

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

**FORM 10-K**

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

For the fiscal year ended December 31, 2023  
or

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

For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission file number 1-41509



**Nxu, Inc.**

(Exact Name of Registrant as Specified in Its Charter)

**Delaware**  
(State or other jurisdiction of  
incorporation or organization)

**92-2819012**  
(I.R.S. Employer Identification No.)

**1828 N. Higley Rd. Ste 116  
Mesa, AZ 85205**  
(Address of principal executive offices) (Zip Code)

Registrant's telephone number, including area code **(760) 515-1133**

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

Title of each class	Trading Symbol	Name of each exchange on which registered
Class A Common Stock, par value \$0.0001 per share	NXU	NASDAQ

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

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

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

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

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

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or an emerging growth company. See the definitions of “large accelerated filer,” “accelerated filer” and “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 has filed a report on and attestation to its management’s assessment of the effectiveness of its internal control over financial reporting under Section 404(b) of the Sarbanes-Oxley Act (15 U.S.C. 7262(b)) by registered public accounting firm that prepared or issued its audit report. Yes  No

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

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

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

As of June 30, 2023, the aggregate market value of the common stock of the registrant held by non-affiliates was \$19.9 million based on the closing price of the common stock on the NASDAQ on such date.

As of March 28, 2024, there were 11,930,986 and 252,503 shares of the Registrant’s Class A and Class B Common Stock outstanding, respectively, par value \$0.0001.

#### **Documents Incorporated by Reference**

Portions of our Definitive Proxy Statement for the 2024 Annual Meeting, expected to be filed within 120 days of our fiscal year end, are incorporated by reference into Part III of this Annual Report on Form 10-K.

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NXU, INC.  
ANNUAL REPORT ON FORM 10-K  
FOR THE FISCAL YEAR ENDED DECEMBER 31, 2023

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## FORWARD-LOOKING STATEMENTS

The Securities and Exchange Commission (“SEC”) encourages companies to disclose forward-looking information so that investors can better understand a company’s future prospects and make informed investment decisions. This Annual Report on Form 10-K for the fiscal year ended December 31, 2023 (“Form 10-K”) contains forward-looking statements. We intend such forward-looking statements to be covered by the safe harbor provisions for forward-looking statements contained in 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”). All statements other than statements of historical facts contained in this Form 10-K may be forward-looking statements. In some cases, you can identify forward-looking statements by terms such as “may,” “will,” “should,” “expects,” “plans,” “anticipates,” “could,” “intends,” “targets,” “projects,” “contemplates,” “believes,” “estimates,” “forecasts,” “predicts,” “potential” or “continue” or the negative of these terms or other similar expressions. In particular, statements regarding expectations and opportunities, industry trends, new product expectations and capabilities, market share and product sales, expectations and timing related to commercial product launches and production volumes, future strategies and products, and our outlook regarding our performance and growth are forward-looking statements. This Form 10-K may also contain forward-looking statements regarding future results of operations and financial position, manufacturing capabilities and facilities, business strategy, plans, goals and objectives for future operations.

There is no assurance that we will be able to carry out our plans or achieve our goals and objectives or that we will be able to do so successfully on a profitable basis. Forward-looking statements by their nature address matters that are, to different degrees, uncertain and involve significant risks, many of which are beyond our control, and actual results may differ materially. Investors are urged not to place undue reliance on forward-looking statements. Forward-looking statements speak only as of the date on which they were made. We do not undertake to update our forward-looking statements. All forward-looking statements contained herein are qualified in their entirety by the foregoing cautionary statements.

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## PART I

### Item 1. *Business*

#### Overview

Nxu, Inc. (“Nxu,” the “Company” or “we”) is a technology company developing next-generation electric vehicle (“EV”) charging, battery, and vehicle technologies for mobility customers. We believe widespread adoption of electric vehicles requires a focused effort in development of the energy infrastructure, including charging and energy storage systems. Our NxuOne™ charging technology provides repeatable, consistent power delivery, designed to meet the needs of today’s electric vehicles as well as those developed in the future. We believe the NxuOne™ is the highest powered charging technology currently on the market and is expandable to meet the megawatt power needs of tomorrow’s vehicles.

Nxu is an early-stage company that began delivery of product in 2023 and is working towards scaled manufacturing and site development of charging hardware and software systems to deploy at bespoke charging sites along highway corridors. Of the products we intend to bring to market, our NxuOne™ charging systems are the furthest along and began manufacturing in 2023. We intend to continue developing, manufacturing, and deploying charging and infrastructure systems throughout the year 2024 and beyond. We plan to continue to develop battery and vehicle products while the business focuses on cashflow generation and reaching profitability in our charging infrastructure programs.

#### Our Target Market

Our target market consists of consumers and commercial transportation customers that are contemplating or have recently adopted the use of electric vehicles. Expansion of the EV charging infrastructure is a key business vertical of renewable energy transition and electrification of the transportation sector. However, the customers and prospective customers interested in adopting electric vehicles face significant and unique barriers.

- **Charging time:** Incumbent charging stations built and operated by competitors deliver inconsistent energy while charging, creating inconsistent charge times. The NxuOne™ delivers full requested power to all known vehicles.
- **High upfront costs:** To mitigate the significant capital required for infrastructure investments, Nxu provides technology solutions that are scalable as the market capabilities grow and that minimize capital expenses and time for utility integration.
- **Limited range and charging infrastructure:** The existing commercial and consumer charging infrastructure lacks consistency and is fragmented. The NxuOne™ provides a solution that is scalable and capable of delivering a consistent charging experience at every stop.
- **Vehicle downtime:** Time spent charging, especially when it is inconsistent, creates additional cost when owning an EV. The NxuOne™ provides consistent, repeatable charging experiences so you can minimize downtime and planning challenges when transitioning to EVs.
- **Uncertainty about total cost of ownership:** Variable costs in electricity while charging, combined with unknown total cost of ownership creates uncertainty in the market. Nxu’s subscription-based ownership program allows charging for consumer and commercial users as well as business operators to better plan with a flat monthly rate.

We believe that consumer and commercial electric vehicle adoption requires a unified infrastructure solution and necessitates giant leaps in battery and vehicle technology to address all concerns simultaneously. A piecemeal solution in which multiple companies independently develop and build incompatible pieces of the electrification puzzle will not adequately address all needs for individual and commercial electric vehicle consumers. Nxu plans to develop and deploy this unified solution.

#### Principal Products and Services

Nxu plans to address the needs highlighted above by developing a unified set of products and solutions to support a seamless transition to electrification. We plan to build megawatt charging stations that will provide consistent, repeatable energy delivery to meet the maximum needs of current and future electric mobility vehicles and equipment. Our charging systems may also incorporate energy storage systems, as we aim to create microgrid solutions to ease the investment and time required for utilities to scale to meet the demanding needs of the electric mobility market.

#### Our Products

- NxuOne™ – Our proprietary NxuOne™ charging system is intended to be capable of delivering up to 4.5 megawatts (“MWs”) of continuous power, deployable as a standalone charging station or as a drop-in direct-grid connection solution. The NxuOne™ is intended to be a proprietary charging solution aimed at providing charging capabilities to the Nxu pickup truck, Nxu EV platform, and non-Nxu branded electric vehicles utilizing North American Charging Standard (“NACS”) and Combined Charging System 2.0 (“CCS 2.0”). The NxuOne™ charging systems can accommodate direct current (“DC”) inputs from energy storage systems, reducing the complex and expensive utility integration and equipment cost necessary to provide consistent and repeatable megawatt+ power to charging sites.

## *Future Products*

- Nxu battery cells and packs – Our proprietary battery technology is the foundation of the Nxu ecosystem. The Nxu battery cell is designed to leverage an in-house developed NMC-811 chemistry, combined with a unique, proprietary mechanical construction, to significantly improve thermal management and reduce electrical resistance. In addition, our battery cell structure eliminates excess volume and space, thereby providing high energy density. Nxu’s battery technology utilizes a combination of Nxu battery cell technology combined with proprietary pack technology into a solution to be utilized in various vehicle types. We believe the Nxu battery cell, when implemented with Nxu’s battery pack technology and utilizing our NxuOne™ charging system, will be capable of delivering consistent power from 0% to 100% battery usable capacity, while charging from 0% to 100% usable capacity in 15 minutes. This is the same amount of time it normally takes to fill an Internal Combustion Engine (“ICE”) vehicle with fuel. Throughout the first half of 2023, we developed technologies and processes designed to produce the Nxu battery cells at our warehouse in Mesa, Arizona. In August 2023, Nxu paused development and production of proprietary battery cells and related systems and components to focus all of its resources on charging infrastructure. As development and production of batteries is extremely capital intensive, the Company expects to resume batter development and production when the Company is better capitalized.
- Nxu EV Platform –The Nxu EV platform (the “Nxu Platform”) is designed to be a modular vehicle system, or electric skateboard, providing all technology, software, and mobility technology required to develop a vehicle by third parties. Intended to be a universal, connected, complete vehicle hardware and mechanical architecture system, the Nxu Platform utilizes our proprietary battery, electronics hardware, mechanical, and software technologies to create a vehicle platform that may be utilized by low-volume vehicle original equipment manufacturers (“OEMs”) to develop new EV solutions for niche- and mass-market opportunities. We expect that the production start of Nxu Platform will follow the commencement of Nxu battery cell and pack production.
- Nxu pickup truck – The Nxu pickup truck (the “Nxu Truck”) is intended to be our flagship vehicle and a 100% electric full-sized truck. The Nxu pickup truck is intended to be the first of a long line of vehicle solutions built on our Nxu Platform. We intend to provide up to 500 miles of range, up to 35,000 pounds of towing capacity, and a simplistic operational approach with fleet connectivity that utilizes our software and cloud service solutions. The Nxu Truck is still in the research and development phase and is not yet in production. We expect that the start of Nxu Truck production will follow commencement of production of Nxu battery cell and pack production and the Nxu Platform production.

## *Our People*

Beyond our products and solutions in development, we believe the largest competitive advantage at Nxu’s disposal is the Company culture. Our Company culture embodies the idea that a transition to electrification and a sustainable future should not require compromise. We are unwilling to bend in our belief that when a technology does not exist, we find creative and innovative ways of developing solutions to solve these challenges. Our team is built of a small and diverse group of individuals with a singular focus, to build a future where energy is harnessed in a way that is abundant, accessible and infinite, and to make electric mobility viable.

## **Competition**

The EV charging market is a competitive market with highly capitalized and established players. Current competition in the market provides a wide range of charging systems with inconsistent power delivery and are susceptible to utility infrastructure restrictions to ensure their customers get a consistent repeatable experience. Current competitors are focused on deployments of charging and infrastructure in high daily traffic consumer locations. Currently there are an insufficient number of charging systems deployed for commercial customers and there is a significant gap in charging systems focused on vehicles which may be towing trailers. A vast majority of locations are focused on pull in and park, with power sharing across vehicles currently connected. Nxu is the only company with dedicated 750 kilowatt (“kW”) power delivery per pedestal.

The EV market and battery segment are highly competitive and rapidly evolving, with new technologies and potential new entrants emerging frequently. Several major manufacturers currently supply batteries for the EV industry, including Panasonic Corporation, Samsung SDI, Contemporary Amperex Technology Co. Limited, LG Energy Solutions, and BYD Co. Limited. These companies primarily supply conventional lithium-ion batteries and are also working on developing new solid-state battery technologies, including potentially lithium-metal batteries. In addition to these established players, many new entrants and automotive OEMs are also investing in battery development and production, with some researching and developing solid-state battery technologies. For example, Quantscape and Solid Power are developing solid-state batteries while Tesla, Inc. is building multiple battery gigafactories and has the potential to supply batteries to other automotive OEMs. Overall, the competitive landscape of the EV battery market is likely to continue evolving, with new technologies and players emerging over time. Companies operating in this market will need to be nimble and responsive to these changes to remain competitive and successful.

Similarly, the competitive landscape for energy storage products is rapidly evolving, with new technologies and players entering the market. Currently, major companies supplying batteries for energy storage systems include Panasonic Corporation, LG Energy Solutions, Samsung SDI, and Tesla, Inc. In addition to established players, there are many startups and smaller companies that are developing new energy storage technologies, such as flow batteries, solid-state batteries, and hydrogen fuel cells. Large energy companies, such as Total, Shell, and Enel, are also entering the market and investing in energy storage projects. The competitive landscape for energy storage products is expected to remain highly dynamic, with new technologies and players emerging over time, driven by factors such as declining costs, increasing demand for renewable energy, and government incentives.

## Competitive Strengths

We believe that Nxu is well positioned to compete successfully in charging infrastructure and eventually electric battery technologies.

Our competitive strengths include:

- **NxuOne™ charging system.** Nxu has developed what we believe is the world's most powerful charging system. Our first generation product delivers up to 750MWs of power, maximizing charging capabilities of any current and expected electric mobility vehicles to reach customers over the next several years. The NxuOne™ system is capable of scaling up to 4.5MWs per pedestal. When combined with energy storage, the NxuOne™ can provide the maximum power requested by any vehicle currently on the market.
- **Fast-Charging Nxu Battery Tech with Superior Cycle Life.** Nxu has developed a battery technology that is industry competitive in terms of energy density through chemistry development of proprietary coating mixtures. In addition, the terminal size of the battery cells is designed with increased surface area to enable a much higher electric current intake at a cell level than the capabilities of conventional lithium-ion ("Li-ion cells"). We believe that this, coupled with a differentiated form factor, allows our batteries to charge fast and to last a long time. Nxu battery technology is being designed to charge in 15 minutes or less and sustain performance for as long as one million miles of vehicle life.
- **Robust Intellectual Property Portfolio.** As of December 31, 2023, Nxu has three issued and 32 pending U.S. patents. Our issued patents are effective through dates between April 2039 and April 2042. For all other patents, the rights and duration are pending grant of the patent by the U.S. Patent and Trademark Office.
- **Vertical Integration.** By taking a vertically integrated approach to development, Nxu is engineering solutions from the ground up, beginning with the Nxu battery cell, Nxu Platform, and ultimately the Nxu Truck. By developing from cell to vehicle, Nxu's product offering, development costs, pricing, and success will not depend on Tier 1 suppliers.
- **A Team with Deep Experience in Disruption.** Nxu's leadership team is made up of individuals with experience in developing products or working in companies that have disrupted traditional industries. Instead of building a team with traditional automotive experience, Nxu has prioritized innovation as a requirement when recruiting talent.
- **Company Core Values & Culture.** Nxu has four Core Values: "Candid Ownership", "Team First", "Intentional Simplicity", and "Make it Happen". These beliefs make Nxu a unique company. Nxu has been dedicated to Candid Ownership from its inception, as can be seen in the transparency of the YouTube videos and social media updates that the Company publishes on a regular basis. This level of transparency and authenticity sets Nxu apart from other companies in the electric vehicle and battery industries. "Team First" is a commitment to always do what is best for the team over any one individual, holding Nxu to a high standard of performance management internally. "Intentional Simplicity" captures the deliberate decisions Nxu takes to keep things simple in its product and process designs and in its functionality, or both. "Intentional Simplicity" is the opposite of complexity, and it involves making conscious choices to minimize unnecessary elements or features, and to prioritize simplicity and ease of use. Finally, "Make It Happen" instills in the team a relentlessness and perseverance that has resulted in Nxu delivering results using far less resources than our competitors.
- **Magnetic Brand with an Engaged Community.** Nxu has built a social media following of over 120,000 combined followers across Facebook, Instagram, LinkedIn, YouTube, and X (formerly known as Twitter). This community is highly engaged in Nxu's progress and updates, and many of them have even participated in one of our previous equity crowdfunding offerings. This community base is a resource for Nxu to test new ideas, validate product-market fit, and solicit feedback from a community that we believe is representative of our future customer base.
- **Made in the USA.** Nxu plans to build its products in-house in its facility in Arizona. As Nxu scales production output, we may need to expand into additional or alternative facilities. Nxu intends to keep manufacturing in the United States, which we believe will likely make the Company one of the few American companies building electric vehicle batteries and related components and systems on United States soil.

## Company History

Nxu was incorporated in Delaware in 2016 as Atlis Motor Vehicles Inc. (“Atlis”). Since its incorporation, Nxu has been primarily focused on research and development. The business strategy, intellectual property, and initial truck design were created by the founding team. In March 2018, Nxu launched its first Regulation CF campaign to fund further development of the battery technology and the concept designs of the Nxu Platform and Nxu Truck. In October 2018, Nxu completed a proof-of-concept prototype battery pack that demonstrated a full charge in less than 15 minutes. In 2019, Nxu completed a proof-of-concept prototype of the Nxu Platform. A second Regulation CF campaign in December 2019 allowed the Company to move out of Chief Executive Officer Mark Hanchett’s garage and into our first production facility and hire additional engineers to finalize design of the Nxu battery cell, Nxu Platform, and Nxu Truck. In August 2020, Nxu launched a successful Regulation A+ campaign which funded facility expansion and continued growth of Nxu technical development teams. In September 2021, Nxu launched a Regulation CF campaign to continue scaling Nxu battery cell development. In early 2022, Nxu launched its final Regulation A+ campaign which not only funded the Company’s operations throughout that year but also provided a foundation upon which Nxu could become a public company. On September 27, 2022, the Company became a publicly listed company under the ticker “AMV” at The Nasdaq Stock Market LLC (“Nasdaq”).

On May 12, 2023, Atlis, the predecessor company, completed a reorganization merger pursuant to an agreement and plan of merger, dated as of April 16, 2023 (the “Reorganization Agreement”), by and among Atlis, Nxu and Atlis Merger Sub, Inc., a Delaware corporation and, as of immediately prior to the consummation of such merger, a wholly-owned subsidiary of Nxu (“Merger Sub”). The Reorganization Agreement provided for the merger of Atlis and Merger Sub, with Atlis surviving the merger as a wholly-owned subsidiary of Nxu (the “Reorganization Merger”). Following the closing of the Reorganization Merger, Nxu’s Class A common stock commenced trading on Nasdaq under the ticker “NXU”.

Nxu is an execution focused company and plans to continue to raise capital if needed to execute on its immediate and long-term goals.

## How We Generate Revenue

Nxu currently generates revenue by providing kW hour (“kWh”) of energy to consumer and commercial customers through the NxuOne™ charging systems. Nxu intends to generate revenue in 2024 through the sale of the NxuOne™ charging systems through our partner program as well as by continuing to provide kWh of energy to consumer and commercial customers through the NxuOne™ charging systems. Nxu first deployed a pilot vehicle charging location in Mesa, Arizona in September 2023. The Company will continue to develop charging site locations focused on bringing the NxuOne™ charging experience to electric vehicle customers.

Nxu is focused on building a profitable and sustainable technology company, beginning with our NxuOne™ charging systems. Nxu intends to continue to make investments into our NxuOne™ charging solution and sites, as well as future investments in Nxu cell and vehicle technologies for future product programs.

Nxu believes that the charging and infrastructure business will be a profitable, positive cash flow business for Nxu, and intends to focus our energies on scaling this business while strategically positioning Nxu as a future leader in the renewable energy and electric vehicle mobility sectors.

## Industry

### *Electric Vehicle Battery, Energy Storage and Charging Infrastructure*

The electric vehicle battery industry is rapidly growing as OEMs target transition to completely electric product offerings, some as soon as 2025. Electric vehicle batteries are in high demand, and smaller companies have not been able to secure battery supply for their production targets from the larger battery manufacturers. According to Wood Mackenzie, by 2030 the 2.3 Terawatt hour (“TWh”) global need for electric vehicle batteries is 77% higher than the forecasted supply of 1.3 Gigawatt hour (“GWh”). Furthermore, as EV’s become increasingly popular, there has been a growth in charging infrastructure around the world. According to Acumen Research and Consulting, the electric vehicle charging market is projected to hit \$182 billion by 2030. However, there are still challenges to widespread adoption of EV’s. These primarily include long charge times and limited charging infrastructure. Nxu intends to supply battery cells; and charging infrastructure to help fill these gaps in supply.

### *Energy Storage*

Energy storage systems (“ESS”) have a wide range of emerging use cases that are becoming increasingly important as the adoption of renewable energy sources and electrification continues to grow. Some of the emerging use cases for energy storage systems include:

- Grid Stabilization - Energy storage systems can help stabilize the electrical grid by storing excess energy during periods of low demand and releasing it during periods of high demand. This can help prevent blackouts and improve the reliability of the electrical grid.
- Renewable Integration - Energy storage systems can help integrate renewable energy sources, such as solar and wind, into the grid by storing excess energy and releasing it when demand is high. This can help balance the variability of renewable energy sources and increase the penetration of renewable energy into the grid.



- Electric Vehicle Charging - Energy storage systems can be used to store energy for electric vehicle charging. This can help reduce the strain on the electrical grid during peak charging periods and enable more efficient use of renewable energy sources.
- Microgrids - Energy storage systems can be used in microgrids, which are small-scale power grids that can operate independently of the main electrical grid. Microgrids can be used to provide power to remote or off-grid locations, improve the reliability of the electrical grid, and enable more efficient use of renewable energy sources.
- Emergency Backup Power - Energy storage systems can be used as backup power sources during power outages or other emergencies. This can help ensure critical facilities, such as hospitals, data centers, and emergency response centers, have continuous power.

Overall, the emerging use cases for energy storage systems are diverse and are becoming increasingly important as the world shifts toward a more sustainable energy system. Nxu intends to leverage its battery technology to support the growth of the ESS market given that ESS requirements are technologically adjacent to electric vehicle batteries.

### ***Pickup Trucks***

Pickup trucks have been among the top three best-selling vehicles in the United States for the past five years. Altogether, including the new and used truck market, vehicle up-fitter market, and charging opportunity, the total market opportunity for manufacturers in the pickup truck space is north of \$241 billion. Nxu intends to capture a large share of the electric truck market. Our proprietary battery technology is being designed to allow us to deliver unprecedented range and charge times.

### **Our Company**

#### ***Geographic Sales Territory***

Nxu is focused on highway corridors in the southwest for charging station site deployment. Nxu plans to sell charging stations to commercial customers throughout the United States.

#### ***Distribution Channels***

The sale of our hardware and services will be facilitated online via our Company's website and through our internally developed business to business sales process. Our intent is to allow fleet and consumer customers to purchase Nxu products both online and directly through the Company's sales process.

#### ***Supply Chain***

As we begin our production ramp, we have been keeping close contact with our supply chain partners to ensure we can satisfy our production goals. Our ability to meet this demand is heavily dependent on our ability to raise the necessary capital. Our suppliers include large global companies geared toward supporting manufacturing with multi-site and international presence. While we believe demand for raw materials will increase over the next several years, we also believe that our suppliers have the ability to support our requested demand. We will need to ensure supply of scarce electronic components. Given our volume, we are confident that our suppliers will be able to sufficiently meet our electronics and microchip demands for our planned charging station production goals.

At the same time, we are paying close attention to the global geopolitical situation. Similar to other manufacturing companies, a large portion of our supply chain is based in China. Currently, approximately 75% of our raw material is supplied directly or indirectly from China. We intend to explore risk mitigation opportunities in parallel for alternative suppliers in Europe and North America to strengthen our supplier diversity.

#### ***Growth Strategy***

We plan to take a strategic approach to scale. First, Nxu will focus on sales of our NxuOne™ charging stations to businesses looking to provide charging to their customers, or to power their own EV fleets (the "Nxu Partnership Program"), while simultaneously focusing on developing dedicated travel sites for electric vehicle owners traveling along major highway corridors. In the future, we intend to build these travel sites to include our NxuOne™ charging stations and energy storage solutions to provide a consistent and reliable charging experience to electric vehicle customers (the "Nxu Quad"). Each Nxu Quad location is intended to have a lounge with restrooms and other amenities travelers can use while they wait for their vehicles to charge and will be accessible with consumer and commercial pull through access.

Nxu will focus on generating positive cashflow by managing growth and controlling expenses while continuing to scale and invest in the NxuOne™ charging infrastructure programs for the near future. Additional future developments in vehicle technology and battery systems will be maintained through positive cashflows generated from NxuOne™ charging stations.

## ***Regulatory Approval of Principal Products or Services***

We will be subject to extensive regulatory requirements that we plan to comply with to begin distribution of our NxuOne™ charging products. Our batteries, and the sale of electric vehicles and motor vehicles in general, are subject to regulation under international, federal, state, and local laws, including export and import control laws. Compliance with changing regulations could be time consuming, burdensome, and expensive. To the extent compliance with new and existing regulations is cost prohibitive, our business prospects, financial condition, and operating results may be adversely affected. We are also subject to numerous federal, state and local environmental laws and regulations governing, among other things, solid and hazardous waste storage, treatment and disposal, and remediation of releases of hazardous materials. There are significant capital, operating and other costs associated with compliance with these environmental laws and regulations. Environmental laws and regulations may become more stringent in the future, which could increase costs of compliance or require us to manufacture with alternative technologies and materials. Obtaining necessary regulatory approvals is critical to Nxu successfully launching its Nxu battery cell, Nxu Platform, and Nxu Truck products. See “Risk Factors — We may face state and federal regulatory challenges, including environmental and safety regulations” for more information.

## ***EPA Emissions and Certificate of Conformity***

The U.S. Clean Air Act requires that we obtain a Certificate of Conformity issued by the Environmental Protection Agency (the “EPA”) certifying that certain of our vehicles comply with all applicable emissions and related certification requirements. A Certificate of Conformity is required for vehicles sold in states covered by the Clean Air Act’s standards. A California Executive Order issued by the California Air Resources Board (“CARB”) is also required for vehicles sold in California and states that have adopted California’s stricter standards for emissions controls related to new vehicles and engines sold in such states. States that have adopted the California standards, as approved by the EPA, also recognize the CARB Executive Order for sales of vehicles. In addition to California, there are several other states that have either adopted or are in the process of adopting the stricter California standards, including New York, Massachusetts, Vermont, Maine, Pennsylvania, Connecticut, Rhode Island, Washington, Oregon, New Jersey, Maryland, Delaware and Colorado.

## ***Vehicle Safety and Testing***

Our vehicles will be subject to, and will be required to comply with, numerous regulatory requirements established by the National Highway Traffic Safety Administration (“NHTSA”), including applicable U.S. federal motor vehicle safety standards (“FMVSS”). We intend that the Nxu Truck will fully comply with all applicable FMVSSs without the need for any exemptions and expect future Nxu vehicles to either fully comply or comply with limited exemptions related to new technologies. Additionally, there are regulatory changes being considered for several FMVSSs, and while we anticipate compliance, there is no assurance until final regulation changes are enacted.

As a manufacturer, Nxu will need to self-certify that its vehicles meet all applicable FMVSSs, as well as the NHTSA bumper standard, or otherwise are exempt, before the vehicles can be imported or sold in the United States. Numerous FMVSSs will apply to Nxu’s vehicles, such as crash-worthiness requirements, crash avoidance requirements and electric vehicle requirements. We will also be required to comply with other federal laws administered by NHTSA, including Theft Prevention Act requirements, consumer information labeling requirements, Early Warning Reporting requirements regarding warranty claims, field reports, death and injury reports and foreign recalls and owner’s manual requirements.

The Automobile Information and Disclosure Act requires manufacturers of motor vehicles to disclose certain information regarding the manufacturer’s suggested retail price, optional equipment and pricing. In addition, this law allows inclusion of crash test ratings as determined by NHTSA if such tests are conducted.

Nxu’s vehicles that may be sold outside of the U.S. are subject to similar foreign safety, environmental and other regulations. Many of those regulations are different from those applicable in the U.S. and may require redesign and/or retesting.

## ***Seasonality***

We expect that our operating results will fluctuate in the future due to various factors including changing economic conditions. Seasonal trends may also be impacted by externalities such as pandemics, supply chain disruptions and materials and machinery shortages.

## ***Impact of Inflation***

In recent years, inflation was the highest in the United States in over 30 years. Our ability to generate revenue and ultimately cash flow can be adversely impacted by sudden increases in specific costs, such as increases in material and labor. In addition, measures used to combat inflation, such as increases in interest rates, could also have an impact on our ability to obtain adequate terms for equipment and material financing. There can be no assurance that inflation will not affect our future results or our speed to market.

## ***Employees***

As of December 31, 2023, Nxu had a total of 36 full time employees. We believe that an engaged, goal-oriented, and productive workforce is critically important to creating shareholder value. To that end, we are committed to providing a safe workplace and opportunities for professional growth and advancement based on performance, qualification, demonstrated skill and achievement at a fair wage. Additionally, given the success of our businesses hinges on the proficiency and abilities of our workforce to meet goals, and we are committed to recruiting, nurturing, and retaining personnel who are well-suited to the demands of our operating environment, the Company leverages its equity as a tool to attract and retain high-skilled talent and to incentivize our management team to achieve its execution goals.

## Implications of Being an Emerging Growth Company and Smaller Reporting Company

We qualify as an “emerging growth company” under the Jumpstart Our Business Startups Act of 2012, as amended (the “JOBS Act”). As a result, we are permitted to, and intend to, rely on exemptions from certain disclosure requirements. For so long as we are an emerging growth company, we will not be required to:

- Have an auditor report on our internal controls over financial reporting pursuant to Section 404(b) of the Sarbanes-Oxley Act of 2002, as amended (the “Sarbanes-Oxley Act”);
- Comply with any requirement that may be adopted by the Public Company Accounting Oversight Board regarding mandatory audit firm rotation or a supplement to the auditor’s report providing additional information about the audit and the financial statements (i.e., an auditor discussion and analysis);
- submit certain executive compensation matters to stockholder advisory votes, such as “say-on-pay,” “say-on-frequency” and pay ratio; and
- Disclose certain executive compensation related items such as the correlation between executive compensation and performance and comparisons of the chief executive officer’s compensation to median employee compensation.

In addition, Section 107 of the JOBS Act also provides that an emerging growth company can take advantage of the extended transition period provided in Section 7(a)(2)(B) of the Securities Act for complying with new or revised accounting standards. In other words, an emerging growth company can delay the adoption of certain accounting standards until those standards would otherwise apply to private companies. We have elected to take advantage of the benefits of this extended transition period. Our financial statements may therefore not be comparable to those of companies that comply with such new or revised accounting standards.

We will remain an “emerging growth company” for up to five years, or until the earliest of (i) the last day of the first fiscal year in which our total annual gross revenues are \$1.07 billion or more, (ii) the date that we become a “large accelerated filer” as defined in Rule 12b-2 under the Exchange Act, which would occur if the market value of our Class A common stock that are held by non-affiliates exceeds \$700 million as of the last business day of our most recently completed second fiscal quarter, or (iii) the date on which we have issued more than \$1 billion in non-convertible debt during the preceding three year period.

We are also a “smaller reporting company” as defined by Rule 12b-2 of the Exchange Act. We may continue to be a smaller reporting company even after we are no longer an emerging growth company. We may take advantage of certain of the scaled disclosures available to smaller reporting companies and will be able to take advantage of these scaled disclosures as long as the market value of our voting and non-voting Class A common stock held by non-affiliates is less than \$250 million measured on the last business day of our second fiscal quarter, or our annual revenue is less than \$100 million during the most recently completed fiscal year and the market value of our voting and non-voting Class A common stock held by non-affiliates is less than \$700 million measured on the last business day of our second fiscal quarter.

## INFORMATION ABOUT NXU, INC.

Nxu, Inc. (“Nxu”, “the Company”, “we”, “us” or “our”) uses its website, [www.nxuenergy.com](http://www.nxuenergy.com), and social media channels including Instagram, YouTube, Facebook, LinkedIn, and X (formerly known as Twitter) (@Nxu) to disclose information about the Company and its products to customers, investors, and the public. It's important to note that this information is not incorporated by reference in any reports or documents filed with the SEC, and website URLs are intended to be inactive textual references only. The information posted on these channels may be considered material, so investors should monitor them in addition to press releases, SEC filings, and public conference calls and webcasts. By enrolling your email address to any of our newsletters, you may receive automatic alerts and other information about Nxu. The Company's Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K, and amendments to reports filed pursuant to Sections 13(a) and 15(d) of the Exchange Act are filed with the SEC and available free of charge on the SEC.gov website.

## **Item 1A. Risk Factors**

An investment in our securities involves a high degree of risk. You should carefully consider the risks described below before making an investment decision. Our business, prospects, financial condition, or operating results could be harmed by any of these risks, as well as other risks not known to us or that we consider immaterial as of the date of the filing of this Form 10-K. The trading price of our securities could decline due to any of these risks, and, as a result, you may lose all or part of your investment. Our actual results may differ materially from any future results expressed or implied by such forward-looking statements as a result of various factors, including, but not limited to, those discussed in the sections of this Form 10-K entitled "Forward-Looking Statements" and "Management's Discussion and Analysis of Financial Condition and Results of Operations."

### **Risk Factors Summary**

The following is a summary of the principal factors that make an investment in our securities speculative or risky, all of which are more fully described below in this section. This summary should be read in conjunction with the full description of "Risk Factors" in this section and should not be relied upon as an exhaustive summary of the material risks facing our business. In addition to the following summary and the information in this section, you should consider the other information contained in this Annual Report on Form 10-K before investing in our securities.

### **Risks Related to Our Business**

- Nxu is an early-stage company with a limited operating history that has never turned a profit and there are no assurances that the Company will ever be profitable.
- We are in the development stages of many of our products, which face technical, significant cost, and regulatory challenges we may not be able to overcome.
- We may not achieve our projected development goals in the time frames we announce and expect due to unforeseen factors, including scarcity of natural resources, increases in costs of raw materials, disruption of supply chain or shortages of materials, rising interest rates and inflation increasing the cost to do business.
- If we cannot continue to innovate, our projected revenue growth rate and profits may be reduced.
- Nxu's estimates of market opportunity and forecasts of market growth may prove to be inaccurate.
- The success of our business depends on attracting and retaining a large number of customers. If we are unable to do so, we will not be able to achieve profitability.
- Nxu's growth and success are highly correlated with and thus dependent upon the continuing rapid adoption of and demand for EVs and OEMs' ability to supply such EVs to the market.
- We generated revenue for the first time in 2023, but there is no assurance that we'll be able to continue to generate revenue from the sale or deployment of the NxuOne™ Charging Network or from the sale of other proprietary products.
- We have losses which we expect to continue into the future. There is no assurance our future operations will result in a profit. If we cannot generate sufficient revenues to operate profitably or we are unable to raise enough additional funds for operations, the stockholders will experience a decrease in value, and we may have to cease operations.
- We employ a small team of people and each team member plays a critical role at Nxu. Any loss of talent may have a material adverse effect on our business and operations.
- If we pursue strategic investments, they may result in losses.
- The preparation of our financial statements requires estimates, judgments and assumptions that are inherently uncertain.
- Failure to maintain internal controls over financial reporting would have an adverse impact on us.
- Uncertainty exists as to whether our business will have sufficient funds over the next 12 months, thereby making an investment in Nxu speculative.
- We need to raise additional capital to meet our future business requirements and such capital raising may be costly or difficult to obtain and could dilute current stockholders' ownership interest.
- Nxu relies on a limited number of suppliers and manufacturers for its charging stations. A loss of any of these partners could negatively affect its business or ability to manufacture and deliver NxuOne™ Charging Stations
- Unknown costs and risks may exist with the prolonged use of NxuOne™ Charging Network equipment and related systems, as the technology is recently developed and has not been widely deployed.
- Nxu is dependent upon the availability of electricity at Nxu's current and future charging stations. Cost increases, delays and/or other restrictions on the availability of electricity would adversely affect Nxu's business and results of Nxu's operations.
- Nxu's business is subject to risks associated with construction, cost overruns and delays and other contingencies that may arise in the course of completing installations and such risks may increase in the future as Nxu expands the scope of such services with other parties.
- A significant interruption of our information technology systems or the loss of confidential or other sensitive data, including cybersecurity risks, could have a material adverse impact on our operations and financial results.
- We may have difficulty protecting our intellectual property.
- We may face state and federal regulatory challenges, including environmental and safety regulations.

### ***Risks Related to the Electric Vehicle Industry***

- The automotive, specifically the electric vehicle, market is highly competitive, and we may not be successful in competing in this industry.
- The EV charging market is characterized by rapid technological change, which requires the Company to continue to develop new products and product innovations. Any delays in such development could adversely affect market adoption of Nxu's products and financial results.
- We rely on complex machinery for our operations, and production involves a significant degree of risk and uncertainty in terms of operational performance, safety, security, and costs.
- The electric vehicle technology industry is rapidly evolving and may be subject to unforeseen changes which could adversely affect the demand for our chargers or other products and may increase our operating costs.
- Rideshare and commercial fleets may not electrify as quickly as expected and may not rely on public fast charging or on Nxu's network as much as expected. Future demand for or availability of battery EVs from the medium- and heavy-duty vehicle segment may not develop as anticipated or take longer to develop than expected.
- The EV market currently benefits from the availability of rebates, tax credits and other financial incentives from governments, utilities and others to offset the purchase or operating cost of EVs and EV charging stations. The reduction, modification or elimination of such benefits could adversely affect Nxu's financial results and ability to continue to grow.
- We have minimal experience servicing and repairing our charging stations. If we or our partners are unable to adequately service our charging stations our business, prospects, financial condition, results of operations, and cash flows could be materially and adversely affected.
- Product recall could hinder growth and product liability or other claims could have a material adverse effect on our business.

### ***Risks Related to Our Management***

- We are dependent upon our executives for their services and the loss of personnel may have a material adverse effect on our business and operations.
- Our management team does not have experience running a public company.
- We are significantly influenced by our officers and directors.
- Management's judgment, estimates and assumptions have a significant impact on business decisions and accounting policies.
- Limitations of director liability and director and officer indemnification.

### ***Risks Related to Our Capital Structure and Ownership of Class A Common Stock***

- We cannot predict the impact our dual class structure may have on our stock price.
- The market price of our Class A common stock has fluctuated, and may continue to fluctuate, significantly.
- If the market price of our Class A common stock declines below \$1 for more than 30 consecutive trading days, we may be deemed noncompliant with Nasdaq listing rules, which would require a cure.
- If the market price of our Class A common stock declines precipitously, the only cure may be to enact a reverse split of the stock. Failure to maintain compliance with Nasdaq's Continued Listing Rules could be costly and have material adverse effects.
- We do not anticipate dividends to be paid on our Class A common stock and investors may lose the entire amount of their investment.
- We are an emerging growth company and a smaller reporting company within the meaning of the Securities Act, and if we take advantage of certain exemptions from disclosure requirements available to emerging growth companies and smaller reporting companies, this could make our securities less attractive to investors and may make it more difficult to compare our performance with other public companies.
- We will incur significant additional costs as a result of being a public company, and our management will be required to devote substantial time to compliance with our public company responsibilities and corporate governance practices.
- Small public companies are inherently risky and we may be exposed to market factors beyond our control. If such events were to occur it may impact our operating results.
- Our Amended and Restated Bylaws (the "A&R Bylaws") include forum selection provisions, which could limit our stockholders' ability to obtain a favorable judicial forum for disputes with us.
- Our Class A common stock may be delisted from Nasdaq if we do not maintain compliance with Nasdaq's continued listing requirements. Delisting could affect the market price and liquidity of our Class A common stock and our ability to issue additional securities and raise additional capital would be adversely impacted.
- We may use equity incentives for employees, advisors, directors, key consultants and select affiliates. Any issuance of stock upon the conversion of options and/or incentive rights will result in the dilution of the ownership interests of our existing stockholders.
- A sale, or the perception of future sales, of a substantial number of shares of Class A common stock may cause the share prices to decline.
- Unfavorable securities industry reports could have a negative effect on our share price.
- Our lack of business diversification could cause our stockholders to lose all or some of their investment if we are unable to generate revenues from our primary products.

## Risks Related to Our Business

***Nxu is an early-stage company with a limited operating history that has never turned a profit and there are no assurances that the Company will ever be profitable.***

Nxu is a relatively new company that was incorporated on November 9, 2016. If you are investing in the Company, it is because you think Nxu's business model is a good idea, and Nxu will be able to successfully grow their business and become profitable. We have yet to fully develop or sell our products. We are launching our energy business and have yet to start mass manufacturing of battery cells and pack solutions. Currently, our efforts are focused on scaling our battery pilot production, on building and deploying our megawatt charging stations, primarily for testing our hardware and software, and on building and deploying our energy storage solutions. We have never turned a profit and there is no assurance that we will ever be profitable.

We also have no history in the EV battery, charging, energy storage or in the automotive industry. Although Nxu has taken significant steps in developing brand awareness, Nxu is a new company and currently has no experience developing or selling battery technology. As such, it is possible that Nxu's lack of history in the industry may impact our brand, business, financial goals, operation performance, and products.

We should be considered a "Development Stage Company," and our operations will be subject to all the risks inherent in the establishment of a new business enterprise, including, but not limited to, hurdles or barriers to the implementation of our business plans. Further, because there is no history of operations there is also no operating history from which to evaluate our executive management's ability to manage our business and operations and achieve our goals or the likely performance of the Company. Prospective investors should also consider the fact that our management team has not previously developed or managed similar companies. No assurances can be given that we will be able to achieve or sustain profitability.

***We are in the development stages of many of our products, which face technical, significant cost, and regulatory challenges we may not be able to overcome.***

Many of our products are in the development stages and have not yet reached commercialization status. These products may face technical, significant costs, and regulatory challenges we may be unable to overcome. Failure to meet these standards may interfere with our ability to commercialize our products and have a negative and material impact on our business, prospects, financial condition, and results of our operation.

***We may not achieve our projected development goals in the time frames we announce and expect due to unforeseen factors, including scarcity of natural resources, increases in costs of raw materials, disruption of supply chain or shortages of materials, rising interest rates and inflation increasing the cost to do business.***

Any valuation of Nxu at this stage is pure speculation. Nxu's business success, timeline, and milestones are estimated. Nxu's production projections, sales volume, and cost models are only estimates. Nxu produced these valuations based on existing business models of successful and unsuccessful efforts of other companies within the technology and automotive industries. All such projections and timeline estimations may change as Nxu continues in the development of electric vehicle technology.

We are currently in the development phase of our products and have only started limited manufacture and sales. Cost overruns, scheduling delays, and failure to meet product performance goals may be caused by, but not limited to, unidentified technical hurdles, delays in material shipments, and regulatory hurdles. We may experience delays in the design and manufacturing of our products. We may experience significant delays in bringing our products to market due to design considerations, technical challenges, material availability, manufacturing complications, and regulatory considerations. Such delays could materially damage our brand, business, financial goals, operation results, and product.

***Our limited operating history makes it difficult for us to evaluate our future business prospects.***

We are a company with an extremely limited operating history and have not generated material revenue from sales of our products and services to date. As we continue to transition from research and development activities to production and sales, it is difficult, if not impossible, to forecast our future results, and we have limited insight into trends that may emerge and affect our business. The estimated costs and timelines that we have developed to reach full scale commercial production are subject to inherent risks and uncertainties involved in the transition from a start-up company focused on research and development activities to the large-scale manufacture and sale of battery products, charging stations or energy storage solutions. There can be no assurance that our estimates related to the costs and timing necessary to complete the design and engineering of our products will prove accurate. These are complex processes that may be subject to delays, cost overruns and other unforeseen issues. In addition, we have engaged in limited marketing activities to date, so even if we are able to bring our other commercial products to market, on time and on budget, there can be no assurance that customers will embrace our products in significant numbers at the prices we establish. Market and geopolitical conditions, many of which are outside of our control and subject to change, including general economic conditions, the availability and terms of financing, the conflict in Ukraine, Middle East, and Taiwan fuel and energy prices, regulatory requirements and incentives, competition, and the pace and extent of vehicle electrification generally, will impact demand for our products, and ultimately our success.

***We may not be able to successfully manage growth.***

We could experience growth over a short period of time, which could put a significant strain on our managerial, operational and financial resources. We must implement and constantly improve our certification processes and hire, train and manage qualified personnel to manage such growth. We have limited resources and may be unable to manage our growth. Our business strategy is based on the assumption that our customer base, geographic coverage and service offerings will increase. If this occurs, it will place a significant strain on our managerial, operational, and financial resources. If we are unable to manage our growth effectively, our business will be adversely affected. As part of this growth, we may have to implement new operational, manufacturing, and financial systems and procedures and controls to expand, train and manage our employees, especially in the areas of manufacturing and sales. If we fail to develop and maintain our people and processes as we experience our anticipated growth, demand for our products and our revenues could decrease.

***Our growth rate may not meet our expectations.***

To successfully develop and grow our business, we must develop, distribute and commercialize our products, secure strategic partnerships with various businesses, and bring our products to market on schedule and in a profitable manner, as well as spend time and resources on the development of future products, services and business strategies that are complementary to our initial products and business plan. Delays or failures in the launch of our products could hurt our ability to meet our growth objectives, which may affect our financial projections and may impact our stock price. Moreover, if we are unable to continually develop and evolve our business strategy and launch additional products and services in the future, our business will be entirely dependent on the success of the technology and solutions we are developing today and this could hinder our ability to stay relevant and to pursue growth. We cannot guarantee that any of our planned products will be able to achieve our expansion goals alone. Our ability to expand successfully will depend on a number of factors, many of which are beyond our control.

***If we cannot continue to innovate, our projected revenue growth rate and profits may be reduced.***

To successfully develop and grow our business, we must develop, distribute and commercialize our products, secure strategic partnerships with various businesses, and bring our products to market on schedule and in a profitable manner, as well as spend time and resources on the development of future products, services and business strategies that are complementary to our initial electric vehicle and business plan. Delays or failures in the launch of our products could hurt our ability to meet our growth objectives, which may affect our financial projections and may impact our stock price. Moreover, if we are unable to continually develop and evolve our business strategy and launch additional products and services in the future, our business will be entirely dependent on the success of the NxuOne™ Charging Network and related products, which could hurt our ability to meet our objectives. We cannot guarantee that the NxuOne™ Charging Network will be able to achieve our expansion goals alone. Our ability to expand successfully will depend on a number of factors, many of which are beyond our control.

***Nxu's estimates of market opportunity and forecasts of market growth may prove to be inaccurate.***

Estimates of future EV adoption in the U.S., the total addressable market, serviceable addressable market for Nxu's products and services and the EV market in general are included in this Form 10-K. Market opportunity estimates and growth forecasts, whether obtained from third-party sources or developed internally, are subject to significant uncertainty and are based on assumptions and estimates that may prove to be inaccurate. Such uncertainty is enhanced by the prevailing geopolitical and macroeconomic environment. Nxu's internal estimates relating to the size and expected growth of the target market, market demand, EV adoption across individual market verticals and use cases, capacity of automotive and battery OEMs and ability of charging infrastructure to address this demand and related pricing may also prove to be inaccurate. In particular, estimates regarding the current and projected market opportunity for public and commercial fast charging and future fast charging throughput or Nxu market share capture are difficult to predict. The estimated addressable market may not materialize in the timeframe of Nxu's internal projections, if ever and even if the markets meet the size estimates and growth estimates presented, Nxu's business could fail to grow at similar rates.

***The success of our business depends on attracting and retaining a large number of customers. If we are unable to do so, we will not be able to achieve profitability.***

Our success depends on attracting a large number of potential customers to purchase our vehicles and the associated services we will provide to our customers. If our customers do not perceive our vehicles and services to be of sufficiently high value and quality, cost competitive and appealing in aesthetics or performance, we may not be able to retain our current preorder customers or attract new customers, and our business, prospects, financial condition, results of operations, and cash flows would suffer as a result. In addition, we may incur significantly higher and more sustained advertising and promotional expenditures than we have previously incurred to attract customers. Further, our future success will also depend in part on securing additional commercial agreements with businesses and/or fleet operators for our commercial vehicles. Many states have enacted legislation to prohibit direct-to-consumer sales, reducing the pool of prospective customers. We may not be successful in attracting and retaining a large number of consumer and commercial customers. If, for any of these reasons, we are not able to attract and maintain consumer and commercial customers, our business, prospects, financial condition, results of operations, and cash flows would be materially harmed.

***Nxu's growth and success are highly correlated with and thus dependent upon the continuing rapid adoption of and demand for EVs and OEMs' ability to supply such EVs to the market.***

Nxu's future growth is highly dependent upon the adoption of EVs by businesses and consumers. The market for EVs is still rapidly evolving, characterized by rapidly changing technologies, competitive pricing and competitive factors, evolving government regulation and industry standards and changing consumer demands and behaviors, changing levels of concern related to environmental issues and governmental initiatives related to energy independence, climate change and the environment generally. Although demand for EVs has grown in recent years, there is no guarantee of continuing future demand. If the market for EVs develops more slowly than expected, or if demand for EVs decreases, Nxu's business, prospects, financial condition and operating results would be harmed. The market for EVs could be affected by numerous factors, such as:

- perceptions about EV features, quality, safety, performance and cost;
- perceptions about the limited range over which EVs may be driven on a single battery charge;
- competition, including from other types of alternative fuel vehicles, plug-in hybrid electric vehicles and high fuel-economy internal combustion engine vehicles;
- volatility in the cost of oil and gasoline, including as a result of trade restrictions;
- concerns regarding the reliability and stability of the electrical grid;
- the change in an EV battery's ability to hold a charge over time;
- the availability and reliability of a national electric vehicle charging network or infrastructure;
- availability of maintenance and repair services for EVs;
- consumers' perception about the convenience and cost of charging EVs;
- increases in fuel efficiency of non-electric vehicles;
- government regulations and economic incentives, including adverse changes in, or expiration of, favorable tax incentives related to EVs, EV charging stations or decarbonization generally;
- relaxation of government mandates or quotas regarding the sale of EVs; and
- concerns about the future viability of EV manufacturers.

In addition, sales of vehicles in the automotive industry can be cyclical, which may affect growth in acceptance of EVs. It is uncertain how macroeconomic factors will impact demand for EVs, particularly since EVs can be more expensive than traditional gasoline-powered vehicles, when the automotive industry globally has been experiencing a recent decline in sales. Furthermore, because fleet operators often make large purchases of EVs, this cyclicity and volatility in the automotive industry may be more pronounced with commercial purchasers, and any significant decline in demand from these customers could reduce demand for EV charging and Nxu's products and services in particular.

Demand for EVs may also be affected by factors directly impacting automobile prices or the cost of purchasing and operating automobiles, such as sales and financing incentives, prices of raw materials and parts and components, cost of fuel and governmental regulations, including tariffs, import regulation and other taxes. Further, the automotive industry in general and EV manufacturing have experienced recent substantial supply chain interruptions due in part to COVID-19 and a worldwide semiconductor shortage adversely impacting the automotive industry, resulting in reduced EV production schedules and sales. Volatility in demand or delays in EV production due to global supply chain constraints may lead to lower vehicle unit sales, which may result in reduced demand for EV charging solutions and therefore adversely affect Nxu's business, financial condition and operating results.

***Our forecasting methods may not be infallible and we may encounter unanticipated obstacles.***

Our business plan may change significantly. Many of our potential business endeavors are capital intensive and may be subject to statutory or regulatory requirements. Our Board of Directors (the "Board of Directors") believes that the chosen activities and strategies are achievable in light of current economic and legal conditions with the skills, background, and knowledge of our principals and advisors. Our Board of Directors reserve the right to make significant modifications to our stated strategies depending on future events.

***We generated revenue for the first time in 2023, but there is no assurance that we'll be able to continue to generate revenue from the sale or deployment of the NxuOne™ Charging Network or from the sale of other proprietary products.***

In 2023, we generated revenue for the first time in the Company's history. The 2023 revenue was largely related to product deliveries from our proprietary battery cell and pack division. We have since ceased electric vehicle battery development as we focus our efforts on the NxuOne™ Charging Network. As such, the bulk of our revenue in 2023 was non-recurring. We expect that any source of revenue in 2024 will be solely from the deployment or sale of NxuOne™ Charging Stations. If we are unable to find customers to purchase our NxuOne™ Charging Stations, we will not likely be able to meet or exceed our 2024 revenue estimates.



***We have losses which we expect to continue into the future. There is no assurance our future operations will result in a profit. If we cannot generate sufficient revenues to operate profitably or we are unable to raise enough additional funds for operations, the stockholders will experience a decrease in value, and we may have to cease operations.***

We are a development-stage technology company that began operating and commenced research and development activities in 2016. As a recently formed “Development Stage Company”, we are subject to all of the risks and uncertainties of a new business, including the risk that we may never develop, complete development or market any of our products or services and we may never generate product or services related revenues. Accordingly, we have only a limited history upon which an evaluation of our prospects and future performance can be made. We only have one product currently under development, which will require further development, significant marketing efforts and substantial investment before it and any successors could provide us with any revenue. As a result, if we do not successfully develop, market and commercialize our Nxu Truck on the Nxu Platform, we will be unable to generate any revenue for many years, if at all. If we are unable to generate revenue, we will not become profitable, and we may be unable to continue our operations. Furthermore, our proposed operations are subject to all business risks associated with new enterprises. The likelihood of our success must be considered in light of the problems, expenses, difficulties, complications, and delays frequently encountered in connection with the expansion of a business, operation in a competitive industry, and the continued development of advertising, promotions and a corresponding customer base. There can be no assurances that we will operate profitably.

We expect to incur operating losses in future periods due to the high cost associated with developing an electric vehicle from the ground up. We cannot be sure that we will be successful in generating revenues in the near future and in the event we are unable to generate sufficient revenues or raise additional funds we will analyze all avenues of business opportunities. Management may consider a merger, acquisition, joint venture, strategic alliance, a roll-up, or other business combination to increase business and potentially increase the liquidity of the Company. Such a business combination may ultimately fail, decreasing the liquidity of the Company and stockholder value or cause us to cease operations, and investors would be at risk of losing all or part of their investment in us.

***Our business would be adversely affected if we are not able to create and develop an effective direct sales force.***

Because a significant component of our growth strategy relates to increasing our revenues through sales to companies and individuals subject to the SEC disclosure and reporting requirements, our business would be adversely affected if we were unable to develop and maintain an effective sales force to market our products directly to consumers. Further complicating this matter, many states have prohibited direct to consumer vehicle sales. Nxu will need to be effective at converting online interest into hard sales. We currently do not employ any sales staff to sell our products, which could have a material adverse effect on our business, results of operations and financial condition.

***If we do not successfully establish and maintain our Company as a highly trusted and respected name for electric vehicle-related technology, we may not be able to attract and retain quality talent or achieve future revenue goals, which could significantly affect our business, financial condition and results of operations.***

In order to attract and retain a client base and increase business, we must establish, maintain and strengthen our name and the services we provide. In order to be successful in establishing our reputation, clients must perceive us as a trusted source for quality services. If we are unable to attract and retain clients with our current marketing plans, we may not be able to successfully establish our name and reputation, which could significantly affect our business, financial condition and results of operations.

***We employ a small team of people and each team member plays a critical role at Nxu. Any loss of talent may have a material adverse effect on our business and operations.***

The nature of our product development efforts requires us to hire talent to complete highly technical and specialized work. Recruiting for these specialized roles may be challenging, and we may be competing with top companies to attract and retain employees for these roles. If we cannot secure the right talent, our product development and production schedules may be affected.

***If we pursue strategic investments, they may result in losses.***

We may elect periodically to make strategic investments in various public and private companies with businesses or technologies that may complement our business. The market values of these strategic investments may fluctuate due to market conditions and other conditions over which we have no control. Other-than-temporary declines in the market price and valuations of the securities that we hold in other companies would require us to record losses related to our investment. This could result in future charges to our earnings. It is uncertain whether or not we will realize any long-term benefits associated with these strategic investments.

***Our ability to utilize loss carry forwards may be limited.***

Generally, a change of more than fifty percent (50%) in the ownership of a company’s stock, by value, over a three-year period constitutes an ownership change for U.S. federal income tax purposes. An ownership change may limit our ability to use our net operating loss carryforwards attributable to the period prior to the change. As a result, if we earn net taxable income, our ability to use our pre-change net operating loss carryforwards to offset U.S. federal taxable income may become subject to limitations.

***Our business could be adversely affected by a downturn in the economy and/or manufacturing.***

We are dependent upon the continued demand for electric vehicles and electric vehicle charging capacity, making our business susceptible to a downturn in the economy or in manufacturing. For example, a decrease in the number of individuals investing their money in the equity markets could result in a decrease in the number of companies deciding to become or remain public. This downturn could have a material adverse effect on our business, our ability to raise funds, our production, and ultimately our overall financial condition.

***The preparation of our financial statements requires estimates, judgments and assumptions that are inherently uncertain.***

Financial statements prepared in accordance with accounting principles generally accepted in the United States (“GAAP”) typically require the use of estimates, judgments and assumptions that affect the reported amounts. Often, different estimates, judgments and assumptions could reasonably be used that would have a material effect on such financial statements, and changes in these estimates, judgments and assumptions may occur from period to period over time. These estimates, judgments and assumptions are inherently uncertain and, if our estimates were to prove to be wrong, we would face the risk that charges to income or other financial statement changes or adjustments would be required. Any such charges or changes could harm our business, including our financial condition and results of operations and the price of our securities. See “Management’s Discussion and Analysis of Financial Condition and Results of Operations” for a discussion of the accounting estimates, judgments and assumptions that we believe are the most critical to an understanding of our consolidated financial statements and our business.

***Failure to maintain internal controls over financial reporting would have an adverse impact on us.***

We are required to establish and maintain appropriate internal controls over financial reporting. The standards required for a public company under Section 404(a) of the Sarbanes-Oxley Act are significantly more stringent than those required by Nxu as a privately held company. Management may not be able to effectively maintain adequate compliance, and our internal controls over financial reporting may not be effective, which may subject us to adverse regulatory consequences and could harm investor confidence. Failure to maintain controls could also adversely impact our public disclosures regarding our business, financial condition or results of operations. In addition, management’s assessment of internal controls over financial reporting may identify deficiencies and conditions that need to be addressed in our internal controls over financial reporting or other matters that may raise concerns for investors. Any actual or perceived deficiencies and conditions that need to be addressed in our internal control over financial reporting, or disclosure of management’s assessment of our internal controls over financial reporting may have an adverse impact on the price of our Class A common stock.

***Uncertainty exists as to whether our business will have sufficient funds over the next 12 months, thereby making an investment in Nxu speculative.***

We require additional financing to complete development and marketing of our NxuOne™ Charging Network, Nxu battery technology, Nxu Platform, and Nxu Truck until the products are in production and sufficient revenue can be generated for us to be self-sustaining. Our management projects that in order to effectively bring the non-charging network products to market, that it will require significant funding over the next 12 months to cover costs involved in completing the prototype, getting the battery assembly line up and running, and beginning to develop a supply chain. In the event that we are unable to generate sufficient revenues, and before all of the funds now held by us are expended, an investment made in Nxu may become worthless.

We will require immediate additional financing to sustain current and fund future operations. There can be no assurance that we will be able to obtain funds on acceptable terms, if at all. If we cannot continue to raise further rounds of funding, we cannot succeed. Nxu will require additional rounds of funding to complete development and begin shipments of the Nxu Truck. If Nxu is unable to secure funding, we will be unable to succeed in our goal of developing the world’s best electric pickup truck. If we are unable to raise adequate financing, we will be unable to sustain operations for a prolonged period of time.

We expect to significantly increase our spending to advance the development of our products and services and launch and commercialize the products for commercial sale. We will require additional capital for the further development and commercialization of our products, as well as to fund our other operating expenses and capital expenditures. We cannot be certain that additional funding will be available on acceptable terms, or at all. If we are unable to raise additional capital in sufficient amounts or on terms acceptable to us, we may have to significantly delay, scale back or discontinue the development or commercialization of one or more of our products and services. We may also seek collaborators for the products at an earlier stage than otherwise would be desirable or on terms that are less favorable than might otherwise be available. Any of these events could significantly harm our business, financial condition, and prospects.

***Continuing or worsening inflationary issues and associated changes in monetary policy may result in increases to the cost of charging equipment, other goods, services and personnel, which in turn could cause capital expenditures and operating costs to rise.***

The U.S. inflation rate increased during 2021, 2022, and 2023 and has remained elevated in 2024. These inflationary pressures have resulted in and may continue to result in, increases to the costs of charging equipment and personnel, which could in turn cause capital expenditures and operating costs to rise. Sustained levels of high inflation have likewise caused the U.S. Federal Reserve and other central banks to increase interest rates, which could have the effects of raising the cost of capital and depressing economic growth, either of which—or the combination thereof—could hurt the financial and operating results of Nxu’s business.

***Uncertainty exists as to whether Nxu will be able to raise sufficient capital to execute on all forecasted plans.***

Our capital requirements depend on numerous factors, including but not limited to the rate and success of our research and development efforts, marketing efforts, market acceptance of our products, our ability to establish and maintain our agreements with suppliers, our ability to ramp up production, product demand and other factors. The capital requirements relating to development of our technology and the implementation of our business plan will be significant. We cannot accurately predict the timing and amount of such capital requirements. However, we are dependent on additional financing that will be required in order to develop our products and fully implement our proposed business plans.

***We need to raise additional capital to meet our future business requirements and such capital raising may be costly or difficult to obtain and could dilute current stockholders' ownership interest.***

We have relied upon cash from financing activities and in the future, we expect to rely on the proceeds from future debt and/or equity financings, and we hope to rely on revenues generated from operations to fund all of the cash requirements of our activities. However, there can be no assurance that we will be able to generate any significant cash from our operating activities in the future. Future financing may not be available on a timely basis, in sufficient amounts or on terms acceptable to us, if at all. Any debt financing or other financing of securities senior to the Class A common stock will likely include financial and other covenants that will restrict our flexibility.

Any failure to comply with these covenants would have a material adverse effect on our business, prospects, financial condition, and results of operations because we could lose our existing sources of funding and impair our ability to secure new sources of funding. However, there can be no assurance that the Company will be able to generate any investor interest in its securities. If we do not obtain additional financing, our prototype will never be completed, in which case you would likely lose the entirety of your investment in us.

At this time, we have not secured or identified any additional financing. We do not have any firm commitments or other identified sources of additional capital from third parties or from our officer and director or from other stockholders. There can be no assurance that additional capital will be available to us, or that, if available, it will be on terms satisfactory to us. Any additional financing will involve dilution to our existing stockholders. If we do not obtain additional capital on terms satisfactory to us, or at all, it may cause us to delay, curtail, scale back or forgo some or all of our product development and/or business operations, which could have a material adverse effect on our business and financial results. In such a scenario, investors would be at risk of losing all or a part of any investment in our Company.

***Nxu relies on a limited number of suppliers and manufacturers for its charging stations. A loss of any of these partners could negatively affect its business or ability to manufacture and deliver NxuOne™ Charging Stations.***

Nxu relies on a limited number of suppliers to manufacture its charging stations, including in some cases only a single supplier for some products and components. This reliance on a limited number of manufacturers increases Nxu's risks, since it does not currently have proven reliable alternatives or replacement manufacturers beyond these key parties. In the event of interruption, including or resulting in a sudden failure by a supplier to meet its obligation, Nxu may not be able to increase capacity from other sources or develop alternate or secondary sources without incurring material additional costs and substantial delays. Thus, Nxu's business could be adversely affected if one or more of its suppliers is impacted by any interruption at a particular location.

As the demand for EV charging increases, Nxu's suppliers and manufacturers may not be able to dedicate sufficient supply chain, production or sales channel capacity to keep up with the required pace of charging infrastructure expansion. By relying on contract manufacturing, Nxu is dependent upon the manufacturer, whose interests may be different from Nxu's. For example, Nxu's suppliers and contract manufacturers may have other customers with demand for the same components or manufacturing services and may allocate their resources based on the supplier's or manufacturer's interests or needs to maximize their revenue or relationships with other customers rather than Nxu's interest. As a result, Nxu may not be able to assure itself that it will have sufficient control over the supply of key components, inventory or finished goods in a timely manner or with acceptable cost and expense, which may adversely affect Nxu's revenue, cost of goods and gross margins. If Nxu experiences a significant increase in demand for its charging stations in future periods, or if it needs to replace an existing supplier, it may not be possible to supplement or replace them on acceptable terms, which may undermine its ability to deliver products to customers in a timely manner. For example, it may take a significant amount of time to identify a manufacturer that has the capability and resources to build charging stations in sufficient volume. Identifying suitable suppliers and manufacturers could be an extensive process that requires Nxu to become satisfied with such party's quality control, technical capabilities, responsiveness and service, financial stability, regulatory compliance, and labor and other ethical practices. Accordingly, a loss of any significant suppliers or manufacturers could have an adverse effect on Nxu's business, financial condition and operating results. In addition, Nxu's suppliers may face supply chain risks and constraints of their own, which may impact the availability and pricing of its products. For example, supply chain challenges related to global chip shortages have impacted companies worldwide both within and outside of Nxu's industry and may continue to have adverse effects on Nxu's suppliers and, as a result, Nxu.

In addition, in fiscal year 2023, Nxu became subject to requirements under the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the “Dodd-Frank Act”) to diligence, disclose and report whether or not its products contain minerals originating from the Democratic Republic of the Congo and adjoining countries, or conflict minerals. Nxu may incur additional costs to comply with these disclosure requirements, including costs related to determining the source of any of the relevant minerals and metals used in Nxu’s products. These requirements could adversely affect the sourcing, availability and pricing of minerals used in the components used in Nxu’s products. It is also possible that Nxu’s reputation may be adversely affected if it determines that certain of its products contain minerals not determined to be conflict-free or if it is unable to alter its products, processes or sources of supply to avoid use of such materials. Nxu may also encounter end-customers who require that all of the components of the products be certified as conflict free. If Nxu is not able to meet this requirement, such end-customers may choose to purchase products from a different company.

***Unknown costs and risks may exist with the prolonged use of NxuOne™ Charging Network equipment and related systems, as the technology is recently developed and has not been widely deployed.***

As the NxuOne™ Charging Station field trials just commenced in the third quarter of 2023, we do not know how our products will hold up over prolonged use. We estimate that our utilization rate will continue to increase as the NxuOne™ Charging Network proliferates and we continue to sign up new users. Since our products have only been in use for a few months, we do not have any way to predict whether our charging stations will remain functional under heavy, persistent use. If the NxuOne™ Charging stations malfunction under heavy use, we will be forced to bear the costs of repairing or replacing the equipment. Given our projected development timeline, such costs could be substantial.

***Nxu is dependent upon the availability of electricity at Nxu’s current and future charging stations. Cost increases, delays and/or other restrictions on the availability of electricity would adversely affect Nxu’s business and results of Nxu’s operations.***

The operation and development of Nxu’s charging stations is dependent upon the availability of electricity, which is beyond Nxu’s control. Nxu’s charging stations are affected by problems accessing electricity sources, such as planned or unplanned power outages. In recent years, shortages of electricity have resulted in increased costs to users and interruptions in service. In particular, California has experienced rolling blackouts due to excessive demands on the electrical grid or as precautionary measures against the risk of wildfire. In the event of a power outage, Nxu will be dependent on the utility company to restore power. Any prolonged power outage could adversely affect customer experience and Nxu’s business and results of operations.

Changes in utility electricity pricing or new and restrictive constructs from regulations applicable to pricing may adversely impact future operating results. For example, some jurisdictions have required the Company to switch from pricing on a per-minute basis to a per-kWh basis and other jurisdictions may follow suit. Utility rates may change in a way that adversely affects fast charging or in a way that may limit Nxu’s ability to access certain beneficial rate schedules. In addition, utilities or other regulated entities with monopoly power may receive authority to provide charging services that result in an anti-competitive advantage relative to the Company and other private sector operators.

***Nxu’s business is subject to risks associated with construction, cost overruns and delays and other contingencies that may arise in the course of completing installations and such risks may increase in the future as Nxu expands the scope of such services with other parties.***

Charger installation and construction is typically performed by third-party contractors managed by the Company. The installation and construction of charging stations at a particular site is generally subject to oversight and regulation in accordance with state and local laws and ordinances relating to building codes, safety, environmental protection and related matters and typically requires local utility cooperation in design and interconnection request approval and commissioning, as well as various local and other governmental approvals and permits that vary by jurisdiction. In addition, building codes, accessibility requirements, utility interconnect specifications, review, approval or study lead time or regulations may hinder EV charger installation and construction because they end up costing the developer or installer more in order to meet the code requirements. In addition, increased demand for the components necessary to install and construct charging stations could lead to higher installed costs. Meaningful delays or cost overruns caused by Nxu’s vendor supply chains, contractors, utility upgrades scope and delays, or inability of local utilities and approving agencies to cope with heightened levels of activity, may impact Nxu’s ability to satisfy the requirements under the build schedule and Nxu’s other contractual commitments, and may impact revenue recognition in certain cases and/or impact Nxu’s relationships, any of which could impact Nxu’s business and profitability, pace of growth and prospects.

Working with contractors may require the Company to obtain licenses or require Nxu or Nxu’s customers to comply with additional rules, working conditions and other union requirements, which can add costs and complexity to an installation and construction project. If these contractors are unable to provide timely, thorough and quality installation-related services, Nxu could fall behind Nxu’s construction schedules or cause customers to become dissatisfied with the solutions Nxu offers. As the demand for public fast charging increases and qualification requirements for contractors become more stringent, Nxu may encounter shortages in the number of qualified contractors available to complete all of Nxu’s desired installations. If Nxu fails to timely pay Nxu’s contractors, they may file liens against Nxu’s owned or leased properties, putting Nxu’s occupancy or operations at risk.

Nxu’s business model is predicated on the presence of qualified and capable electrical and civil contractors and subcontractors in the new markets Nxu intends to enter. There is no guarantee that there will be an adequate supply of such partners. A shortage in the number of qualified contractors may impact the viability of the business plan, increase risks related to the quality of work performed and increase costs if outside contractors are brought into a new market.

In addition, Nxu's network expansion plan relies on Nxu's site development efforts and Nxu's business is exposed to risks associated with receiving site control and access necessary for the construction of the charging station and operation of the charging equipment, electrical interconnection and power supply at identified locations sufficient to host chargers on a timely basis. Nxu generally does not own the land at the charging sites and relies on site licenses with Site Hosts that convey the right to build, own and operate the charging equipment on the site. Nxu may not be able to renew the site licenses or retain site control. The process of establishing or extending site control and access could take longer or become more competitive. As the EV market grows, competition for premium sites may intensify, the power distribution grid may require upgrading, and electrical interconnection with local utilities may become more competitive, all of which may lead to delays in construction and/or commissioning. As a result, Nxu may be exposed to increased interconnection costs and utility fees, as well as delays, which may slow the pace of Nxu's network expansion.

***Nxu's charging stations may be located in areas that are publicly accessible and may be exposed to vandalism or misuse by customers or other individuals, which would increase Nxu's replacement and maintenance costs.***

Nxu's public chargers may be exposed to vandalism or misuse by customers and other individuals, increasing wear and tear of the charging equipment. Such damage could shorten the usable lifespan of the chargers and require the Company to increase its spending on replacement, maintenance and insurance costs and could result in site hosts reconsidering the value of hosting Nxu's charging stations at their sites. In addition, the cost of any such damage may not be covered by Nxu's insurance in full or at all and, in the event of repeated damage to Nxu's charging equipment, Nxu's insurance premiums could increase and it could be subject to additional insurance costs or may not be able to obtain insurance at all, any of which could have an adverse effect on its business.

***We do not own a transportation fleet, nor any fleet vehicles, and so may not be able to transport NxuOne™ Charging Stations once produced. Cost of third-party transport may be high and the risk of loss surrounding transport may be high or hard to predict.***

Our charging stations weigh several thousand pounds. There are inherent transportation risks associated with deployment of our charging network. We do not own a transportation fleet, so we will have to hire a transportation company to transport the NxuOne™ Charging stations to deployment sites. Such transport may be incredibly costly, and we have not been able to accurately predict or project transportation costs. In addition to the risk of losing control of the method of transportation, we may not be able to adequately insure against loss during transport. There is a chance the NxuOne™ charging stations are irrevocably damaged in transit. If we are unable to insure the NxuOne™ Charging Stations for transit, we may be forced to bear the full risk of loss.

***A significant interruption of our information technology systems or the loss of confidential or other sensitive data, including cybersecurity risks, could have a material adverse impact on our operations and financial results.***

Given our reliance on information technology (our own and our third-party providers'), a significant interruption in the availability of information technology, regardless of the cause, or the loss of confidential, personal, or proprietary information (whether our own, our employees', our suppliers', or our customers'), regardless of the cause, could negatively impact our operations. While we have invested in the protection of our data and information technology to reduce these risks and routinely test the security of our information systems network, we cannot be assured that our efforts will prevent breakdowns or breaches in our systems that could adversely affect our business. Management is not aware of a cybersecurity incident that has had a material adverse impact on our financial condition or results of operations; however, we could suffer material financial or other losses in the future and we are not able to predict the severity of these attacks. The occurrence of a cyber-attack, breach, unauthorized access, misuse, computer virus or other malicious code or other cybersecurity event could jeopardize or result in the unauthorized disclosure, gathering, monitoring, misuse, corruption, loss or destruction of confidential and other information that belongs to us, our customers, our counterparties, or third-party suppliers and providers that is processed and stored in, and transmitted through, our computer systems and networks. The occurrence of such an event could also result in damage to our software, computers or systems, or otherwise cause interruptions or malfunctions in our, our customers', our counterparties' or third parties' operations. This could result in loss of customers and business opportunities, reputational damage, litigation, regulatory fines, penalties or intervention, reimbursement or other compensatory costs, or otherwise adversely affect our business, financial condition or results of operations. As part of our regular review of potential risks, we analyze emerging cybersecurity threats to us and our third-party suppliers and providers as well as our plans and strategies to address them. Our Board of Directors, which has oversight responsibility for cybersecurity risks, is regularly briefed by management on such analyses.

***Nxu is highly reliant on its networked charging solution and information technology systems and data, and those of its service providers and component suppliers, any of which systems and data may be subject to cyber-attacks, service disruptions or other security incidents, which could result in data breaches, loss or interruption of services, intellectual property theft, claims, litigation, regulatory investigations, significant liability, reputational damage and other adverse consequences.***

Nxu continues to expand its information technology systems in the form of its networked charging solution, and as its operations grow, its internal information technology systems, such as product data management, procurement, inventory management, production planning and execution, sales, service and logistics, financial, tax and regulatory compliance systems. This includes the implementation of new internally developed systems and the deployment of such systems in the United States and abroad. The implementation, maintenance, segregation and improvement of these systems require significant management time, support and cost, and there are inherent risks associated with developing, improving and expanding Nxu's core systems as well as implementing new systems and updating current systems, including disruptions to the related areas of business operations. These risks may affect Nxu's ability to manage its data and inventory, procure parts or supplies or manufacture, sell, deliver and service products, adequately protect its intellectual property or achieve and maintain compliance with, or realize available benefits under, tax laws and other applicable regulations.

While Nxu maintains information technology measures designed to protect it against intellectual property theft, data breaches, sabotage and other external or internal cyber-attacks or misappropriation, its systems and those of its service providers are potentially vulnerable to malware, ransomware, viruses, denial-of-service attacks, phishing attacks, social engineering, computer hacking, unauthorized access, exploitation of bugs, defects and vulnerabilities, breakdowns, damage, interruptions, system malfunctions, power outages, terrorism, acts of vandalism, security breaches, security incidents, inadvertent or intentional actions by employees or other third parties, and other cyber-attacks. To the extent any security incident results in unauthorized access or damage to or acquisition, use, corruption, loss, destruction, alteration or dissemination of Nxu data, including intellectual property and personal information, or Nxu products, or for it to be believed or reported that any of these occurred, it could disrupt Nxu's business, harm its reputation, compel it to comply with applicable data breach notification laws, subject it to time consuming, distracting and expensive litigation, regulatory investigation and oversight, mandatory corrective action, require it to verify the correctness of database contents, or otherwise subject it to liability under laws, regulations and contractual obligations, including those that protect the privacy and security of personal information. This could result in increased costs to Nxu and result in significant legal and financial exposure and/or reputational harm.

Because Nxu also relies on third-party service providers, it cannot guarantee that its service providers' and component suppliers' systems have not been breached or that they do not contain exploitable defects, bugs, or vulnerabilities that could result in a security incident, or other disruption to, Nxu's or Nxu's service providers' or component suppliers' systems. Nxu's ability to monitor its service providers' and component suppliers' security measures is limited, and, in any event, malicious third parties may be able to circumvent those security measures.

If Nxu does not successfully implement, maintain or expand its information technology systems as planned, its operations may be disrupted, its ability to accurately and/or timely report its financial results could be impaired and deficiencies may arise in its internal control over financial reporting, which may impact its ability to certify its financial results. If Nxu identifies material weaknesses in the future or otherwise fails to maintain an effective system of internal control over financial reporting, this may result in material misstatements contained within Nxu's consolidated financial statements or cause Nxu to fail to meet its periodic reporting obligations," for more detail). Moreover, Nxu's proprietary information, including intellectual property and personal information, could be compromised or misappropriated, its reputation may be adversely affected if these systems or their functionality do not operate as expected and Nxu may be required to expend significant resources to make corrections or find alternative sources for performing these functions.

***We may have difficulty protecting our intellectual property.***

Our pending patents and other intellectual property could be unenforceable or ineffective once patent reviews are completed. We anticipate patent review completion and patents issued in calendar years 2021, 2022, 2023, and 2024 based on the typical two-year process between filing and issuing. We have continued to file patent applications throughout 2023 and plan to continue filing new patents over time. We have filed these patents privately and the scope of what they cover remains confidential until they are issued. For any company creating brand new products, it is imperative to protect the proprietary intellectual property to maintain a competitive advantage. There is no doubt that a significant portion of Nxu's current value depends on the strength and imperviousness of these pending patents. We intend to continue to file additional patent applications and build our intellectual property portfolio as we discover new technologies related to the development of plug-in electric vehicles.

We believe that intellectual property will be critical to our success, and that we will rely on trademark, copyright and patent law, trade secret protection and confidentiality and/or license agreements to protect our proprietary rights. If we are not successful in protecting our intellectual property, it could have a material adverse effect on our business, results of operations and financial condition. While we believe that we will be issued trademarks, patents and pending patent applications help to protect our business, there can be no assurance that our operations do not, or will not, infringe valid, enforceable third-party patents of third parties or that competitors will not devise new methods of competing with us that are not covered by our anticipated patent applications. There can also be no assurance that our patent applications will be approved, that any patents issued will adequately protect our intellectual property, or that such patents will not be challenged by third parties or found to be invalid or unenforceable or that our patents will be effective in preventing third parties from utilizing a copycat business model to offer the same service in one or more categories. Moreover, it is intended that we will rely on intellectual property and technology developed or licensed by third parties, and we may not be able to obtain or continue to obtain licenses and technologies from these third parties at all or on reasonable terms. Effective trademark, service mark, copyright and trade secret protection may not be available in every country in which our intended services will be provided. The laws of certain countries do not protect proprietary rights to the same extent as the laws of the U.S. and, therefore, in certain jurisdictions, we may be unable to protect our proprietary technology adequately against unauthorized third party copying or use, which could adversely affect our competitive position. We expect to license in the future, certain proprietary rights, such as trademarks or copyrighted material, to third parties. These licensees may take actions that might diminish the value of our proprietary rights or harm our reputation, even if we have agreements prohibiting such activity. Also, to the extent third parties are obligated to indemnify us for breaches of our intellectual property rights, these third parties may be unable to meet these obligations. Any of these events could have a material adverse effect on our business, results of operations or financial condition.

The U.S. Patent and Trademark Office and various foreign governmental patent agencies require compliance with a number of procedural, documentary, fee payment and other provisions during the patent process. There are situations in which noncompliance can result in abandonment or lapse of a patent or patent application, resulting in partial or complete loss of patent rights in the relevant jurisdiction. In such an event, competitors might be able to enter the market earlier than would otherwise have been the case, which could have a material adverse effect on our business, results of operations and financial condition.

***Intellectual property protection is costly.***

Filing, prosecuting and defending patents related to our products and software throughout the world is prohibitively expensive. Competitors may use our technologies in jurisdictions where we have not obtained patent protection to develop their own products and, further, may export otherwise infringing products to territories where we have patent protection, but where enforcement is not as strong as that in the U.S. These products may compete with our products in jurisdictions where we do not have any issued or licensed patents and our patent claims or other intellectual property rights may not be effective or sufficient to prevent them from so competing. Many companies have encountered significant problems in protecting and defending intellectual property rights in foreign jurisdictions. The legal systems of certain countries, particularly certain developing countries, do not favor the enforcement of patents and other intellectual property protection, particularly those relating to technology, which could make it difficult for us to stop the infringement of our patents or marketing of competing products in violation of our proprietary rights generally. Proceedings to enforce our patent rights in foreign jurisdictions could result in substantial cost and divert our efforts and attention from other aspects of our business.

***We may face state and federal regulatory challenges, including environmental and safety regulations.***

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

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

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

***Nxu is susceptible to risks associated with an increased focus by stakeholders and regulators on climate change, which may adversely affect its business and results of operations.***

Climate-related events, including the increasing frequency of extreme weather events and their impact on critical infrastructure in the United States and elsewhere, have the potential to disrupt our business and those of its third-party suppliers, and customers, and may cause Nxu to experience higher attrition, losses and additional costs to maintain or resume operations. In addition, Nxu's customers may begin to establish sourcing requirements related to sustainability. As a result, Nxu may receive requests for sustainability related information about its products, business operations, use of sustainable materials and packaging. Nxu's inability to comply with these and other sustainability requirements in the future could adversely affect sales of and demand for its products.

Further, there is an increased focus, including by governmental and nongovernmental organizations, investors, customers, and other stakeholders, on climate change matters, including increased pressure to expand disclosures related to material physical and transition risks related to climate change or to establish sustainability goals, such as the reduction of greenhouse gas emissions, which could expose Nxu to market, operational and execution costs or risks. Nxu's failure to establish such sustainability targets or targets that are perceived to be appropriate, as well as to achieve progress on those targets on a timely basis, or at all, could adversely affect the reputation of its brand and sales of and demand for its products. To the extent legislation is passed, such as the final rules recently adopted by the SEC with respect to enhanced and standardized climate-related disclosures, Nxu would incur significant additional costs of compliance due to the need for expanded data collection, analysis, and certification with respect to greenhouse gas emissions and other climate change related risks. Nxu may also incur additional costs or require additional resources to monitor, report and comply with such stakeholder expectations and standards and legislation, and to meet climate change targets and commitments if established.

## Risks Related to the Electric Vehicle Industry

***The automotive market, specifically with respect to electric vehicles, is highly competitive, and we may not be successful in competing in this industry.***

Both the automobile industry generally, and the electric vehicle segment in particular, are highly competitive, and we will be competing for sales with both electric vehicle manufacturers and traditional automotive companies, including those who have announced consumer and commercial vehicles that may be directly competitive to ours. Many of our current and potential competitors may have significantly greater financial, technical, manufacturing, marketing, or other resources than we do and may be able to devote greater resources to the design, development, manufacturing, distribution, promotion, sale, and support of their products than we may devote to our products. We expect competition for electric vehicles to intensify due to increased demand and a regulatory push for alternative fuel vehicles, continuing globalization, and consolidation in the worldwide automotive industry, as well as the recent significant increase in oil and gasoline prices. In addition, as fleet operators begin transitioning to electric vehicles on a mass scale, we expect that more competitors will enter the commercial fleet electric vehicle market. Further, as a result of new entrants in the commercial fleet electric vehicle market, we may experience increased competition for components and other parts of our vehicles, which may have limited or single-source supply.

Factors affecting competition include product performance and quality, technological innovation, customer experience, brand differentiation, product design, pricing and total cost of ownership, and manufacturing scale and efficiency. Increased competition may lead to lower vehicle unit sales and increased inventory, which may result in downward price pressure and adversely affect our business, prospects, financial condition, results of operations, and cash flows.

***Other manufacturers may beat us to market.***

As of March 2024, several competing electric pickup trucks have entered production, or will enter production by the end of 2024. This includes but is not limited to the Ford F-150 Lightning, Chevrolet Silverado EV, GMC Sierra EV, Rivian R1T, Tesla Cybertruck, Hummer EV pickup, Lordstown Endurance, and Ram Revolution. Although we believe we are developing a superior product in terms of both design and performance, many other auto makers have much more bargaining power and deeper pockets that enable them to quickly create economies of scale. Development of our concept electric vehicles has taken a back seat to the development of the NxuOne™ Charging Network. We will not likely bring our vehicles to market in the next two years. There is a chance that many consumers adopt competitor electric trucks before Nxu can bring its Nxu Truck to market. While other manufacturers focus on mid-size and class 1 pickup trucks, Nxu will focus on Class 2 and 3 markets, while offering a vehicle option for Class 1 customers.

***The EV charging market is characterized by rapid technological change, which requires the Company to continue to develop new products and product innovations. Any delays in such development could adversely affect market adoption of Nxu's products and financial results.***

Continuing technological changes in battery and other EV technologies could adversely affect adoption of current EV charging technology, continuing and increasing reliance on EV charging infrastructure and/or the use of Nxu's products and services. Nxu's future success will depend in part upon Nxu's ability to develop and introduce a variety of new capabilities and innovations to Nxu's existing product offerings, as well as introduce a variety of new product offerings to address the changing needs of the EV charging market.

As EV technologies change, Nxu may need to upgrade or adapt Nxu's charging station technology and introduce new products and services in order to serve vehicles that have the latest technology, in particular major improvements in battery technology leading to significant increases in charging rates, which could involve substantial costs. Even if Nxu is able to keep pace with changes in technology and develop new products and services, Nxu's research and development expenses could increase, Nxu's gross margins could be adversely affected in some periods and Nxu's prior products could become obsolete more quickly than expected.

Nxu cannot guarantee that any new products will be released in a timely manner, or at all, or achieve market acceptance. Delays in delivering new products that meet customer requirements could damage Nxu's relationships with customers and lead them to seek alternative products or services. Delays in introducing products and innovations or the failure to offer innovative products or services at competitive prices may cause existing and potential customers to use Nxu's competitors' products or services.

If Nxu is unable to devote adequate resources to develop products or cannot otherwise successfully develop products or services that meet customer requirements on a timely basis or that remain competitive with technological alternatives, Nxu's products and services could lose market share, Nxu's revenue will decline, Nxu may experience higher operating losses and Nxu's business and prospects will be adversely affected.

***Changes to fuel economy standards or the success of alternative fuels may negatively impact the EV market and thus the demand for Nxu's products and services.***

Regulatory initiatives that required an increase in the mileage capabilities of cars and consumption of renewable transportation fuels, such as ethanol and biodiesel, have helped increase consumer acceptance of EVs and other alternative vehicles. However, the EV fueling model is different from gasoline and other fuel models, requiring behavior changes and education of businesses, consumers, regulatory bodies, local utilities and other stakeholders. Further developments in and improvements in the affordability of, alternative technologies, such as renewable diesel, biodiesel, ethanol, hydrogen fuel cells or compressed natural gas, proliferation of hybrid powertrains involving such alternative fuels, or improvements in the fuel economy of internal combustion engine ("ICE") vehicles, whether as the result of regulation or otherwise, may materially and adversely affect demand for EVs and EV charging stations in some market verticals. Regulatory bodies may also adopt rules that substantially favor certain alternatives to petroleum-based propulsion over others, which may not necessarily be EVs. Local jurisdictions may also impose restrictions on urban driving due to congestion, which may prioritize and accelerate micromobility trends and slow EV adoption growth. If any of the above cause or contribute to automakers reducing the availability of EV models or cause or contribute to consumers or businesses no longer purchasing EVs or purchasing fewer of them, it would materially and adversely affect Nxu's business, operating results, financial condition and prospects.



***We rely on complex machinery for our operations, and production involves a significant degree of risk and uncertainty in terms of operational performance, safety, security, and costs.***

We rely heavily on complex machinery for our operations and our production involves a significant degree of uncertainty and risk in terms of operational performance, safety, security, and costs. Our manufacturing plant consists of large-scale machinery combining many components, including complex software to operate such machinery and to coordinate operating activities across the manufacturing plant. The manufacturing plant components are likely to suffer unexpected malfunctions from time to time, especially as we ramp up production on new products, and will depend on repairs, spare parts, and IT solutions to resume operations, which may not be available when needed. Unexpected malfunctions of the manufacturing plant components may significantly affect operational efficiency. Operational performance and costs can be difficult to predict and are often influenced by factors outside of our control, such as, but not limited to, scarcity of natural resources, environmental hazards and remediation, costs associated with decommissioning of machines, labor disputes and strikes, difficulty or delays in obtaining governmental permits, damages or defects in electronic systems including the software used to control or operate them, industrial accidents, pandemics, fire, seismic activity, and natural disasters.

Should operational risks materialize, it may result in the personal injury to or death of workers, the loss of production equipment, damage to manufacturing facilities, products, supplies, tools and materials, monetary losses, delays and unanticipated fluctuations in production, environmental damage, administrative fines, increased insurance costs, and potential legal liabilities, all which could have a material adverse effect on our business, prospects, financial condition, results of operations, and cash flows. Although we generally carry insurance to cover such operational risks, we cannot be certain that our insurance coverage will be sufficient to cover potential costs and liabilities arising therefrom. A loss that is uninsured or exceeds policy limits may require us to pay substantial amounts, which could adversely affect our business, prospects, financial condition, results of operations, and cash flows.

***The electric vehicle technology industry is rapidly evolving and may be subject to unforeseen changes which could adversely affect the demand for our chargers or other products and may increase our operating costs.***

We may be unable to keep up with changes in electric vehicle technology or alternatives to electricity as a fuel source and, as a result, our competitiveness may suffer. Developments in alternative technologies, such as advanced diesel, hydrogen, ethanol, fuel cells, or compressed natural gas, or improvements in the fuel economy of the ICE or the cost of gasoline, may materially and adversely affect our business and prospects in ways we do not currently anticipate. Existing and other battery cell technologies, fuels or sources of energy may emerge as customers' preferred alternative to our vehicles. Any failure by us to develop new or enhanced technologies or processes, or to react to changes in existing technologies, could materially delay our development and introduction of new and enhanced alternative fuel and electric vehicles, which could result in the loss of competitiveness of our vehicles, decreased revenue, and a loss of market share to competitors. Our research and development efforts may not be sufficient to adapt to changes in alternative fuel and electric vehicle technology. As technologies change, we plan to upgrade or adapt our vehicles with the latest technology. However, we are a relatively late entrant to the electric vehicle space. Our vehicles may not compete effectively with alternative systems if we are not able to source and integrate the latest technology into our vehicles. Additionally, the introduction and integration of new technologies into our vehicles may increase our costs and capital expenditures required for the production and manufacture of our vehicles and, if we are unable to cost efficiently implement such technologies or adjust our manufacturing operations, our business, prospects, financial condition, results of operations, and cash flows would be materially and adversely affected.

***Rideshare and commercial fleets may not electrify as quickly as expected and may not rely on public fast charging or on Nxu's network as much as expected. Future demand for or availability of battery EVs from the medium- and heavy-duty vehicle segment may not develop as anticipated or take longer to develop than expected.***

The EV market is in the early stages of development and the medium- and heavy-duty vehicle segments, often particularly exposed to economic cycles, may not electrify as expected or on the timeline that is expected. The medium- and heavy-duty vehicle fleets that lend themselves well to electrification via EV powertrains are often linked to municipal and commercial budgets and may take longer to electrify as a result of budget or business constraints and administrative approvals. The mix of zero and low emission powertrains in certain vehicle classes and use cases in the medium- and heavy-duty sector may evolve less favorably for EV solutions due to future development of technologies and policy incentives that may favor existing diesel fuel, hybrid, natural gas or hydrogen fuel cell drivetrains. Medium- and heavy-duty vehicle OEMs may choose not to or may not be able to manufacture EVs in sufficient quantities or at all.

***The EV market currently benefits from the availability of rebates, tax credits and other financial incentives from governments, utilities and others to offset the purchase or operating cost of EVs and EV charging stations. The reduction, modification or elimination of such benefits could adversely affect Nxu's financial results and ability to continue to grow.***

The U.S. federal government and some state and local governments provide incentives to end users and purchasers of EVs and EV charging stations in the form of rebates, tax credits and other financial incentives, such as payments for regulatory credits. The EV market relies on these governmental rebates, tax credits and other financial incentives to significantly lower the effective price of EVs and EV charging stations. However, these incentives may expire on a particular date, end when the allocated funding is exhausted, or may be reduced or terminated as a matter of regulatory or legislative policy. In particular, Nxu has historically benefitted from the availability of federal tax credits under Section 30C of the Code, which effectively subsidized the cost of placing in service Nxu's charging stations. The Inflation Reduction Act revised the credits under Section 30C of the Code to (i) retroactively extend the expiration of the credit as of December 31, 2021 (with such credit continuing to be capped at \$30,000 per location for EV charging stations placed in service before January 1, 2023) until December 31, 2032, (ii) revised the credit structure, availability and requirements for EV charging stations placed in service after December 31, 2022 and (iii) introduced the concept of transferability of tax credits, providing an additional option to monetize such credits. As part of the revised credit structure and requirements for EV charging stations placed in service after December 31, 2022, the available Section 30C credit was expanded such that it is capped at \$100,000 per item; however, in order to be eligible for such tax credit, EV charging stations must be installed in rural or low-income census tracts. Additionally, in order to receive the full tax credit, labor for EV charging station construction and maintenance must meet prevailing wage and apprenticeship requirements unless an exception applies. There can be no assurance that the EV charging stations placed in service by Nxu will meet the revised requirements for the Section 30C credits and compliance with such requirements could increase Nxu's labor and other costs. Any reduction in rebates, tax credits or other financial incentives available to EVs or EV charging stations, could negatively affect the EV market and adversely impact Nxu's business operations and expansion potential. In addition, there is no assurance Nxu will have the necessary tax attributes to utilize any such credits that are available and may not be able to monetize such credits on favorable terms.

Federal guidance on Buy America requirements (effective as of March 23, 2023) applicable to the National Electric Vehicle Infrastructure ("NEVI") Program, which was established by the Bipartisan Infrastructure Law, requires immediate domestic assembly and U.S. steel requirements for chargers to qualify for funding under the NEVI program, with higher domestic content percentages required in 2024. Nxu's suppliers may experience delays in bringing their U.S. facilities online, and Nxu may be unable to source Buy America-compliant chargers in time to take advantage of early NEVI funding opportunities or only at increased costs. Nxu may be at a disadvantage to competitors that have already implemented domestic assembly and content standards into their supply chain. Nxu's customers may request delays or adjustments to their build-out plans in order to accommodate these added Buy America requirements, which could result in delays in receipt of revenue from customers.

New tariffs and policies that could incentivize overbuilding of infrastructure may also have a negative impact on the economics of Nxu's stations. Furthermore, new tariffs and policy incentives could be put in place that favor equipment manufactured by or assembled at American factories, which may put Nxu's fast charging equipment vendors at a competitive disadvantage, including by increasing the cost or delaying the availability of charging equipment, by challenging or delaying Nxu's ability to apply or qualify for grants and other government incentives, or for certain charging infrastructure build-out solicitations and programs, including those initiated by federal government agencies.

Moreover, a variety of incentives and rebates offered by the U.S. federal government as well as state and local governments in order to encourage the use of EVs may be limited or reduced. In particular, the U.S. federal government offers a tax credit, the maximum amount of which is \$7,500, for qualified new plug-in EVs. The Inflation Reduction Act modified the tax credit for new plug-in EVs and added new tax credits for used and commercial EVs. The Inflation Reduction Act removed the phase-out of tax credits for new plug-in EVs with respect to vehicle manufacturers that reached certain production levels beginning in 2023. However, the tax credit is subject to additional requirements and limitations, such as certain adjusted gross income limits for consumers claiming the credit, domestic content requirements for critical minerals and batteries and a requirement for final assembly to occur in North America. Such additional requirements and limitations for such tax credits may reduce incentives available to encourage the adoption of EVs; favor competitors whose production chains enable them to more readily take advantage of such incentives; delay purchases and installations of charging equipment by the Company as manufacturing of charging equipment is moved to the U.S. in order to expand eligibility for such incentives (which, in turn, could delay the Company's recognition of revenue in connection with such stalls); increase the cost of procurement of some inputs in the construction of charging infrastructure; and negatively affect the EV market and adversely impact Nxu's business operations and expansion potential. Any such developments could have an adverse effect on Nxu's business, financial condition and results of operations.

***We have minimal experience servicing and repairing our charging stations. If we or our partners are unable to adequately service our charging stations our business, prospects, financial condition, results of operations, and cash flows could be materially and adversely affected.***

We have minimal experience servicing and repairing our charging stations. Servicing our products requires specialized skills, including high voltage training and servicing techniques. Although we are planning to internalize most aspects of vehicle service over time, initially we plan to partner with third parties to enable nationwide coverage for our network. There can be no assurance that we will be able to enter into an acceptable arrangement with any such third-party providers. Although such servicing partners may have experience in servicing other vehicles, they will initially have limited experience in servicing our vehicles. There can be no assurance that our service arrangements will adequately address the service requirements of our customers to their satisfaction, or that we and our servicing partners will have sufficient resources, experience, or inventory to meet these service requirements in a timely manner as the volume of charging stations we deploy increases.

As we continue to grow, additional pressure may be placed on our customer support team or partners, and we may be unable to respond quickly enough to accommodate short-term increases in customer demand for technical support. Customer behavior and usage may result in higher than expected maintenance and repair costs, which may negatively affect our business, prospects, financial condition, results of operations, and cash flows. We also could be unable to modify the future scope and delivery of our technical support to compete with changes in the technical support provided by our competitors. Increased customer demand for support, without corresponding revenue, could increase costs and negatively affect our results of operations. If we are unable to successfully address the service requirements of our customers or establish a market perception that we do not maintain high-quality support, we may be subject to claims from our customers, including loss of revenue or damages, and our business, prospects, financial condition, results of operations, and cash flows could be materially and adversely affected.

***Product recall could hinder growth and product liability or other claims could have a material adverse effect on our business.***

If the Nxu Truck, Nxu Platform, or NxuOne™ Charging Station are unable to meet performance and quality criteria, we may be required to perform product recalls to address said concerns. A product recall can have a substantial cost related to performing such corrective actions. Although Nxu will perform significant internal testing and qualifications, as well as external qualifications through approved third-party vendors against industry standards and regulatory requirements, there will be unperceived conditions which may negatively impact the customer or Company expected performance and safety of our vehicles. As such, Nxu may perform a corrective action such as a recall of products, mandatory repairs of defective components, or litigation settlements which can materially affect our financial goals, operation results, brand, business, and products. If we are unable to provide significant charging stations, our business success may be substantially affected.

A significant portion of our success is our ability to deploy the appropriate number of charging stations, in strategic locations relative to our customers and customer behaviors. If Nxu is unable to deploy charging stations to specified locations, this may negatively affect our brand, business, financial goals, operational results, and product success in the market. As such, to meet said availability requirements, Nxu will require significant capital investments to rapidly deploy said NxuOne™ Charging Stations, as well as development of relationships with third party members who can assist in deployment of said charging stations. If we are unable to address service requirements, we may negatively affect our customer experience. As such, Nxu will require service capabilities to be established in locations within close proximity to our Nxu Truck and Nxu Platform owners. Nxu's ability to engage with third party operating service stations, as well as our ability to establish company operated locations, will be critical to the success of developing a positive customer experience.

While Nxu will work diligently to meet all company and regulatory safety requirements, there is a chance that a component catastrophically fails. It is possible that through unknown circumstances or conditions out of our control, some person is injured by our product. The risk of product liability claims, product recalls and associated adverse publicity is inherent in the manufacturing, marketing and sale of all vehicles, including electric vehicles. A successful product liability claim against us could require us to pay a substantial monetary award. Moreover, a product recall could generate substantial negative publicity about our products and business and inhibit or prevent commercialization of other future product candidates. We cannot provide assurance that such claims and/or recalls will not be made in the future.

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

Our charging stations, batteries, and the sale of electric vehicles and motor vehicles in general, are subject to regulation under international, federal, state, and local laws, including export and import control laws. We expect to incur significant costs in complying with these regulations. Regulations related to the battery and electric vehicle industry are currently evolving and we face risks associated with these changing regulations.

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

Internationally, there may be laws and jurisdictions we have not yet entered or laws we are unaware of in jurisdictions we have entered that may restrict our sales or other business practices. These laws may be complex, difficult to interpret and may change over time. Continued regulatory limitations and obstacles that may interfere with our ability to commercialize our products could have a negative and material impact on our business, prospects, financial condition, and results of our operation.

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

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

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

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

### **Risks Related to Our Management**

***We are dependent upon our executives for their services and the loss of personnel may have a material adverse effect on our business and operations.***

The loss of the services of our CEO, CFO, or President, Mr. Mark Hanchett, Ms. Sarah Wyant, or Mrs. Annie Pratt, respectively, could have a material adverse effect on us. We do not maintain any key man life insurance on our executives. The loss of any of our executives' services could cause investors to lose all or a part of their investment. Our future success will also depend on our ability to attract, retain and motivate other highly skilled employees. Competition for personnel in our industry is intense. We may not be able to retain our key employees or attract, assimilate or retain other highly qualified employees in the future. If we do not succeed in attracting new personnel or retaining and motivating our current personnel, our business will be adversely affected.

***Our management team does not have experience running a public company.***

While our management team has a wide breadth of business experience, none of our executive officers have held an executive position at a publicly traded company. Given the onerous compliance requirements to which public companies are subject, there is a chance our executive officers will fail to perform at a level expected of public company officers. In such an event, the Company's share price could be adversely affected. The management team's limited experience in dealing with the increasingly complex laws pertaining to public companies could be a significant disadvantage in that it is likely that an increasing amount of their time may be devoted to these activities which will result in less time being devoted to the management and growth of the company. We may not have adequate personnel with the appropriate level of knowledge, experience and training in the accounting policies, practices or internal control over financial reporting required of public companies in the United States. We may upgrade our systems to an enterprise resource management system, and a delay could impact our ability or prevent us from timely reporting our operating results, timely filing required reports with the SEC and complying with Section 404 of the Sarbanes-Oxley Act. The development of the standards and controls necessary for us to achieve the level of accounting standards required of a public company in the United States may require costs greater than expected. We plan to expand our employee base and hire additional employees to support our operations as a public company which will increase our operating costs in future periods.

***We are significantly influenced by our officers and directors.***

Our future performance is dependent on the ability to retain key personnel. The Company's performance is substantially dependent on the performance of senior management. The loss of the services of any of its executive officers or other key employees could have a material adverse effect on the Company's business, results of operations and financial condition.

***Management's judgment, estimates and assumptions have a significant impact on business decisions and accounting policies.***

Our management team is not infallible. We rely heavily on our management team's judgment in formulating the estimates and assumptions that govern our business decisions and accounting policies. Despite their best intentions, errors in our management team's judgment may result in significant negative impacts to the Company's financial performance.

***We rely on human resources, the loss of services of any of such personnel may have a material adverse effect on our business and operations.***

We rely on our management team, our advisors, third-party consultants, third-party developers, service providers, technology partners, outside attorneys, advisors, accountants, auditors, and other administrators. The loss of services of any of such personnel may have a material adverse effect on our business and operations.

### ***Limitations of director liability and director and officer indemnification.***

Our Charter limits the liability of directors to the maximum extent permitted by Delaware law. Delaware law provides that directors of a corporation will not be personally liable for monetary damages for breach of their fiduciary duties as directors, except for liability for any:

- breach of their duty of loyalty to us or our stockholders;
- act or omission not in good faith or that involves intentional misconduct or a knowing violation of law;
- unlawful payments of dividends or unlawful stock repurchases or redemptions as provided in Section 174 of the Delaware General Corporation Law; or
- transactions for which the directors derived an improper personal benefit.

These limitations of liability do not apply to liabilities arising under the federal or state securities laws and do not affect the availability of equitable remedies such as injunctive relief or rescission. Our Bylaws (the “Bylaws”) provide that we will indemnify our directors, officers and employees to the fullest extent permitted by law. Our Bylaws also provide that we are obligated to advance expenses incurred by a director or officer in advance of the final disposition of any action or proceeding. We believe that these Bylaw provisions are necessary to attract and retain qualified persons as directors and officers. The limitation of liability in our Bylaws may discourage stockholders from bringing a lawsuit against directors for breach of their fiduciary duties. They may also reduce the likelihood of derivative litigation against directors and officers, even though an action, if successful, might provide a benefit to us and our stockholders. Our results of operations and financial condition may be harmed to the extent we pay the costs of settlement and damage awards against directors and officers pursuant to these indemnification provisions.

### ***Limitations on remedies; indemnification.***

Our Certificate of Incorporation, as amended from time to time, provides that officers, directors, employees and other agents and their affiliates shall only be liable to the Company and its stockholders for losses, judgments, liabilities and expenses that result from fraud or other breach of fiduciary obligations. Additionally, we assumed certain indemnification agreements with each of our officers and directors consistent with industry practice. Thus, certain alleged errors or omissions might not be actionable by the Company. Our governing instruments also provide that, under the broadest circumstances allowed under law, we must indemnify its officers, directors, employees and other agents and their affiliates for losses, judgments, liabilities, expenses and amounts paid in settlement of any claims sustained by them in connection with the Company, including liabilities under applicable securities laws.

### **Risks Related to Our Capital Structure and Ownership of Class A Common Stock**

#### ***We cannot predict the impact our dual class structure may have on our stock price.***

We cannot predict whether our dual class structure will result in a lower or more volatile market price of our Class A common stock or in adverse publicity or other adverse consequences. For example, because of our dual class structure, we will likely be excluded from certain indexes, and we cannot assure you that other stock indexes will not take similar actions. Given the sustained flow of investment funds into passive strategies that seek to track certain indexes, exclusion from stock indexes would likely preclude investment by many of these funds and could make our Class A common stock less attractive to other investors. As a result, the market price of our Class A common stock could be adversely affected.

#### ***The market price of our Class A common stock has fluctuated, and may continue to fluctuate, significantly.***

The market price of our Class A common stock has fluctuated, and may continue to fluctuate, significantly and our stockholders may lose all or part of their investment.

The market prices for securities of startup companies have historically been highly volatile, and the market has from time-to-time experienced significant price and volume fluctuations that are unrelated to the operating performance of particular companies. The market price of our Class A common stock has fluctuated, and may continue to fluctuate, significantly in response to numerous factors, some of which are beyond our control, such as:

- actual or anticipated adverse results or delays in our research and development efforts;
- our failure to commercialize our Nxu Platform and Nxu Truck;
- unanticipated serious safety concerns related to the use of our products;
- adverse regulatory decisions;
- legal disputes or other developments relating to proprietary rights, including patents, litigation matters and our ability to obtain patent protection for our intellectual property, government investigations and the results of any proceedings or lawsuits, including patent or stockholder litigation;
- changes in laws or regulations applicable to the electric vehicle industry;
- our dependence on third party suppliers;
- announcements of the introduction of new products by our competitors;
- market conditions in the electric vehicle industry;
- announcements concerning product development results or intellectual property rights of others;

- future issuances of our common stock or other securities;
- the addition or departure of key personnel;
- actual or anticipated variations in quarterly operating results;
- announcements of significant acquisitions, strategic partnerships, joint ventures or capital commitments by us or our competitors;
- our failure to meet or exceed the estimates and projections of the investment community;
- issuances of debt or equity securities;
- trading volume of our common stock;
- sales of our Class A common stock by us or our stockholders in the future;
- overall performance of the equity markets and other factors that may be unrelated to our operating performance or the operating performance of our competitors, including changes in market valuations of similar companies;
- failure to meet or exceed any financial guidance or expectations regarding development milestones that we may provide to the public;
- ineffectiveness of our internal controls;
- general political and economic conditions;
- effects of natural or man-made catastrophic events;
- scarcity of raw materials necessary for battery production; and
- other events or factors, many of which are beyond our control.

Further, price and volume fluctuations may result in volatility in the price of our Class A common stock, which could cause a decline in the value of our common stock. Price volatility of our Class A common stock might worsen if the trading volume of our shares is low. The realization of any of the above risks or any of a broad range of other risks, including those described in these “Risk Factors,” could have a dramatic and material adverse impact on the market price of our Class A common stock.

***If the market price of our Class A common stock declines below \$1 for more than 30 consecutive trading days, we may be deemed noncompliant with Nasdaq listing rules, which would require a cure.***

Pursuant to Nasdaq Listing Rule 5810(c)(3)(A), the Company must maintain a closing bid price over \$1.00 per share (“Minimum Bid Price Requirement”). Currently, the Company’s closing bid price has been under \$1.00 per share for more than 15 consecutive trading days. If the Company’s closing bid price is below \$1.00 per share for more than 30 consecutive trading days, we may be deemed noncompliant with Nasdaq’s continued listing requirements. The Company would have 180 calendar days from receipt of a notice from Nasdaq (the “Compliance Period”), to regain compliance with the Minimum Bid Price Requirement. If at any time during the Compliance Period, the bid price of the Class A Common Stock closes at or above \$1.00 per share for a minimum of ten consecutive business days, Nasdaq will provide the Company with written confirmation of compliance with the Minimum Bid Price Requirement and the matter will be closed. In the event the Company does not regain compliance with the Minimum Bid Price Requirement by the end of the Compliance Period, the Company may be eligible for an additional 180-calendar day grace period. Pursuant to Nasdaq Listing Rule 5810(3)(A)(iii), if during any compliance period specified in Nasdaq Listing Rule 5810(c)(3)(A), a company’s security has a closing bid price of \$0.10 or less for ten consecutive trading days, the Listing Qualifications Department of Nasdaq will issue a Staff Delisting Determination under Nasdaq Listing Rule 5810 with respect to that security (the “Low Priced Stocks Rule”). If a company receives such delisting notice, the company can request a hearing before a Nasdaq hearings panel (the “Panel”). If the Class A Common Stock closes at or below \$0.10 for ten consecutive days during the Compliance Period or any additional compliance period, the Company could receive a Staff Delisting Determination during the Compliance Period or any additional compliance period or, if the Company receives such Staff Delisting Determination, Nasdaq may not grant the Company’s request for a hearing, or if Nasdaq grants the Company’s request for a hearing, the Panel may not grant the Company’s request for continued listing of the Class A Common Stock on The Nasdaq Capital Market pending the Company’s compliance with all applicable listing criteria, including the Minimum Bid Price Requirement, or the Company may be unable to timely satisfy the terms of any extension that may be granted by the Panel.

***If the market price of our Class A common stock declines precipitously, the only cure may be to enact a reverse split of the stock. Failure to maintain compliance with Nasdaq’s Continued Listing Rules could be costly and have material adverse effects.***

The Company will continue to monitor the closing bid price of its Class A Common Stock and seek to maintain compliance with all applicable Nasdaq requirements within the allotted compliance periods and may, if appropriate, consider available options, including implementation of an additional reverse stock split, to regain compliance with the Minimum Bid Price Requirement or the Low Priced Stocks Rule, as applicable.

On December 27, 2023, the Company completed a Reverse Stock Split at a ratio of 1-for-150. If the Company does not maintain compliance with the Minimum Bid Price Requirement, the Company may be forced to complete another reverse stock split, which could negatively affect the price of its Common Stock.

Further, while Nasdaq rules do not impose a specific limit on the number of times a listed company may effect a reverse stock split to maintain or regain compliance with the Minimum Bid Price Requirement, Nasdaq has stated that a series of reverse stock splits may undermine investor confidence in securities listed on Nasdaq. Accordingly, Nasdaq may determine that it is not in the public interest to maintain the Company’s listing, even if we regain compliance with the Minimum Bid Price Requirement.

In addition, Nasdaq Listing Rule 5810(c)(3)(A)(iv) states that if a listed company that fails to meet the Minimum Bid Price Requirement after effecting one or more reverse stock splits over the prior two-year period with a cumulative ratio of 250 shares or more to one, then the company is not eligible for a Compliance Period. The Company has effected a reverse stock split with a cumulative ratio of 150 shares to one. A subsequent reverse stock split could cause the Company to exceed the 1-for-250 ratio. If such ratio is exceeded, the Company would no longer be eligible for a Compliance Period and may be subject to an immediate delisting notification in the event it cannot comply with the Minimum Bid Price Requirement in the future.

Any future non-compliance may be costly, divert management's time and attention, and could have a material adverse effect on the Company's business, reputation, financing, and results of operation. A delisting could substantially decrease trading in the Class A Common Stock, adversely affect the market liquidity of the Common Stock as a result of the loss of market efficiencies associated with Nasdaq and the loss of federal preemption of state securities laws, materially adversely affect its ability to obtain financing on acceptable terms, if at all, and may result in the potential loss of confidence by investors, suppliers, customers and employees and fewer business development opportunities. Additionally, the market price of the Class A Common Stock may decline further and stockholders may lose some or all of their investment.

***We do not anticipate dividends to be paid on our Class A common stock and investors may lose the entire amount of their investment.***

A dividend has never been declared or paid in cash on our Class A common stock and we do not anticipate such a declaration or payment for the foreseeable future. We expect to use future earnings, if any, to fund business growth. Therefore, stockholders will not receive any funds absent a sale of their Class A common stock. We cannot assure stockholders of a positive return on their investment when they sell their Class A common stock, nor can we assure that stockholders will not lose the entire amount of their investment. Any payment of dividends on our capital stock will depend on our earnings, financial condition and other business and economic factors affecting us at such a time as the Board of Directors may consider it relevant. If we do not pay dividends, our Class A common stock may be less valuable because a return on our stockholders' investment will only occur if the common stock price appreciates.

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

We are an "emerging growth company" within the meaning of the Securities Act, as modified by the JOBS Act, and we may take advantage of certain exemptions from various reporting requirements that are applicable to other public companies that are not emerging growth companies including, but not limited to, not being required to comply with the auditor attestation requirements of Section 404 of the Sarbanes-Oxley Act, reduced disclosure obligations regarding executive compensation in our periodic reports and proxy statements, and exemptions from the requirements of holding a nonbinding advisory vote on executive compensation and stockholder approval of any golden parachute payments not previously approved. As a result, our stockholders may not have access to certain information they may deem important. We could be an emerging growth company for up to five years, although circumstances could cause us to lose that status earlier, including if the market value of our Class A common stock held by non-affiliates exceeds \$700 million as of any June 30 before that time, in which case we would no longer be an emerging growth company as of the following December 31. We cannot predict whether investors will find our securities less attractive because we will rely on these exemptions. If some investors find our securities less attractive as a result of our reliance on these exemptions, the trading prices of our securities may be lower than they otherwise would be, there may be a less active trading market for our securities and the trading prices of our securities may be more volatile.

Further, Section 102(b)(1) of the JOBS Act exempts emerging growth companies from being required to comply with new or revised financial accounting standards until private companies (that is, those that have not had a Securities Act registration statement declared effective or do not have a class of securities registered under the Exchange Act) are required to comply with the new or revised financial accounting standards. The JOBS Act provides that a company can elect to opt out of the extended transition period and comply with the requirements that apply to non-emerging growth companies but any such an election to opt out is irrevocable. We have elected not to opt out of such extended transition period, which means that when a standard is issued or revised and it has different application dates for public or private companies, we, as an emerging growth company, can adopt the new or revised standard at the time private companies adopt the new or revised standard. This may make comparison of our financial statements with another public company which is neither an emerging growth company nor an emerging growth company which has opted out of using the extended transition period difficult or impossible because of the potential differences in accountant standards used.

Additionally, we are a "smaller reporting company" as defined in Rule 10(f)(1) of Regulation S-K. Smaller reporting companies may take advantage of certain reduced disclosure obligations, including, among other things, providing only two years of audited financial statements. We will remain a smaller reporting company until the last day of the fiscal year in which (1) the market value of our common stock held by non-affiliates exceeds \$250 million as of the end of the prior June 30th, or (2) our annual revenues exceeded \$100 million during such completed fiscal year and the market value of our common stock held by non-affiliates exceeds \$700 million as of the prior June 30. To the extent we take advantage of such reduced disclosure obligations, it may also make the comparison of our financial statements with other public companies difficult or impossible.

***We will incur significant additional costs as a result of being a public company, and our management will be required to devote substantial time to compliance with our public company responsibilities and corporate governance practices.***

We expect to incur increased costs associated with corporate governance requirements that are now applicable to us as a public company, including rules and regulations of the SEC, under the Sarbanes-Oxley Act, the Dodd-Frank Wall Street Reform and Customer Protection Act of 2010, and the Exchange Act, as well as the rules of Nasdaq. These rules and regulations are expected to significantly increase our accounting, legal and financial compliance costs and make some activities more time consuming, including due to increased training of our current employees, additional hiring of new employees, and increased assistance from consultants. We expect such expenses to further increase after we are no longer an “emerging growth company.” We also expect these rules and regulations to make it more expensive for us to maintain directors’ and officers’ liability insurance. As a result, it may be more difficult for us to attract and retain qualified persons to serve on our Board of Directors or as executive officers. Furthermore, these rules and regulations will increase our legal and financial compliance costs and will make some activities more time-consuming and costly. We cannot predict or estimate the amount of additional costs we will incur as a public company or the timing of such costs. In addition, our management team will need to devote substantial attention to transitioning to interacting with public company analysts and investors and complying with the increasingly complex laws pertaining to public companies, which may divert attention away from the day-to-day management of our business, including operational, research and development and sales and marketing activities. Increases in costs incurred or diversion of management’s attention as a result of becoming a publicly traded company may adversely affect our business, prospects, financial condition, results of operations, and cash flows.

***Small public companies are inherently risky and we may be exposed to market factors beyond our control. If such events were to occur it may impact our operating results.***

Managing a small public company involves a high degree of risk. Few small public companies ever reach market stability and we will be subject to oversight from governing bodies and regulations that will be costly to meet. Our present officer has limited experience in managing a fully reporting public company, so we may be forced to obtain outside consultants to assist us with meeting these requirements. These outside consultants are expensive and can have a direct impact on our ability to be profitable. This will make an investment in our Company a highly speculative and risky investment.

***Our Bylaws include forum selection provisions, which could limit our stockholders’ ability to obtain a favorable judicial forum for disputes with us.***

Our Bylaws require that, unless we consent in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware (or, if that court lacks subject matter jurisdiction, another federal or state court situated in the State of Delaware) will be the sole and exclusive forum for (i) any derivative action or proceeding brought on behalf of our business, (ii) any action asserting a claim of breach of a duty owed by any director, officer, employee, agent or stockholder of ours to us or our stockholders, (iii) any action asserting a claim arising pursuant to any provision of the DGCL or (iv) any action asserting a claim governed by the internal affairs doctrine. In addition, our Bylaws require that, unless we consent in writing to the selection of an alternative forum, the federal district courts of the United States will be the exclusive forum for the resolution of any complaint asserting a cause of action under the Securities Act and the Exchange Act. Any person or entity purchasing or otherwise acquiring any interest in shares of our capital stock is deemed to have notice of and consented to the foregoing provisions.

These forum selection provisions in our Bylaws may limit our stockholders’ ability to obtain a favorable judicial forum for disputes with us, which may discourage such lawsuits against us. We cannot be certain as to whether a court would enforce these provisions, and if a court were to find the forum selection provisions contained in Bylaws to be inapplicable or unenforceable in an action, we may incur additional costs associated with resolving such action in other jurisdictions, which could harm our business, operating results and financial condition. Furthermore, investors cannot waive compliance with the federal securities laws and the rules and regulations thereunder.

***Our Class A common stock may be delisted from Nasdaq if we do not maintain compliance with Nasdaq’s continued listing requirements. Delisting could affect the market price and liquidity of our Class A common stock and our ability to issue additional securities and raise additional capital would be adversely impacted***

Continued listing of a security on Nasdaq is conditioned upon compliance with various continued listing standards. If we fall out of compliance with a continued listing standard, there can be no assurance that we will be able to regain compliance with Nasdaq’s listing requirements. We intend to take all commercially reasonable actions to maintain our Nasdaq listing, including an evaluation of all reasonable alternatives.

If our Class A common stock is delisted, the liquidity of our Class A common stock would be adversely affected and the market price of our Class A common stock could decrease. In addition, in the event of such delisting, we could experience a decreased ability to issue additional securities and raise additional capital in the future.



***We may use equity incentives for employees, advisors, directors, key consultants and select affiliates. Any issuance of stock upon the conversion of options and/or incentive rights will result in the dilution of the ownership interests of our existing stockholders.***

We may use equity incentives for employees, advisors, directors, key consultants and select affiliates. Any issuance of stock upon the conversion of options and/or incentive rights will result in the dilution of the ownership interests of our existing stockholders.

***We are subject to general securities investment risks.***

All investments in securities involve the risk of loss of capital. No guarantee or representation is made that an investor will receive a return of its capital. The value of our Class A common stock can be adversely affected by a variety of factors, including development problems, regulatory issues, technical issues, commercial challenges, competition, legislation, government intervention, industry developments and trends, and general business and economic conditions.

***A sale, or the perception of future sales, of a substantial number of shares of Class A common stock may cause the share prices to decline.***

If our stockholders sell, or the market perceives that our stockholders intend to sell for various reasons, substantial amounts of our Class A common stock in the public market, including shares issued in connection with the exercise of outstanding options, the market price of our shares could fall. Sales of a substantial number of shares of our common stock may make it more difficult for us to sell equity or equity-related securities in the future at a time and price that we deem reasonable or appropriate. We may become involved in securities class action litigation that could divert management's attention and harm our business. The stock markets have from time-to-time experienced significant price and volume fluctuations that have affected the market prices for the common stock of automotive companies. These broad market fluctuations may cause the market price of our common stock to decline. In the past, securities class action litigation has often been brought against a company following a decline in the market price of a company's securities. We may become involved in this type of litigation in the future. Litigation often is expensive and diverts management's attention and resources, which could adversely affect our business.

***Our quarterly operating results may fluctuate.***

We expect our operating results to be subject to quarterly fluctuations. Our net loss and other operating results will be affected by numerous factors, including:

- variations in the level of expenses related to our development programs;
- any intellectual property infringement lawsuit in which we may become involved;
- regulatory developments affecting our products and related services; and
- our execution of any collaborative, licensing or similar arrangements, and the timing of payments we may make or receive under these arrangements.

If our quarterly operating results fall below the expectations of investors or securities analysts, the price of our Class A common stock could decline substantially. Furthermore, any quarterly fluctuations in our operating results may, in turn, cause the price of our Class A common stock to fluctuate substantially.

***Unfavorable securities industry reports could have a negative effect on our share price.***

Any trading market for our Class A common stock will be influenced in part by any research reports that securities industry analysts publish about us. Should one or more of such analysts downgrade our securities, or otherwise reports on us unfavorably, or discontinues coverage, the market price and market trading volume of our Class A common stock could be negatively affected.

***Our lack of business diversification could cause our stockholders to lose all or some of their investment if we are unable to generate revenues from our primary products.***

Our business consists of developing and manufacturing electric vehicles and charging infrastructure. We do not have any other lines of business or other sources of revenue if we are unable to compete effectively in the marketplace. This lack of business diversification could cause you to lose all or some of your investment if we are unable to generate revenues since we do not expect to have any other lines of business or alternative revenue sources.

**Item 1B. *Unresolved Staff Comments***

None.

**Item 1C. *Cybersecurity***

***Cybersecurity Program Overview***

As part of our overall risk management processes and procedures, we have instituted a cybersecurity program designed to identify, assess and manage material risks from cybersecurity threats. The cyber risk management program involves risk assessments, implementation of security measures and ongoing monitoring of systems and networks, including networks on which we rely. Through our cybersecurity program, the current threat landscape is actively monitored in an effort to identify material risks arising from new and evolving cybersecurity threats. We have implemented policies to ensure we can control and monitor all devices that may have access to our protected information. We may engage external experts, including cybersecurity assessors, consultants and auditors to evaluate cybersecurity measures and risk management processes as needed. Our risk management, legal, and compliance personnel oversee and identify material risks from cybersecurity threats associated with our use of such entities.

#### ***Board Oversight of Cybersecurity Risks***

Our Board provides strategic oversight on cybersecurity matters, including material risks associated with cybersecurity threats. Our Board receives periodic updates from our Chief Legal Officer, President, and Director of Information Technology and more frequently as needed, regarding the overall state of our cybersecurity program, information on the current threat landscape, and material risks from cybersecurity threats and cybersecurity incidents.

#### ***Management's Role in Cybersecurity Risk Management***

Our management team, including our Chief Legal Officer, President, and Director of Information Technology is responsible for assessing and managing material risks from cybersecurity threats. Members of our management team possess relevant expertise in various disciplines that are key to effectively managing such risks, such as technology systems, technology leadership, technological development, cybersecurity, regulatory compliance and corporate governance. Our Director of Information Technology has over 10 years of experience in technology systems and cybersecurity and has the requisite training, skills, and experience to manage our cybersecurity risks. Our management team is informed about and monitors the prevention, detection, mitigation, and remediation of cybersecurity incidents, including through the receipt of notifications from third-party service providers and reliance on communications with our risk management, legal, and/or compliance personnel.

#### ***Assessment of Cybersecurity Risk***

The potential impact of risks from cybersecurity threats are assessed on an ongoing basis, and how such risks could materially affect our business strategy, operational results, and financial condition are regularly evaluated. During the reporting period, we have not identified any risks from cybersecurity threats, including as a result of previous cybersecurity incidents, that we believe have materially affected, or are reasonably likely to materially affect, us, including our business strategy, operational results, and financial condition.

#### **Item 2. *Properties***

The Company leases a facility at 1828 Higley Road, Mesa, Arizona, for all its operations. The 42,828 square foot industrial facility is occupied solely by the Company and includes 7,828 square feet of office space and approximately 35,000 in manufacturing space. We do not own the land on which our primary facility is located and thus are subject to various lease arrangements with a third-party entity.

The Company subleases 21,441 square feet of office space at 63 S. Rockford Drive, Ste, 201, Tempe, Arizona. The second-floor suite is occupied entirely by Nxu. We do not own the land on which the additional office space is located, nor are we the primary leaseholder, and thus are subject to various lease arrangements with a third-party entity.

We consider our current office and manufacturing space adequate for our current operations.

#### **Item 3. *Legal Proceedings***

From time to time, we may be involved in litigation matters arising from the normal course of our business activities. Litigation, even if not meritorious, could result in substantial costs and diversion of resources and management attention, and an adverse outcome in litigation could materially adversely affect our business, results of operations, financial condition, cash flows, price.

#### **Item 4. *Mine Safety Disclosures***

Not applicable.

## PART II

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

#### *Market Information*

Our Class A common stock, par value \$0.0001 per share, is listed on Nasdaq and trades under the symbol "NXU."

Pursuant to the terms of a Share Purchase Agreement, dated as of June 25, 2021, as amended by a letter agreement, dated as of September 19, 2023, by and among the Company, GEM Global Yield LLC SCS ("GEM Global") and GEM Yield Bahamas Limited (as amended, the "Share Purchase Agreement"), the Company issued 34.0 million shares of Class A common stock to GEM Global on October 2, 2023 in full satisfaction of the Company's obligation to pay a commitment fee pursuant to the Share Purchase Agreement and fees due under a registration rights agreement. As such, the Company did not receive any proceeds from the sale of such shares. The shares were issued to GEM Global in a private placement in reliance on exemptions from registration provided by Section 4(a)(2) of the Securities Act of 1933, as amended (the "Securities Act"), and Rule 506(b) promulgated thereunder.

As of March 28, 2024, there were 16,960 holders of record of our Class A common stock. We have never declared or paid any cash dividends on our Class A common stock, and we do not expect to pay any cash dividends in the foreseeable future. Payment of any future dividends will depend on our earnings, cash flows and financial condition and will be subject to legal and contractual restrictions.

### Item 6. *[Reserved]*

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

You should read the following discussion of our results of operations and financial condition in conjunction with the "Risk Factors" included in Part I, Item 1A and our Consolidated Financial Statements and related Notes thereto included in Part II, Item 8 of this Form 10-K. See also the discussion of "Forward-Looking Statements" immediately preceding Part I of this Form 10-K.

#### **Company Overview**

Nxu, Inc. ("Nxu", "the Company", "we", "us" or "our") is a US-based technology company building energy and infrastructure solutions for consumers and businesses to enable faster transition to electrification across all market segments. We design, engineer, and build megawatt charging stations, innovative battery cells for use in advanced energy storage systems and mobility products. We believe that widespread adoption of EVs across all market segments, especially by the commercial and industrial markets requires high performing battery solutions that can effectively compete with legacy diesel-based products in terms of capability, performance and charge time. We design, engineer, and build NxuOne™ charging station and plan to build proprietary Li-ion battery cells, energy storage solutions and a suite of software and services designed to allow an easy transition from diesel to electric for our target segment.

In 2023, we introduced our megawatt charging station, the NxuOne™, and demonstrated its ability to deliver up to 1.1 megawatts of electricity to fast charge compatible batteries. Our megawatt chargers, being designed to provide 1,500kW of electricity, represent the next generation of charging solutions needed to expedite the mass adoption of electric vehicles for individual drivers, commercial fleets, medium-to-heavy duty equipment customers and businesses. To take advantage of the expected rapid growth in the number of EVs on the road in the United States, the Company plans to deploy and test its chargers for mass rollout in the near future.

We also believe that energy storage solutions are important for both consumer and commercial markets as grid stability and resiliency becomes critical to enabling the adoption of electric vehicles. Stationary energy storage systems are technologically adjacent opportunities which can leverage the modular design of our battery packs and advanced battery management systems to create solutions that address residential, commercial and utility-scale needs. Energy storage can also provide backup power during grid outages or emergencies, helping to ensure that critical services like hospitals and emergency responders remain operational.

The Company was incorporated in the State of Delaware on November 9, 2016 as Atlis Motor Vehicles Inc. ("Atlis" or "AMV"), and maintains its headquarters in Mesa, Arizona. Nxu is an early-stage company that first deployed a pilot vehicle charging location in Mesa, Arizona in September 2023 and is working towards scaled manufacturing and site development of charging hardware and software systems to deploy at bespoke charging sites along highway corridors. We have incurred losses from operations and have had negative cash flows from operating activities since our inception. Our current operating plan indicates that we will continue to incur losses from operations and generate negative cash flows from operating activities given expenses related to the completion of our ongoing research and development and production activities.

On May 12, 2023, Atlis, the predecessor company, completed reorganization merger pursuant to the Agreement and Plan of Merger, dated as of April 16, 2023 (the "Reorganization Agreement"), by and among Atlis, Nxu and Atlis Merger Sub, Inc., a Delaware corporation and, as of immediately prior to the consummation of such merger, a wholly-owned subsidiary of Nxu ("Merger Sub"). The Reorganization Agreement provided for the merger of Atlis and Merger Sub, with Atlis surviving the merger as a wholly-owned subsidiary of Nxu (the "Reorganization Merger"). The Reorganization Agreement was approved and adopted by Atlis's stockholders at Atlis's Special Meeting of Stockholders, which was held on May 9, 2023.

## Company and Industry Outlook

We are focused on building products to capture the commercial and industrial markets which represent a portion of the electric vehicle opportunity that we believe is not fully serviced by existing EV solutions. Individuals and companies that make up these segments require vehicles and equipment that are comparable in performance to their existing diesel-powered vehicles and equipment. However, limited battery capacity, range anxiety, and long charge times continue to be primary challenges to electrification. We are developing products aimed at addressing these challenges. Our planned products include our proprietary mega-watt charging infrastructure and energy storage solutions, and, in the long-term, a return to our proprietary battery cells, a modular and scalable electric powered platform, and an electric pickup truck.

Our strategy is to focus on execution, both in the near-term and in the long-term. Following a shift in focus in the latter half of 2023, we are currently developing our megawatt charging station in our Mesa, Arizona facility. As of December 31, 2023, we have successfully launched our first charging station and produced a second production unit ready for deployment. In 2023, we incurred losses from the operation of our first NxuOne™ charging station, primarily as a result of discounts offered to consumer and commercial customers to generate customer interest. We expect to continue to incur a losses on the delivery of electricity to customer electric vehicles. In the future, we intend to generate additional revenue through the sale of the NxuOne™ charging systems through our partner program as well as by continuing to provide kWh of energy to consumer and commercial customers through the NxuOne™ charging systems. It is possible that we will incur losses from any sales of the NxuOne™ charging systems to partners. Additionally, until we obtain sufficient capital to efficiently scale our production capabilities and increase production volume, we expect to incur losses on each product we sell.

Our operations have been financed primarily through net proceeds from the sale of securities. During the year ended December 31, 2023, we raised approximately \$31.4 million net, after expenses, through a mix of convertible notes, public offerings and an “at-the-market” equity offering. The Company intends to continue obtaining additional capital through the public markets and other means. There can be no assurance that we will obtain a sufficient level of capital through these channels in the time frames needed to sustain or grow the business or on terms agreeable to us.

## Segment Information

We evaluated segment reporting in accordance with Accounting Standards Codification 280 – Segment Reporting (“ASC 280”) and concluded that Nxu is comprised of one operating segment. We report segment information based on the operating results regularly reviewed by the chief operating decision maker to make decisions about resource allocation and the performance of the business.

## Reverse Stock Split

On December 26, 2023, we filed a Certificate of Amendment to the Certificate of Incorporation (the “Certificate of Amendment”) with the Secretary of State of the State of Delaware to effect a reverse stock split (the “Reverse Stock Split”) of the Class A Common Stock at a ratio of 1-for-150 (the “Reverse Stock Split Ratio”).

The Reverse Stock Split was previously approved by our Board of Directors and a majority of our stockholders. The Reverse Stock Split became effective immediately after the close of trading on Nasdaq on December 26, 2023 (the “Effective Time”), and the Class A common stock began trading on Nasdaq on a split-adjusted basis at the opening of trading on December 27, 2023. Accordingly, each holder of our Class A common stock received one share of Class A common stock for every 150 shares such stockholder held immediately prior to the effectiveness of the Reverse Stock Split.

In addition, equitable adjustments corresponding to the Reverse Stock Split Ratio were made to the number of shares of Class A Common Stock underlying our outstanding equity awards and the number of shares issuable under our equity incentive plan. Equitable adjustments corresponding to the Reverse Stock Split Ratio were also made to issued and outstanding shares of the Company’s Class B common stock and to the number of shares of Class A Common Stock underlying the Company’s outstanding warrants, as well as the applicable exercise price. All shares and per share information included in these financial statements and notes thereto have been retroactively adjusted to give effect to the Reverse Stock Split.

No fractional shares were issued in connection with the Reverse Stock Split. Any stockholder who would otherwise be entitled to receive a fractional share instead became entitled to receive one whole share in lieu of such fractional share.

## Revenue and Gross Profit

We recognized revenue for the first time in 2023. Our largest source of revenue, totaling approximately \$0.5 million, was generated through the sale of battery systems and components. Sales of battery systems and components generated losses as a result of significant costs incurred to develop and deliver battery related products for the first time. In addition, we incurred losses related to our contract to develop and deliver battery products as we were unable to satisfy all performance obligations, resulting in partial recognition of revenue from the contract with our customer.

Beginning in September 2023, we also generated a nominal amount of revenue from the launch of our first megawatt charging station delivering electricity to consumer and commercial customer electric vehicles. We expect to continue to generate revenue from charging customer vehicles and from the sale of proprietary NxuOne™ Megawatt+ Charging Systems to partners.

Sales of electricity to consumer and commercial customers for electric vehicle charging generated losses during the year, primarily as a result of discounted prices offered to customers to generate customer interest and encourage high charging station utilization. In the future, our goal is to continue to drive customer interest while focusing on increasing opportunities for profitability through utilization of our NxuOne™ charging station network, competitive pricing, and deployment of additional NxuOne™ charging stations in the near future.

### **Investment in Charging Development & Deployment**

We have historically aggressively invested in research & development of our products and the growth of our business. In the third quarter of 2023, we made a strategic shift to prioritize development and deployment of our megawatt charging system. In September 2023, we launched the NxuOne™ Megawatt+ Charging System in Mesa, Arizona. In connection with the shift to concentrate our resources on charging technology in 2023, we paused development and production of proprietary battery cells, battery packs and related systems and components. Development and production of batteries is expected to resume in the near term.

While we intend to become profitable and increasingly efficient over time, we also anticipate that our operating expenses will continue to remain consistently high as we maintain our current growth trajectory, scale the production of our megawatt charging stations and continue to invest in research and development of core proprietary products. We therefore anticipate a continued focus on capital financing and strategic partnership with other entities that mirror our commitment to electrification and provide infusions of working capital to fund development and operations. There is no guarantee that we will be able to realize the desired return on our investments.

### **Strategic Capital Funding**

We will continue to seek additional capital to fund our megawatt charging station production goals, charging site development and deployment and research and development of core proprietary products. During 2023, we raised approximately \$31.4 million, net to fund our development, production and deployment of energy and infrastructure solutions. Capital funding proceeds throughout the year included:

- On January 27, 2023, we received proceeds of \$9.0 million, net of offering costs, related to the second tranche of convertible notes issued to certain institutional investors.
- On February 21, 2023, we consummated a public offering for an aggregate of 0.1 million units of the Company's stock at an offering price of \$234 per unit resulting in gross proceeds of approximately \$12.0 million, net of offering costs. Each unit consisted of (i) one share of Class A common stock, (ii) 0.65 Series A warrants to purchase 0.65 shares of Class A common stock and (iii) 0.75 Series B warrants to purchase 0.75 shares of Class A common stock, each such warrant being exercisable from time to time for one share of Class A common stock at an exercise price of \$234.
- On August 11, 2023, we completed a public offering of 0.1 million units of the Company's stock at an offering price of \$45 per unit resulting in proceeds from the offering, net of offering costs, of approximately \$4.5 million. Each unit consists of one share of Class A common stock (or a pre-funded warrant in lieu thereof) and one common warrant, with each warrant exercisable for two shares of Class A common stock at an exercise price of \$45.
- On October 23, 2023, we completed a public offering of 0.6 million shares of its Class A common stock at an offering price of \$5.25 per share. Proceeds from the offering, net of offering costs, were approximately \$2.6 million.
- On November 10, 2023, we launched an "At-The-Market" equity offering ("ATM") pursuant to our October 2023 shelf registration on Form S-3 for sale from time to time of up to \$75.0 million of shares of Class A common stock. As of December 31, 2023, the Company has issued and sold 1.0 million shares of its Class A common stock, resulting in \$3.3 million of proceeds, net of commissions and offering costs.

See the Notes to consolidated financial statements contained elsewhere in this Form 10-K for more information.

We intend to continue to focus on strategic capital financing, conscientious operational spending and managing our cash position to optimize our potential for growth and profitability. There can be no assurance that we will obtain a sufficient level of capital through these channels in the time frames needed to sustain or grow the business or on terms agreeable to us.

### **Strategic Investment in Lynx**

On December 27, 2023, we entered into a Share Exchange Agreement with Lynks Motor Corporation (d/b/a Lynx Motor Corporation), a Delaware corporation ("Lynx"), pursuant to which Lynx sold to us, and we purchased from Lynx, a number of newly issued shares of Lynx representing 15% of the issued and outstanding equity interests in Lynx in exchange for 1,000 newly issued shares of Series A convertible preferred stock, par value \$0.0001 per share, of Nxu, which were later converted into 1,000,000 shares of Class A common stock, par value \$0.0001 per share, of Nxu. The Share Exchange Agreement had the effect of increasing our stockholders' equity through strategic investment and memorialized our commitment to utilizing strategic partnerships to accelerate our mission to develop superior highway electrification.

## Results of Operations

The following table sets forth certain statement of operations data for the years ended December 31, 2023 and 2022 (in thousands, certain amounts may not calculate due to rounding):

	Years Ended December 31,				
	2023	% of Total operating expenses	2022	% of Total operating expenses	Change
Revenue	\$ 496	1%	\$ —	—%	\$ 496
Cost of revenue	1,015	2	—	—	1,015
Depreciation	14	—	—	—	14
Total cost of revenue	1,029	2	—	—	1,029
Gross loss	(533)	(1)	—	—	(533)
Operating expenses					
Stock-based compensation	19,710	43	42,346	60	(22,636)
Research and development	11,310	24	10,375	15	935
General and administrative	15,529	33	11,626	17	3,903
Advertising	319	—	5,297	8	(4,978)
Total operating expenses	46,868	100	69,644	100	(22,776)
Operating loss	(47,401)	—	(69,644)	—	22,243
Other income (expense), net	7,223	—	(1,881)	—	9,104
Net loss	\$ (40,178)	—%	\$ (71,525)	—%	\$ 31,347

*Revenue.* We recognized revenue during the year ended December 31, 2023 of approximately \$0.5 million, primarily from delivery of battery system and components recognized upon partial satisfaction of a customer contract. We do not have any other contracts with customers for delivery of battery systems and components. We also launched our first megawatt charging station to deliver electricity to customer electric vehicles in September 2023, which resulted in a nominal amount of revenue during the year ended December 31, 2023.

*Cost of revenue and depreciation.* We recognized cost of revenue during the year ended December 31, 2023 of approximately \$1.0 million. The cost of revenue primarily represents the product cost of battery system and components sales, along with the write-off of approximately \$0.9 million in battery system and components work-in-process inventory that will not be completed or sold. We also recognized a nominal amount of energy costs and capitalized depreciation related to the charging station services.

*Stock-based compensation.* Stock-based compensation decreased \$22.6 million from \$42.3 million during the year ended December 31, 2022 to \$19.7 million in the year ended December 31, 2023 as a result of the vesting of stock options for employees and executives including \$27.8 million of expense in the year ended December 31, 2023. Additionally, we capitalized \$0.5 million of stock-based compensation expense to property and equipment for the year ended December 31, 2023. These decreases were partially offset by \$6.2 million of compensation expense related to restricted stock units granted under the 2023 Omnibus Incentive Plan (the “Plan”). See Note 12 – Stock-Based Compensation and Common Stock in the Notes to the Consolidated Financial Statements included in Part II, Item 8 – Financial Statements and Supplementary Data to this Form 10-K for further discussion. Our non-cash stock compensation expenses are expected to remain elevated in the future since it is a crucial element of our comprehensive employee compensation and management incentive plan.

*Research and development.* Research and development increased \$0.9 million from \$10.4 million in the year ended December 31, 2022 to \$11.3 million in the year ended December 31, 2023 as we continued battery development in the first half of the year and ramped up charging development during the year ended December 31, 2023. We expect to continue to invest heavily in research and development as we continue to bring our products and services to market. We also expect significant future investment in facilities, production capacity and quality, and continued refinement of our product design and development processes. As such, costs may fluctuate due to movement between R&D, finished product production, and capital expenditures.

*General and administrative.* General and administrative expenses increased \$3.9 million from \$11.6 million in the year ended December 31, 2022 to \$15.5 million in the year ended December 31, 2023. The increase was due to the increase in employee and labor costs from increased headcount in the first half of 2023, along with professional services and compensation costs for outside legal counsel, accounting, and other professional services to facilitate public company activities, including for expenditures related to capital fundraising classified as debt.

*Advertising.* Advertising decreased by \$5.0 million from \$5.3 million in the year ended December 31, 2022 to \$0.3 million in the year ended December 31, 2023 primarily due to our crowdfunding activities during the year ended December 31, 2022.

*Other income (expense), net.* Other income (expense), net increased by \$9.1 million for the year ended December 31, 2022 to the year ended December 31, 2023 primarily as a result of a \$10.6 million gain for changes in the fair value of our convertible long term debt and warrant liability, partially offset by \$1.0 million of non-cash warrant expense. See Note 14 – Fair Value of the Notes to the Consolidated Financial Statements included in Part II, Item 8– Financial Statements and Supplementary Data to this Form 10-K for further discussion.

## Liquidity and Capital Resources

The table below sets forth a summary of our cash flows for the years ended December 31, 2023 and 2022 (in thousands):

	December 31,	
	2023	2022
Net cash used in operating activities	\$ (27,991)	\$ (23,450)
Net cash used in investing activities	(1,670)	(1,557)
Net cash provided by financing activities	29,806	24,562

As disclosed in Note 1 – Organization and Basis of Presentation of the Notes to the Consolidated Financial Statements included in Part II, Item 8– Financial Statements and Supplementary Data to this Form 10-K, the accompanying audited consolidated financial statements have been prepared assuming we will continue as a going concern.

During the year ended December 31, 2023, we incurred a net loss of approximately \$40.2 million and had net cash used in operating activities of \$28.0 million. On December 31, 2023, we had \$2.8 million in cash and an accumulated deficit of approximately \$259.6 million.

During the year, we raised capital through a mix of convertible notes, public offerings and our ATM equity offering. As of the year ended December 31, 2023, we raised \$9 million, net of offering costs, from the second tranche related to our convertible debt agreement, an additional \$19.5 million, net of offering costs, through the issuance and sale of our Class A common stock and warrants from public offerings, and a total of \$3.3 million, net of offering costs, through the issuance and sales of our Class A common stock through the ATM. Further, in the first quarter of 2024, we raised an additional \$10.7 million, net of commissions and offering costs, through the ATM. We cannot provide any assurance that we will be able to raise additional capital on terms acceptable to us or at all.

These matters, among others, raise substantial doubt about our ability to continue as a going concern for a period of one year after the date these financial statements are issued. We believe that we currently have sufficient cash resources to fund our plan of operations for up to the next two quarters. Company management is addressing this risk by pursuing all available options for funding including accessing the public markets through public listing. We plan to continue considering all avenues available to us in order to obtain the necessary capital to be able to continue as a going concern and to execute on our business objectives including but not limited to debt financing, private placements, equity lines of credit and strategic partnerships. Our success is dependent upon achieving our strategic and financial objectives, including continuing to acquire capital through public markets.

*Net cash used in operating activities.* Net cash used in operating activities during the year ended December 31, 2023, was \$28.0 million. The use of cash resulted primarily from a net loss of \$40.2 million, and changes in the fair value of convertible debt and warrant liabilities of \$8.3 million, offset by employee and non-employee stock-based compensation expense of \$19.8 million, non-cash warrant expense of \$1.0 million, and changes in working capital.

Net cash used in operating activities during the year ended December 31, 2022, of \$23.5 million resulted primarily from a net loss of \$71.5 million, offset by employee and non-employee stock compensation of \$43.1 million, changes in working capital, changes in the fair value of convertible debt and warrant liabilities and forgiveness of the Paycheck Protection Loan program.

*Net cash used in investing activities.* Net cash used in investing activities for the years ended December 31, 2023, and 2022, was \$1.7 million and \$1.6 million, respectively. Cash used in investing activities was related to purchases of property and equipment during each period, offset by proceeds from the sale of property and equipment.

*Net cash provided by financing activities.* Net cash provided by financing activities of \$29.8 million during the year ended December 31, 2023, primarily consisted of proceeds from stock issuance from our Regulation A+ offering and our ATM sales, as well as proceeds from issuance of \$7.3 million convertible debt and the conversion of \$0.5 million in employee stock options during the period. These increases were partially offset by \$2.4 million of payments on the convertible debt.

Net cash provided by financing activities of \$24.6 million during the year ended December 31, 2022, primarily consisted of proceeds from stock issuance from our Regulation A+ offering and crowd funding campaigns as well as proceeds from issuance of \$9.0 million convertible debt and the conversion of \$260 thousand in employee stock options during the period.



Because our working capital requirements depend upon numerous factors there can be no assurance that our current cash resources will be sufficient to fund our operations. Thus, we will require immediate additional financing to fund future operations. There can be no assurance, however, that we will be able to obtain funds on acceptable terms, if at all.

We have contractual lease obligations for our two properties with initial lease terms ending in summer 2025. The lease agreement for our warehouse facility in Mesa, Arizona includes one or more options to renew with renewal terms that can extend the lease term by five years or more. For additional information related to these obligations, see Note 10 – Leases of the Notes to the Consolidated Financial Statements included in Part II, Item 8– Financial Statements and Supplementary Data to this Form 10-K . In addition, we also have obligations under our convertible debt facility to repay the remaining balance not converted into equity at the maturity date two years from issuance. See Note 14 – Fair Value of the Notes to the Consolidated Financial Statements included in Part II, Item 8– Financial Statements and Supplementary Data to this Form 10-K for further discussion.

### **Critical Accounting Estimates**

Our significant accounting policies are discussed in Note 2 – Summary of Significant Accounting Policies of the Notes to the Consolidated Financial Statements included in Part II, Item 8– Financial Statements and Supplementary Data to this Form 10-K. We consider the accounting policies described below to be critical in preparing our consolidated financial statements. These policies require us to make estimates and judgments that affect the reported amounts of certain assets, liabilities, expenses and related disclosures of contingencies. Our assumptions, estimates and judgments are based on historical experience, current trends and other factors to be relevant at the time we prepare the consolidated financial statements. Although our estimates and assumptions are reasonable, we cannot determine future events. Consequently, actual results could differ materially from our assumptions and estimates.

#### Stock-Based Compensation

As disclosed in Note 12 – Stock-Based Compensation and Common Stock of the Notes to the Consolidated Financial Statements included in Part II, Item 8– Financial Statements and Supplementary Data to this Form 10-K, we account for stock-based compensation in accordance with ASC Topic 718, Compensation - Stock Compensation. Under the fair value recognition provisions of this topic, stock-based compensation cost for equity classified awards is measured at the grant date based on the fair value of the award and is recognized as an expense over the requisite service period, which is the vesting period.

We have granted stock-based awards consisting of incentive and non-qualified stock options and restricted stock units to employees, members of our board of directors and non-employees. No stock options were granted to employees, members of our Board of Directors or non-employees in 2023. Existing stock options generally vest over three years at a rate of 33.33% each year beginning one year after the grant date, with the exception of stock options granted to our Chief Executive Officer and our President which vest on the first of each month through December 1, 2024. Stock options generally expire 10 years from the grant date and are exercisable when the options vest. Stock-based compensation expense for stock options is generally recognized on a straight-line basis over the requisite service period based on the estimated fair value of the awards on the grant date. Forfeitures are accounted for as they occur in accordance with ASC 718-10-35-3. We estimate the fair value of stock options granted using the Black-Scholes option-pricing model. Calculating the fair value of stock option awards using the Black-Scholes option pricing model requires the input of certain subjective assumptions, including the fair value of the underlying common stock, expected common stock price volatility, expected dividend yield of our common stock, risk-free interest rates, and the expected option term. The assumptions used in the Black-Scholes option-pricing model is estimated as described below. Other reasonable assumptions could have a material impact on our stock-based compensation expense and therefore, our operational results.

*Fair value of common stock* – Historically, the fair value of our Class A common stock was estimated using a 409a valuation performed by a third party because our Class A common stock had not yet been publicly traded. The 409a valuation included certain inputs and assumptions related to the Company’s projections of future earnings and growth. Beginning in September 2022, the fair value of our common stock was indexed to the listed price of our publicly traded stock.

*Expected Volatility* – The volatility rate was determined by using an average of historical volatilities of selected peers deemed to be comparable to our business corresponding to the expected option term as we did not have sufficient history of trading on our common stock prior to our public offering.

*Dividend Yield* – The expected dividend yield was zero as we have never declared or paid cash dividends and have no plans to do so in the foreseeable future.

*Risk Free Interest Rate* – The risk-free interest rate was based on the U.S. Treasury yield curve in effect at that time of grant for zero-coupon U.S. Treasury notes with maturities corresponding to the expected option term.

*Expected Option Term* – The expected option term represented the period that the Company’s options were expected to be outstanding and is based on historical experience of similar awards, giving consideration to the contractual terms, vesting schedules and expectations of future employee behavior.

We continue to use judgement in evaluating the expected volatility over the expected option term and the expected option term utilized in our stock-based compensation expense calculation on a prospective basis. As we continue to accumulate additional data related to our common stock, we may refine our estimates of the expected volatility over the expected option term, which could materially impact our future stock-based compensation expense.

### Convertible Debt and Warrants

As disclosed in Note 14 – Fair Value of the Notes to the Consolidated Financial Statements included in Part II, Item 8– Financial Statements and Supplementary Data to this Form 10-K, we elected the fair value option for our convertible debt and warrant liability in accordance with ASC 815 and 820. As a result, our convertible debt instrument and warrant liabilities require the use of the Monte Carlo or Black Scholes valuation model to determine fair value. Calculating the fair value of convertible debt and warrants utilizing this model requires the input of certain subjective assumptions, including the expected share price at conversion/exercise, equity volatility, dividend yield, expected life and risk free rate. Other reasonable assumptions related to the inputs used in the calculation could have a material impact on the fair market value of our convertible debt and warrants and therefore, our operational results.

*Expected Volatility* – The volatility rate was determined by using an average of historical volatilities of selected peers deemed to be comparable to our business corresponding to the expected option term as we did not have sufficient history of trading on our common stock at the time of valuation.

*Dividend Yield* – The expected dividend yield was zero as we have never declared or paid cash dividends and have no plans to do so in the foreseeable future.

*Expected Life* – The expected life represented the period that the Company’s debt or warrants were expected to be outstanding and is based on historical experience of similar instruments, giving consideration to the contractual terms and expectations of future conversions or exercises.

*Risk Free Interest Rate* – The risk-free interest rate was based on the U.S. Treasury Bond for the expected life.

*Roll Forward Discount Rate* – Calculated by incorporating the market adjustment factor to the implied discount rate calculated as at the transaction date and based on 92.5% of the average of the three lowest closing prices for the 10 trading days prior to the date of value. Simulated closing prices were used as a proxy for the projected Volume Weighted Average Price.

We continue to use judgement in evaluating the expected volatility and the expected term utilized in our calculation on a prospective basis. As we continue to accumulate additional data related to our common stock, we may refine our estimates of the expected volatility over the expected term, which could materially impact the fair market value of these instruments in the future.

### **Recent Accounting Pronouncements**

See Note 2 of the Notes to Consolidated Financial Statements in Part II, Item 8, Financial Statements and Supplementary Data of this Form 10-K for recent accounting pronouncements.

### **Emerging Growth Company Status**

As a public reporting company under the Exchange Act, we are required to publicly report on an ongoing basis as an “*emerging growth company*” (as defined in the Jumpstart Our Business Startups Act of 2012, which we refer to as the “JOBS Act”) under the reporting rules set forth under the Exchange Act. As defined in the JOBS Act, an emerging growth company is defined as a company with less than \$1.0 billion in revenue during its last fiscal year. An emerging growth company may take advantage of specified reduced reporting and other burdens that are otherwise applicable generally to public companies.

For so long as we remain an “*emerging growth company*,” we may take advantage of certain exemptions from various reporting requirements that are applicable to other Exchange Act reporting companies that are not “*emerging growth companies*,” including but not limited to:

- not being required to comply with the auditor attestation requirements of Section 404 of the Sarbanes-Oxley Act;
- taking advantage of extensions of time to comply with certain new or revised financial accounting standards;
- being permitted to comply with reduced disclosure obligations regarding executive compensation in our periodic reports and proxy statements; and
- being exempt from the requirement to hold a non-binding advisory vote on executive compensation and stockholder approval of any golden parachute payments not previously approved.

We expect to take advantage of these reporting exemptions until we are no longer an emerging growth company. We would remain an “*emerging growth company*” for up to five years, though if the market value of our common stock that is held by non-affiliates exceeds \$700 million, we would cease to be an “*emerging growth company*.”

**Item 7A. *Quantitative and Qualitative Disclosures about Market Risk***

Not required.

**Item 8. *Financial Statements and Supplementary Data***

Reference is made to the Consolidated Financial Statements, the Reports thereon, the Notes thereto, and the supplementary data commencing on page F-1 of this Form 10-K, which Consolidated Financial Statements, Reports, Notes and data are incorporated herein by reference.

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

None.

**Item 9A. *Controls and Procedures***

**Evaluation of Disclosure Controls and Procedures**

As required by Rule 13a-15(b) and Rule 15d-15(b) under the Exchange Act, our management, with the participation of our Chief Executive Officer and Chief Financial Officer, has evaluated the effectiveness of our disclosure controls and procedures as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act, as of December 31, 2023. Based on that evaluation, our Chief Executive Officer and Chief Financial Officer concluded that our disclosure controls and procedures were effective as of December 31, 2023 to provide reasonable assurance that information required to be disclosed by us in reports filed or submitted under the Exchange Act is recorded, processed, summarized and reported within the time periods specified by the rules and forms of the Exchange Act and is accumulated and communicated to management, including the Chief Executive Officer and Chief Financial Officer, as appropriate to allow timely decisions regarding required disclosures.

**Management’s Annual Report on Internal Controls over Financial Reporting**

Our management is responsible for establishing and maintaining adequate internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act). Our internal control system is a process designed to provide reasonable assurance regarding the preparation and fair presentation of published financial statements in accordance with GAAP. All internal control systems, no matter how well designed, have inherent limitations and can only provide reasonable assurance with respect to financial reporting. Management assessed the effectiveness of the Company’s internal control over financial reporting based on the criteria for effective internal control over financial reporting established in “Internal Control-Integrated Framework,” issued by the Committee of Sponsoring Organizations of the Treadway Commission in 2013 (“COSO”). Based on this assessment, management determined that the Company maintained effective internal control over financial reporting as of December 31, 2023.

Our independent registered public accounting firm will not be required to report on the effectiveness of our internal control over financial reporting pursuant to Section 404 until we are no longer an “emerging growth company” nor a non-accelerated filer.

**Changes in Internal Control Over Financial Reporting**

There have been no changes in the Company’s internal controls over financial reporting (as defined in Rule 13a-15(f) under the Exchange Act) during the fourth fiscal quarter of the Company’s year ended December 31, 2023, that has materially affected, or is reasonably likely to materially affect, the Company’s internal control over financial reporting.

**Item 9B. *Other Information***

None.

**Item 9C. *Disclosure Regarding Foreign Jurisdictions that Prevent Inspections***

Not applicable.

### PART III

Information called for by the Items included under this Part III is incorporated by reference to the sections listed below of our definitive Proxy Statement for our 2023 Annual Meeting of Stockholders that will be filed not later than 120 days after December 31, 2023 (“**2024 Proxy Statement**”).

**Item 10**     ***Directors, Executive Officers and Corporate Governance***

The information required by this item is incorporated by reference to our 2024 Proxy Statement to be filed with the SEC within 120 days after the end of our fiscal year ended December 31, 2023.

**Item 11**     ***Executive Compensation***

The information required by this item is incorporated by reference to our 2024 Proxy Statement to be filed with the SEC within 120 days after the end of our fiscal year ended December 31, 2023.

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

The information required by this item is incorporated by reference to our 2024 Proxy Statement to be filed with the SEC within 120 days after the end of our fiscal year ended December 31, 2023.

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

The information required by this item is incorporated by reference to our 2024 Proxy Statement to be filed with the SEC within 120 days after the end of our fiscal year ended December 31, 2023.

**Item 14**     ***Principal Accountant Fees and Services***

The information required by this item is incorporated by reference to our 2024 Proxy Statement to be filed with the SEC within 120 days after the end of our fiscal year ended December 31, 2023.

## PART IV

### Item 15. Exhibits and Financial Statement Schedules

(a) The following documents are filed as a part of this Form 10-K:

(1) *Financial Statements:*

Financial Statements are listed in the Index to Consolidated Financial Statements on page F-1 of this report.

(2) *Financial Statement Schedules:*

All other schedules have been omitted because they are not applicable, or the required information is included in the Consolidated Financial Statements or the Notes thereto.

(3) *Exhibits:*

The documents listed below are being filed or have previously been filed on behalf of the Company and are incorporated herein by reference from the documents indicated and made a part hereof. Exhibits not identified as previously filed are filed herewith.

### EXHIBIT INDEX

Exhibit No.	Description
2.1	<a href="#">Agreement and Plan of Merger, dated April 16, 2023, by and among Atlis Motor Vehicles Inc., a Delaware corporation, Nxu, Inc., a Delaware corporation, and Atlis Merger Sub Inc., a Delaware corporation (incorporated by reference to Exhibit 2.1 to the Company's Registration Statement on Form S-4 filed with the SEC on April 17, 2023).</a>
3.1*	<a href="#">Certificate of Incorporation of Nxu, Inc.</a>
3.2	<a href="#">Certificate of Amendment to the Certificate of Incorporation of Nxu, Inc., dated December 26, 2023 (incorporated by reference to Exhibit 3.2 of the Company's Form 8-K filed with the SEC on December 27, 2023).</a>
3.3	<a href="#">Certificate of Designations of Series A Convertible Preferred Stock of Nxu, Inc., dated December 22, 2023 (incorporated by reference to Exhibit 3.1 to the Company's Form 8-K filed with the SEC on December 27, 2023).</a>
3.4*	Bylaws of Nxu, Inc.
4.1	<a href="#">Form of Senior Secured Original Issue 10% Discount Convertible Promissory Note (incorporated by reference to Exhibit 4.1 to the Company's Current Report on Form 8-K filed with the SEC on November 4, 2022).</a>
4.2	<a href="#">Form of Common Stock Purchase Warrant (incorporated by reference to Exhibit 4.2 to the Company's Current Report on Form 8-K filed with the SEC on November 4, 2022).</a>
4.3	<a href="#">Form of Warrant Agency Agreement (incorporated by reference to Exhibit 4.3 of the Registration Statement on Form S-1 filed with the SEC on February 10, 2023).</a>
4.4	<a href="#">Form of Series A and Series B Class A Common Stock Purchase Warrant (incorporated by reference to Exhibit 4.4 of the Registration Statement on Form S-1 filed with the SEC on February 10, 2023).</a>
4.5	<a href="#">Common Stock Purchase Warrant (incorporated by reference to Exhibit 4.3 to the Company's Registration Statement on Form S-1 filed with the SEC on September 20, 2023).</a>
4.6	<a href="#">Form of Pre-Funded Warrant (incorporated by reference to Exhibit 4.5 to the Company's Registration Statement on Form S-1 filed with the SEC on October 10, 2023).</a>
4.7	<a href="#">Form of Common Stock Purchase Warrant (incorporated by reference to Exhibit 4.4 to the Company's Registration Statement on Form S-1 filed with the SEC on August 4, 2023).</a>
4.8	<a href="#">Form of Common Stock Purchase Warrant (incorporated by reference to Exhibit 4.4 to the Company's Registration Statement on Form S-1 filed with the SEC on July 10, 2023).</a>
4.9	<a href="#">Form of Pre-Funded Warrant (incorporated by reference to Exhibit 4.5 to the Company's Registration Statement on Form S-1 filed with the SEC on July 10, 2023).</a>
4.10	<a href="#">Registration Rights Agreement, by and between the Company and the selling stockholder (incorporated by reference to Exhibit 10.2 of the Company's Form 8-K filed with the SEC on December 27, 2023).</a>
4.11*	<a href="#">Description of Securities, filed herewith.</a>

10.1†	<a href="#"><u>Amended Collaboration Agreement, dated July 28, 2022, between the Company and Australian Manufactured Vehicles (incorporated by reference to Exhibit 10.6 to the Company's Registration Statement on Form S-1 filed with the SEC on January 4, 2023).</u></a>
10.2	<a href="#"><u>Form of Indemnification Agreement (incorporated by reference to Exhibit 10.7 to the Company's Registration Statement on Form S-1 filed with the SEC on January 4, 2023).</u></a>
10.3	<a href="#"><u>Form of Securities Purchase Agreement (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the SEC on November 4, 2022).</u></a>
10.4	<a href="#"><u>Form of Amendment No. 1 to Securities Purchase Agreement (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the SEC on January 6, 2023).</u></a>
10.5	<a href="#"><u>Form of Securities Agreement (incorporated by reference to Exhibit 10.2 to the Company's Current Report on Form 8-K filed with the SEC on November 4, 2022).</u></a>
10.6	<a href="#"><u>Form of Registration Rights Agreement (incorporated by reference to Exhibit 10.3 to the Company's Current Report on Form 8-K filed with the SEC on November 4, 2022).</u></a>
10.7	<a href="#"><u>Form of Amendment No. 1 to Registration Rights Agreement (incorporated by reference to Exhibit 10.2 to the Company's Current Report on Form 8-K filed with the SEC on January 6, 2023).</u></a>
10.8	<a href="#"><u>Form of Securities Purchase Agreement (incorporated by reference to Exhibit 10.13 of the Registration Statement on Form S-1 filed with the SEC on February 10, 2023).</u></a>
10.9	<a href="#"><u>Share Exchange Agreement, dated as of December 27, 2023, by and between Nxu, Inc. and Lynks Motor Corporation (incorporated by reference to Exhibit 10.1 to the Company's Form 8-K filed with the SEC on December 27, 2023).</u></a>
10.10+	<a href="#"><u>Nxu, Inc. 2023 Omnibus Incentive Plan (incorporated by reference to Exhibit 10.1 to the Company's Registration Statement on Form S-4 filed with the SEC on April 17, 2023).</u></a>
10.11	<a href="#"><u>Share Purchase Agreement, dated as of June 25, 2021, among the Company, GEM Global Yield LLC SCS and GEM Yield Bahamas Limited (incorporated by reference to Exhibit 10.14 to the Company's Registration Statement on Form S-1 filed with the SEC on September 20, 2023).</u></a>
10.12	<a href="#"><u>Registration Rights Agreement, dated as of June 25, 2021, among the Company, GEM Global Yield LLC SCS and GEM Yield Bahamas Limited (incorporated by reference to Exhibit 10.15 to the Company's Registration Statement on Form S-1 filed with the SEC on September 20, 2023).</u></a>
10.13	<a href="#"><u>Letter Agreement Relating to Share Subscription Facility, dated as of September 19, 2023, among the Company, GEM Global Yield LLC SCS and GEM Yield Bahamas Limited (incorporated by reference to Exhibit 10.16 to the Company's Registration Statement on Form S-1 filed with the SEC on September 20, 2023).</u></a>
10.14+	<a href="#"><u>Board of Directors Agreement, dated May 11, 2023, between the Company and Britt Ide (incorporated by reference to Exhibit 10.1 to the Company's Amendment No. 1 to the Registration Statement on Form S-1, filed with the SEC on July 10, 2023).</u></a>
10.15+	<a href="#"><u>Board of Directors Agreement, dated May 11, 2023, between the Company and Caryn Nightengale (incorporated by reference to Exhibit 10.2 to the Company's Amendment No. 1 to the Registration Statement on Form S-1, filed with the SEC on July 10, 2023).</u></a>
10.16+	<a href="#"><u>Board of Directors Agreement, dated June 15, 2023, between the Company and Jessica Billingsley (incorporated by reference to Exhibit 10.3 to the Company's Amendment No. 1 to the Registration Statement on Form S-1, filed with the SEC on July 10, 2023).</u></a>
10.17+	<a href="#"><u>Employment Agreement, dated as of May 12, 2023, between the Company and Mark Hanchett (incorporated by reference to Exhibit 10.4 to the Company's Amendment No. 1 to the Registration Statement on Form S-1, filed with the SEC on July 10, 2023).</u></a>
10.18+	<a href="#"><u>Employment Agreement, dated as of May 12, 2023, between the Company and Annie Pratt (incorporated by reference to Exhibit 10.5 to the Company's Amendment No. 1 to the Registration Statement on Form S-1, filed with the SEC on July 10, 2023).</u></a>
10.19+	<a href="#"><u>Employment Agreement, dated as of May 12, 2023, between the Company and Apoorv Dwivedi (incorporated by reference to Exhibit 10.6 to the Company's Amendment No. 1 to the Registration Statement on Form S-1, filed with the SEC on July 10, 2023).</u></a>
10.20*+	<a href="#"><u>Employment Agreement, dated as of April 28, 2023, between the Company and Sarah Wyant, filed herewith.</u></a>
21.1	<a href="#"><u>List of Subsidiaries of Nxu, Inc (incorporated by reference to Exhibit 21.1 to the Company's Registration Statement on Form S-1 filed with the SEC on January 4, 2023).</u></a>
23.1*	<a href="#"><u>Consent of Prager Metis CPAs LLC, independent registered public accounting firm for Nxu, Inc.</u></a>
24.1*	<a href="#"><u>Power of Attorney (included on the signature page to this Form 10-K).</u></a>

31.1*	<a href="#">Certification of Chief Executive Officer pursuant to Rule 13a-14(a) or Rule 15d – 14(a)</a>
31.2*	<a href="#">Certification of Interim Chief Financial Officer pursuant to Rule 13a-14(a) or Rule 15d - 14(a)</a>
32.1**	<a href="#">Certification of Chief Executive Officer and Interim Chief Financial Officer under Section 906 of the Sarbanes-Oxley Act of 2002</a>
97.1*	<a href="#">Clawback Policy, filed herewith.</a>
101.INS*	Inline XBRL Instance Document.
101.SCH*	Inline XBRL Taxonomy Extension Schema Document.
101.CAL*	Inline XBRL Taxonomy Extension Calculation Linkbase Document.
101.DEF*	Inline XBRL Taxonomy Extension Definition Linkbase Document
101.LAB*	Inline XBRL Taxonomy Extension Label Linkbase Document.
101.PRE*	Inline XBRL Taxonomy Presentation Linkbase Document.
104*	Cover Page Interactive Data File (formatted as Inline XBRL and contained in Exhibit 101).

\* Filed herewith.

\*\*Furnished herewith. This exhibit should not be deemed filed for purposes of Section 18 of the Securities Exchange Act of 1934, as amended.

+ Management contract or compensatory plan or arrangement.

† Portions of the exhibit have been omitted pursuant to Item 601(b)(10) of Regulation S-K. The Company agrees to furnish a supplemental copy with any omitted information to the SEC upon request.

**Item 16.** *Form 10-K Summary*

None.



## SIGNATURES

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, on the 1<sup>st</sup> day of April 2024.

NXU, INC.

By: /s/ Mark Hanchett  
Mark Hanchett  
*Chief Executive Officer*

## POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each of the undersigned Directors and Officers of Nxu Inc. hereby constitute and appoint Mark Hanchett, Annie Pratt, and Sarah Wyant as such Director's or Officer's true and lawful attorneys-in-fact and agents, for such Director or Officer and in such Director's or Officer's name, place and stead, in any and all capacities, with full power to act alone, to sign any and all amendments to this report, and to file each such amendment to this report, with all exhibits thereto, and any and all documents in connection therewith, with the Securities and Exchange Commission, hereby granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform any and all acts and things requisite and necessary to be done in connection therewith, as fully to all intents and purposes as such Director or Officer might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or any of them may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

<b>Signature</b>	<b>Title</b>	<b>Date</b>
<u>/s/ Mark Hanchett</u> <b>Mark Hanchett</b>	Chairman of the Board and Chief Executive Officer (Principal Executive Officer)	April 1, 2024
<u>/s/ Annie Pratt</u> <b>Annie Pratt</b>	President and Director	April 1, 2024
<u>/s/ Sarah Wyant</u> <b>Sarah Wyant</b>	Interim Chief Financial Officer (Principal Financial and Principal Accounting Officer)	April 1, 2024
<u>/s/ Britt Ide</u> <b>Britt Ide</b>	Director	April 1, 2024
<u>/s/ Caryn Nightengale</u> <b>Caryn Nightengale</b>	Director	April 1, 2024
<u>/s/ Jessica Billingsley</u> <b>Jessica Billingsley</b>	Director	April 1, 2024

NXU, INC. AND SUBSIDIARIES

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**REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

To the Board of Directors and  
Stockholders of Nxu, Inc. and Subsidiaries

**Opinion on the Financial Statements**

We have audited the accompanying consolidated balance sheets of Nxu, Inc. and Subsidiaries (the Company) as of December 31, 2023 and 2022, and the related consolidated statements of operations, stockholders' equity (deficit), and cash flows for each of the years in the two-year period ended December 31, 2023, and the related notes (collectively referred to as the financial statements). In our opinion, the financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2023, and 2022, and the results of its operations and its cash flows for each of the years in the two-year period ended December 31, 2023, in conformity with accounting principles generally accepted in the United States of America.

**Going Concern**

The accompanying consolidated financial statements were prepared assuming the Company will continue as a going concern. As discussed in Note 1 to the financial statements, as of December 31, 2023, the Company had recurring losses from operations and an accumulated deficit. These conditions, among others, raise substantial doubt about its ability to continue as a going concern. Management's plans concerning these matters are also described in Note 1. The financial statements do not include any adjustments that might result from the outcome of this uncertainty.

**Basis for Opinion**

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

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

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

*/s/ Prager Metis CPAs, LLC*

We have served as the Company's auditor since 2020.

Hackensack, NJ

March 29, 2024

**NXU, INC. AND SUBSIDIARIES**  
**CONSOLIDATED BALANCE SHEETS**  
(Amounts in thousands, except share data)

<b>Assets</b>	<b>December 31, 2023</b>	<b>December 31, 2022</b>
<b>Current Assets:</b>		
Cash	\$ 2,846	\$ 2,701
Prepaid expenses and other current assets	999	868
Inventory	—	98
Notes receivable from related party	250	—
<b>Total current assets</b>	<b>4,095</b>	<b>3,667</b>
Property and equipment, net	3,865	2,441
Right-of-use assets	1,507	798
Investment in Lynx	3,000	—
Intangible assets, net	20	10
Other assets	772	122
<b>Total assets</b>	<b>\$ 13,259</b>	<b>\$ 7,038</b>
<b>Liabilities and Stockholders' Equity (Deficit)</b>		
<b>Current Liabilities:</b>		
Accounts payable and accrued liabilities	\$ 3,371	\$ 3,219
Variable share settled restricted stock units	1,334	—
Current portion of operating lease liability	864	344
Other current liabilities	40	680
<b>Total current liabilities</b>	<b>5,609</b>	<b>4,243</b>
Lease liability, net of current portion	688	558
Convertible debt and warrant liability, at fair value	65	11,285
Other long-term liabilities	233	-
<b>Total liabilities</b>	<b>6,595</b>	<b>16,086</b>
Commitments and contingencies (Note 11)		
<b>Stockholders' Equity (Deficit):</b>		
Class A Common Stock, par value \$0.0001; 4,000,000,000 shares authorized; 2,563,288 issued and outstanding as of December 31, 2023; 65,093 issued and outstanding as of December 31, 2022	—	—
Class B Common Stock, par value \$0.0001; 1,000,000,000 authorized; 243,503 issued and outstanding at December 31, 2023; 0 issued and outstanding at December 31, 2022	—	—
Series A Convertible Preferred Stock, par value \$0.0001; 5,000 shares authorized; 1,000 issued and outstanding at December 31, 2023; 0 issued and outstanding at December 31, 2022	—	—
Additional paid-in capital	266,302	210,412
Accumulated deficit	(259,638)	(219,460)
<b>Total stockholders' equity (deficit)</b>	<b>6,664</b>	<b>(9,048)</b>
<b>Total liabilities and stockholders' equity (deficit)</b>	<b>\$ 13,259</b>	<b>\$ 7,038</b>

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

**NXU, INC. AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENTS OF OPERATIONS**  
(Amounts in thousands, except per-share data)

	Years Ended December 31,	
	2023	2022
Revenue	\$ 496	\$ —
Cost of revenue	1,015	—
Depreciation	14	—
Total cost of revenue	1,029	—
Gross loss	(533)	—
Operating expenses:		
Stock-based compensation	19,710	42,346
Research and development	11,310	10,375
General and administrative	15,529	11,626
Advertising	319	5,297
Total operating expenses	46,868	69,644
Operating loss	(47,401)	(69,644)
Other income (expense):		
Interest expense	(73)	(7)
Paycheck protection program forgiveness	—	397
Gain/(loss) on sale or disposal of property and equipment	18	(152)
Warrant expense	(1,020)	—
Gain/(loss) on convertible debt and warrant liability	8,265	(2,285)
Other income	33	166
Total other income (expense), net	7,223	(1,881)
Net loss	\$ (40,178)	\$ (71,525)
Loss per share, basic and diluted	\$ (72.16)	\$ (1,347.65)
Weighted average number of common shares outstanding used in computing loss per share:	556,826	53,074

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

**NXU, INC. AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY (DEFICIT)**  
(in thousands, except share data)

	Common Stock						Series A Convertible Preferred Stock		Additional Paid-in Capital	Accumulated (Deficit)	Total
	Class A		Class C		Class B		Shares	Amount			
	Shares	Amount	Shares	Amount	Shares	Amount					
Balance at December 31, 2021	45,698	\$ —	34	\$ —	171,503	\$ —	—	\$ —	\$ 151,737	\$ (147,935)	\$ 3,802
Class A common stock issued for cash	16,504	—	—	—	—	—	—	—	15,302	—	15,302
Class B common stock issued	—	—	—	—	36,000	—	—	—	—	—	—
Stock-based compensation	1,133	—	—	—	—	—	—	—	42,452	—	42,452
Shares issued for services and rent guarantees	1,010	—	34	—	—	—	—	—	89	—	89
Exchange of Class C to Class A common stock	500	—	(68)	—	—	—	—	—	572	—	572
Exercise of stock options	248	—	—	—	—	—	—	—	260	—	260
Net loss	—	—	—	—	—	—	—	—	—	(71,525)	(71,525)
Balance at December 31, 2022	65,093	\$ —	—	\$ —	207,503	\$ —	—	\$ —	\$ 210,412	\$ (219,460)	\$ (9,048)
Class A common stock issued for cash	730,425	—	—	—	—	—	—	—	8,784	—	8,784
Class A common stock issued for cash under ATM	981,283	—	—	—	—	—	—	—	3,277	—	3,277
Shares adjustment after reverse stock split	10,002	—	—	—	—	—	—	—	—	—	—
Class B common stock issued	—	—	—	—	36,000	—	—	—	—	—	—
Issuance of Series A Convertible Preferred Stock	—	—	—	—	—	1,000	—	—	3,000	—	3,000
Stock-based compensation	—	—	—	—	—	—	—	—	18,844	—	18,844
Common stock issued under stock compensation plans	136,494	—	—	—	—	—	—	—	—	—	—
Shares issued for services	973	—	—	—	—	—	—	—	106	—	106
Forfeitures of restricted stock and restricted stock surrendered in lieu of withholding taxes	(1,081)	—	—	—	—	—	—	—	(32)	—	(32)
Exercise of warrants	53,513	—	—	—	—	—	—	—	3,519	—	3,519
Warrant modification from liability to equity	—	—	—	—	—	—	—	—	222	—	222
Exercise of stock options	520	—	—	—	—	—	—	—	547	—	547
Conversion of long term debt to equity	359,399	—	—	—	—	—	—	—	17,623	—	17,623
Stock-based commitment fee	226,667	—	—	—	—	—	—	—	—	—	—
Net loss	—	—	—	—	—	—	—	—	—	(40,178)	(40,178)
Balance at December 31, 2023	2,563,288	\$ —	—	\$ —	243,503	\$ —	1,000	\$ —	\$ 266,302	\$ (259,638)	\$ 6,664

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

**NXU, INC. AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENTS OF CASH FLOWS**  
(in thousands)

	Years Ended December 31,	
	2023	2022
Cash flows from operating activities:		
Net loss	\$ (40,178)	\$ (71,525)
Adjustments to reconcile net loss to net cash provided by operating activities:		
Depreciation and amortization	689	348
Employee stock-based compensation	19,710	42,346
Non-employee stock-based compensation	106	768
Non-cash warrant expense	1,020	—
Paycheck Protection Loan Program	—	(397)
Net change in operating lease assets and liabilities	(59)	(22)
Loss on write-off of inventory	896	—
(Gain)/loss on the sale or disposal of property and equipment	(18)	152
(Gain)/loss on fair value of convertible debt and warrant liability	(8,265)	2,285
Changes in assets and liabilities:		
Prepaid expenses and other current assets	(130)	(578)
Note receivable from related party	(250)	—
Inventory	(784)	(98)
Other assets	(650)	64
Accounts payable and accrued liabilities	212	2,731
Other current liabilities	(523)	476
Other long-term liabilities	233	—
Net cash used in operating activities	(27,991)	(23,450)
Cash flows from investing activities:		
Purchases of property and equipment	(2,217)	(1,787)
Capitalized patent costs	(12)	—
Proceeds from the sale of property and equipment	559	230
Net cash used in investing activities	(1,670)	(1,557)
Cash flows from financing activities:		
Proceeds from public offering, net of equity offering costs	21,209	15,302
Proceeds from ATM, net of offering costs	3,277	—
Proceeds from the issuance of convertible debt	7,330	9,000
Payments on convertible debt	(2,367)	—
Payments on financing lease liability	(158)	—
Proceeds from the exercise of stock options	547	260
Tax withholdings related to restricted stock units and awards	(32)	—
Net cash provided by financing activities	29,806	24,562
Net decrease in cash	145	(445)
Cash, beginning of period	2,701	3,146
Cash, end of period	\$ 2,846	\$ 2,701
Supplemental disclosure of cash flow information:		
Cash paid for income taxes	\$ 1	\$ —
Cash paid for interest	\$ 6	\$ 7
Supplemental disclosure of non-cash investing and financing activities:		
Debt converted to equity	\$ 18,063	\$ —
Issuance of Series A Convertible Preferred stock for investment in Lynx	\$ 3,000	\$ —
Operating lease right-of-use asset obtained in exchange for operating lease liability	\$ 1,263	\$ —
Capital expenditures included in accounts payable and other accrued liabilities	\$ 204	\$ 232
Stock-based compensation expense capitalized to property and equipment	\$ 490	\$ —
Incremental expense on Class C to Class A stock exchange	\$ —	\$ 572

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

**NXU, INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

**1. Organization and Basis of Presentation**

*Reorganization, Merger and Incorporation of Nxu, Inc.*

On May 12, 2023, Atlis Motor Vehicles Inc. (“Atlis”) completed its previously announced reorganization merger pursuant to the Agreement and Plan of Merger, dated as of April 16, 2023 (the “Reorganization Agreement”), by and among Atlis, Nxu, Inc., a Delaware Corporation (the “Company” or “Nxu”), and Atlis Merger Sub, Inc., a Delaware corporation and, as of immediately prior to the consummation of such merger, a wholly-owned subsidiary of Nxu (“Merger Sub”). The Reorganization Agreement provided for the merger of Atlis and Merger Sub, with Atlis surviving the merger as a wholly-owned subsidiary of Nxu (the “Reorganization Merger”). The Reorganization Agreement was approved and adopted by Atlis’s stockholders at Atlis’s Special Meeting of Stockholders, which was held on May 9, 2023. After the Reorganization Merger, Atlis was reclassified from a corporation to a limited liability company and renamed Nxu Technologies, LLC. Nxu Technologies, LLC is a wholly owned operating company and the sole subsidiary of Nxu, Inc. References to “Nxu” or the “Company” shall collectively mean Nxu, Inc and its wholly owned subsidiary, Nxu Technologies, LLC.

The directors and executive officers of Nxu immediately following the completion of the Reorganization Merger are the same individuals who were directors and executive officers, respectively, of Atlis as of immediately prior to the Reorganization Merger.

Upon completion of the Reorganization Merger, Nxu Class A Common Stock was deemed to be registered under Section 12(b) of the Securities Exchange Act of 1934, as amended, pursuant to Rule 12g-3(a) promulgated thereunder and for purposes of Rule 12g-3(a), Nxu is the successor issuer to Atlis. Future filings by Nxu with the Securities and Exchange Commission (the “SEC”) will be filed by Nxu under Atlis’s existing CIK number: 0001722969.

Transactions that occurred in connection with the Reorganization Merger are considered transactions between entities under common control, and thus the financial statements for periods prior to the Reorganization Merger have been adjusted to combine the previously separate entities for presentation purpose. See more information regarding shares of common stock authorized, issued and outstanding in connection with the Reorganization Merger in Note 12 – Stock-Based Compensation and Common Stock.

*Organization*

Nxu is a US-based technology company building megawatt (“MW”) charging stations and developing innovative battery cells and battery packs for use in advanced energy storage systems, and mobility products. The Company believes that widespread adoption of EVs by the commercial and industrial markets requires high performing battery and pack solutions that can effectively compete with legacy diesel-based products. Nxu designs, engineers, and plans to build proprietary 1 megawatt plus charging stations, lithium-ion (“Li-ion”) battery cells and packs, energy storage solutions and a suite of software and services designed to allow an easy transition from diesel to electric for our target segment.

*Basis of consolidation*

The accompanying consolidated financial statements include the accounts of the Company and its wholly-owned subsidiaries. All intercompany transactions and balances have been eliminated in consolidation.

*Basis of Presentation*

The Company’s financial statements are prepared in conformity with U.S. generally accepted accounting principles (GAAP), which requires us to make estimates based on assumptions about current, and for some estimates, future economic and market conditions which affect reported amounts and related disclosures in our financial statements. Although our estimates contemplate current and expected future conditions, it is reasonably possible that actual conditions could differ from our expectations, which could materially affect our results of operations, our financial position and cash flows.

References to amounts in the consolidated financial statement sections are in thousands, except share and per share data, unless otherwise specified.

*Reverse Stock Split*

On December 26, 2023, the Company effected a 1-for-150 reverse stock split of the shares of common stock of the Company. All historical share and per share amounts reflected throughout the financial statements have been retroactively adjusted to give effect to the reverse stock split. See Note 12 – Stock-Based Compensation and Common Stock for further discussion.

*Correction of Immaterial Misclassification and Error*

Management identified an immaterial classification error related to research and development costs previously reported as general and administrative expense in the December 31, 2022 consolidated financial statements. The correction resulted in an increase to research and development costs of \$0.8 million for the year ended December 31, 2022 with a corresponding decrease to general and administrative expenses. The reclassification of costs allows for a more accurate presentation of research and development costs and had no impact on total operating expenses, net loss, total assets, total liabilities or shareholders’ deficit.



Management identified an immaterial error in its previously reported stock-based compensation expense in the December 31, 2022 consolidated financial statements. Correction of the error resulted in an increase to stock-based compensation expense of \$0.8 million as of December 31, 2022. The restatement had no effect on stockholders' deficit as of December 31, 2022 and had no other effect to the Company's consolidated financial statements.

### *Going Concern*

The accompanying consolidated financial statements have been prepared assuming the Company will continue as a going concern, which contemplates the realization of assets and the liquidation of liabilities in the normal course of business. These financial statements do not include any adjustments to the recoverability and classification of recorded asset amounts and classification of liabilities that might be necessary should the Company be unable to continue as a going concern.

During the year ended December 31, 2023, the Company incurred a net loss of \$40.2 million and had net cash flows used in operating activities of \$28.0 million. On December 31, 2023, the Company had \$2.8 million in cash and an accumulated deficit of \$259.6 million.

The Company cannot provide any assurance that unforeseen circumstances that could occur at any time within the next twelve months or thereafter will not increase the need for the Company to raise additional capital on an immediate basis. Additionally, Company cannot provide any assurance that access to capital will be readily available when needed.

These matters, among others, raise substantial doubt about the Company's ability to continue as a going concern for a period of one year after the date these financial statements are issued. Company management is addressing this risk by pursuing all available options for funding including accessing the public markets through public listing. As further discussed in Note 13 – Convertible Debt and Warrant Liability, in January 2023, the Company received the second tranche of funding related to its convertible debt agreement entered into on November 4, 2022 for net proceeds of \$9.0 million. Additionally, as discussed in Note 12 – Stock-Based Compensation and Common Stock, throughout 2023, the Company consummated public offerings totaling 0.7 million units of Company stock for net proceeds of approximately \$19.1 million. Further, as discussed in Note 12 – Stock-Based Compensation and Common Stock, in November 2023, the Company launched an at-the-market equity offering ("ATM"), which resulted in net proceeds of approximately \$3.3 million as of December 31, 2023. The Company plans to continue considering all avenues available to it in order to obtain the necessary capital to be able to continue as a going concern and to execute on its business objectives including but not limited to debt financing, private placements, and equity lines of credit. The Company's success is dependent upon achieving its strategic and financial objectives, including continuing to acquire capital through public markets.

## **2. Recent Accounting Pronouncements and Summary of Significant Accounting Policies**

### ***Summary of Significant Accounting Policies***

#### *Use of Estimates*

The preparation of consolidated financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the amounts reported in the consolidated financial statements and accompanying notes. Due to uncertainties, actual results could differ from the estimates and assumptions used in preparation of the consolidated financial statements.

#### *Segment Reporting*

The Company evaluated segment reporting in accordance with Accounting Standards Codification ("ASC") 280 – Segment Reporting ("ASC 280") and concluded that Nxu is comprised of one operating segment. The Company reports segment information based on the operating results regularly reviewed by the chief operating decision maker to make decisions about resource allocation and the performance of the business.

#### *Cash and cash equivalents*

Cash and cash equivalents include cash on hand, money market funds, and credit and debit card transactions. The cash balance at financial institutions may exceed the FDIC insurance coverage limit. The Company considers all investments with an original maturity of three months or less and money market funds to be cash equivalents.

#### *Inventory*

Inventory is stated at the lower of cost or net realizable value ("LCNRV") and generally consists of raw materials and work in progress. The Company calculates inventory value on the first-in, first-out ("FIFO") basis. NRV is the estimated selling price of inventory in the ordinary course of business, less estimated costs of completion, disposal, and transportation. The Company assesses the valuation of inventory and periodically adjusts its value for estimated excess and obsolete inventory based upon expectations of future demand and market conditions, as well as damaged or otherwise impaired goods.

The Company had \$0.1 million in raw materials inventory related to a customer contract for battery systems and components as of December 31, 2022. During the first half of the year ended December 31, 2023, the Company continued development on its battery inventory for sale, but later determined it would no longer be able to complete the remaining work in process. As a result, the net realizable value of the inventory was \$0, and the Company wrote-off approximately \$0.9 million of inventory to cost of goods sold in the consolidated statements of operations during the year ended December 31, 2023.

#### *Deferred Costs*

Deferred costs are presented within prepaid expenses and other current assets in the Company's consolidated balance sheets and represent legal, accounting, and other direct costs related to the Company's efforts to raise capital through its ATM sales of common stock. Deferred costs are reclassified to additional paid-in-capital upon each sale as a reduction of proceeds on a pro rata basis over the total applicable availability under the ATM.

#### *Property, Equipment, and Software*

Property and equipment consists of charging station equipment, leasehold improvements, other tools and equipment, and vehicles, and is stated at cost, less accumulated depreciation and amortization.

The Company capitalizes direct costs of materials and services consumed in developing internal-use software in accordance with ASC 350-40. The Company also capitalizes payroll and payroll-related costs for employees who are directly associated with and who devote time to the development of software products for internal use, to the extent of the time spent directly on the project. Capitalization of costs begins during the application development stage and ends when the software is available for general use. Capitalized costs for internal-use software are amortized on a straight-line basis over the useful lives once the software is ready for intended use and is included in general and administrative expenses in the accompanying unaudited condensed consolidated statements of operations. Costs incurred during the preliminary project and post-implementation stages are charged to expense as incurred.

Depreciation begins when the asset is placed in service and is computed using the straight-line method over the lesser of the remaining lease term or the following estimated useful lives:

Charging station equipment	5 years
Leasehold improvements	5 years
Tools and plant equipment	5 years
Office equipment	5 years
Vehicles	5 years
Software	3 years

Maintenance and repairs are charged to expense as incurred. Significant renewals and betterments are capitalized according to their estimated useful lives or over the lease term for leasehold improvements.

In accordance with ASC 360-10, the Company evaluates long-lived assets for impairment whenever events or changes in circumstances indicate that their net book value may not be recoverable. When such facts and circumstances exist, the Company compares the projected undiscounted future cash flows associated with the related asset or group of assets over their estimated useful lives against their respective carrying amount. Impairment, if any, is based on the excess of the carrying amount over the fair value, based on market value when available, or discounted expected cash flows, of those assets and is recorded in the period in which the determination is made. Depending on the asset, estimated fair market value may be determined either by use of the discounted cash flow model or by reference to estimated selling values of assets in similar condition. There were no impairment charges for the years ended December 31, 2023 or 2022.

#### *Intangible Assets*

The Company has issued patents for its developed technology. The Company amortizes its patents using the straight-line method over the estimated useful life of each patent of 10 years. The Company recorded nominal amounts of amortization expense on its patents during the years ended December 31, 2023 and 2022.

#### *Investment in Lynx*

Investment in Lynx represents the equity interest in the Company's strategic partnership with Lynx Motor Corporation ("Lynx"). The Company accounts for its investment that represents less than 20% ownership, and for which the Company does not have the ability to exercise influence, using ASC 321 – *Investments – Equity Securities* ("ASC 321"). Lynx is a private company and therefore the fair value of the equity interest is not readily determinable. Therefore, the Company remeasures its investment at cost minus impairment, if any. See Note 12 – Stock- Based Compensation and Common Stock for further discussion of the Company's investment in Lynx Motor Corporation.

## *Leases*

The Company adopted ASC 842, Leases (“ASC 842”), on January 1, 2022. The Company chose to elect certain relief options offered in ASC 842 including the package of practical expedients, the option to account for separate lease and non-lease components as a single unit, and the option to exclude right-of-use assets and lease liabilities that arise from short term leases (i.e., leases with terms of twelve months or less). Under ASC 842, the Company determines if an arrangement is a lease at inception. Right-of-use (“ROU”) assets represent the Company’s 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 recognized at commencement date of the lease based on the present value of lease payments over the lease term. The Company’s lease evaluation may include options to terminate the lease when it is reasonably certain that the Company will exercise such options. When readily determinable, the Company uses the implicit rate in determining the present value of lease payments. The ROU asset also includes any lease payments made and excludes lease incentives. Lease expense for amortization of the ROU asset is recognized on a straight-line basis over the lease term. The Company’s lease agreements do not contain any material residual value guarantees, material restrictions, or covenants.

## *Contract Liability*

The Company defers the recognition of revenue when cash payments are received or due in advance of satisfying its performance obligations, including amounts which are refundable. The Company had a contract liability of \$0 and \$0.5 million as of December 31, 2023 and 2022, respectively. Contract liabilities are presented within other current liabilities in the Company’s consolidated balance sheets.

## *Convertibles Notes and Warrant Liabilities*

The Company accounts for its Convertible Notes under ASC 815, *Derivatives and Hedging* (“ASC 815”), and as such has elected to account for these instruments under the fair value option under ASC 825. Using the fair value option, the Convertible Notes are required to be recorded at initial fair value on the date of issuance and each balance sheet date thereafter. Changes in the estimated fair value of the notes are recognized as non-cash changes in the fair value of the Convertible Notes in other income (expense), net in the Company’s consolidated statements of operations. As a result of applying the fair value option, direct costs and fees related to the Convertible Notes are expensed as incurred and are not deferred. The Company calculates fair value using an appropriate method, which in the case of the currently outstanding Convertible Notes, is the Monte Carlo simulation model.

The Common Stock Warrants are accounted for as liabilities pursuant to ASC 815-40 and are measured at fair value as of each reporting period. Changes in the fair value of the Common Stock Warrants are recorded in other income (expense), net in the consolidated statements of operations each period. The Common Stock Warrants are valued using a Monte Carlo simulation model, except for Series B Warrants, which are valued using the Black Scholes simulation model. Changes in fair value of the liability resulting from the cumulative changes in instrument-specific credit risk are presented in accumulated other comprehensive income. As of December 31, 2023, there were no changes in the liability related to credit risk.

The Convertible Notes and the Common Stock Warrants are considered to be a Level 3 fair value measurements. Inherent in the pricing models used to value these instruments are assumptions related to expected share-price volatility, expected life, risk-free interest rate and dividend yield. The Company estimates the volatility of its ordinary shares based on historical volatility that matches the expected remaining life of the warrants. The risk-free interest rate is based on the U.S. Treasury zero-coupon yield curve on the grant date for a maturity similar to the expected remaining life of the warrants. The expected life of the warrants is assumed to be equivalent to their remaining contractual term. The dividend rate is based on the historical rate, which the Company anticipates to remain at zero.

## *Revenue Recognition*

The company accounts for revenue in accordance with ASC 606, *Revenue from Contracts with Customers* (“ASC 606”) following the five-step model: 1) identification of the contract, 2) identification of performance obligations, 3) determination of transaction price, 4) allocation of transaction price, and 5) recognition of revenue. The Company’s sources of revenue are primarily from retail charging services and battery systems and components sales.

### Retail Charging Services

The Company provides electricity for its customers through the use of its megawatt charging station equipment. The transaction price of the charging services is set forth in the customer contracts. The Company satisfies its performance obligation at the point in time in which electricity is delivered to the customer’s vehicle, of over the course of a month in the case of its subscription model. Revenue is recognized as the agreed upon purchase price, calculated as a dollar amount per kilowatt hour provided for point-in-time transactions, and a set monthly price for the subscription transactions.

### Battery Systems and Components

The Company was contracted to provide certain battery systems and components to a customer. The transaction price of the contract was set forth in the customer contract and was allocated to the separate discrete performance obligations of the contract. The company satisfied certain performance obligations at the point in time in which it delivered components to the customer and the risks and rewards of the components passed to the customer.

### *Cost of Revenue*

Cost of retail charging services revenue includes the energy usage fees, maintenance and repair expenses on charging equipment, and depreciation and amortization associated with the charging station equipment.

Cost of battery systems and components sales include costs to acquire the components for sale to the customer and adjustments to reflect inventory at the lower of cost or net realizable value.

### *Research and Development Expenses*

Research and development costs are primarily related to development of our charging units and battery systems and components. Research and development costs are charged to operations when incurred and are included in operating expenses on the consolidated statements of operations. In the years ended December 31, 2023 and 2022, the Company recorded \$11.3 million and \$10.4 million, respectively, in research and development expenses, of which \$6.2 million and \$6.8 million, respectively, was related to employee compensation and \$5.1 million and \$3.6 million, respectively, was related to materials and equipment purchases.

### *Stock-Based Compensation*

The Company accounts for stock-based compensation in accordance with ASC Topic 718, Compensation-Stock Compensation (“ASC 718”). The Company classifies stock-based awards granted in exchange for services as either equity awards or liability awards. The classification of an award as either an equity award or a liability award is generally based upon cash settlement options. Equity awards are measured based on the fair value of the award at the grant date. Liability awards are granted at a fixed dollar amount settled in a variable number of shares and are measured at fair value at the grant date and remeasured at the end of each reporting period until fully vested. As such, the fair value of awards classified as liabilities at each reporting date approximates the fixed dollar amount at inception.

The Company generally recognizes stock-based compensation on a straight-line basis over the award’s requisite service period, which is generally the vesting period of the award, less actual forfeitures. No compensation expense is recognized for awards for which participants do not render the requisite services. For equity and liability awards earned based on performance or upon occurrence of a contingent event, when and if the awards will be earned is estimated. If an award is not considered probable of being earned, no amount of stock-based compensation is recognized. If the award is deemed probable of being earned, related compensation expense is recorded over the estimated service period. To the extent the estimate of awards considered probable of being earned changes, the amount of stock-based compensation recognized will also change. See Note 12 – Stock-Based Compensation and Common Stock for additional information.

### *Stock Issued for Services*

The Company periodically grants common stock awards to non-employees in exchange for services. The fair value of the stock-based compensation awards granted is based on the fair value of the award on the grant date. Stock-based payments are recorded on the consolidated statements of operations in the same manner and to the same financial statement line item as it would have been had such settlement been made in cash.

### *Advertising*

The Company advertises its business utilizing media networks, including, but not limited to online and social media presence to build awareness for the product and brand. Advertising costs for the years ended December 31, 2023 and 2022 were \$0.3 million and \$5.3 million, respectively.

### *Income Taxes*

Income taxes are accounted for in accordance with the provisions of ASC 740. Deferred tax assets and liabilities are recognized for future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in income in the period that includes the enactment date. Valuation allowances are established, when necessary, but no less than quarterly, to reduce deferred tax assets to the amounts expected to be realized.

### *Fair Value of Financial Instruments.*

Financial Accounting Standards Board's ("FASB") Accounting Standards Codification ("ASC") Topic 820 "Fair Value Measurements and Disclosures" ("ASC 820") defines fair value, the methods used to measure fair value and the expanded disclosures about fair value measurements. Fair value is the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between the buyer and the seller at the measurement date. In determining fair value, the valuation techniques consistent with the market approach, income approach and cost approach shall be used to measure fair value. ASC 820 establishes a fair value hierarchy for inputs, which represent the assumptions used by the buyer and seller in pricing the asset or liability. These inputs are further defined as observable and unobservable inputs. Observable inputs are those that buyer and seller would use in pricing the asset or liability based on market data obtained from sources independent of the Company. Unobservable inputs reflect the Company's assumptions about the inputs that the buyer and seller would use in pricing the asset or liability developed based on the best information available in the circumstances.

The fair value hierarchy is categorized into three levels based on the inputs as follows:

Level 1 - Valuations based on unadjusted quoted prices in active markets for identical assets or liabilities that the Company has the ability to access. Valuation adjustments and block discounts are not being applied. Since valuations are based on quoted prices that are readily and regularly available in an active market, valuation of these securities does not entail a significant degree of risk.

Level 2 - Valuations based on (i) quoted prices in active markets for similar assets and liabilities, (ii) quoted prices in markets that are not active for identical or similar assets, (iii) inputs other than quoted prices for the assets and liabilities, or (iv) inputs that are derived principally from or corroborated by market through correlation or other means.

Level 3 - Valuations based on inputs that are unobservable and significant to the overall fair value measurement.

The fair value of the Company's certain assets and liabilities, which qualify as financial instruments under ASC 820, approximates the carrying amounts represented in the balance sheets as of December 31, 2023, and 2022. The fair values of cash and cash equivalents, prepaid assets, accounts payable and accrued expenses are estimated to approximate the carrying values as of December 31, 2023, and 2022, due to the short maturities of such instruments.

There were no transfers between Levels 1, 2 or 3 during the years ended December 31, 2023 or 2022.

### ***Adoption of Recent Accounting Pronouncements***

The Company has reviewed all recently issued accounting pronouncements and concluded that they were either not applicable or not expected to have a material impact on its consolidated financial statements.

### **3. Revenue**

Prior to the year ended December 31, 2023, the Company was in a pre-revenue development stage. During the year ended December 31, 2023, the Company recognized the following in disaggregated revenue (in thousands):

Battery systems and components sales	\$	494
Retail charging services		2
Total revenue	\$	<u>496</u>

During the year ended December 31, 2023, the Company recognized revenue for the delivery of battery systems and components, resulting in approximately \$0.5 million in revenue. The Company had previously recorded a contract liability in connection with the revenue not yet recognized for the performance obligations under the contract. As of December 31, 2023 and December 31, 2022, the Company had a remaining contract liability under the contract of \$0 million and \$0.5 million, respectively, which is presented within other current liabilities in the consolidated balance sheets. The Company does not have any other contracts with customers for delivery of battery systems and components.

The Company also launched the NxuOne™, its first megawatt charging station, to deliver electricity to customer electric vehicles during the year ended December 31, 2023, and recognized a nominal amount of revenue.

#### 4. Property and Equipment

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

	As of December 31,	
	2023	2022
Charging station equipment	\$ 649	\$ —
Leasehold improvements	151	261
Tools and plant equipment	2,715	2,354
Office equipment	318	114
Software	860	—
Vehicles	70	70
Total property and equipment excluding construction in progress	4,763	2,799
Less: accumulated depreciation and amortization	(898)	(358)
Property and equipment excluding construction in progress, net	3,865	2,441
Charging station equipment construction in progress	—	—
Property and equipment, net	\$ 3,865	\$ 2,441

Depreciation expense for the years ended December 31, 2023 and 2022 was \$0.6 million and \$0.3 million, respectively, of which a nominal amount was capitalized to cost of revenue during the year ended December 31, 2023. No depreciation was capitalized to cost of revenue during the year ended December 31, 2022.

The Company capitalized internal use software costs of approximately \$0.9 million during the year ended December 31, 2023, which is included in software in the table above and is primarily related to payroll and payroll-related costs for employees who are directly devoted time to the development of software products for internal use. No internal use software costs were capitalized during the year ended December 31, 2022.

#### 5. Prepaid Expenses and Other Current Assets

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

	As of December 31,	
	2023	2022
Tax credit receivable	\$ 372	\$ —
Prepaid insurance	302	765
Prepaid rent	98	3
Deferred offering costs	102	—
Other prepaid expenses	125	100
Total prepaid expenses and other current assets	\$ 999	\$ 868

#### 6. Other Assets

Other assets consist of the following (in thousands):

	As of December 31,	
	2023	2022
Security deposits	\$ 772	\$ 101
Vendor deposits	—	21
Total prepaid expenses and other current assets	\$ 772	\$ 122

## 7. Accounts Payable and Accrued Liabilities

Accounts payable and accrued liabilities consist of the following (in thousands):

	As of December 31,	
	2023	2022
Accounts payable	\$ 2,501	\$ 1,523
Accrued compensation and benefits	153	234
Other accrued liabilities	717	1,462
Total accounts payable and accrued liabilities	<u>\$ 3,371</u>	<u>\$ 3,219</u>

## 8. Income Taxes

Deferred income taxes reflect the net tax effects of temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for income tax purposes. The Company recorded a valuation allowance due to the uncertainty of future realization of federal and state net operating loss carryforwards.

Deferred income tax assets are comprised of the following (in thousands):

	As of December 31,	
	2023	2022
Deferred income tax assets:	\$ 60,537	\$ 51,919
Valuation allowance	(60,537)	(51,919)
Net total	<u>\$ -</u>	<u>\$ -</u>

As of December 31, 2023, total net operating loss carryforwards total approximately \$54.3 million. The Company's net operating loss carryforwards consist of approximately \$16.5 million related to years prior to 2022, which will carryforward through 2037, and approximately \$19.9 million and \$17.8 million for fiscal years 2022 and 2023, respectively, which will carry forward indefinitely.

In December 2017, the U.S. Tax Cuts and Jobs Act of 2017 ("Tax Act") was enacted into law which significantly revises the Internal Revenue Code of 1986, as amended. The newly enacted federal income tax law, among other things, contains significant changes to corporate taxation, including a flat corporate tax rate of 21%, limitation of the tax deduction for interest expense to 30% of adjusted taxable income, limitation of the deduction for newly generated net operating losses to 80% of current year taxable income and elimination of net operating loss ("NOL") carrybacks, future taxation of certain classes of offshore earnings regardless of whether they are repatriated, immediate deductions for certain new investments instead of deductions for depreciation expense over time, and modifying or repealing many business deductions and credits beginning in 2018.

The Company generated an income tax benefit of \$10.0 million for the year ended December 31, 2023. The Company has increased its valuation allowance accordingly as the Company's ability to generate sufficient taxable income to utilize its net operating loss carry forwards is uncertain. The Company's deferred tax balances primarily consist of its operating loss carryforwards and stock-based compensation.

The reconciliation between the statutory rate and the effective tax rate is as follows:

	As of December 31,	
	2023	2022
Effective Tax Rate Reconciliation:		
Federal statutory tax rate	21%	21%
State taxes, net of federal benefit	-%	-%
Change in valuation allowance	(21%)	(21%)
Effective Tax Rate	<u>-%</u>	<u>-%</u>

The Company recognizes interest and penalties related to uncertain tax positions in general and administrative expense. At December 31, 2023 and 2022 the Company did not have any unrecognized uncertain tax positions or any associated interest and penalties.

The Company's federal income tax returns for tax years ended December 31, 2019 and beyond remain subject to examination by the Internal Revenue Service. The returns for Arizona, the Company's most significant state tax jurisdiction, remain subject to examination by the Arizona Department of Revenue for tax years ended December 31, 2017 and beyond.

## 9. Net Loss per Share

Net loss per share is computed by dividing net loss by the weighted-average number of common shares outstanding during the period, excluding shares of Class B common stock as these shares do not participate in the earnings of the Company. For the years ended December 31, 2023 and 2022, respectively, the Company's basic and diluted net loss per share were the same because the Company generated a net loss for each period and potentially dilutive securities are excluded from diluted net loss per share as a result of their anti-dilutive impact.

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

	Years Ended December 31,	
	2023	2022
<b>Numerator:</b>		
Net loss	\$ (40,178)	\$ (71,525)
<b>Denominator:</b>		
Weighted-average shares of Class A common stock outstanding	556,826	53,074
<b>Net loss per share, basic and diluted</b>	<u>\$ (72.16)</u>	<u>\$ (1,347.65)</u>

The Company had outstanding stock options and RSUs during the year ended December 31, 2023, as further discussed in Note 12 – Stock-Based Compensation and Common Stock. None of the options outstanding were potentially dilutive as the exercise prices were not in-the-money throughout the year. Weighted-average restricted stock units of approximately 0.5 million were evaluated under the treasury stock method for potentially dilutive effects. Further, as discussed in Note 15 – Subsequent Event, on February 23, 2024, the Company authorized the RSU Exchange Program (as defined below), to provide for the cancellation and exchange of the Company's unvested RSUs. Therefore, unvested RSUs were determined to be anti-dilutive.

Weighted-average warrants of approximately 0.1 million for the year ended December 31, 2023 were evaluated for potentially dilutive effects and they were determined to be anti-dilutive.

Weighted-average as-converted convertible notes of approximately 0.2 million were evaluated under the if-converted method for potentially dilutive effects and were determined to be anti-dilutive.

On February 6, 2024, Lynx converted its Series A Convertible Preferred Stock into 1.0 million shares of Class A common stock.

For the year ended December 31, 2022, approximately 0.3 million options and RSUs, approximately 0.1 million shares related to convertible notes, and a nominal amount of warrants were evaluated for potentially dilutive effects and were determined to be anti-dilutive.

## 10. Leases

As of December 31, 2023, the Company's operating leases consist of an office space in Tempe, Arizona and warehouse space in Mesa, Arizona, which had initial terms of two years and five years, respectively. Both terms expire in 2025. The leases had a weighted average remaining lease term of 1.7 years and 2.5 years, and a weighted average discount rate of 8.69% and 3.25%, as of December 31, 2023 and 2022, respectively.

The Company also had a finance lease for equipment to be used in research and development. The lease had a term of 18 months at 7% interest payable in monthly installments of \$14 thousand. As of December 31, 2023, the finance lease has terminated.

The following table provides information about the financial statement classification of our lease expenses reported within the consolidated statements of operations during the years ended December 31, 2023 and 2022 (in thousands):

Lease Expense Category:	Classification	December 31,	
		2023	2022
Operating Lease Expense	General and administrative expenses	\$ 654	\$ 335
Finance lease expense:			
Amortization of leased assets	General and administrative expenses	66	23
Interest on lease liabilities	Interest expense	6	7
<b>Total lease expense</b>		<u>\$ 726</u>	<u>\$ 365</u>



The Company's aggregate lease maturities as of December 31, 2023, are as follows (in thousands):

Year	Operating Leases	Finance Lease
2024	\$ 968	\$ 40
2025	716	—
Total minimum lease payments	1,684	40
Less imputed interest	(132)	—
Total operating lease liabilities	<u>\$ 1,552</u>	<u>\$ 40</u>

## 11. Commitments and Contingencies

### Registration Rights

The holders of the convertible notes that were issued will have registration rights to require the Company to register the sale of their debt securities held by them pursuant to a registration rights agreement to be signed in conjunction with the convertible notes.

Concurrently with the closing of the share exchange with Lynx, the Company also entered into a registration rights agreement (the "Registration Rights Agreement") with Lynx, pursuant to which the Company agreed to file a registration statement (a "Registration Statement") with the SEC registering the resale of the Class A Common Stock issuable upon conversion of the Series A Preferred Stock within forty-five (45) days after the closing of the share exchange, and to cause any such Registration Statement to become effective as promptly as practicable after filing.

### Contract Losses

In December 2021, the Company entered into an agreement ("Agreement") with QAD, Inc. ("QAD"), a cloud-based enterprise resource software provider. Under the Agreement, QAD would facilitate implementation services and access to the cloud-based software platform for a non-cancellable, 5-year term. Subsequent to executing the Agreement, the Company determined that the software did not fit the Company's needs and the Company and QAD (collectively, the "Parties") were unable to successfully implement the software platform. The Parties attempted to mutually terminate the Agreement but were unsuccessful, and in May 2023, the dispute moved to arbitration to determine whether the Company owed QAD a payment for cancellation of the contract. In October 2023, the Parties agreed to a settlement whereby the Company agreed to pay a termination fee of \$0.7 million to QAD over a 21-month period, upon which the Company will be released from the contract. As of December 31, 2023, the Company's remaining portion accrued for the fee due within the next twelve months is \$0.4 million and is included in accounts payable and accrued liabilities, and the remaining portion is included in other long-term liabilities in the Company's consolidated balance sheets.

The Company is not currently subject to any other material legal proceedings, nor, to the Company's knowledge, are any material legal proceedings threatened against the Company. From time to time, the Company may be a party to certain legal or regulatory proceedings in the ordinary course of business. While the outcome of any such future legal or regulatory proceedings cannot be predicted with certainty, management does not expect that any such future proceedings will have a material effect on the Company's financial condition or results of operations.

## 12. Stock-Based Compensation and Common Stock

### Stock-Based Compensation

A summary of stock-based compensation recognized during the years ended December 31, 2023 and 2022 is as follows (in thousands):

	For the Years Ended December 31,	
	2023	2022
Restricted stock units (classified as liabilities)	\$ 4,667	\$ —
Restricted stock units (classified as equity)	1,538	550
Stock options	13,995	41,796
Total stock-based compensation	20,200	42,346
Stock-based compensation capitalized to property and equipment	(490)	—
Stock-based compensation, net of capitalized amount	<u>\$ 19,710</u>	<u>\$ 42,346</u>

During the years ended December 31, 2023 and 2022, the Company capitalized \$0.5 million and \$0, respectively, of stock-based compensation to property and equipment related to software development and charging station units. All other stock-based compensation is included in the accompanying consolidated statements of operations.

During preparation of the Company's consolidated financial statements for the year ended December 31, 2023, management identified an error in its previously reported stock-based compensation expense for the year ended December 31, 2022. The error resulted from the inadvertent omission of expense related to stock options granted to employees of the Company throughout 2022, the majority of which vested immediately. None of the omitted grants have been exercised. Stock-based compensation expense has been restated from amounts previously reported to include additional expense from the vesting of stock options of approximately \$0.8 million for the year ended December 31, 2022. The restatement had no effect on stockholders' deficit as of December 31, 2022 and had no other effect to the Company's consolidated financial statements.

As of December 31, 2023, unrecognized stock-based compensation related to outstanding awards and the related weighted-average period over which it is expected to be recognized subsequent to December 31, 2023 is presented in the table below. Total unrecognized stock-based compensation will be adjusted for actual forfeitures.

	<b>Unrecognized Stock-based Compensation Related to Outstanding Awards (in thousands)</b>	<b>Remaining Weighted Average Amortization Period (in years)</b>
Stock options	\$ 4,031	0.9
Restricted stock units classified as equity awards	197	1.7
Restricted stock units classified as liability awards	8,259	1.3
Total unrecognized stock-based compensation	<u>\$ 12,487</u>	

### *Stock Options*

The Company granted stock options during the year ended December 31, 2022. The Company uses the Black-Scholes option-pricing method for valuing stock option awards. Calculating the fair value of stock option awards requires the input of subjective assumptions. The fair value of stock options at the grant date was determined using the following assumptions for the years ended December 31, 2022:

	<u>December 31, 2022</u>
Expected average life (years)	7.0
Expected volatility	75.33%
Risk-free interest rate	1.65%
Expected dividend yield	-%

The Company did not grant options during the year ended December 31, 2023.

A summary of the Company's outstanding stock options as of December 31, 2023 and 2022 and changes during the year is presented below:

	<b>Shares</b>	<b>Weighted Average Exercise Price</b>	<b>Weighted Average Contractual Term (in Years)</b>
Outstanding, December 31, 2021	304,443	\$ 1,050.00	7.0
Granted	6,868	\$ 1,158.23	6.8
Exercised	(248)		
Forfeited	(6,028)	\$ 1,050.00	7.0
Unissued shares converted to options	523		
Outstanding, December 31, 2022	<u>305,558</u>	<u>\$ 1,050.00</u>	<u>7.0</u>
Granted	-		
Exercised	(520)		7.0
Forfeited	(4,941)	\$ 1,134.02	7.0
Outstanding, December 31, 2023	<u>300,097</u>	<u>\$ 1,054.35</u>	<u>7.0</u>
Exercisable, December 31, 2023	<u>263,570</u>	<u>\$ 1,054.97</u>	<u>7.0</u>

In 2022, the Company agreed with a third party who provided a rent guarantee to the Company's landlord on the Company's building in Mesa, Arizona to exchange 500 shares of Class A common stock for 66 shares of Class C common stock. The Company recorded general and administrative expenses of \$0.6 million on the Company's consolidated statements of operations for the year ended December 31, 2022, resulting from consideration provided for the loss of prerequisites afforded to the Class C shareholder.

#### *Restricted Stock Units*

Employees, non-employee directors and consultants of the Company participate in the 2023 Omnibus Incentive Plan (the "Plan") and are granted Nxu stock-based awards, which include restricted stock units ("RSUs").

For the years ended December 31, 2023 and 2022, the Company granted RSUs classified as equity awards, which generally vest over a three year period. RSUs granted and classified as equity awards are measured at fair value based on the closing price of the company's common stock on the grant date. Compensation cost for these RSUs is recognized on a straight-line basis over the requisite service period, which is the vesting period. In accordance with ASC 718-10-35-8, the amount of compensation cost recognized will at least equal the portion of the grant-date value of the award that is vested at that date.

During the year ended December 31, 2023, the Company granted RSUs that vest over various periods, ranging from immediate to increments over a period of three years. The Company generally accounts for these RSUs as liability-classified awards; the awards are granted at a fixed dollar amount settled in a variable number of shares, and as such, the fair value approximates the fixed dollar amount at inception. As a result, the RSUs will be measured at fair value at the grant date and remeasured at the end of each reporting period until fully vested.

On October 31, 2023, the Company's Board of Directors approved an amendment to certain existing Executive grant agreements to delay the vesting of service-based liability-classified Executive RSU awards that would have vested between October and December 2023 to vest on January 31, 2024. As of the date of the amendment, the Company determined there was no incremental value of the awards in connection with the amendment. Additionally, as all Executives affected by the amendment were still employees as of December 31, 2023, the Company determined it was probable they would meet the service requirements and their awards would vest within the initial vesting period of the awards. Therefore, the Company recognized stock-based compensation expense at the fair value of the awards through the initial vesting dates. The amended awards will remain classified in liabilities in the consolidated balance sheets of the Company until they are settled in a variable number of shares.

The Board of Directors subsequently approved additional amendments in January and March 2024 to further delay the vesting of the same RSUs, including vests between January and May, until June 30, 2024.

A summary of the Company's outstanding RSUs as of December 31, 2023 and 2022 and changes during the year is presented below:

	<b>Shares</b>	<b>Weighted Average Grant Date Fair Value</b>
Outstanding and unvested, December 31, 2021	8,965	\$ 1,050.00
Granted	734	\$ 1,050.00
Settled	(8,526)	\$ 1,050.00
Forfeited	(50)	\$ 1,050.00
Unvested shares converted to options	(523)	\$ 1,050.00
Outstanding and unvested, December 31, 2022	<u>600</u>	<u>\$ 1,050.00</u>
Granted	338,332	\$ 9.72
Settled	(319,144)	\$ 10.28
Forfeited	(16,887)	\$ 0.50
Outstanding and unvested, December 31, 2023	<u>2,901</u>	<u>\$ 0.49</u>

## 2023 Omnibus Incentive Plan

On May 12, 2023, the Company adopted the 2023 Omnibus Incentive Plan. The purposes of the Plan are to a) encourage the growth of the Company through short and long-term incentives that are consistent with the Company's objectives; (b) give participants an incentive for excellence in individual performance; (c) promote teamwork among participants; and (d) give the Company a significant advantage in attracting and retaining key employees, directors and consultants. To accomplish such purposes, the Plan provides that the Company may grant (i) Options, (ii) Stock Appreciation Rights, (iii) Restricted Shares, (iv) Restricted Stock Units, (v) Performance-Based Awards (including performance-based Restricted Shares and Restricted Stock Units), (vi) Other Share-Based Awards, (vii) Other Cash-Based Awards or (viii) any combination of the foregoing. The Plan was originally adopted in connection with the consummation of the Company's Reorganization Merger as contemplated by that certain agreement and plan of merger, dated as of April 14, 2023, by and among the Company, Atlis Motor Vehicles Inc., and such other parties to the agreement.

With respect to awards granted under the Plan and in accordance with the Plan, the Company's Board of Directors (or the "Administrator") is authorized to deliver an aggregate of 350 million shares of Common Stock to be reserved and available for issuance under the Plan (the "Initial Share Limit"), which includes (i) 250 million shares of Common Stock available for new issuances under the Plan and (ii) 100 million shares of Common Stock relating to a portion of outstanding stock options and restricted stock units assumed by the Company in connection with the Reorganization Merger; provided, that the total number of shares of Common Stock that will be reserved, and that may be issued, under the Plan will automatically increase on the first trading day of each calendar year, beginning with calendar year 2024, by a number of Common Shares equal to five percent (5%) of the total number of Outstanding Shares on the last day of the prior calendar year. Notwithstanding the foregoing, the Administrator may act prior to January 1 of a given year to provide that there will be no such increase in the share reserve for that year or that the increase in the share reserve for such year will be a lesser number of Common Shares than provided herein.

### *Common Stock*

#### Organizational Structure

As described in Note 1. Organization and Basis of Presentation, on May 12, 2023, the Company completed its Reorganization Merger to Nxu, Inc. At the effective time of the Reorganization Merger, all of the issued and outstanding shares of Atlis's Class A common stock, par value \$0.0001 per share ("Atlis Class A Common Stock") were converted automatically on a one-for-one basis into shares of Nxu's Class A common stock, par value \$0.0001 per share ("Nxu Class A Common Stock") and all of the issued and outstanding shares of Atlis's Class D common stock, par value \$0.0001 per share ("Atlis Class D Common Stock" and, together with Atlis Class A Common Stock, "Atlis Common Stock") were converted automatically on a one-for-one basis into shares of Nxu's Class B common stock, par value \$0.0001 per share ("Nxu Class B Common Stock" and, together with Nxu Class A Common Stock, "Nxu Common Stock"), and, as a result, the current stockholders of Atlis automatically became stockholders of Nxu, holding the same number and percentage of shares of Nxu Common Stock as they held of Atlis Common Stock as of immediately prior to the Reorganization Merger.

Issuance and conversion of shares of common stock pursuant to the Reorganization Merger are considered transactions between entities under common control. As a result, the consolidated financial statements for periods prior to these transactions have been adjusted to combine the previously separate entities for presentation purposes.

Pursuant to the Company's Reorganization Merger, each share of Atlis Motor Vehicles, Inc Class A common stock was converted into one validly issued, fully paid and nonassessable share of Nxu, Inc. Class A common stock and each share of Atlis Motor Vehicles, Inc Class D common stock was converted into one validly issued, fully paid and nonassessable share of Nxu, Inc. Class B common stock. Except as otherwise required by applicable law, and the voting rights described below, shares of Class A common stock and Class B common stock shall have the same rights, privileges and powers, rank equally, share ratably and be identical in all respects and as to all matters. The voting, dividend, liquidation and other rights, powers and preferences of the holders of Class A common stock and Class B common stock are subject to and qualified by the rights, powers and preferences of the holders of the preferred stock of any series as may be designated by the Board of Directors of the Corporation (the "Board") upon any issuance of the preferred stock of any series.

In addition, at the effective time of the Reorganization Merger, (i) each outstanding option to purchase shares of Atlis Class A Common Stock ("Atlis Option"), whether vested or unvested, automatically converted into an option to purchase shares of Nxu Class A Common Stock (a "Nxu Option") and (ii) each outstanding Atlis restricted share unit (an "Atlis Restricted Share"), whether vested or unvested, automatically converted into a restricted stock unit of Nxu (a "Nxu RSU"). Each Nxu Option is subject to terms and conditions consistent with the Employee Stock Option Plan and the applicable Atlis Option award agreement as in effect immediately prior to the effective time. Each Nxu RSU is subject to terms and conditions consistent with the applicable Atlis Restricted Share award agreement as in effect immediately prior to the effective time.

At the effective time of the Reorganization Merger, (i) each outstanding Senior Secured Original Issue 10% Discount Convertible Promissory Note (an "Atlis Note") convertible into shares of Atlis Class A Common Stock automatically converted into a Senior Secured Original Issue 10% Discount Convertible Promissory Note convertible into shares of Nxu Class A Common Stock (a "Nxu Note") and (ii) each outstanding warrant to purchase shares of Atlis Class A Common Stock (an "Atlis Warrant") automatically converted into a warrant to purchase shares of Nxu Class A Common Stock (a "Nxu Warrant"). Each Nxu Note is subject to terms and conditions consistent with the applicable Atlis Note as in effect immediately prior to the effective time. Each Nxu Warrant is subject to terms and conditions consistent with the applicable Atlis Warrant as in effect immediately prior to the effective time.

In 2023 and 2022, the Company issued Class B shares of common stock. These shares are not traded openly nor available for sale to the public. Class B shares are offered only to the (1) Chief Executive Officer and (2) President of the Company. At all meetings of stockholders and on all matters submitted to a vote of stockholders of the Corporation generally, each holder of Class A common stock, as such, shall have the right to one (1) vote per share of Class A common stock held of record by such holder and each holder of Class B common stock, as such, shall have the right to ten (10) votes per share of Class B common stock held of record by such holder. The shares of Class B common stock are not entitled to receive any dividends or any distribution upon voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Company. Class B shares are not convertible, are deemed to have no economic value, and upon a holder's cessation of service to the Company, such holder shall, on the one-year anniversary of such cessation, surrender to the Company for no consideration all shares of Class B shares owned by such holder. Shares of Class B common stock were issued to the (1) Chief Executive Officer and (2) President in the amount of 0.2 million shares through December 31, 2023.

The total number of shares of all classes of capital stock which the Company has authority to issue is 5.0 billion shares, consisting of (1) 5.0 billion authorized shares of common stock, including (a) 4.0 billion authorized shares of Class A Common Stock, (b) 1.0 billion authorized shares of Class B common stock and (2) 10.0 million authorized shares of preferred stock, par value \$0.0001 per share.

#### Reverse Stock Split

On December 26, 2023, the Company filed a Certificate of Amendment to the Certificate of Incorporation (the "Certificate of Amendment") with the Secretary of State of the State of Delaware to affect a reverse stock split ("the "Reverse Stock Split") of the Class A Common Stock at a ratio of 1-for-150 (the "Reverse Stock Split Ratio").

The Reverse Stock Split was previously approved by the Company's board of directors and a majority of the Company's stockholders. The Reverse Stock Split became effective immediately after the close of trading on Nasdaq on December 26, 2023 (the "Effective Time"), and the Class A common stock began trading on Nasdaq on a split-adjusted basis at the opening of trading on December 27, 2023. Accordingly, each holder of our common stock received one share of common stock for every 150 shares such stockholder held immediately prior to the effectiveness of the Reverse Stock Split.

In addition, equitable adjustments corresponding to the Reverse Stock Split Ratio were made to the number of shares of Class A Common Stock underlying the Company's outstanding equity awards and the number of shares issuable under the Company's equity incentive plan. Equitable adjustments corresponding to the Reverse Stock Split Ratio were also made to issued and outstanding shares of the Company's Class B common stock, and to the number of shares of Class A Common Stock underlying the Company's outstanding warrants, as well as the applicable exercise price.

#### Common Stock Offerings

On February 21, 2023, the Company completed a public offering of 0.1 million units at a public offering price of \$234.00 per unit (the "February 2023 Offering"). Each unit consists of one share of Class A common stock, Series A warrants to purchase 0.65 shares of Class A common stock (the "Series A Warrants"), and Series B warrants to purchase 0.75 shares of Class A common stock (the "Series B Warrants"). See Note 13 - Convertible Notes and Warrant Liability for more information regarding the Series A and Series B warrants. Proceeds from the offering, net of offering costs, were approximately \$12.0 million.

On August 11, 2023, the Company completed a public offering of 0.1 million units at an offering price of \$45.00 per unit (the "August 2023 Offering"). Each unit consists of one share of Class A common stock (or a pre-funded warrant in lieu thereof) and one common warrant, with each warrant exercisable for two shares of Class A common stock at an exercise price of \$45.00 per share (the "August 2023 Warrants"). See Note 13 - Convertible Notes and Warrant Liability for more information regarding the August 2023 warrants. Proceeds from the offering, net of offering costs, were approximately \$4.5 million.

In September 2022, a stock purchase agreement between the Company and GEM Global Yield LLC SCS and GEM Yield Bahamas Limited, respectively (together, "GEM Global") became effective whereby GEM Global committed to purchase up to \$300.0 million in shares of the Company's Class A common stock for up to three years (the "GEM Stock Purchase Facility"). In connection with the GEM Stock Purchase Facility, GEM Global would earn a commitment fee proportionate to number of shares sold in the first year, or a \$6.0 million commitment fee on September 27, 2023 if no shares were sold. As of September 27, 2023, the Company had not sold any shares under the GEM Stock Purchase Facility and, as such, registered 0.3 million Class A common shares, 0.2 million of which were immediately issuable to GEM Global for payment of the commitment fee. Additionally, in connection with the share registration, approximately 2 thousand warrants were issuable to GEM Global. On October 2, 2023, the 0.2 million shares of Class A common stock and 2 thousand common stock warrants were issued to GEM Global.

On October 23, 2023, the Company completed a public offering of 0.6 million shares of its Class A common stock at an offering price of \$5.25 per share (the "October 2023 Offering"). Proceeds from the offering, net of offering costs, were approximately \$2.6 million.

In November 2023, the Company launched its ATM pursuant to its shelf registration on Form S-3 for sale from time to time of up to \$75.0 million of Class A common stock. As of December 31, 2023, the Company has issued and sold approximately 1.0 million shares of its Class A common stock, resulting in \$3.3 million of proceeds, net of commissions and offering costs.

#### *Series A Convertible Preferred Stock*

##### Share Exchange Agreement with Lynx Motor Corporation

On December 27, 2023, the Company entered into a share exchange agreement (the “Share Exchange Agreement”) with Lynx, pursuant to which Lynx sold to the Company, and the Company purchased from Lynx, a number of newly issued shares of Lynx representing 15% of the issued and outstanding equity interests in Lynx in exchange for 1,000 newly issued shares of series A convertible preferred stock, par value \$0.0001 per share, of the Company (the “Series A Convertible Preferred Stock” or “Series A Convertible Preferred Shares”). Each Series A Convertible Preferred Share is convertible into 1,000 shares of Class A common stock, par value \$0.0001 per share, of the Company for a conversion price of \$3.00 per share. The Share Exchange Agreement contains customary representations and warranties by the Company. As a part of the transaction, the Company designated one person to serve on the board of directors of Lynx. The Company’s investment in Lynx is presented within investment in Lynx at the fair market value of the Series A Convertible Preferred Stock on the transaction date, with the corresponding issuance of Series A Convertible Preferred Stock presented within stockholders’ equity in the consolidated balance sheets.

On February 8, 2024, Lynx converted all the Series A Convertible Preferred Stock into 1.0 million shares of Class A common stock.

Concurrently with the Share Exchange Agreement, Lynx issued a non-interest bearing promissory note in the principal amount of \$0.3 million to the Company in exchange for \$0.3 million in immediately available funds from the Company. The note is due and payable by June 2024, and is presented in notes receivable from related party in the consolidated balance sheets.

### **13. Convertible Debt and Warrant Liability**

#### *Convertible Notes*

On November 3, 2022, the Company entered into a Securities Purchase Agreement (the “Purchase Agreement”) with certain institutional investors (collectively, the “Investors”), pursuant to which the Company agreed to issue to the Investors Senior Secured Original Issue 10% Discount Convertible Promissory Notes (“Convertible Notes” or “Notes”) and common stock warrants to purchase a number of shares of the Company’s Class A common stock equal to 30% of the face value of the Notes divided by the volume weighted average price (“VWAP”), in three tranches.

The Convertible Notes are convertible solely into Class A common stock of the Company at a conversion price of (a) \$2,250 per share (“Fixed Conversion Price”) or (b) 92.5% of the average of the three lowest daily VWAP of the common stock during the ten-trading day period (“Variable Conversion Price”), whichever is lower. The Fixed Conversion Price includes a one-time reset at the 6-month anniversary of the Original Issuance Date (the “Reset Date”) to the lower of the conversion price (with the Variable Conversion Price determined as if the conversion notice was delivered on the Reset Date) and 130% of the daily VWAP of the common stock for the trading day immediately prior to the Reset Date.

All Convertible Notes and related common stock warrants, by written agreement, provide for a beneficial ownership limitation cap of 4.99% shares of the total issued and outstanding common stock of the Company, at any given time. Upon an event of default, the Convertible Notes earn interest at a rate of 10% per annum.

#### First Tranche

On November 3, 2022, the Company issued the first tranche of the Convertible Notes in the aggregate principal amount of \$10.0 million and common stock warrants to purchase up to an aggregate of 1,543 shares of Class A common stock (the “First Tranche”) to the Investors pursuant to the Purchase Agreement for net proceeds of \$9.0 million. These Convertible Notes have a maturity date of 24 months from the issuance date. Subsequently, upon reaching the Reset Date, the exercise price of the remaining balance was changed to \$96.05 per share. These Convertible Notes are secured by a first priority security interest in all of the assets of the Company.

On January 5, 2023, the Company entered into an amendment to the Purchase Agreement (the “Purchase Agreement Amendment”), pursuant to which the Company and each Investor agreed, among other things, to amend the terms and conditions of the second tranche of funding and terminate the third tranche of funding contemplated under the Purchase Agreement. In connection with the Purchase Agreement Amendment, the Company also issued a warrant to the Investors to purchase up to an aggregate of 3,587 shares of the Company’s Class A common stock (the “Purchase Agreement Amendment Tranche”).

## Second Tranche

On January 27, 2023, the Investors exercised their rights to purchase the allowable amounts under the Purchase Agreement Amendment and the Company issued the second tranche of the Convertible Notes in the aggregate principal amount of \$10.0 million and common stock warrants to purchase up to an aggregate of 6,281 shares of Class A common stock (the "Second Tranche") to the Investors pursuant to the Purchase Agreement for net proceeds of \$9.0 million. These Convertible Notes have a maturity date of 24 months from the issuance date. Subsequently, upon reaching the Reset Date, the exercise price of the remaining balance was changed to \$112.32 per share.

The Company elected the fair value option to account for the Convertible Notes, as further discussed in Note 14 – Fair Value. As such, the Company recorded the Convertible Notes at fair value and subsequently remeasures them at fair value at each reporting date. Changes in fair value are recognized as a component of other income (expense), net in the consolidated statements of operations. Activity related to the Company's Convertible Notes during the years ended December 31, 2023 and 2022 were as follows (in thousands):

	Years ended December 31,	
	2023	2022
Balance at the beginning of the year	\$ 10,911	\$ —
Convertible Debt issued during the period	7,330	7,034
Conversions	(17,623)	—
Payments	(2,367)	—
Change in fair value measurement	1,759	3,877
Convertible Notes Liability at the end of the year	<u>\$ 10</u>	<u>\$ 10,911</u>

On April 11, 2023, the Company received a notice from Nasdaq indicating that the Company was not in compliance with the \$1.00 minimum bid price requirement set forth in Nasdaq Listing Rule 5550(a)(2) for continued listing on The Nasdaq Global Market. The Company acknowledges that receipt of the notice from Nasdaq constituted an event of default under its Convertible Notes agreements. As a result, unless waived by the holders, the Convertible Notes began accruing default interest at a rate of 10% per annum and the Company was obligated to pay to the holders up to \$1.4 million, which amount represented 100% of the sum of (x) the outstanding principal of the Convertible Notes as of April 11, 2023 and (y) accrued and unpaid interest thereon. As such, a total of \$0.08 million was accrued as interest payable on the Convertible Notes as of December 31, 2023.

## *Warrant Liability*

As discussed in previous sections of this Form 10-K, the Company has issued warrants in connection with various capital raises. The following tables summarize the Company's warrants outstanding as of December 31, 2023 and 2022:

### Warrants Outstanding:

	<u>First</u>	<u>Purchase</u>	<u>Second</u>	<u>Series A</u>	<u>Series B</u>	<u>August 2023</u>	<u>GEM</u>
	<u>Tranche</u>	<u>Agreement</u>	<u>Tranche</u>				<u>Warrants</u>
		<u>Amendment</u>					
December 31, 2021	—	—	—	—	—	—	—
Issued	1,543	—	—	—	—	—	—
Exercised	—	—	—	—	—	—	—
December 31, 2022	1,543	—	—	—	—	—	—
Issued	—	3,587	6,281	36,114	41,670	222,223	2,270
Exercised	—	—	—	(36,114)	(8,065)	—	—
Modified <sup>(1)</sup>	—	—	—	—	—	(160,000)	—
December 31, 2023	<u>1,543</u>	<u>3,587</u>	<u>6,281</u>	<u>—</u>	<u>33,605</u>	<u>62,223</u>	<u>2,270</u>

- (1) During the year ended December 31, 2023, the Company and certain Investors of the August 2023 Warrants agreed to amend the terms of the original warrant agreements to remove the feature that precludes the warrants from being considered indexed to the Company's own stock. As a result, these modified warrants were measured at fair value and reclassified to equity.

<b>Common Stock Warrants</b>	<b>Issue Date</b>	<b>Reset Date</b>	<b>Exercise Price at Issuance</b>	<b>Reset Exercise Price</b>
First Tranche	11/3/2022	5/3/2023	\$ 2,250	\$ 88.65
Purchase Agreement				
Amendment	1/5/2023	6/5/2023	\$ 2,250	\$ 87.38
Second Tranche	1/27/2023	7/30/2023	\$ 2,250	\$ 103.68
Series A	2/21/2023	No Reset	\$ 0	N/A
Series B	2/21/2023	No Reset	\$ 234(1)	N/A
August 2023	8/11/2023	No Reset	\$ 45(2)	N/A
GEM Warrants	10/2/2023	No Reset	\$ 26.54	N/A

(1) Excludes 4,800 of remaining warrants authorized to exercise for no consideration, as discussed below.

(2) Excludes pre-funded warrants, as discussed below.

In connection with the issuance of the Convertible Notes, the Investors received a number of common stock warrants equal to 30% of the face value of the Convertible Notes divided by the VWAP prior to the applicable closing date. The common stock warrants entitle the holder to purchase one share of the Company's Class A common stock at the exercise price of a) \$2,250 per share ("Exercise Price") or (b) 92.5% of the average of the three lowest daily VWAP of the common stock during the ten-trading day period ("Variable Exercise Price"), whichever is lower. The Exercise Price included a one-time reset at the 6-month anniversary of the initial exercise date (the "Reset Date") to the lower of the initial Exercise Price and 120% of the daily VWAP on the trading day prior to the Reset Date. The common stock warrants issued in First Tranche, Purchase Agreement Amendment Tranche, and Second Tranche have a five-year exercise period from their respective issuance date. Subsequently to their issuance, upon reaching the Reset date, the Exercise Price of these warrants was changed to \$88.65, \$87.38, and \$103.68 per share for the First Tranche, Purchase Agreement Amendment Tranche, and Second Tranche, respectively.

As discussed in Note 12 – Stock-based Compensation and Common Stock, in connection with the February 2023 Offering, the purchasing shareholders received Series A and Series B Warrants with each Class A common share issued. All Series A warrants were exercised following issuance for no consideration. The Series B Warrants were exercisable upon completion of the Reorganization Merger and will expire five years from the merger date.

As discussed in Note 12 – Stock-based Compensation and Common Stock, in connection with the August 2023 Offering, the purchasing shareholders received August 2023 Warrants with each Class A common share issued. The Company also issued pre-funded warrants (the "Pre-Funded Warrants") which were immediately exercisable for one share of Class A common stock at an Exercise Price of \$0.0001 and were fully exercised as of December 31, 2023. The August 2023 Warrants were immediately exercisable and expire three years from the date of issuance. As of December 31, 2023, 160,000 of the August 2023 Warrants were amended and reclassified as equity warrants.

In connection with the August 2023 Offering, the Company amended existing Series B warrant agreements to authorize certain Investors to purchase 12,865 shares of the Company's Class A common stock for no consideration. As of December 31, 2023, 8,065 of these Series B warrants were exercised. Series B warrants are accounted for as liabilities and the fair market value of the warrants is remeasured at the end of every reporting period.

The majority of the First Tranche, Purchase Agreement Amendment tranche, Second Tranche, Series A, Series B, August 2023 Warrants, and GEM warrants (together, the "Liability Warrants") contain a feature that precludes them from being considered indexed to the Company's own stock and therefore are accounted for as liabilities in the Company's consolidated balance sheets. The Company records the Liability Warrants at fair value and subsequently remeasures unexercised warrants to fair value at the reporting date, as further discussed in Note 14 – Fair Value. Activity related to the Company's warrants during the years ended December 31, 2023 and 2022 were as follows (in thousands):

	<b>Years Ended December 31,</b>	
	<b>2023</b>	<b>2022</b>
Balance at the beginning of the year	\$ 374	\$ —
Liability Warrants issued during the period	13,446	1,966
Liability Warrants exercised during the period	(3,519)	—
Liability Warrants modified to Equity Warrants	(222)	—
Change in fair value measurement	(10,024)	(1,592)
Warrant Liability at the end of the year	\$ 55	\$ 374



#### 14. Fair Value

The following table presents information about the Company's liabilities that are measured at fair value on a recurring basis at December 31, 2023 and 2022 and indicates the fair value hierarchy of the valuation inputs the Company utilized to determine such fair value (in thousands):

	Level	As of December 31,	
		2023	2022
Convertible Notes	3	\$ 10	\$ 10,911
Warrant liability	3	55	374
Convertible Notes and warrant Liability, at fair value		<u>\$ 65</u>	<u>\$ 11,285</u>

##### *Convertible Notes*

As of December 31, 2023, the Second Tranche of Convertible Notes was fully converted, and a nominal amount of the First Tranche was outstanding. Therefore, no fair value estimate was calculated on the Convertible Notes as of December 31, 2023. The following table provides the fair value and contractual principal balance outstanding of the Convertible Notes accounted for under the fair value option as of December 31, 2023 and 2022 (in thousands):

	As of December 31,	
	2023	2022
Convertible Notes fair value	\$ 10	\$ 10,911
Convertible Notes, contractual principal outstanding	10	10,000
Fair value less unpaid principal balance	<u>\$ —</u>	<u>\$ 911</u>

The estimated fair value of the Convertible Notes as of December 31, 2022 was based on the following significant inputs:

	December 31, 2022 First Tranche
Risk-free interest rate	4.46%
Time to expiration (in years)	1.84
Expected volatility	85%
Dividend yield	—
Stock price	\$ 3.25
Original face value	\$ 10,000,000
Fixed conversion rate	\$ 15.00
Roll-forward discount rate	5.11%

## Warrant Liability

The following table provides quantitative information regarding Level 3 fair value measurements for Common Stock Warrants as of December 31, 2023 and 2022:

	December 31, 2023						December 31, 2022
	First Tranche	Purchase Agreement Amendment	Second Tranche	Series B Warrants	August 2023	GEM Warrants	First Tranche
Risk-free interest rate	3.84%	3.84%	3.84%	3.91%	3.84%	3.84%	4.46%
Time to expiration (in years)	3.84	4.01	4.01	4.14	2.61	1.66	1.84
Expected volatility	90%	90%	90%	125%	85%	90%	85%
Dividend yield	—	—	—	—	—	—	—
Stock price	\$ 2.3	\$ 2.30	\$ 2.30	\$ 2.30	\$ 2.30	\$ 2.30	\$ 3.25
Exercise price	\$ 88.65	\$ 87.38	\$ 103.68	\$ 234.00	\$ 45.00	\$ 26.54	\$ 15

## 15. Subsequent Events

### *At-The-Market (“ATM”) Offering*

Subsequent to December 31, 2023, the Company issued and sold an additional 8.1 million shares of its Class A common stock for a total of 9.1 million shares issued and sold from its ATM pursuant to its October 2023 Shelf. The additional shares issued and sold resulted in \$10.7 million of proceeds, net of commissions and offering costs, for a total of \$14.0 million in proceeds, net of commissions and offering costs from the ATM.

### *Lynx Corporation Preferred Share Conversion*

On January 29, 2024, the Company registered 1,000,000 shares of Class A common stock, par value \$0.0001, pursuant to the terms of its Share Exchange Agreement with Lynx, under which Nxu sold to Lynx 1,000 shares of Series A convertible preferred stock, par value \$0.0001, which are convertible into shares of Class A common stock. The Company did not sell any shares of its Class A common stock and received no proceeds from the offering.

On February 8, 2024, Lynx converted all the Series A Convertible Preferred Stock into 1.0 million shares of Class A common stock.

### *Stock-based Compensation Modification*

On February 23, 2024 (the “Exchange Date”), the Compensation Committee of the Board of Directors authorized a mandatory Exchange Program (the “RSU Exchange Program”) to provide for the cancellation and exchange of \$0.4 million of stock-based compensation related to unvested RSUs (“Exchanged RSUs”), previously recorded as liabilities within the consolidated balance sheets, for an option to purchase shares of Class A common stock of the Company (“Exchange Option”), which are expected to be classified as equity awards within the consolidated balance sheets. The Exchange Options have an equal value to the Exchanged RSUs at the Exchange Date.

### *Notice of Compliance from NASDAQ*

On February 13, 2024, the Nasdaq Stock Market (“Nasdaq”) confirmed that the Company has sufficiently demonstrated compliance with the bid price requirement in Nasdaq Listing Rule 5550(a)(2) (“Bid Price Rule”) and regained compliance with the equity requirement in Nasdaq Listing Rule 5550(b)(1) (“Equity Rule”) pursuant to the Nasdaq Hearing Panel (“Panel”) decision dated December 18, 2023.

On February 14, 2024, the Nasdaq withdrew its January 9, 2024 letter that cited the Company’s apparent lack of a 2023 annual shareholder meeting, as required by Nasdaq Listing Rule 5815 (d)(4)(C) (“Annual Meeting Rule”), as an additional basis for delisting the Company’s securities from Nasdaq. Upon further review of the Company’s shareholder meeting held May 9, 2023, Nasdaq confirmed that the Company did in fact meet the requirements of the Annual Meeting Rule as of December 31, 2023. As a result, Nasdaq withdrew its January delisting letter and closed the matter. Nxu has fully regained compliance with all of Nasdaq’s continued listing requirements and has been removed from Nasdaq’s list of noncompliant companies.

**CERTIFICATE OF INCORPORATION OF  
NXU, INC.**

**ARTICLE I  
NAME**

The name of the corporation is “Nxu, Inc.” (hereinafter called the “Corporation”).

**ARTICLE II  
REGISTERED OFFICE AND AGENT**

The address of the Corporation’s registered office in the State of Delaware is c/o Corporation Service Company, 251 Little Falls Drive, Wilmington New Castle County, Delaware 19808. The name of its registered agent at such address is Corporation Service Company.

**ARTICLE III  
PURPOSE**

The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware or any applicable successor act thereto, as the same may be amended from time to time (the “DGCL”).

**ARTICLE IV  
CAPITAL STOCK**

The total number of shares of all classes of capital stock which the Corporation shall have authority to issue is 5,010,000,000 shares, consisting of (x) 5,000,000,000 authorized shares of common stock, including (1) 4,000,000,000 authorized shares of Class A Common Stock (“Class A Common Stock”), (2) 1,000,000,000 authorized shares of Class B common stock (“Class B Common Stock” and together with Class A Common Stock, “Common Stock”) and (y) 10,000,000 authorized shares of preferred stock, par value \$0.0001 per share (“Preferred Stock”). The number of authorized shares of Class A Common Stock, Class B Common Stock or Preferred Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of capital stock representing a majority of the voting power of all the then-outstanding shares of capital stock of the Corporation entitled to vote thereon irrespective of the provisions of Section 242(b)(2) of the DGCL.

The following is a statement of the designations and the powers, preferences, privileges and rights, and the qualifications, limitations or restrictions thereof in respect of each class of capital stock of the Corporation.

A. CLASS A COMMON STOCK AND CLASS B COMMON STOCK.

Unless otherwise indicated, references to “Sections” or “Subsections” in this Part A of this Article IV refer to sections and subsections of Part A of this Article IV.

1. Equal Status; General. Except as otherwise provided in this Certificate of Incorporation (as amended and/or restated from time to time, including pursuant to any Preferred Stock Designation (as defined below), this “Certificate of Incorporation”) or required by applicable law, shares of Class A Common Stock and Class B Common Stock shall have the same rights, privileges and powers, rank equally, share ratably and be identical in all respects and as to all matters. The voting, dividend, liquidation and other rights, powers and preferences of the holders of Class A Common Stock and Class B Common Stock are subject to and qualified by the rights, powers and preferences of the holders of the Preferred Stock of any series as may be designated by the Board of Directors of the Corporation (the “Board”) upon any issuance of the Preferred Stock of any series.

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2. Voting. Except as otherwise required by applicable law, at all meetings of stockholders and on all matters submitted to a vote of stockholders of the Corporation generally, each holder of Class A Common Stock, as such, shall have the right to one (1) vote per share of Class A Common Stock held of record by such holder and each holder of Class B Common Stock, as such, shall have the right to ten (10) votes per share of Class B Common Stock held of record by such holder. Except as otherwise required by applicable law or provided in this Certificate of Incorporation, the holders of shares of Class A Common Stock and Class B Common Stock, as such, shall (a) at all times vote together as a single class on all matters (including the election of directors) submitted to a vote of the stockholders of the Corporation generally, (b) be entitled to notice of any stockholders' meeting in accordance with the Bylaws of the Corporation, as the same may be amended and/or restated from time to time (the "Bylaws"), and (c) be entitled to vote upon such matters and in such manner as may be provided by applicable law; *provided, however*, that, except as otherwise required by applicable law, holders of Class A Common Stock and Class B Common Stock, as such, shall not be entitled to vote on any amendment to this Certificate of Incorporation (including any Preferred Stock Designation) that relates solely to the terms of one or more outstanding series of Preferred Stock if the holders of such affected series of Preferred Stock are exclusively entitled, either separately or together with the holders of one or more other such series of Preferred Stock, to vote thereon pursuant to this Certificate of Incorporation or applicable law. There shall be no cumulative voting. In no event shall the shares of any Class A Common Stock or Class B Common Stock be split, divided, or combined unless the outstanding shares of Class A Common Stock or Class B Common Stock, as applicable, be proportionately split, divided, or combined.

3. Dividend and Distribution Rights. Subject to the prior rights and preferences, if any, applicable to shares of Preferred Stock or any series thereof, the holders of shares of Class A Common Stock shall be entitled to receive, ratably in proportion to the number of shares of Class A Common Stock held by them, with respect to any dividends or distributions as may be declared and paid from time to time by the Board out of any assets of the Corporation legally available therefor; *provided, however*, that in the event a dividend is paid in the form of shares of Class A Common Stock or Class B Common Stock (or rights to acquire, or securities convertible into or exchangeable for, such shares), then holders of Class A Common Stock shall be entitled to receive shares of Class A Common Stock (or rights to acquire, or securities convertible into or exchangeable for, such shares, as the case may be), and holders of Class B Common Stock shall be entitled to receive shares of Class B Common Stock (or rights to acquire, or securities convertible into or exchangeable for, such shares, as the case may be), with holders of shares of Class A Common Stock and Class B Common Stock receiving, on a per share basis, an identical number of shares of Class A Common Stock or Class B Common Stock (or rights to acquire, or securities convertible into or exchangeable for, such shares, as the case may be), as applicable. Notwithstanding the foregoing, the Board may pay or make a disparate dividend or distribution per share of Class A Common Stock or Class B Common Stock (whether in the amount of such dividend or distribution payable per share, the form in which such dividend or distribution is payable, the timing of the payment, or otherwise) if such disparate dividend or distribution is approved by the affirmative vote of the holders of a majority of the outstanding shares of Class A Common Stock and Class B Common Stock, each voting separately as a class.

4. Subdivisions, Combinations or Reclassifications. Shares of Class A Common Stock or Class B Common Stock may not be subdivided, combined or reclassified unless the shares of the other class is concurrently therewith proportionately subdivided, combined or reclassified in a manner that maintains the same proportionate equity ownership between the holders of the outstanding Class A Common Stock and Class B Common Stock on the record date for such subdivision, combination or reclassification; *provided, however*, that shares of one such class may be subdivided, combined or reclassified in a different or disproportionate manner if such subdivision, combination or reclassification is approved by the affirmative vote of the holders of a majority of the outstanding shares of Class A Common Stock and Class B Common Stock, each voting separately as a class.

5. Liquidation, Dissolution or Winding Up. Subject to the preferential or other rights of any holders of Preferred Stock then outstanding, upon a Liquidation Event, whether voluntary or involuntary, holders of Class A Common Stock will be entitled to receive ratably all assets of the Corporation available for distribution to its stockholders unless disparate or different treatment of the shares of each such class with respect to distributions upon any such Liquidation Event is approved by the affirmative vote of the holders of a majority of the outstanding shares of Class A Common Stock, provided, however, that for the avoidance of doubt, consideration to be paid or received by a holder of Common Stock in connection with any such liquidation, dissolution, distribution of assets or winding up pursuant to any employment, consulting, severance or similar services arrangement shall not be deemed to be "distribution to stockholders" for the purpose of this Part A, Section 5; provided, further, however, that shares of such classes may receive, or have the right to elect to receive, different or disproportionate consideration in connection with such consolidation, merger or other transaction if the only difference in the per share consideration to the holders of the Class A Common Stock and Class B Common Stock is that any securities distributed to the holder of a share of Class B Common Stock have ten (10) times the voting power of any securities distributed to the holder of a share of Class A Common Stock. The holders of shares of Class B Common Stock, as such, shall not be entitled to receive any assets of the Corporation in the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation.

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6. Protective Provisions. Unless such action is first approved by the affirmative vote (or written consent) of the holders of two-thirds (2/3<sup>rd</sup>) of the then-outstanding shares of Class B Common Stock, voting as a separate class, in addition to any other vote required by applicable law, this Certificate of Incorporation or the Bylaws, the Corporation shall not, whether by merger, consolidation, certificate of designation or otherwise amend, alter, repeal or waive any provision of Part A of this Article IV (or adopt any provision inconsistent therewith), or, authorize, or issue any shares of, any class or series of capital stock of the Corporation entitling the holder thereof to more than (1) vote for each share thereof or entitling any class or series of securities to designate or elect directors as a class or series separate from the Class A Common Stock and Class B Common Stock.

7. Definitions. For purposes of this Certificate of Incorporation:

“Change of Control Transaction” means (i) the sale, lease, exchange, or other disposition (other than liens and encumbrances created in the ordinary course of business, including liens or encumbrances to secure indebtedness for borrowed money that are approved by the Board, so long as no foreclosure occurs in respect of any such lien or encumbrance) of all or substantially all of the Corporation’s property and assets (which shall for such purpose include the property and assets of any direct or indirect subsidiary of the Corporation), *provided* that any sale, lease, exchange or other disposition of property or assets exclusively between or among the Corporation and any direct or indirect subsidiary or subsidiaries of the Corporation shall not be deemed a “Change of Control Transaction”; (ii) the merger, consolidation, business combination, or other similar transaction of the Corporation with any other entity, other than a merger, consolidation, business combination, or other similar transaction that would result in the voting securities of the Corporation outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity or its Parent) more than fifty percent (50%) of the total voting power represented by the voting securities of the Corporation and more than fifty percent (50%) of the total number of outstanding shares of the Corporation’s capital stock, in each case as outstanding immediately after such merger, consolidation, business combination, or other similar transaction, and the stockholders of the Corporation immediately prior to the merger, consolidation, business combination, or other similar transaction continuing to own voting securities of the Corporation, the surviving entity or its Parent immediately following the merger, consolidation, business combination, or other similar transaction in substantially the same proportions (*vis a vis* each other) as such stockholders owned of the voting securities of the Corporation immediately prior to the transaction; and (iii) a recapitalization, liquidation, dissolution, or other similar transaction involving the Corporation, other than a recapitalization, liquidation, dissolution, or other similar transaction that would result in the voting securities of the Corporation outstanding immediately prior thereto continuing to represent (either by remaining outstanding or being converted into voting securities of the surviving entity or its Parent) more than fifty percent (50%) of the total voting power represented by the voting securities of the Corporation and more than fifty percent (50%) of the total number of outstanding shares of the Corporation’s capital stock, in each case as outstanding immediately after such recapitalization, liquidation, dissolution or other similar transaction, and the stockholders of the Corporation immediately prior to the recapitalization, liquidation, dissolution or other similar transaction continuing to own voting securities of the Corporation, the surviving entity or its Parent immediately following the recapitalization, liquidation, dissolution or other similar transaction in substantially the same proportions (*vis a vis* each other) as such stockholders owned of the voting securities of the Corporation immediately prior to the transaction.

“Fiduciary” means a Person who (a) is an executor, personal representative, administrator, trustee, manager, managing member, general partner, director, officer or any other agent of a Person and (b) manages, controls or otherwise has decision-making authority with respect to such Person, but, in each case, only to the extent that such Person may be removed, directly or indirectly, and replaced with another Fiduciary.

“Liquidation Event” means any liquidation, dissolution, or winding up of the Corporation, whether voluntary or involuntary, or any Change of Control Transaction.

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“Parent” of an entity means any entity that directly or indirectly owns or controls a majority of the voting power of the voting securities of such entity.

“Person” means any individual, corporation, limited liability company, limited or general partnership, joint venture, association, joint-stock company, trust, unincorporated organization or other entity, whether domestic or foreign.

“Requisite Stockholder Consent” means (i) prior to the Voting Threshold Date, the action at a meeting or by written consent (to the extent permitted under this Certificate of Incorporation) of the holders of a majority in voting power of the shares of capital stock of the Corporation that would then be entitled to vote in the election of directors at an annual meeting of stockholders, and (ii) on and after the Voting Threshold Date, the action at a meeting or by written consent (to the extent permitted under this Certificate of Incorporation) of the holders of two-thirds (2/3rds) of the voting power of the shares of capital stock of the Corporation that would then be entitled to vote in the election of directors at an annual meeting of stockholders.

“Voting Threshold Date” means the first date on which the issued and outstanding shares of Class B Common Stock represents less than 50% of the total voting power of the then outstanding shares of capital stock of the Corporation that would then be entitled to vote in the election of directors at an annual meeting of stockholders.

B. PREFERRED STOCK

Subject to Article IV, Part A, Section 6, Preferred Stock may be issued from time to time in one or more series, each of such series to have such terms as stated or expressed herein and in the resolution or resolutions providing for the issue of such series adopted by the Board as hereinafter provided. Any shares of Preferred Stock which may be redeemed, purchased or acquired by the Corporation may be reissued except as otherwise provided by law.

Subject to Article IV, Part A, Section 6, authority is hereby expressly granted to the Board from time to time to issue the Preferred Stock in one or more series, and in connection with the creation of any such series, by adopting a resolution or resolutions providing for the issuance of the shares thereof and by filing a certificate of designations relating thereto in accordance with the DGCL (a “Preferred Stock Designation”), to determine and fix the number of shares of such series and such voting powers, full or limited, or no voting powers, and such designations, preferences and relative participating, optional or other special rights, and qualifications, limitations or restrictions thereof, including without limitation thereof, dividend rights, conversion rights, redemption privileges and liquidation preferences, as shall be stated and expressed in such resolutions, all to the full extent now or hereafter permitted by the DGCL. Without limiting the generality of the foregoing, the resolutions providing for issuance of any series of Preferred Stock may provide that such series shall be superior or rank equally or be junior to any other series of Preferred Stock to the extent permitted by law.

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**ARTICLE V  
AMENDMENT OF THE CERTIFICATE OF INCORPORATION**

The Corporation reserves the right to amend, alter, change, adopt or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon stockholders herein are granted subject to this reservation; *provided, however*, that, notwithstanding any other provision of this Certificate of Incorporation or any provision of law that might otherwise permit a lesser vote or no vote, but in addition to any vote of the holders of shares of any class or series of capital stock of the Corporation required by law or by this Certificate of Incorporation, the affirmative vote of the holders of a majority of the voting power of the then-outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class, shall be required to amend or repeal, or adopt any provision of this Certificate of Incorporation inconsistent with Articles IV, V, VI, VII, VIII, IX, X, XI and XII; *provided further* the Corporation shall not, without the prior affirmative vote of the holders of two-thirds (2/3<sup>rd</sup>) of the outstanding shares of Class B Common Stock, voting as a separate class, in addition to any other vote required by applicable law or this Certificate of Incorporation, directly or indirectly, whether by amendment, or through merger, recapitalization, consolidation or otherwise amend, alter, change, repeal or adopt any provision of this Certificate of Incorporation (1) in a manner that is inconsistent with, or that otherwise alters or changes, any of the voting, conversion, dividend or liquidation provisions of the shares of Class B Common Stock or other rights, powers, preferences or privileges of the shares of Class B Common Stock; (2) to provide for each share of Class A Common Stock to have more than one (1) vote per share or any rights to a separate class vote of the holders of shares of Class A Common Stock other than as provided by this Certificate of Incorporation or required by the DGCL; or (3) to otherwise adversely impact or affect the rights, powers, preferences or privileges of the shares of Class B Common Stock in a manner that is disparate from the manner in which it affects the rights, powers, preferences or privileges of the shares of Class A Common Stock; *provided further*, so long as any shares of Class A Common Stock remain outstanding, the Corporation shall not, without the prior affirmative vote of the holders of a majority of the outstanding shares of Class A Common Stock, voting as a separate class, in addition to any other vote required by applicable law or this Certificate of Incorporation, directly or indirectly, whether by amendment, or through merger, recapitalization, consolidation or otherwise amend, alter, change, repeal or adopt any provision of this Certificate of Incorporation (1) in a manner that is inconsistent with, or that otherwise alters or changes the powers, preferences, or special rights of the shares of Class A Common Stock so as to affect them adversely; or (2) to provide for each share of Class B Common Stock to have more than ten (10) votes per share or any rights to a separate class vote of the holders of shares of Class B Common Stock other than as provided by this Certificate of Incorporation or required by the DGCL. For the avoidance of doubt, (i) nothing in the immediately preceding provisions shall limit the rights of the Board as specified in Article IV, Section B (as qualified by Article IV, Section 6) or Article VI of this Certificate of Incorporation, and (ii) notwithstanding anything in this Article V to the contrary, any amendment to a provision that contemplates a specific approval requirement by the stockholders (or any class of capital stock of the Corporation) in this Certificate of Incorporation (including the definition of Requisite Stockholder Consent and Voting Threshold Date) shall require the greater of (x) the specific approval requirement by the stockholders (or any class of capital stock of the Corporation) contemplated in such provision, and (y) the approval requirements contemplated by this Article V.

**ARTICLE VI  
AMENDMENT OF THE BYLAWS**

In furtherance and not in limitation of the powers conferred upon it by the DGCL, and subject to the terms of any series of Preferred Stock, the Board shall have the power to adopt, amend, alter or repeal the Bylaws of the Corporation by the affirmative vote of a majority of the directors present at any regular or special meeting of the Board at which a quorum is present in any manner not inconsistent with the laws of the State of Delaware or this Certificate of Incorporation. The stockholders may not adopt, amend, alter or repeal the Bylaws of the Corporation, or adopt any provision inconsistent therewith, unless such action is approved, in addition to any other vote required by this Certificate of Incorporation, by the Requisite Stockholder Consent.

**ARTICLE VII  
CORPORATE OPPORTUNITIES**

The Corporation renounces any interest or expectancy of the Corporation in, or in being offered an opportunity to participate in, any Excluded Opportunity. An “Excluded Opportunity” is any matter, transaction or interest that is presented to, or acquired, created or developed by, or which otherwise comes into the possession of, any director of the Corporation who is not an employee or officer of the Corporation or any of its subsidiaries (a “Covered Person”), unless such matter, transaction or interest is presented to, or acquired, created or developed by, or otherwise comes into the possession of, a Covered Person expressly and solely in such Covered Person’s capacity as a director of the Corporation.

**ARTICLE VIII  
BOARD OF DIRECTORS**

This Article VIII is inserted for the management of the business and for the conduct of the affairs of the Corporation, and for further definition, limitation and regulation of the powers of the Corporation and of its directors and stockholders.

(A) General Powers. The business and affairs of the Corporation shall be managed by or under the direction of the Board, except as otherwise provided by law.

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(B) Number of Directors. Subject to the rights of holders of any series of Preferred Stock to elect directors, the number of the directors of the Corporation shall be fixed from time to time by the Board; *provided, further*, that unless otherwise approved by the Requisite Stockholder Consent, the number of the directors shall not exceed nine (9). For the avoidance of doubt, no decrease in the number of directors constituting the Board shall shorten the term of any incumbent director.

(C) Tenure. The directors shall be elected or appointed for a term of office continuing until the next annual meeting of stockholders of the Corporation. Each director shall hold office until such director's successor is elected and qualified, or until such director's earlier death, resignation, disqualification or removal from office. Any director may resign at any time upon notice to the Corporation given in writing by any electronic transmission permitted in the Corporation's Bylaws or in accordance with applicable law.

(D) Vacancies; Newly Created Directorships. Subject to the rights of holders of any series of Preferred Stock, any newly created directorship that results from an increase in the number of directors or any vacancy on the Board that results from the death, disability, resignation, disqualification or removal of any director or from any other cause shall be filled: (i) prior to the Voting Threshold Date, solely by the stockholders of the Corporation with the Requisite Stockholder Consent unless any such vacancy or newly created directorships remains unfilled for at least sixty (60) days, in which case such vacancy or newly created directorships may also be filled by the affirmative vote of a majority of the total number of directors then in office, even if less than a quorum, or by a sole remaining director; or (ii) on or after the Voting Threshold Date solely by the affirmative vote of a majority of the total number of directors then in office, even if less than a quorum, or by a sole remaining director.

(E) Removal. Subject to the rights of the holders of any series of Preferred Stock expressly set forth in a Preferred Stock Designation adopted in compliance with this Certificate of Incorporation, any director or the entire Board may be removed from office at any time with or without cause and for any or no reason only with and immediately upon the Requisite Stockholder Consent.

(F) Committees. Pursuant to the Bylaws of the Corporation, the Board may establish one or more committees to which may be delegated any or all of the powers and duties of the Board to the full extent permitted by law.

(G) Stockholder Nominations and Introduction of Business. Advance notice of stockholder nominations for election of directors and other business to be brought by stockholders before a meeting of stockholders shall be given in the manner provided by the Bylaws.

(H) Preferred Stock Directors. During any period when the holders of any series of Preferred Stock have the right to elect additional directors as provided for or fixed pursuant to and in accordance with the provisions of Article IV hereof or any Preferred Stock Designation, then upon commencement and for the duration of the period during which such right continues: (i) the then otherwise total number of authorized directors of the Corporation shall automatically be increased by such specified number of directors, and the holders of such Preferred Stock shall be entitled to elect the additional directors so provided for or fixed pursuant to said provisions, and (ii) each such additional director shall serve until such director's successor shall have been duly elected and qualified, or until such director's right to hold such office terminates pursuant to said provisions, whichever occurs earlier, subject to his earlier death, disqualification, resignation or removal. Except as otherwise provided for or fixed pursuant to and in accordance with the provisions of Article IV hereof or any Preferred Stock Designation, whenever the holders of any series of Preferred Stock having such right to elect additional directors are divested of such right pursuant to the provisions of such stock, all such additional directors elected by the holders of such stock, or elected or appointed to fill any vacancies resulting from the death, resignation, disqualification or removal of such additional directors shall automatically cease to be qualified as directors, the terms of office of all such directors shall forthwith terminate and the total authorized number of directors of the Corporation shall be reduced accordingly.

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**ARTICLE IX  
ELECTION OF DIRECTORS**

Unless and except to the extent that the Bylaws shall so require, the election of directors of the Corporation need not be by written ballot. The vote required for election of a director by the stockholders at a meeting of stockholders shall, except in a contested election, be the affirmative vote of a majority of the votes cast in favor or against the election of a nominee at a meeting of stockholders. In a contested election, (i) the directors shall be elected by a plurality of the votes cast at a meeting of stockholders by the holders of stock entitled to vote in such election, and (ii) stockholders shall not be permitted to vote against a nominee. An election shall be considered contested if, as the tenth (10th) preceding the date the Corporation first mails its notice of meeting for such meeting to the stockholders of the Corporation, there are more nominees for election than directorships on the Board to be filled by election at the meeting.

**ARTICLE X  
LIMITATION OF DIRECTOR LIABILITY**

To the fullest extent permitted by the DGCL as the same exists or as may hereafter be amended, a director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director; *provided, however*, that nothing contained in this Article X shall eliminate or limit the liability of a director (i) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) pursuant to the provisions of Section 174 of the DGCL, or (iv) for any transaction from which the director derived an improper personal benefit. No repeal or modification of this Article X shall apply to or have any adverse effect on any right or protection of, or any limitation of the liability of, a director of the Corporation existing at the time of such repeal or modification with respect to acts or omissions occurring prior to such repeal or modification.

**ARTICLE XI  
INDEMNIFICATION**

The Corporation may indemnify, and advance expenses to, to the fullest extent permitted by law, any person who was or is a party to or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative by reason of the fact that the person is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise.

**ARTICLE XII  
CONSENT OF STOCKHOLDERS IN LIEU OF MEETING**

Subject to the terms of any series of Preferred Stock and as expressly provided for in Article IV, Section 9 of this Certificate of Incorporation, any action required or permitted to be taken by the stockholders of the Corporation must be effected at an annual or special meeting of the stockholders and may not be effected by written consent in lieu of a meeting; *provided*, that prior to the Voting Threshold Date, any action required or permitted to be taken at any annual or special meeting of stockholders of the Corporation may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holders of the outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted and shall be delivered to the Corporation by delivery to its registered office in the State of Delaware, its principal place of business, or an officer or agent of the Corporation having custody of the books in which proceedings of meetings of stockholders are recorded. Delivery made to the Corporation's registered office shall be made by hand, overnight courier or by certified or registered mail, return receipt requested.

**ARTICLE XIII  
SPECIAL MEETING OF STOCKHOLDERS**

Special meetings of stockholders for any purpose or purposes may be called at any time by the Board, the Chairperson of the Board or the Chief Executive Officer of the Corporation, and may not be called by another other Person or Persons; *provided* that special meetings of stockholders for any purpose or purposes may also be called by or at the request of stockholders of the Corporation collectively holding shares of capital stock of the Corporation with voting power sufficient to provide the Requisite Stockholder Consent. Business transacted at any special meeting of stockholders shall be limited to matters relating to the purpose or purposes stated in the notice of meeting.

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**ARTICLE XIV  
FORUM SELECTION**

Unless the Corporation consents in writing to the selection of an alternative forum, (i) the Court of Chancery (the “Chancery Court”) of the State of Delaware (or, in the event that the Chancery Court does not have jurisdiction, the federal district court for the District of Delaware or other state courts of the State of Delaware) shall, to the fullest extent permitted by law, be the sole and exclusive forum for (1) any derivative action or proceeding brought on behalf of the Corporation, (2) any action asserting a claim of breach of a fiduciary duty owed by, or any other wrongdoing by, any current or former director, officer, other employee or stockholder of the Corporation, (3) any action asserting a claim against the Corporation arising pursuant to any provision of the DGCL, this Certificate of Incorporation or the Bylaws or as to which the DGCL confers jurisdiction on the Court of Chancery, (4) any action to interpret, apply, enforce or determine the validity of any provisions of this Certificate of Incorporation or the Bylaws, or (5) any other action asserting a claim governed by the internal affairs doctrine and (ii) notwithstanding anything to the contrary herein, but subject to the foregoing provisions of this Article XIV, the federal district courts of the United States shall be the exclusive forum for the resolution of any action, suit or proceeding asserting a cause of action arising under the Securities Act of 1933, as amended. If any action the subject matter of which is within the scope of the preceding sentence is filed in a court other than the applicable courts specified in the immediately preceding sentence (a “Foreign Action”) in the name of any stockholder, such stockholder shall, to the fullest extent permitted by applicable law, be deemed to have consented to (a) the personal jurisdiction of the state and federal courts located within the State of Delaware in connection with any action brought in any such court to enforce the preceding sentence and (b) having service of process made upon such stockholder in any such action by service upon such stockholder’s counsel in the Foreign Action as agent for such stockholder. This provision will not apply to claims arising under the Securities Exchange Act of 1934, as amended, or other federal securities laws for which there is exclusive federal jurisdiction. Any Person or entity purchasing or otherwise acquiring or holding any interest in shares of capital stock of the Corporation shall be deemed to have notice of and consented to the provisions of this Article XIV.

**ARTICLE XV  
MISCELLANEOUS**

1. Severability. If any provision or provisions of this Certificate of Incorporation shall be held to be invalid, illegal or unenforceable as applied to any circumstance for any reason whatsoever: (i) the validity, legality and enforceability of such provisions in any other circumstance and of the remaining provisions of this Certificate of Incorporation (including, without limitation, each portion of any paragraph of this Certificate of Incorporation containing any such provision held to be invalid, illegal or unenforceable that is not itself held to be invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby and (ii) to the fullest extent possible and without limiting any other provisions of this Certificate of Incorporation (or any other provision of the Bylaws or any agreement entered into by the Corporation), the provisions of this Certificate of Incorporation (including, without limitation, each such portion of any paragraph of this Certificate of Incorporation containing any such provision held to be invalid, illegal or unenforceable) shall be construed so as to permit the Corporation to protect its directors, officers, employees and agents from personal liability in respect of their good faith service to, or for the benefit of, the Corporation to the fullest extent permitted by law.

2. Notice of Provisions. To the fullest extent permitted by law, each and every Person purchasing or otherwise acquiring any interest (of any nature whatsoever) in any shares of the capital stock of the Corporation shall be deemed, by reason of and from and after the time of such purchase or other acquisition, to have notice of and to have consented to all of the provisions of (a) this Certificate of Incorporation, (b) the Bylaws and (c) any amendment to this Certificate of Incorporation or the Bylaws enacted or adopted in accordance with this Certificate of Incorporation, the Bylaws and applicable law.

3. Opt-Out of Section 203 of the DGCL. The Corporation shall not be governed by Section 203 of the DGCL.

*[Remainder of Page Intentionally Left Blank]*

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IN WITNESS WHEREOF, this Certificate of Incorporation has been executed this 10th day of March, 2023.

**Nxu, Inc.**

By: \_\_\_\_\_  
Name:  
Title:

*Signature Page to Certificate of Incorporation*

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**BYLAWS**

**OF**

**NXU, INC.**

Adopted on March 27, 2023

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## ARTICLE I

### STOCKHOLDERS

1.1 Place of Meetings. All meetings of stockholders shall be held at such place, if any, as may be designated from time to time by the Board of Directors (the “Board”) of Nxu, Inc. (the “Corporation”), the Chairperson of the Board or the Chief Executive Officer or, if not so designated, at the principal office of the Corporation.

1.2 Annual Meeting. The annual meeting of stockholders for the election of directors to succeed those whose terms expire and for the transaction of such other business as may properly be brought before the meeting shall be held on a date and at a time designated by the Board, the Chairperson of the Board or the Chief Executive Officer. The Corporation may postpone, recess, reschedule or cancel any previously scheduled annual meeting of stockholders.

1.3 Special Meetings. Special meetings of stockholders for any purpose or purposes may be called at any time by only the Board, the Chairperson of the Board or the Chief Executive Officer, and may not be called by any other person or persons; *provided* that, prior to the Final Conversion Date (as defined in the Corporation’s Certificate of Incorporation (the “Certificate of Incorporation”), special meetings of stockholders for any purpose or purposes may also be called by or at the request of stockholders of the Corporation collectively holding shares of capital stock of the Corporation with voting power sufficient to provide the Requisite Stockholder Consent (as defined in the Certificate of Incorporation). Business transacted at any special meeting of stockholders shall be limited to matters relating to the purpose or purposes stated in the notice of meeting. The Corporation may postpone, reschedule or cancel any previously scheduled meeting of stockholders; *provided, however*, that with respect to any special meeting of stockholders of the Corporation previously scheduled at the request of the Requisite Stockholder Consent, the Corporation shall not postpone, reschedule or cancel any such special meeting without the prior written consent of the stockholders who comprised the Requisite Stockholder Consent.

1.4 Notice of Meetings. Except as otherwise provided by law, the Certificate of Incorporation or these Bylaws, notice of each meeting of stockholders, whether annual or special, shall be given not less than ten (10) nor more than sixty (60) days before the date of the meeting to each stockholder entitled to vote at such meeting as of the record date for determining the stockholders entitled to notice of the meeting. Without limiting the manner by which notice otherwise may be given to stockholders, any notice to stockholders given by the Corporation shall be effective if given by electronic transmission in accordance with the General Corporation Law of the State of Delaware (the “DGCL”). The notices of all meetings shall state the place, if any, date and time of the meeting, the means of remote communications, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such meeting, and the record date for determining the stockholders entitled to vote at the meeting (if such date is different from the record date for stockholders entitled to notice of the meeting). The notice of a special meeting shall state, in addition, the purpose or purposes for which the meeting is called. If notice is given by mail, such notice shall be deemed given when deposited in the United States mail, postage prepaid, directed to the stockholder at such stockholder’s address as it appears on the records of the Corporation. If notice is given by electronic transmission, such notice shall be deemed given at the time specified in Section 232 of the DGCL.

1.5 Voting List. The Corporation shall prepare, at least ten (10) days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting (provided, however, if the record date for determining the stockholders entitled to vote is less than ten (10) days before the date of the meeting, the list shall reflect the stockholders entitled to vote as of the tenth day before the meeting date), arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder; provided, that such list shall not be required to contain the electronic mail address or other electronic contact information of any stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, for a period of at least ten (10) days prior to the meeting: (a) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting, or (b) during ordinary business hours, at the principal place of business of the Corporation. If the meeting is to be held at a place, then the list shall also be produced and kept at the time and place of the meeting during the whole time thereof, and may be examined by any stockholder who is present. If the meeting is to be held solely by means of remote communication, then such list shall also be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting. Except as otherwise provided by law, the stock ledger contemplated by this Section 1.5 shall be the only evidence as to who are the stockholders entitled to examine the list of stockholders required by this Section 1.5 or entitled to vote in person or by proxy at any meeting of stockholders.

1.6 Quorum. Except as otherwise provided by law, the Certificate of Incorporation or these Bylaws, at each meeting of stockholders the holders of a majority in voting power of the shares of the capital stock of the Corporation issued and outstanding and entitled to vote at the meeting, present in person or represented by proxy, shall constitute a quorum for the transaction of business; provided, however, that where a separate vote by a class or classes or series of capital stock is required by law or the Certificate of Incorporation, the holders of a majority in voting power of the shares of such class or classes or series of the capital stock of the Corporation issued and outstanding and entitled to vote on such matter, present in person or represented by proxy, shall constitute a quorum entitled to take action with respect to the vote on such matter. A quorum, once established at a meeting, shall not be broken by the withdrawal of enough votes to leave less than a quorum.

1.7 Adjournments. Any meeting of stockholders may be adjourned from time to time to any other time and to the same or some other place at which a meeting of stockholders may be held under these Bylaws by the Board, the chairperson of the meeting or, if directed to be voted on by the chairperson of the meeting, by a majority of the votes cast by stockholders present or represented at the meeting and entitled to vote thereon, although less than a quorum. It shall not be necessary to notify any stockholder of any adjournment of thirty (30) days or less if the time and place of the adjourned meeting, and the means of remote communication, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such adjourned meeting, are announced at the meeting at which adjournment is taken, unless after the adjournment a new record date is fixed for determination of stockholders entitled to vote at the adjourned meeting (in which case the Board shall fix the same or an earlier date as the record date for determining stockholders entitled to notice of such adjourned meeting and shall give notice of the adjourned meeting to each stockholder of record as of such date). At the adjourned meeting, the Corporation may transact any business which might have been transacted at the original meeting.



1.8 Voting and Proxies. Each stockholder of record entitled to vote at a meeting of stockholders may vote in person or may authorize another person or persons to vote for such stockholder by proxy. Except as otherwise limited therein, proxies shall entitle the persons authorized thereby to vote at any adjournment of such meeting. Proxies shall be filed with the Secretary of the Corporation (the "Secretary"). No such proxy shall be voted upon after three years from its date, unless the proxy expressly provides for a longer period. A proxy may be irrevocable if it states that it is irrevocable and if, and only as long as, it is coupled with an interest sufficient in law to support an irrevocable power, regardless of whether the interest with which it is coupled is an interest in the stock itself or an interest in the Corporation generally. A stockholder may revoke any proxy which is not irrevocable by attending the meeting and voting in person or by filing an instrument in writing revoking the proxy or another duly executed proxy bearing a later date with the Secretary of the Corporation.

1.9 Action at Meeting. When a quorum is present at any meeting, any matter other than the election of directors to be voted upon by the stockholders at such meeting shall be decided by a majority of the votes cast by the holders of all of the shares of stock present in person or represented by proxy at the meeting and voting affirmatively or negatively on such matter (or if one or more class, classes or series of stock are entitled to vote as a separate class or series, then a majority of the votes cast by the holders of the shares of stock of such class, classes or series entitled to vote as a separate class or series present or represented by proxy at the meeting and voting affirmatively or negatively on such matter), except when a different or minimum vote is required by law, regulation applicable to the Corporation or its securities, the rules or regulations of any stock exchange applicable to the Corporation, the Certificate of Incorporation or these Bylaws, in which case such different or minimum vote shall be the required vote on such matter. When a quorum is present at any meeting, in any election by stockholders of directors other than in a contested election, directors shall be elected by the affirmative vote of a majority of the votes cast in favor or against the election of a nominee at a meeting of stockholders. In a contested election, (i) the directors shall be elected by a plurality of the votes cast at a meeting of stockholders by the holders of stock entitled to vote in such election, and (ii) stockholders shall not be permitted to vote against a nominee. An election shall be considered contested if, as of the tenth (10th) day preceding the date on which the Corporation first mails its notice of meeting for such meeting to the stockholders of the Corporation, there are more nominees for election than directorships on the Board to be filled by election at the meeting.

1.10 Nomination of Directors.

(A) Except for any directors entitled to be elected by the holders of preferred stock, at any meeting of stockholders, only persons who are nominated in accordance with the procedures in this Section 1.10 shall be eligible for election as directors. Nominations of persons for election to the Board at an annual meeting of stockholders or a special meeting of stockholders at which directors are to be elected pursuant to the Corporation's notice of meeting may be made (i) by or at the direction of the Board or any duly authorized committee thereof or (ii) by any stockholder of the Corporation who (x) timely complies with the notice procedures in Section 1.10(B), (y) is a stockholder of record on the date of the giving of such notice and on the record date for the determination of stockholders entitled to vote at such meeting and (z) is entitled to vote at such meeting and on such election.

(B) To be timely, a stockholder's notice must be received in writing by the Secretary at the principal executive offices of the Corporation as follows: (i) in the case of an election of directors at an annual meeting of stockholders, not less than ninety (90) days nor more than one hundred twenty (120) days prior to the first anniversary of the preceding year's annual meeting; provided, however, that in the event that the date of the annual meeting is advanced by more than thirty (30) days, or delayed by more than seventy (70), from the first anniversary of the preceding year's annual meeting, a stockholder's notice must be so received not earlier than the 120th day prior to such annual meeting and not later than the close of business on the later of (A) the 90th day prior to such annual meeting and (B) the tenth day following the day on which public disclosure of the date of such annual meeting is first made; or (ii) in the case of an election of directors at a special meeting of stockholders, provided that directors are to be elected at such special meeting as set forth in the Corporation's notice of meeting and provided further that the nomination made by the stockholder is for one of the director positions that the notice of meeting states will be filled at such special meeting, not earlier than the 120th day prior to such special meeting and not later than the close of business on the later of (x) the 90th day prior to such special meeting and (y) the tenth day following the day on which public disclosure of the date of such special meeting for the election of directors is first made. The number of nominees a stockholder may nominate for election at a meeting (or in the case of a stockholder giving the notice on behalf of a beneficial owner, the number of nominees a stockholder may nominate for election at the meeting on behalf of such beneficial owner) shall not exceed the number of directors to be elected at such meeting. In no event shall the adjournment or postponement of a meeting (or the public disclosure thereof) commence a new time period (or extend any time period) for the giving of a stockholder's notice.

The stockholder's notice to the Secretary shall set forth: (A) as to each proposed nominee (1) such person's name, age, business address and, if known, residence address, (2) such person's principal occupation or employment, (3) the class(es) and series and number of shares of stock of the Corporation that are, directly or indirectly, owned, beneficially or of record, by such person, (4) a description of all direct and indirect compensation and other material monetary agreements, arrangements and understandings during the past three years, and any other material relationships, between or among (x) the stockholder, the beneficial owner, if any, on whose behalf the nomination is being made and the respective affiliates and associates of, or others acting in concert with, such stockholder and such beneficial owner, on the one hand, and (y) each proposed nominee, and his or her respective affiliates and associates, or others acting in concert with such nominee(s), on the other hand, including all information that would be required to be disclosed pursuant to Item 404 of Regulation S-K if the stockholder making the nomination and any beneficial owner on whose behalf the nomination is made or any affiliate or associate thereof or person acting in concert therewith were the "registrant" for purposes of such Item and the proposed nominee were a director or executive officer of such registrant, and (5) any other information concerning such person that must be disclosed as to nominees in proxy solicitations pursuant to Regulation 14A under the Securities Exchange Act of 1934, as amended (the "Exchange Act"); and (B) as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination is being made (1) the name and address of such stockholder, as they appear on the corporation's books, and of such beneficial owner, (2) the class(es) and series and number of shares of stock of the corporation that are, directly or indirectly, owned, beneficially or of record, by such stockholder and such beneficial owner, (3) a description of any agreement, arrangement or understanding between or among such stockholder and/or such beneficial owner and each proposed nominee and any other person or persons (including their names) pursuant to which the nomination(s) are being made or who may participate in the solicitation of proxies in favor of electing such nominee(s), (4) a description of any agreement, arrangement or understanding (including any derivative or short positions, swaps, profit interests, options, warrants, convertible securities, stock appreciation or similar rights, hedging transactions, and borrowed or loaned shares) that has been entered into by, or on behalf of, such stockholder or such beneficial owner, the effect or intent of which is to mitigate loss to, manage risk or benefit of share price changes for, or increase or decrease the voting power of, such stockholder or such beneficial owner with respect to shares of stock of the Corporation, (5) any other information relating to such stockholder and such beneficial owner that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for the election of directors in a contested election pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder, (6) a representation that such stockholder is a holder of record of stock of the Corporation entitled to vote at such meeting and on such election and intends to appear in person or by proxy at the meeting to nominate the person(s) named in its notice and (7) a representation whether such stockholder and/or such beneficial owner intends or is part of a group which intends (x) to deliver a proxy statement and/or form of proxy to holders of at least the percentage of the Corporation's outstanding capital stock reasonably believed by such stockholder or such beneficial owner to be sufficient to elect the nominee (and such representation shall be included in any such proxy statement and form of proxy) and/or (y) otherwise to solicit proxies or votes from stockholders in support of such nomination (and such representation shall be included in any such solicitation materials). Not later than ten (10) days after the record date for determining the stockholders entitled to vote at the meeting, the information required by Items (A)(1)-(5) and (B)(1)-(5) of the prior sentence shall be supplemented by the stockholder giving the notice to provide updated information as of such record date. In addition, to be effective, the stockholder's notice must be accompanied by the written consent of the proposed nominee to serve as a director if elected and to being named in the Corporation's proxy statement and associated proxy card as a nominee of the stockholder. The Corporation may require any proposed nominee to furnish such other information as the Corporation may reasonably require to, among other things, determine the eligibility of such proposed nominee to serve as a director of the Corporation or whether such nominee would be independent under applicable Securities and Exchange Commission and stock exchange rules and the Corporation's publicly disclosed corporate governance guidelines, as applicable. A stockholder shall not have complied with this Section 1.10(B) if the stockholder (or beneficial owner, if any, on whose behalf the nomination is made) solicits or does not solicit, as the case may be, proxies or votes in support of such stockholder's nominee in contravention of the representations with respect thereto required by this Section 1.10.

(C) The chairperson of any meeting shall have the power and duty to determine whether a nomination was made in accordance with the provisions of this Section 1.10 (including whether the stockholder or beneficial owner, if any, on whose behalf the nomination is made solicited (or is part of a group which solicited) or did not so solicit, as the case may be, proxies in support of such stockholder's nominee in compliance with the representations with respect thereto required by this Section 1.10), and if the chairperson should determine that a nomination was not made in accordance with the provisions of this Section 1.10, the chairperson shall so declare to the meeting and such nomination shall not be brought before the meeting. Without limiting the foregoing, in advance of any meeting of stockholders, the Board shall also have the power to determine whether any nomination was made in accordance with the provisions of this Section 1.10 (including whether the stockholder or beneficial owner, if any, on whose behalf the nomination is made solicited (or is part of a group which solicited) or did not so solicit, as the case may be, proxies in support of such stockholder's nominee in compliance with the representations with respect thereto required by this Section 1.10).

(D) Except as otherwise required by law, nothing in this Section 1.10 shall obligate the Corporation or the Board to include in any proxy statement or other stockholder communication distributed on behalf of the Corporation or the Board information with respect to any nominee for director submitted by a stockholder.

(E) Notwithstanding the foregoing provisions of this Section 1.10, unless otherwise required by law, if the stockholder (or a qualified representative of the stockholder) does not appear at the meeting to present a nomination, such nomination shall not be brought before the meeting, notwithstanding that proxies in respect of such nominee may have been received by the Corporation. For purposes of this Article I, to be considered a "qualified representative" of the stockholder, a person must be authorized by a written instrument executed by such stockholder or an electronic transmission delivered by such stockholder to act for such stockholder as proxy at the meeting of stockholders and such person must produce such written instrument or electronic transmission, or a reliable reproduction of the written instrument or electronic transmission, at the meeting of stockholders.

(F) For purposes of this Article I, "public disclosure" shall include disclosure in a press release reported by the Dow Jones News Service, Associated Press or comparable national news service or in a document publicly filed by the corporation with the Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the Exchange Act.

(G) Notwithstanding anything in this Section 1.10 to the contrary, in the event that the number of directors to be elected to the Board at any annual meeting is increased effective after the time period for which nominations would otherwise be due under Section 1.10(B) and there is no public disclosure by the Corporation naming the nominees for the additional directorships at least one hundred (100) days prior to the first anniversary of the preceding year's annual meeting, a stockholder's notice required by Section 1.10(B) with respect to nominations for such annual meeting shall also be considered timely, but only with respect to nominees for the additional directorships, if it shall be delivered to the Secretary at the principal executive offices of the Corporation not later than the close of business on the tenth day following the day on which such public disclosure is first made by the Corporation.

1.11 Notice of Business to be Brought Before a Meeting.

(A) At an annual meeting of the stockholders, only such business shall be conducted as shall have been properly brought before the meeting. To be properly brought before an annual meeting, business (other than the nominations of persons for election to the Board) must constitute a proper matter for stockholder action and must be (i) specified in a notice of meeting given by or at the direction of the Board or any duly authorized committee thereof, (ii) if not specified in a notice of meeting, otherwise brought before the meeting by the Board or any duly authorized committee thereof or the Chairperson of the Board or (iii) otherwise properly brought before the meeting by a stockholder who (A) (1) was a stockholder of record of the Corporation both at the time of giving the notice provided for in this Section 1.11 and at the time of the meeting, (2) is entitled to vote at the meeting, and (3) has complied with this Section 1.11 in all applicable respects or (B) properly made such proposal in compliance with Rule 14a-8 under the Exchange Act. The foregoing clause (iii) shall be the exclusive means for a stockholder to propose business to be brought before an annual meeting of the stockholders. Notwithstanding anything herein to the contrary, unless otherwise required by law, if a stockholder seeking to bring business before an annual meeting pursuant to clause (iii) of this Section 1.11(A) (or a qualified representative of the stockholder) does not appear at the meeting to present the proposed business, such proposed business shall not be transacted, notwithstanding that proxies in respect of such proposed business may have been received by the Corporation.

(B) Without qualification, for business to be properly brought before an annual meeting by a stockholder, the stockholder must (i) provide Timely Notice (as defined below) thereof in writing and in proper form to the Secretary of the Corporation and (ii) provide any updates or supplements to such notice at the times and in the forms required by this Section 1.11. To be timely, a stockholder's notice must be delivered to, or mailed and received at, the principal executive offices of the Corporation not less than ninety (90) days nor more than one hundred twenty (120) days prior to the one-year anniversary of the preceding year's annual meeting; provided, however, that if the date of the annual meeting is more than thirty (30) days before or more than seventy (70) days after such anniversary date, notice by the stockholder to be timely must be so delivered, or mailed and received, not later than the 90th day prior to such annual meeting or, if later, the tenth day following the day on which public disclosure of the date of such annual meeting was first made (such notice within such time periods, "Timely Notice"). In no event shall any adjournment or postponement of an annual meeting or the announcement thereof commence a new time period (or extend any time period) for the giving of Timely Notice as described above.

(C) To be in proper form for purposes of this Section 1.11, a stockholder's notice to the Secretary shall set forth:

(i) As to each Proposing Person (as defined below), (A) the name and address of such Proposing Person (including, if applicable, the name and address that appear on the Corporation's books and records); and (B) the class(es) and series and number of shares of the Corporation that are, directly or indirectly, owned of record and beneficially owned (within the meaning of Rule 13d-3 under the Exchange Act) by such Proposing Person, except that such Proposing Person shall in all events be deemed to beneficially own any shares of any class or series of the Corporation as to which such Proposing Person has a right to acquire beneficial ownership at any time in the future (the disclosures to be made pursuant to the foregoing clauses (A) and (B) are referred to as "Stockholder Information");

(ii) As to each Proposing Person, (A) the full notional amount of any securities that, directly or indirectly, underlie any “derivative security” (as such term is defined in Rule 16a-1(c) under the Exchange Act) that constitutes a “call equivalent position” (as such term is defined in Rule 16a-1(b) under the Exchange Act) (“Synthetic Equity Position”) and that is, directly or indirectly, held or maintained by such Proposing Person with respect to any shares of any class(es) or series of shares of the Corporation; provided that, for the purposes of the definition of “Synthetic Equity Position,” the term “derivative security” shall also include any security or instrument that would not otherwise constitute a “derivative security” as a result of any feature that would make any conversion, exercise or similar right or privilege of such security or instrument becoming determinable only at some future date or upon the happening of a future occurrence, in which case the determination of the amount of securities into which such security or instrument would be convertible or exercisable shall be made assuming that such security or instrument is immediately convertible or exercisable at the time of such determination; and, provided, further, that any Proposing Person satisfying the requirements of Rule 13d-1(b)(1) under the Exchange Act (other than a Proposing Person that so satisfies Rule 13d-1(b)(1) under the Exchange Act solely by reason of Rule 13d-1(b)(1)(ii)(E)) shall not be deemed to hold or maintain the notional amount of any securities that underlie a Synthetic Equity Position held by such Proposing Person as a hedge with respect to a bona fide derivatives trade or position of such Proposing Person arising in the ordinary course of such Proposing Person’s business as a derivatives dealer, (B) any rights to dividends on the shares of any class or series of shares of the Corporation owned beneficially by such Proposing Person that are separated or separable from the underlying shares of the Corporation, (C) any material pending or threatened legal proceeding in which such Proposing Person is a party or material participant involving the Corporation or any of its officers or directors, or any affiliate of the Corporation, (D) any other material relationship between such Proposing Person, on the one hand, and the Corporation and any affiliate of the Corporation, on the other hand, (E) any direct or indirect material interest in any material contract or agreement of such Proposing Person with the Corporation or any affiliate of the Corporation (including, in any such case, any employment agreement, collective bargaining agreement or consulting agreement), (F) a representation that such stockholder is a holder of record of stock of the Corporation entitled to vote at such meeting and intends to appear in person or by proxy at the meeting to propose such business, (G) a representation that such Proposing Person intends or is part of a group which intends to deliver a proxy statement or form of proxy to holders of at least the percentage of the Corporation’s outstanding capital stock required to approve or adopt the proposal or otherwise solicit proxies from stockholders in support of such proposal and (H) any other information relating to such Proposing Person that would be required to be disclosed in a proxy statement or other filing required to be made in connection with solicitations of proxies or consents by such Proposing Person in support of the business proposed to be brought before the meeting pursuant to Section 14(a) of the Exchange Act (the disclosures to be made pursuant to the foregoing clauses (A) through (G) are referred to as “Disclosable Interests”); provided, however, that Disclosable Interests shall not include any such disclosures with respect to the ordinary course business activities of any broker, dealer, commercial bank, trust company or other nominee who is a Proposing Person solely as a result of being the stockholder directed to prepare and submit the notice required by these Bylaws on behalf of a beneficial owner; and

(iii) As to each item of business that the stockholder proposes to bring before the annual meeting, (A) a brief description of the business desired to be brought before the annual meeting, the reasons for conducting such business at the annual meeting and any material interest in such business of each Proposing Person, (B) the text of the proposal or business (including the text of any resolutions proposed for consideration and in the event that such business includes a proposal to amend these Bylaws, the language of the proposed amendment), and (C) a reasonably detailed description of all agreements, arrangements and understandings (x) between or among any of the Proposing Persons or (y) between or among any Proposing Person and any other record or beneficial holder(s) of shares of capital stock of the Corporation or persons(s) who have a right to acquire beneficial ownership at any time in the future of the shares of any class or series of the Corporation (including their names), in connection with the proposal of such business by such stockholder; and (D) any other information relating to such item of business that would be required to be disclosed in a proxy statement or other filing required to be made in connection with solicitations of proxies in support of the business proposed to be brought before the meeting pursuant to Section 14(a) of the Exchange Act; provided, however, that the disclosures required by this paragraph (iii) shall not include any disclosures with respect to any broker, dealer, commercial bank, trust company or other nominee who is a Proposing Person solely as a result of being the stockholder directed to prepare and submit the notice required by these Bylaws on behalf of a beneficial owner.

For purposes of this Section 1.11, the term "Proposing Person" shall mean (i) the stockholder providing the notice of business proposed to be brought before an annual meeting, (ii) the beneficial owner or beneficial owners, if different, on whose behalf the notice of the business proposed to be brought before the annual meeting is made, and (iii) any participant (as defined in paragraphs (a)(ii)-(vi) of Instruction 3 to Item 4 of Schedule 14A) with such stockholder in such solicitation.

(D) A Proposing Person shall update and supplement its notice to the Corporation of its intent to propose business at an annual meeting, if necessary, so that the information provided or required to be provided in such notice pursuant to this Section 1.11 shall be true and correct as of the record date for stockholders entitled to vote at the meeting and as of the date that is ten (10) business days prior to the meeting or any adjournment or postponement thereof, and such update and supplement shall be delivered to, or mailed and received by, the Secretary at the principal executive offices of the Corporation not later than five (5) business days after the record date for stockholders entitled to vote at the meeting (in the case of the update and supplement required to be made as of such record date), and not later than eight (8) business days prior to the date for the meeting or, if practicable, any adjournment or postponement thereof (and, if not practicable, on the first practicable date prior to the date to which the meeting has been adjourned or postponed) (in the case of the update and supplement required to be made as of ten (10) business days prior to the meeting or any adjournment or postponement thereof). For the avoidance of doubt, the obligation to update and supplement as set forth in this paragraph or any other Section of these Bylaws shall not limit the Corporation's rights with respect to any deficiencies in any notice provided by a stockholder, extend any applicable deadlines hereunder or enable or be deemed to permit a stockholder who has previously submitted notice hereunder to amend or update any proposal or to submit any new proposal, including by changing or adding matters, business or resolutions proposed to be brought before a meeting of the stockholders.

(E) Notwithstanding anything in these Bylaws to the contrary, no business shall be conducted at an annual meeting that is not properly brought before the meeting in accordance with this Section 1.11. The chairperson of the meeting shall have the power and duty to determine whether any proposed business was brought in accordance with the provisions of this Section 1.11, and if the chairperson should determine that the business was not properly brought before the meeting in accordance with this Section 1.11, the chairperson shall so declare to the meeting and any such business not properly brought before the meeting shall not be transacted. Without limiting the foregoing, in advance of any meeting of stockholders, the Board shall also have the power to determine whether any proposed business was made in accordance with the provisions of this Section 1.11.

(F) This Section 1.11 is expressly intended to apply to any business proposed to be brought before an annual meeting of stockholders other than any proposal made in accordance with Rule 14a-8 under the Exchange Act and included in the Corporation's proxy statement. In addition to the requirements of this Section 1.11 with respect to any business proposed to be brought before an annual meeting of stockholders, each Proposing Person shall comply with all applicable requirements of the Exchange Act with respect to any such business. Nothing in this Section 1.11 shall be deemed to affect the rights of stockholders to request inclusion of proposals in the Corporation's proxy statement pursuant to Rule 14a-8 under the Exchange Act.

#### 1.12 Conduct of Meetings.

(A) Meetings of stockholders shall be presided over by the Chairperson of the Board, if any, or in the Chairperson's absence by the Vice Chairperson of the Board, if any, or in the Vice Chairperson's absence by the Chief Executive Officer, or in the Chief Executive Officer's absence, by the President, or in the President's absence by a Vice President, or in the absence of all of the foregoing persons by a chairperson designated by the Board. The Secretary shall act as secretary of the meeting, but in the Secretary's absence the chairperson of the meeting may appoint any person to act as secretary of the meeting.

(B) The Board may adopt by resolution such rules, regulations and procedures for the conduct of any meeting of stockholders of the Corporation as it shall deem appropriate including, without limitation, such guidelines and procedures as it may deem appropriate regarding the participation by means of remote communication of stockholders and proxyholders not physically present at a meeting. Except to the extent inconsistent with such rules, regulations and procedures as adopted by the Board, the chairperson of any meeting of stockholders shall have the right and authority to convene and (for any or no reason) to recess and/or adjourn the meeting, to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such chairperson, are appropriate for the proper conduct of the meeting. Such rules, regulations or procedures, whether adopted by the Board or prescribed by the chairperson of the meeting, may include, without limitation, the following: (i) the establishment of an agenda or order of business for the meeting; (ii) rules and procedures for maintaining order at the meeting and the safety of those present; (iii) limitations on attendance at or participation in the meeting to stockholders of record of the Corporation, their duly authorized and constituted proxies or such other persons as shall be determined; (iv) restrictions on entry to the meeting after the time fixed for the commencement thereof; and (v) limitations on the time allotted to questions or comments by participants. Unless and to the extent determined by the Board or the chairperson of the meeting, meetings of stockholders shall not be required to be held in accordance with the rules of parliamentary procedure.



(C) The chairperson of the meeting shall announce at the meeting when the polls for each matter to be voted upon at the meeting will be opened and closed. After the polls close, no ballots, proxies or votes or any revocations or changes thereto may be accepted.

(D) In advance of any meeting of stockholders, the Board, the Chairperson of the Board or the Chief Executive Officer shall appoint one or more inspectors of election to act at the meeting and make a written report thereof. One or more other persons may be designated as alternate inspectors to replace any inspector who fails to act. If no inspector or alternate is present, ready and willing to act at a meeting of stockholders, the chairperson of the meeting shall appoint one or more inspectors to act at the meeting. Unless otherwise required by law, inspectors may be officers, employees or agents of the Corporation. Each inspector, before entering upon the discharge of such inspector's duties, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of such inspector's ability. The inspector shall have the duties prescribed by law and, when the vote is completed, shall certify their determination of the result of the vote taken and of such other facts as may be required by law. Every vote taken by ballots shall be counted by a duly appointed inspector or duly appointed inspectors.

## ARTICLE II

### DIRECTORS

2.1 General Powers. The business and affairs of the Corporation shall be managed by or under the direction of the Board, who may exercise all of the powers of the Corporation except as otherwise provided by law or the Certificate of Incorporation.

2.2 Number, Election and Term. The total number of directors constituting the Board shall be as fixed in, or in the manner provided by, the Certificate of Incorporation. Election of directors need not be by written ballot. The term of office of each director shall be as specified in the Certificate of Incorporation.

2.3 Chairperson of the Board; Vice Chairperson of the Board. The Board may appoint from its members a Chairperson of the Board and a Vice Chairperson of the Board, neither of whom need be an employee or officer of the Corporation. If the Board appoints a Chairperson of the Board, such Chairperson shall perform such duties and possess such powers as are assigned by the Board and, if the Chairperson of the Board is also designated as the Corporation's Chief Executive Officer, shall have the powers and duties of the Chief Executive Officer prescribed in Section 3.7 of these Bylaws. If the Board appoints a Vice Chairperson of the Board, such Vice Chairperson shall perform such duties and possess such powers as are assigned by the Board. Unless otherwise provided by the Board, the Chairperson of the Board or, in the Chairperson's absence, the Vice Chairperson of the Board, if any, shall preside at all meetings of the Board.

2.4 Terms of Office. Directors shall be elected for such terms and in the manner provided by the Certificate of Incorporation and applicable law. The term of each director shall continue until the election and qualification of his or her successor and be subject to his or her earlier death, resignation, disqualification or removal. For the avoidance of doubt, no decrease in the number of directors constituting the Board shall shorten the term of any incumbent director.

2.5 Quorum. The greater of (a) a majority of the directors at any time in office and (b) one-third of the number of directors established by the Board pursuant to Section 2.2 of these Bylaws shall constitute a quorum of the Board. If at any meeting of the Board there shall be less than a quorum, a majority of the directors present may adjourn the meeting from time to time without further notice other than announcement at the meeting, until a quorum shall be present.

2.6 Action at Meeting. Every act or decision done or made by a majority of the directors present at a meeting duly held at which a quorum is present shall be regarded as the act of the Board, unless a greater number is required by law, the Certificate of Incorporation or these Bylaws.

2.7 Removal. Directors of the Corporation may only be removed in the manner specified by the Certificate of Incorporation.

2.8 Newly Created Directorships; Vacancies. Any newly created directorship or vacancy on the Board, however occurring, shall be filled in accordance with the Certificate of Incorporation and applicable law.

2.9 Resignation. Any director may resign by delivering a resignation in writing or by electronic transmission to the Corporation. Such resignation shall be effective upon delivery unless it is specified to be effective at some later time or upon the happening of some later event.

2.10 Regular Meetings. Regular meetings of the Board may be held without notice at such time and place as shall be determined from time to time by the Board; provided that any director who is absent when such a determination is made shall be given notice of the determination. A regular meeting of the Board may be held without notice immediately after and at the same place as the annual meeting of stockholders.

2.11 Special Meetings. Special meetings of the Board may be called by the Chairperson of the Board, the Chief Executive Officer, the affirmative vote of a majority of the directors then in office, or by one director in the event that there is only a single director in office.

2.12 Notice of Special Meetings. Notice of the date, place and time of any special meeting of the Board shall be given to each director (a) in person or by telephone at least twenty-four (24) hours in advance of the meeting, (b) by sending written notice by reputable overnight courier, telecopy, facsimile, electronic mail or other means of electronic transmission, or delivering written notice by hand, to such director's last known business, home or means of electronic transmission address at least twenty-four (24) hours in advance of the meeting, or (c) by sending written notice by first-class mail to such director's last known business or home address at least seventy-two (72) hours in advance of the meeting. Such notice may be given by the Secretary or by the Chairperson of the Board, the Chief Executive Officer or one of the directors calling the meeting. A notice or waiver of notice of a meeting of the Board need not specify the purposes of the meeting.

2.13 Meetings by Conference Communications Equipment. Directors may participate in meetings of the Board or any committee thereof by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation by such means shall constitute presence in person at such meeting.

2.14 Action by Consent. Any action required or permitted to be taken at any meeting of the Board or of any committee thereof may be taken without a meeting, if all members of the Board or committee, as the case may be, consent to the action in writing or by electronic transmission.

2.15 Committees. The Board may designate one or more committees, each committee to consist of one or more of the directors of the Corporation with such lawfully delegable powers and duties as the Board thereby confers, to serve at the pleasure of the Board. The Board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of a committee, the member or members of the committee present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another member of the Board to act at the meeting in the place of any such absent or disqualified member. Any such committee, to the extent provided in the resolution of the Board and subject to the provisions of law, shall have and may exercise all the powers and authority of the Board in the management of the business and affairs of the Corporation and may authorize the seal of the Corporation to be affixed to all papers which may require it. Each such committee shall keep minutes and make such reports as the Board may from time to time request. Except as otherwise provided in the Certificate of Incorporation, these Bylaws, or the resolution of the Board designating the committee, a committee may create one or more subcommittees, each subcommittee to consist of one or more members of the committee, and delegate to a subcommittee any or all of the powers and authority of the committee.

2.16 Compensation of Directors. Directors may be paid such compensation for their services and such reimbursement for expenses of attendance at meetings as the Board may from time to time determine. No such payment shall preclude any director from serving the Corporation or any of its parent or subsidiary entities in any other capacity and receiving compensation for such service.

### **ARTICLE III**

#### **OFFICERS**

3.1 Titles. The officers of the Corporation may consist of a Chief Executive Officer, a President, a Chief Financial Officer, a Treasurer and a Secretary and such other officers with such other titles as the Board shall from time to time determine. The Board may appoint such other officers, including one or more Vice Presidents and one or more Assistant Treasurers or Assistant Secretaries, as it may deem appropriate from time to time.

3.2 Election. The Chief Executive Officer, President, Treasurer and Secretary shall be elected annually by the Board at its first meeting following the annual meeting of stockholders. Other officers may be appointed by the Board at such meeting or at any other meeting.

3.3 Qualification. No officer need be a stockholder. Any two or more offices may be held by the same person.

3.4 Tenure. Except as otherwise provided by law, by the Certificate of Incorporation or by these Bylaws, each officer shall hold office until such officer's successor is duly elected and qualified, unless a different term is specified in the resolution electing or appointing such officer, or until such officer's earlier death, resignation, disqualification or removal.

3.5 Resignation and Removal. Any officer may resign by delivering a resignation in writing or by electronic transmission to the Corporation. Such resignation shall be effective upon receipt unless it is specified to be effective at some later time or upon the happening of some later event. Any officer may be removed at any time, with or without cause, by the affirmative vote of a majority of the directors then in office. Except as the Board may otherwise determine, no officer who resigns or is removed shall have any right to any compensation as an officer for any period following such officer's resignation or removal, or any right to damages on account of such removal, whether such officer's compensation be by the month or by the year or otherwise, unless such compensation is expressly provided for in a duly authorized written agreement with the Corporation.

3.6 Vacancies. The Board may fill any vacancy occurring in any office. Each such successor shall hold office for the unexpired term of such officer's predecessor and until a successor is duly elected and qualified, or until such officer's earlier death, resignation, disqualification or removal.

3.7 President; Chief Executive Officer. Unless the Board has designated another person as the Corporation's Chief Executive Officer, the President shall be the Chief Executive Officer of the Corporation. The Chief Executive Officer shall have general charge and supervision of the business of the Corporation subject to the direction of the Board, and shall perform all duties and have all powers that are commonly incident to the office of chief executive or that are delegated to such officer by the Board. The President shall perform such other duties and shall have such other powers as the Board or the Chief Executive Officer (if the President is not the Chief Executive Officer) may from time to time prescribe. In the event of the absence, inability or refusal to act of the Chief Executive Officer or the President (if the President is not the Chief Executive Officer), the Vice President (or if there shall be more than one, the Vice Presidents in the order determined by the Board) shall perform the duties of the Chief Executive Officer and when so performing such duties shall have all the powers of and be subject to all the restrictions upon the Chief Executive Officer.

3.8 Vice Presidents. Each Vice President shall perform such duties and possess such powers as the Board or the Chief Executive Officer may from time to time prescribe. The Board may assign to any Vice President the title of Executive Vice President, Senior Vice President or any other title selected by the Board.

3.9 Secretary and Assistant Secretaries. The Secretary shall perform such duties and shall have such powers as the Board or the Chief Executive Officer may from time to time prescribe. In addition, the Secretary shall perform such duties and have such powers as are incident to the office of the secretary, including without limitation the duty and power to give notices of all meetings of stockholders and special meetings of the Board, to attend all meetings of stockholders and the Board and keep a record of the proceedings, to maintain a stock ledger and prepare lists of stockholders and their addresses as required, to be custodian of corporate records and the corporate seal and to affix and attest to the same on documents.

Any Assistant Secretary shall perform such duties and possess such powers as the Board, the Chief Executive Officer or the Secretary may from time to time prescribe. In the event of the absence, inability or refusal to act of the Secretary, the Assistant Secretary (or if there shall be more than one, the Assistant Secretaries in the order determined by the Board) shall perform the duties and exercise the powers of the Secretary.

In the absence of the Secretary or any Assistant Secretary at any meeting of stockholders or directors, the chairperson of the meeting shall designate a temporary secretary to keep a record of the meeting.

3.10 Treasurer and Assistant Treasurers. The Treasurer shall perform such duties and shall have such powers as may from time to time be assigned by the Board or the Chief Executive Officer. In addition, the Treasurer shall perform such duties and have such powers as are incident to the office of treasurer, including without limitation the duty and power to keep and be responsible for all funds and securities of the Corporation, to deposit funds of the Corporation in depositories selected in accordance with these Bylaws, to disburse such funds as ordered by the Board, to make proper accounts of such funds, and to render as required by the Board statements of all such transactions and of the financial condition of the Corporation.

The Assistant Treasurers shall perform such duties and possess such powers as the Board, the Chief Executive Officer or the Treasurer may from time to time prescribe. In the event of the absence, inability or refusal to act of the Treasurer, the Assistant Treasurer (or if there shall be more than one, the Assistant Treasurers in the order determined by the Board) shall perform the duties and exercise the powers of the Treasurer.

3.11 Salaries. Officers of the Corporation shall be entitled to such salaries, compensation or reimbursement as shall be fixed or allowed from time to time by the Board.

3.12 Delegation of Authority. Subject to these Bylaws and any contrary action by the Board, each officer of the Corporation shall have, in addition to the duties and powers specifically set forth in these Bylaws, such duties and powers as are customarily incident to his or her office, and such duties and powers as may be designated from time to time by the Board. In addition, the Board may from time to time delegate the powers or duties of any officer to any other officer or agent, notwithstanding any provision hereof.

## ARTICLE IV

### CAPITAL STOCK

4.1 Stock Certificates; Uncertificated Shares. The shares of the Corporation shall be represented by certificates, provided that the Board may provide by resolution or resolutions that some or all of any or all classes or series of the Corporation's stock shall be uncertificated shares. Any such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the Corporation. Every holder of stock of the Corporation represented by certificates shall be entitled to have a certificate, in such form as may be prescribed by law and by the Board, representing the number of shares held by such holder registered in certificate form. Each such certificate shall be signed in a manner that complies with Section 158 of the DGCL, and each officer appointed pursuant to Article III shall be an authorized officer for this purpose.

Each certificate for shares of stock which are subject to any restriction on transfer pursuant to the Certificate of Incorporation, these Bylaws, applicable securities laws or any agreement among any number of stockholders or among such holders and the Corporation shall have conspicuously noted on the face or back of the certificate either the full text of the restriction or a statement of the existence of such restriction.

If the Corporation shall be authorized to issue more than one class of stock or more than one series of any class, the powers, designations, preferences and relative participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights shall be set forth in full or summarized on the face or back of each certificate representing shares of such class or series of stock, provided that in lieu of the foregoing requirements there may be set forth on the face or back of each certificate representing shares of such class or series of stock a statement that the Corporation will furnish without charge to each stockholder who so requests the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights.

Within a reasonable time after the issuance or transfer of uncertificated shares, the registered owner thereof shall be given a notice, in writing or by electronic transmission, containing the information required to be set forth or stated on certificates pursuant to Sections 151, 156, 202(a) or 218(a) of the DGCL or, with respect to Section 151 of the DGCL, a statement that the Corporation will furnish without charge to each stockholder who so requests the powers, designations, preferences and relative participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights.

4.2 Transfers. Shares of stock of the Corporation shall be transferable in the manner prescribed by law, the Certificate of Incorporation and in these Bylaws. Transfers of shares of stock of the Corporation shall be made only on the books of the Corporation or by transfer agents designated to transfer shares of stock of the Corporation. Subject to applicable law, shares of stock represented by certificates shall be transferred only on the books of the Corporation by the surrender to the Corporation or its transfer agent of the certificate representing such shares properly endorsed or accompanied by a written assignment or power of attorney properly executed, and with such proof of authority or the authenticity of signature as the Corporation or its transfer agent may reasonably require. Except as may be otherwise required by law, by the Certificate of Incorporation or by these Bylaws, the Corporation shall be entitled to treat the record holder of stock as shown on its books as the owner of such stock for all purposes, including the payment of dividends and the right to vote with respect to such stock, regardless of any transfer, pledge or other disposition of such stock until the shares have been transferred on the books of the Corporation in accordance with the requirements of these Bylaws.

4.3 Lost, Stolen or Destroyed Certificates. The Corporation may issue a new certificate or uncertificated shares in place of any previously issued certificate alleged to have been lost, stolen or destroyed, upon such terms and conditions as the Board may prescribe, including the presentation of reasonable evidence of such loss, theft or destruction and the giving of such indemnity and posting of such bond sufficient to indemnify the Corporation against any claim that may be made against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new certificate or uncertificated shares.

4.4 Record Date. The Board may fix in advance a date as a record date for the determination of the stockholders entitled to notice of any meeting of stockholders, or entitled to receive payment of any dividend or other distribution or allotment of any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action. Such record date shall not precede the date on which the resolution fixing the record date is adopted, and such record date shall not be more than sixty (60) nor less than ten (10) days before the date of such meeting, nor more than sixty (60) days prior to any other action to which such record date relates. If the Board so fixes a record date for determining the stockholders entitled to notice of any meeting of stockholders, such date shall also be the record date for determining the stockholders entitled to vote at such meeting unless the Board determines, at the time it fixes such record date, that a later date on or before the date of the meeting shall be the date for making such determination.

If no record date is fixed, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day before the day on which notice is given, or, if notice is waived, at the close of business on the day before the day on which the meeting is held. If no record date is fixed, the record date for determining stockholders for any other purpose shall be at the close of business on the day on which the Board adopts the resolution relating to such purpose.

A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board may fix a new record date for determination of stockholders entitled to vote at the adjourned meeting, and in such case shall also fix as the record date for stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote in accordance herewith at the adjourned meeting.

4.5 Regulations. The issue, conversion and registration of shares of stock of the Corporation shall be governed by such other regulations as the Board may establish.

## ARTICLE V

### GENERAL PROVISIONS

5.1 Fiscal Year. Except as from time to time otherwise designated by the Board, the fiscal year of the Corporation shall begin on the first day of January of each year and end on the last day of December in each year.

5.2 Corporate Seal. The corporate seal shall be in such form as shall be approved by the Board.

5.3 Waiver of Notice. Whenever notice is required to be given by law, by the Certificate of Incorporation or by these Bylaws, a written waiver signed by the person entitled to notice, or a waiver by electronic transmission by the person entitled to notice, whether before, at or after the time of the event for which notice is to be given, shall be deemed equivalent to notice required to be given to such person. Neither the business nor the purpose of any meeting need be specified in any such waiver. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

5.4 Voting of Securities. Except as the Board may otherwise designate, the Chief Executive Officer, the President, the Chief Financial Officer or the Treasurer may waive notice, vote, consent, or appoint any person or persons to waive notice, vote or consent, on behalf of the Corporation, and act as, or appoint any person or persons to act as, proxy or attorney-in-fact for the Corporation (with or without power of substitution and re-substitution), with respect to the securities of any other entity which may be held by the Corporation.

5.5 Evidence of Authority. A certificate by the Secretary, or an Assistant Secretary, or a temporary Secretary, as to any action taken by the stockholders, directors, a committee or any officer or representative of the Corporation shall as to all persons who rely on the certificate in good faith be conclusive evidence of such action.

5.6 Certificate of Incorporation. All references in these Bylaws to the Certificate of Incorporation shall be deemed to refer to the Certificate of Incorporation of the Corporation, as amended and/or restated and in effect from time to time, including any certificate of designation relating to any outstanding series of preferred stock.

5.7 Severability. Any determination that any provision of these Bylaws is for any reason inapplicable, illegal or ineffective shall not affect or invalidate any other provision of these Bylaws.

5.8 Pronouns. All pronouns used in these Bylaws shall be deemed to refer to the masculine, feminine or neuter, singular or plural, as the identity of the person or persons may require.

5.9 Electronic Transmission. For purposes of these Bylaws, “electronic transmission” means any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved, and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process.

## ARTICLE VI

### AMENDMENTS

These Bylaws may be altered, amended or repealed, in whole or in part, or new Bylaws may be adopted by the Board or by the stockholders as expressly provided in the Certificate of Incorporation.



## ARTICLE VII

### INDEMNIFICATION AND ADVANCEMENT

7.1 Power to Indemnify in Actions, Suits or Proceedings other than Those by or in the Right of the Corporation. Subject to Section 7.3, the Corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Corporation) by reason of the fact that such person is or was a director or officer of the Corporation, or, while a director or officer of the Corporation, is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe such person's conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which such person reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that such person's conduct was unlawful.

7.2 Power to Indemnify in Actions, Suits or Proceedings by or in the Right of the Corporation. Subject to Section 7.3, the Corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that such person is or was a director or officer of the Corporation, or, while a director or officer of the Corporation, is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Corporation; except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the Corporation unless and only to the extent that the Court of Chancery or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity by the Corporation for such expenses which the Court of Chancery or such other court shall deem proper.

7.3 Authorization of Indemnification. Any indemnification under this Article VII (unless ordered by a court) shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification of the director or officer is proper in the circumstances because such person has met the applicable standard of conduct set forth in Section 7.1 or Section 7.2, as the case may be. Such determination shall be made, with respect to a person who is a director or officer at the time of such determination, (i) by a majority vote of the directors who are not parties to such action, suit or proceeding, even though less than a quorum, or (ii) by a committee of such directors designated by a majority vote of such directors, even though less than a quorum, or (iii) if there are no such directors, or if such directors so direct, by independent legal counsel in a written opinion or (iv) by the stockholders. Such determination shall be made, with respect to former directors and officers, by any person or persons having the authority to act on the matter on behalf of the Corporation. To the extent, however, that a present or former director or officer of the Corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding set forth in Section 7.1 or Section 7.2 or in defense of any claim, issue or matter therein, such person shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection therewith, without the necessity of authorization in the specific case.

7.4 Good Faith Defined. For purposes of any determination under Section 7.3, a person shall, to the fullest extent permitted by law, be deemed to have acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Corporation, or, with respect to any criminal action or proceeding, to have had no reasonable cause to believe such person's conduct was unlawful, if such person's action is based on good faith reliance on the records or books of account of the Corporation or another enterprise, or on information supplied to such person by the officers of the Corporation or another enterprise in the course of their duties, or on the advice of legal counsel for the Corporation or another enterprise or on information or records given or reports made to the Corporation or another enterprise by an independent certified public accountant or by an appraiser or other expert selected with reasonable care by the Corporation or another enterprise. The term "another enterprise" as used in this Section 7.4 shall mean any other corporation or any partnership, joint venture, trust, employee benefit plan or other enterprise of which such person is or was serving at the request of the Corporation as a director, officer, employee or agent. The provisions of this Section 7.4 shall not be deemed to be exclusive or to limit in any way the circumstances in which a person may be deemed to have met the applicable standard of conduct set forth in Sections 7.1 or 7.2, as the case may be.

7.5 Right of Claimant to Bring Suit. Notwithstanding any contrary determination in the specific case under Section 7.3, and notwithstanding the absence of any determination thereunder, if (i) following the final disposition of the applicable proceeding, a claim for indemnification under Sections 7.1 or 7.2 of this Article VII is not paid in full by the Corporation within ninety (90) days after the later of a written claim for indemnification has been received by the Corporation, or (ii) a claim for advancement of expenses under Section 7.6 of this Article VII is not paid in full by the Corporation within thirty (30) days after the Corporation has received a statement or statements requesting such amounts to be advanced, the claimant may at any time thereafter (but not before) bring suit against the Corporation in the Court of Chancery in the State of Delaware to recover the unpaid amount of the claim, together with interest thereon, or to obtain advancement of expenses, as applicable. It shall be a defense to any such action brought to enforce a right to indemnification (but not in an action brought to enforce a right to an advancement of expenses) that the claimant has not met the standards of conduct which make it permissible under the DGCL (or other applicable law) for the Corporation to indemnify the claimant for the amount claimed, but the burden of proving such defense shall be on the Corporation. Neither a contrary determination in the specific case under Section 7.3 nor the absence of any determination thereunder shall be a defense to such application or create a presumption that the claimant has not met any applicable standard of conduct. If successful, in whole or in part, the claimant shall also be entitled to be paid the expense of prosecuting such claim, including reasonable attorneys' fees incurred in connection therewith, to the fullest extent permitted by applicable law.

7.6 Expenses Payable in Advance. Expenses, including without limitation attorneys' fees, incurred by a current or former director or officer in defending any civil, criminal, administrative or investigative action, suit or proceeding to which such person is a party or is threatened to be made a party or otherwise involved as a witness or otherwise by reason of the fact that such person is or was a director or officer of the Corporation, or, while a director or officer of the Corporation, is or was serving at the request of the Corporation as a director, officer, employee or agent of another Corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, shall be paid by the Corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such current or former director or officer to repay such amount if it shall ultimately be determined that such person is not entitled to be indemnified by the Corporation as authorized in this Article VII or otherwise.

7.7 Nonexclusivity of Indemnification and Advancement of Expenses. The rights to indemnification and advancement of expenses provided by or granted pursuant to this Article VII shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under the Certificate of Incorporation, any agreement, vote of stockholders or disinterested directors or otherwise, both as to action in such person's official capacity and as to action in another capacity while holding such office, it being the policy of the Corporation that, subject to Section 7.11, indemnification of the persons specified in Sections 7.1 and 7.2 shall be made to the fullest extent permitted by law. The provisions of this Article VII shall not be deemed to preclude the indemnification of any person who is not specified in Sections 7.1 or 7.2 but whom the Corporation has the power or obligation to indemnify under the provisions of the DGCL, or otherwise.

7.8 Insurance. The Corporation may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise against any liability asserted against such person and incurred by such person in any such capacity, or arising out of such person's status as such, whether or not the Corporation would have the power or the obligation to indemnify such person against such liability under the provisions of this Article VII.

7.9 Certain Definitions. For purposes of this Article VII, references to "the Corporation" shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, employees or agents so that any person who is or was a director or officer of such constituent corporation, or, while a director or officer of such constituent corporation, is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, shall stand in the same position under the provisions of this Article VII with respect to the resulting or surviving corporation as such person would have with respect to such constituent corporation if its separate existence had continued. For purposes of this Article VII, references to "fines" shall include any excise taxes assessed on a person with respect to any employee benefit plan; and references to "serving at the request of the Corporation" shall include any service as a director, officer, employee or agent of the Corporation which imposes duties on, or involves services by, such director, officer, employee or agent with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner such person reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner "not opposed to the best interests of the Corporation" as referred to in this Article VII.

7.10 Survival of Indemnification and Advancement of Expenses. The indemnification and advancement of expenses provided by, or granted pursuant to, this Article VII shall continue as to a person who has ceased to be a director or officer and shall inure to the benefit of the heirs, executors and administrators of such a person.

7.11 Limitation on Indemnification. Notwithstanding anything contained in this Article VII to the contrary, except for proceedings to enforce rights to indemnification or advancement of expenses (which shall be governed by Section 7.5), the Corporation shall not be obligated to indemnify any current or former director or officer in connection with an action, suit proceeding (or part thereof) initiated by such person unless such action, suit or proceeding (or part thereof) was authorized by the Board.

7.12 Contract Rights. The obligations of the Corporation under this Article VII to indemnify, and advance expenses to, a person who is or was a director or officer of the Corporation shall be considered a contract between the Corporation and such person, and no modification or repeal of any provision of this Article VII shall affect, to the detriment of such person, such obligations of the Corporation in connection with a claim based on any act or failure to act occurring before such modification or repeal.

**DESCRIPTION OF SECURITIES**

As of the date of the Annual Report on Form 10-K of which this exhibit is a part, Nxu, Inc. (“Nxu,” the “Company,” “we,” “our” or “us”) has one class of security registered under Section 12 of the Securities Exchange Act of 1934, as amended: our Class A common stock, par value \$0.0001 per share (“Class A common stock”). The following summary of the material terms of Nxu’s Class A common stock is not intended to be a complete summary of the rights and preferences of such securities. Nxu’s Class A common stock is governed by Nxu’s Certificate of Incorporation, Bylaws and the Delaware General Corporation Law (“DGCL”). We urge you to read the Certificate of Incorporation and Bylaws in its entirety for a complete description of the rights and preferences of Nxu’s Class A common stock.

**General**

Nxu’s Certificate of Incorporation authorizes the issuance of 5,010,000,000 shares, consisting of (x) 5,000,000,000 authorized shares of common stock, including (1) 4,000,000,000 authorized shares of Class A common stock, (2) 1,000,000,000 authorized shares of Class B common stock and (y) 10,000,000 authorized shares of preferred stock, par value \$0.0001 per share.

As of March 28] 2024, there were 11,930,986 shares of Class A common stock outstanding, 252,503 shares of Class B common stock outstanding and 1,000 shares of Series A Convertible Preferred Stock outstanding.

**Common Stock***Voting Rights*

Each holder of Class A common stock, as such, shall have the right to one (1) vote per share of Class A common stock held of record by such holder and each holder of Class B common stock, as such, shall have the right to ten (10) votes per share of Class B common stock held of record by such holder. There are no cumulative voting rights.

*Dividend Rights*

The holders of shares of Class A common stock and the holders of shares of Class B common stock shall be entitled to receive, ratably in proportion to the number of shares of Class A common stock or Class B common stock, respectively, with respect to any dividends or distributions as may be declared and paid from time to time by Nxu; provided, however, that in the event a dividend is paid in the form of shares of Class A common stock or Class B Common Stock, then holders of Class A common stock shall be entitled to receive shares of Class A common stock, and holders of Class B common stock shall be entitled to receive shares of Class B common stock, with holders of shares of Class A common stock and Class B common stock receiving, on a per share basis, an identical number of shares of Class A common stock or Class B common stock, as applicable.

*Liquidation Rights*

Subject to the rights of any then outstanding preferred stock which ranks senior to common stock, in the event of a liquidation, dissolution or winding up of Nxu, the holders of Class A common stock will be entitled to receive, after payment or provision for payment of all of its debts and liabilities, all of the assets of Nxu legally available for distribution to stockholders.

The holders of shares of Class B common stock, as such, shall not be entitled to receive any assets of Nxu in the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of Nxu.

*Other Rights*

There are no conversion rights or redemption, purchase, retirement or sinking fund provisions with respect to the common stock.

*Anti-Takeover Effects of Delaware Law and Certificate of Incorporation and Bylaws*

Delaware law, the Certificate of Incorporation and Bylaws contain provisions that could have the effect of delaying, deferring or discouraging another party from acquiring control of Nxu. These provisions are expected to discourage coercive takeover practices and inadequate takeover bids. These provisions are also designed to encourage persons seeking to acquire control of Nxu to first negotiate with the Board.

*Board of Directors; Removal of Directors*

The Certificate of Incorporation and Bylaws provide that a director may be removed with or without cause and only by the affirmative vote of the holders of at least two-thirds of the votes that all the stockholders would be entitled to cast in an election of directors. Any vacancy on the Board, including a vacancy resulting from an enlargement of the Board, may be filled only by the affirmative vote of a majority of the votes cast in favor or against the election of a nominee at a meeting of stockholders. At each annual meeting, the entire board will stand for election for a one-year term. The limitations on the removal of directors and filling of vacancies could make it more difficult for a third party to acquire, or discourage a third party from seeking to acquire, control of Nxu.

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### *Stockholder Action by Written Consent; Special Meetings*

The Certificate of Incorporation provides that any action required or permitted to be taken by stockholders must be effected at a duly called annual or special meeting of such holders and may not be effected by any consent in writing by such holders. The Certificate of Incorporation and Bylaws also provide that, except as otherwise required by law, special meetings of stockholders can only be called by the chairman of the board, chief executive officer or board of directors.

### *Advance Notice Requirements for Stockholder Proposals*

The Bylaws establish an advance notice procedure for stockholder proposals to be brought before an annual meeting of stockholders, including proposed nominations of persons for election to the Board. Stockholders at an annual meeting may only consider proposals or nominations specified in the notice of meeting or brought before the meeting by or at the direction of the Board or by a stockholder of record on the record date for the meeting, who is entitled to vote at the meeting and who has delivered timely written notice in proper form to the secretary of the stockholder's intention to bring such business before the meeting. This written notice must contain certain information specified in the Bylaws. These provisions could have the effect of delaying until the next stockholder meeting stockholder actions that are favored by the holders of a majority of outstanding voting securities.

### *Delaware Business Combination Statute*

Nxu has opted out of Section 203 of the DGCL.

### *Amendment of Certificate of Incorporation and Bylaws*

The DGCL provides generally that the affirmative vote of a majority of the shares entitled to vote on any matter is required to amend a corporation's certificate of incorporation or bylaws, unless a corporation's certificate of incorporation or bylaws, as the case may be, requires a greater percentage. The Bylaws may be amended or repealed by a majority vote of the Board or by the affirmative vote of the holders of at least two-thirds of the votes which all stockholders would be entitled to cast in any election of directors. The Certificate of Incorporation may be amended by the affirmative vote of a majority of the directors present at any regular or special meeting of the Board at which a quorum is present in any manner not inconsistent with the laws of the State of Delaware.

### *Exclusive Forum Provisions*

Our Certificate of Incorporation requires that, unless we consent in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware (or, if that court lacks subject matter jurisdiction, another federal or state court situated in the State of Delaware) will be the sole and exclusive forum for (i) any derivative action or proceeding brought on behalf of our business, (ii) any action asserting a claim of breach of a duty owed by any director, officer, employee, agent or stockholder of ours to us or our stockholders, (iii) any action asserting a claim arising pursuant to any provision of the DGCL or (iv) any action asserting a claim governed by the internal affairs doctrine. In addition, our Certificate of Incorporation requires that, unless we consent in writing to the selection of an alternative forum, the federal district courts of the United States will be the exclusive forum for the resolution of any action, suit or proceeding asserting a cause of action arising under the Securities Act. These forum selection provisions will not apply to claims arising under the Exchange Act or other federal securities laws for which there is exclusive federal jurisdiction. Any person or entity purchasing or otherwise acquiring or holding any interest in shares of our capital stock is deemed to have notice of and consented to the foregoing provisions.

### *Rule 144*

Pursuant to Rule 144, a person who has beneficially owned restricted shares of Nxu's voting common stock for at least six months would be entitled to sell their securities provided that (i) such person is not deemed to have been one of Nxu's affiliates at the time of, or at any time during the three months preceding, a sale and (ii) Nxu is subject to the Exchange Act periodic reporting requirements for at least three months before the sale and has filed all required reports under Section 13 or 15(d) of the Exchange Act during the twelve months (or such shorter period as Nxu was required to file reports) preceding the sale.

Persons who have beneficially owned restricted shares of Nxu's voting common stock for at least six months but who are Nxu's affiliates at the time of, or at any time during the three months preceding, a sale, would be subject to additional restrictions, by which such person would be entitled to sell within any three-month period only a number of securities that does not exceed the greater of:

- 1% of the total number of shares of such securities then-outstanding; or
  - the average weekly reported trading volume of such securities during the four calendar weeks preceding the filing of a notice on Form 144 with respect to the sale.
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Sales by Nxu's affiliates under Rule 144 are also limited by manner of sale provisions and notice requirements and to the availability of current public information about us.

#### *Listing of Securities*

Nxu's Class A common stock is listed for trading on Nasdaq under the symbol "NXU."

#### *Transfer Agent*

The transfer agent for our Class A common stock is American Stock Transfer & Trust Company, LLC. We have agreed to indemnify American Stock Transfer & Trust Company, LLC in its role as transfer agent, its agents and each of its stockholders, directors, officers and employees against all liabilities, including judgments, costs and reasonable counsel fees that may arise out of acts performed or omitted for its activities in that capacity, except for any liability due to any gross negligence, willful misconduct or bad faith of the indemnified person or entity.

#### **Preferred Stock**

Our board of directors is authorized, subject to limitations prescribed by Delaware law, to issue up to 10,000,000 shares of preferred stock in one or more series, and in connection with the creation of any such series, by adopting a resolution or resolutions providing for the issuance of the shares thereof and by filing a certificate of designations relating thereto in accordance with the DGCL, to determine and fix the number of shares of such series and such voting powers, full or limited, or no voting powers, and such designations, preferences and relative participating, optional or other special rights, and qualifications, limitations or restrictions thereof, including without limitation thereof, dividend rights, conversion rights, redemption privileges and liquidation preferences, as shall be stated and expressed in such resolutions, all to the full extent now or hereafter permitted by the DGCL. Any shares of preferred stock which may be redeemed, purchased or acquired by the Company may be reissued except as otherwise provided by law. Our board of directors can increase or decrease the number of shares of any series (but not below the number of shares of that series then outstanding) by the affirmative vote of the holders of capital stock representing a majority of the voting power of all the then-outstanding shares of capital stock of the Company entitled to vote thereon. Our board of directors may authorize the issuance of preferred stock with voting or conversion rights that could adversely affect the voting power or other rights of the holders of the common stock. The issuance of preferred stock, while providing flexibility in connection with possible acquisitions and other corporate purposes, could, among other things, have the effect of delaying, deferring or preventing a change in control of the Company and may adversely affect the market price of our Class A common stock and the voting and other rights of the holders of our Class A common stock.

#### *Series A Preferred Stock*

On December 22, 2023, the Company filed a Certificate of Designations of Series A Convertible Preferred Stock (the "Certificate of Designations") with the Secretary of State of the State of Delaware, which sets forth the rights, preferences, and privileges of the Series A Preferred Stock. Five thousand (5,000) shares of Series A Preferred Stock, with a stated value of \$3,000 per share (the "Stated Value"), were authorized under the Certificate of Designations.

Each share of Series A Preferred Stock is convertible, without the payment of any additional consideration by the holder thereof, into a number of shares of Class A Common Stock as is determined by dividing the Stated Value by the Series A Conversion Price (as defined in the Certificate of Designations) in effect at the time of conversion and then multiplying such quotient by the number of shares of Series A Preferred Stock to be converted. The Company may not effect the conversion of any shares of Series A Preferred Stock if, after giving effect to the conversion or issuance, the holder, together with its affiliates, would beneficially own more than 19.99% of the outstanding common stock or voting power of the Company, unless and until the Company receives the approval of stockholders ("Stockholder Approval") required by the applicable rules and regulations of Nasdaq.

All outstanding shares of Series A Preferred Stock will automatically convert into shares of Class A Common Stock, at the then-effective conversion rate, on the first trading day immediately following the effective date of any Stockholder Approval.

Other than those rights provided by law, the holders of Series A Preferred Stock will not have any voting rights.

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April 28, 2023

Sarah Wyant

Re: Offer of Employment

Dear Sarah:

On behalf of Atlis Motor Vehicles (the "**Company**"), I am pleased to offer you the position of VP, Finance located in Mesa. This letter sets forth the terms and conditions of your employment with the Company. It is important that you understand clearly both what your benefits are and what the Company expects of you. By signing this letter, you will be accepting employment on the following terms.

1. **Effective Date.** Your employment will commence on May 15, 2023 (the "**Effective Date**"). Your job title will be VP, Finance, reporting to Apoorv S Dwivedi, CFO.
  2. **Compensation.** This is an exempt position and you will be paid \$190,000 per year in accordance with the Company's normal payroll procedures. Subject to the Company's current annual performance review process, you may be eligible for an increase of your base compensation if your annual performance reviews are favorable.
  3. **Sign-On Long-Term Incentive:** Subject to your continued service as an employee through vesting periods, you are eligible to receive grant of restricted stock units with a fair value of \$190,000 ("Long Term Equity Incentive" or "LTEI") vested over a period of four years, to be granted on a grant date in the near future. The Long-Term Equity Incentive is subject to (a) corporate reorganization to parent public holding company Atlis, Inc. or another named public holding company ("Pubco"); (b) the Pubco's stockholders approving the Omnibus Equity Compensation Plan ("**Stockholder Approval**") and (c) approval of the terms and conditions of such award by the Committee ("**Committee Approval**"). In order to receive the LTEI grant, you must remain in service as an employee of the Company or its affiliates through the dates of Stockholder Approval and Committee Approval. The LTEI grant will vest over a three-year period in percentages of 25% after years one and two, 50% after year three, and will be subject to the Omnibus Equity Compensation Plan and the RSU Grant award agreement. For these purposes, the term "Committee" means the board of directors or its delegate, as provided under the equity incentive plan (the "**Omnibus Equity Compensation Plan**") intended to be adopted by the Company, its parent or subsidiary, or its successor. If you separate from the Company for any reason, you will forfeit all unvested equity. LTEI grants are not subject to pro ration for months of service.
  4. **Sign-On Equity:** Subject to your continued service as an employee through vesting periods, you are eligible to receive grant of restricted stock units with a fair value of \$10,000 vested annually on your start date, to be granted at the first board meeting following your start date. The bonus is subject to (a) corporate reorganization to parent public holding company Atlis, Inc. or another named public holding company ("Pubco"); (b) the Pubco's stockholders approving the Omnibus Equity Compensation Plan ("**Stockholder Approval**") and (c) approval of the terms and conditions of such award by the Committee ("**Committee Approval**"). In order to receive the Sign-on grant, you must remain in service as an employee of the Company or its affiliates through the dates of Stockholder Approval and Committee Approval. The Sign-on grant will be subject to the Omnibus Equity Compensation Plan and the RSU Grant award agreement. For these purposes, the term "Committee" means the board of directors or its delegate, as
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provided under the equity incentive plan (the "Omnibus Equity Compensation Plan") intended to be adopted by the Company, its parent or subsidiary, or its successor. If you separate from the Company for any reason, you will forfeit all unvested equity. All grants are not subject to pro ration for months of service.

5. Employee Benefits. You will be eligible to participate in Company-sponsored benefits, including health benefits, paid holidays and other benefits that the Company may offer to similarly situated employees from time to time. Your eligibility to receive such benefits will be subject in each case to the generally applicable terms and conditions for the benefits in question and to the determinations of any person or committee administering such benefits. The Company may from time to time, in its sole discretion, amend or terminate the benefits available to employees. You will be covered by worker's compensation insurance, state disability insurance and other governmental benefit programs as required by state law.
  6. At-Will Employment. Your employment with the Company is "at-will." In other words, either you or the Company can terminate your employment at any time for any reason, with or without cause and with or without notice, without liability except as expressly set forth in this letter. No representative of the Company has authority to enter into any agreement contrary to the foregoing "employment at will" relationship.
  7. Adjustments and Changes in Employment Status. The Company reserves the right to make personnel decisions regarding your employment, including but not limited to decisions regarding any transfers or other changes in duties or assignments, changes in your salary and other compensation, changes in benefits and changes in Company policies or procedures.
  8. Non-Disclosure Agreement ("NDA"). You will be required to sign and abide by the terms of the enclosed NDA prior to beginning employment, indicating your full agreement to, and ongoing compliance with, the terms of that agreement, which include, among other provisions, the assignment of patent rights to any invention made during your employment at the Company, and non-disclosure of the Company's proprietary information.
  9. References and Immigration Documents. This offer is contingent upon satisfactory completion of all of our reference and background checks, and on your ability to prove your identity and authorization to work in the U.S. for the Company. You must comply with the United States Citizenship and Immigration Services employment verification requirements.
  10. No Conflicting Obligations. By execution of this letter, you represent and warrant that your performance of this letter does not and will not breach any agreement you have entered into, or will enter into, with any other party. You must disclose to the Company any and all agreements relating to your prior employment that may affect your eligibility to be employed by the Company or limit the manner in which you may be employed. It is the Company's understanding that any such agreements will not prevent you from performing the duties of your position and you represent that such is the case. Moreover, you agree that, during the term of your employment with the Company, you will not engage in any other employment, occupation, consulting, or other business activity directly related to the business in which the Company is now involved or becomes involved during the term of your employment, nor will you engage in any other activities that conflict with your obligations to the Company. Similarly, you agree not to bring any third-party confidential information to the Company, including that of any former employer, and that you will not in any way utilize any such information in performing your duties for the Company. By signing and accepting this offer, you represent and warrant that: (i) you are not subject to any pre-existing contractual or other legal obligation with any person, company or business enterprise which may be an impediment to, or a conflict of interest with, your employment with the Company, or your providing services to the Company as its employee; (ii) you do not have and shall not bring onto the Company's premises, or use in the course of your employment with the Company, any confidential or proprietary information of another person, company or business enterprise to whom you previously provided services; and (iii) you will not, at any time during your employment with the Company, breach any obligation or agreement that you have entered into with any third party, including your former employers. You agree not to enter into any written or oral agreement that conflicts with this letter.
  11. Integrated Agreement. This letter supersedes any prior agreements, representations or promises of any kind, whether written, oral, express or implied between the parties hereto with respect to its subject matter. Likewise, this letter will constitute the full, complete and exclusive agreement between you and the Company with respect to its subject matter. This Agreement may only be changed by a writing, signed by you and an authorized representative of the Company.
  12. Severability. If any term of this letter is held to be invalid, void or unenforceable, the remainder of the terms herein
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will remain in full force and effect and will in no way be affected, and the parties will use their best efforts to find an alternative way to achieve the same result.

13. Governing Law. The terms of this letter and the resolution of any dispute as to the meaning, effect, performance or validity of this letter or arising out of, related to, or in any way connected with, this letter, your employment with the Company or any other relationship between you and the Company (a "Dispute") will be governed by the laws of the State of Arizona, without giving effect to the principles of conflict of laws. You and the Company consent to the exclusive jurisdiction of, and venue in, the state or federal courts in Arizona.

This offer letter expires on May 3, 2023.

Sincerely,

Atlis Motor Vehicles



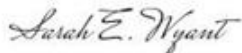
Katie Rogers Sieker

VP, People

04/28/2023

**Acknowledgment and Acceptance of Employment Offer**

I accept employment with Atlis Motor Vehicles and acknowledge and fully agree to the terms and conditions set forth in this offer letter:



Sarah Wyant

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**Consent of Independent Registered Public Accounting Firm**

We consent to the incorporation by reference in Registration Statement No. 333-272020 on Form S-8 and Registration Statement No. 333-275059 on Form S-3 of our report dated March 29, 2024, relating to the consolidated financial statements of Nxu, Inc. and Subsidiaries (which report expresses an unqualified opinion and includes an explanatory paragraph related to Nxu, Inc. and Subsidiaries's ability to continue as a going concern), appearing in the Annual Report on Form 10-K of Nxu, Inc. for the year ended December 31, 2023.

/s/ Prager Metis CPAs LLC

Hackensack, NJ

March 29, 2024

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**Certification of Principal Executive Officer Required by  
Rule 13a-14(a) of the Securities Exchange Act of 1934, as amended,  
as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002**

I, Mark Hanchett, certify that:

1. I have reviewed this annual report on Form 10-K of Nxu, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's Board of Directors (or persons performing the equivalent functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize, and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: April 1, 2024

By: /s/ Mark Hanchett  
Mark Hanchett  
Chief Executive Officer

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**Certification of Principal Financial Officer Required by  
Rule 13a-14(a) of the Securities Exchange Act of 1934, as amended,  
as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002**

I, Sarah Wyant, certify that:

1. I have reviewed this annual report on Form 10-K of Nxu, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's Board of Directors (or persons performing the equivalent functions):
  - a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize, and report financial information; and
  - b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: April 1, 2024

By: /s/ Sarah Wyant  
Sarah Wyant  
Interim Chief Financial Officer

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CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER AND PRINCIPAL FINANCIAL OFFICER  
PURSUANT TO 18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Annual Report of Nxu, Inc. (the "Company") on Form 10-K for the year ended December 31, 2023 (the "Report"), the undersigned hereby certify in their capacities as Chief Executive Officer and Interim Chief Financial Officer of the Company, respectively, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 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 result of operations of the Company.

Date: April 1, 2024

By: /s/ Mark Hanchett  
Mark Hanchett  
*Chief Executive Officer*

Date: April 1, 2024

By: /s/ Sarah Wyant  
Sarah Wyant  
*Interim Chief Financial Officer*

A signed original of this written statement required by Section 906, or other document authenticating, acknowledging, or otherwise adopting the signatures that appear in typed form within the electronic version of this written statement required by Section 906, has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.

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## NXU, INC.

## INCENTIVE BASED COMPENSATION RECOUPMENT POLICY

1. **Purpose.** The purpose of the Nxu, Inc. Incentive Based Compensation Recoupment Policy (the “*Policy*”) is to set forth the circumstances in which Nxu, Inc. (the “*Company*”) will recover the amount of Erroneously Awarded Compensation (as defined below) received by a current or former Executive Officer (as defined below) in the event that the Company is required to prepare an Accounting Restatement (as defined below).
  2. **Definitions.** For purposes of this Policy, the following terms have the definitions set forth below:
    - A. “*Accounting Restatement*” shall mean the required revision of a previously issued financial statement for correction of an error in such financial statement that is (i) due to the material noncompliance of the Company with any applicable financial reporting requirement under the U.S. federal securities laws, including any required accounting restatement to correct an error in a previously issued financial statement that is material to such previously issued financial statement, or (ii) not material to a previously issued financial statement, but would result in a material misstatement if the error were corrected in the current period (i.e., as of the time of the Accounting Restatement) financial statements or left uncorrected in the current period financial statements.
    - B. “*Board*” shall mean the Board of Directors of the Company.
    - C. “*Committee*” shall mean the Compensation Committee of the Board, or in the absence of such committee, a group constituting the majority of the Board’s independent directors.
    - D. “*Effective Date*” shall mean October 2, 2023.
    - E. “*Erroneously Awarded Compensation*” shall mean, with respect to each Executive Officer and in connection with any Accounting Restatement, the amount of Incentive Based Compensation received by such Executive Officer that exceeds the amount of Incentive Based Compensation that would have been received by such Executive Officer had it been determined based on the restated amounts set forth in the Accounting Restatement.
    - F. “*Executive Officer*” shall mean each individual designated as an “officer” of the Company in accordance with 17 C.F.R. 240.16a-1(f). Identification of an executive officer for purposes of this Policy would include, at a minimum, executive officers identified pursuant to 17 C.F.R. 229.401(b).
    - G. “*Financial Reporting Measures*” means financial measures that are used for evaluating the attainment of Incentive Based Compensation and that are determined and presented in accordance with the accounting principles used in preparing the Company’s financial statements, as well as any financial measures that are derived wholly or in part from such measures. For purposes of this Policy, the Company’s stock price and total shareholder return are also Financial Reporting Measures. A Financial Reporting Measure need not be presented within the financial statements or included in a filing with the SEC.
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- H. **“Incentive Based Compensation”** means compensation that is granted, earned or vested based wholly or in part upon the attainment of a Financial Reporting Measure, including any earnings, proceeds or other economic benefit received at any time related thereto. Incentive Based Compensation is deemed received by an Executive Officer in the Company’s fiscal year during which the Financial Reporting Measure specified in the Incentive Based Compensation award is attained, even if the payment or grant of the Incentive Based Compensation occurs after the end of that period.
- I. **“Nasdaq”** shall mean the Nasdaq Stock Market.
- J. **“Required Restatement Date”** shall mean the earlier to occur of (i) the date upon which the Board, the Committee or the officers of the Company authorized to take such action, concludes, or reasonably should have concluded, that the Company is required to prepare an Accounting Restatement, or (ii) the date upon which a court, regulator or other legally authorized body directs the issuer to prepare an Accounting Restatement in a final, non-appealable order or judgment.
- K. **“SEC”** shall mean the U.S. Securities and Exchange Commission.

**3. Application.**

- A. This Policy applies to all Incentive Based Compensation received by a current and former Executive Officer: (i) on or after the Effective Date; (ii) after beginning service as an Executive Officer; (iii) who served as an Executive Officer at any time during the performance period for which Incentive Based Compensation was received; (iv) while the Company has a class of securities listed on a national securities exchange or a national securities association; and (v) during the three completed fiscal years immediately preceding the Required Restatement Date.
- B. Notwithstanding Paragraph A of this Section 3, this Policy applies during any transition period that results from a change in the Company’s fiscal year within or immediately following the three completed fiscal year period. For the avoidance of doubt any transition period between the last day of the Company’s previous fiscal-year end and the first day of its new fiscal year that comprises a period of nine to 12 months would be deemed a completed fiscal year.
- C. For the avoidance of doubt, references to Executive Officer throughout this Policy shall be read to refer to current or former Executive Officers in accordance with this Section 3, unless otherwise noted.

**4. Recovery of Erroneously Awarded Incentive Based Compensation.**

- A. In the event of an Accounting Restatement, the Company shall promptly determine the amount of any Erroneously Awarded Compensation for each Executive Officer in connection with such Accounting Restatement and shall provide written notice to each Executive Officer of (i) the Required Restatement Date, (ii) the amount of Erroneously Awarded Compensation received, and (iii) the method, manner, and time for repayment or return of such Erroneously Awarded Compensation, as applicable. The amount of Incentive Based Compensation that is subject to recovery will be computed without regard to any taxes paid.



- B. The Committee shall have the discretion to reasonably determine the appropriate means of recovery of such Erroneously Awarded Compensation based on applicable facts and circumstances. If an Executive Officer fails to repay Erroneously Awarded Compensation to the Company by the time and in the manner set forth in writing by the Committee, the Company shall take all actions reasonable and appropriate to recover the Erroneously Awarded Compensation from the Executive Officer. The Executive Officer shall be required to reimburse the Company for all expenses and attorney's fees reasonably incurred by the Company in recovering Erroneously Awarded Compensation to the extent permitted under applicable law.
  - C. For Incentive Based Compensation based on the Company's stock price or total shareholder return, where the amount of Erroneously Awarded Compensation is not subject to mathematical recalculation directly from the information in an Accounting Restatement:
    - i. the amount will be based on a reasonable estimate of the effect of the Accounting Restatement on the Company's stock price or total shareholder return upon which the Incentive Based Compensation was received; and
    - ii. the Company will maintain documentation of the determination of that reasonable estimate and provide such documentation to Nasdaq.
5. **Recovery Exceptions.** The Company will recover Erroneously Awarded Compensation in accordance with this Policy, except to the extent that any of the following conditions are met and applicable, and the Committee has determined that recovery would be impracticable:
- A. the direct expense reasonably expected to be paid to a third party to assist in enforcing this Policy would exceed the amount to be recovered; *provided* that before concluding that it would be impracticable to recover any amount of Erroneously Awarded Compensation based on the expense of enforcement, the Company will make a reasonable attempt to recover such Erroneously Awarded Compensation without incurring any third party expense, document such reasonable attempt(s) to recover and provide such documentation to Nasdaq;
  - B. recovery would violate home country law, applicable where the Company is incorporated outside of the United States, and that law was adopted prior to November 28, 2022; *provided* that before concluding that it would be impracticable to recover any amount of Erroneously Awarded Compensation based on violation of home country law, the Company will obtain an opinion of home country counsel, acceptable to Nasdaq, that recovery would result in such a violation and provide such opinion to Nasdaq; or
  - C. recovery would likely cause an otherwise tax-qualified retirement plan, under which benefits are broadly available to employees of the Company, to fail to meet the requirements of 26 U.S.C. 401(a)(13) or 26 U.S.C. 411(a) and regulations thereunder.
6. **Reporting and Disclosure Requirements.** The Company shall file all disclosures with respect to this Policy in accordance with the requirements of the federal securities laws, including the disclosure required by the applicable SEC filings.
7. **Indemnification Prohibition.** The Company will not indemnify any current or former Executive Officer against any losses stemming from the application of this Policy to Erroneously Awarded Compensation.

8. **Other Recoupment Rights.** This Policy is not intended to limit the Company's ability to pursue equitable relief or other means to recover monetary damages resulting from an Executive Officer's wrongdoing. The Company retains all rights it may have under applicable law.
9. **Administration.** The Committee shall have sole discretion in making all determinations under this Policy. Any determinations of the Committee shall be binding on the Executive Officer.
10. **Amendment.** This Policy may be amended from time to time in the Committee's sole discretion.
11. **Compliance with the Exchange Act.** Notwithstanding the foregoing, this Policy shall be interpreted and administered consistent with the applicable securities laws, including the requirements of (i) Section 10D of the Securities Exchange Act of 1934, as amended (the "**Exchange Act**"), as added by Section 954 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, (ii) Rule 10D-1 under the Exchange Act, and (iii) the listing standards adopted by Nasdaq pursuant to Rule 10D-1, and, to the extent this Policy is in any manner deemed inconsistent with such requirements, this Policy shall be treated as retroactively amended to be compliant with such requirements.
12. **Acknowledgement.** Each Executive Officer shall sign and return to the Company, within 15 calendar days following the later of (i) the Effective Date or (ii) the date the individual becomes an Executive Officer, the Acknowledgement Form attached as **Exhibit A**.
13. **Savings Clause.** To the extent that any of the provisions of this Policy are found by a court of competent jurisdiction to be illegal, invalid, or unenforceable for any reason, such provision shall be deleted, and the balance of this Policy shall not be affected.

Approved and Adopted: October 2, 2023

**Exhibit A**

**NXU, INC.**

**INCENTIVE BASED COMPENSATION RECOVERY POLICY**

**ACKNOWLEDGEMENT AND ACCEPTANCE FORM**

By signing this Acknowledgement and Acceptance Form below, the undersigned (the “*Executive Officer*”) acknowledges and confirms that the Executive Officer has received and reviewed a copy of the Incentive Based Compensation Recovery Policy (the “*Policy*”) of Nxu, Inc. (the “*Company*”).

In consideration of the Executive Officer’s eligibility to receive future Incentive Based Compensation (as defined in the Policy) and to participate in Incentive Based Compensation plans, as well as other good and valuable consideration, the receipt and sufficiency of which are acknowledged by the Executive Officer signing this Acknowledgement and Acceptance Form below, the Executive Officer acknowledges and agrees that:

1. the Executive Officer is and will continue to be fully bound by, and subject to, the Policy;
2. in the event of any inconsistency between the Policy and the terms of any employment or separation agreement to which the Executive Officer is a party, or the terms of any compensation plan, program or arrangement under which any Incentive Based Compensation is granted, awarded, earned or paid, **the terms of the Policy shall govern**;
3. the Policy will apply **both during and after the Executive Officer’s employment with the Company**;
4. the Policy will apply **to past and future Incentive Based Compensation as provided in the Policy**; and
5. the Executive Officer is required to comply with the terms and conditions of the Policy, including, without limitation, the requirement to return any Erroneously Awarded Compensation (as defined in the Policy) to the Company to the extent required by, and in a manner consistent with, the Policy.

**ACKNOWLEDGED AND ACCEPTED:**

**EXECUTIVE OFFICER**

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Signature

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_