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: 001-39946

AGRIFY

AGRIFY CORPORATION
(Exact name of registrant as specified in its charter)

Nevada	**30-0943453**
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification No.)

2468 Industrial Row Dr.
Troy, Michigan 48084
(Address of principal executive offices, including zip code)

(855) 420-0020
(Registrant's telephone number, including area code)

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

Title of each class	**Trading Symbol(s)**	**Name of each exchange on which registered**
Common Stock, par value $0.001 per share	AGFY	NASDAQ Capital Market

Securities Registered Pursuant to Section 12(g) of the Act: None.

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act.

Yes ☐ No ☒

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or 15(d) of the Exchange 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 check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files).

YES ☒ NO ☐

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

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

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

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

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

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

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act).

YES ☐ NO ☒

The aggregate market value of the voting and non-voting common equity held by non-affiliates of the registrant, computed by reference to the price at which the common equity was last sold, or the average bid and asked price of such common equity, as of June 30, 2023, was approximately $5,643,188. Shares of the registrant's common stock held by each officer and director and each person known to the registrant to own 10% or more of the outstanding voting power of the registrant have been excluded in that such persons may be deemed affiliates. This determination of affiliate status is not a determination for other purposes.

There were a total of 13,729,386 shares of the registrant's common stock, par value $0.001 per share, outstanding as of April 9, 2024.

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SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

This report contains forward-looking statements and information relating to Agrify Corporation. All statements other than statements of historical facts contained in this report, including statements regarding our future results of operations and financial position, business strategy and plans and our objectives for future operations, are forward-looking statements. The words “believe,” “may,” “will,” “estimate,” “continue,” “anticipate,” “intend,” “expect” and similar expressions are intended to identify forward-looking statements. These forward-looking statements include statements relating to:

- our market opportunity;
- the effects of increased competition as well as innovations by new and existing competitors in our market;
- our ability to retain our existing customers and to increase our number of customers;
- the future growth of the indoor agriculture industry and demands of our customers;
- our ability to effectively manage or sustain our growth;
- potential issuance of holdback shares from prior acquisitions and integration of complementary businesses and technologies;
- our ability to maintain, or strengthen awareness of, our brand;
- future revenue, hiring plans, expenses, capital expenditures, and capital requirements;
- our ability to comply with new or modified laws and regulations that currently apply or become applicable to our business;
- the loss of key employees or management personnel;
- our financial performance and capital requirements; and
- our ability to maintain, protect, and enhance our intellectual property.

We caution you that the foregoing list may not contain all of the forward-looking statements made in this report. We have based these forward-looking statements largely on our current expectations and projections about future events and financial trends that we believe may affect our financial condition, results of operations, business strategy, short term and long-term business operations and objectives, and financial needs. These forward-looking statements are subject to a number of risks, uncertainties and assumptions, including those described in “Risk Factors.” Moreover, we operate in a very competitive and rapidly changing environment. New risks emerge from time to time. It is not possible for our management to predict all risks, nor can we assess the impact of all factors on our business or the extent to which any factor, or combination of factors, may cause actual results to differ materially from those contained in any forward-looking statements we may make. In light of these risks, uncertainties and assumptions, the forward-looking events and circumstances discussed in this report may not occur and actual results could differ materially and adversely from those anticipated or implied in the forward-looking statements.

You should not rely upon forward-looking statements as predictions of future events. Although we believe that the expectations reflected in the forward-looking statements are reasonable, we cannot guarantee that the future results, levels of activity, performance or events and circumstances reflected in the forward-looking statements will be achieved or occur. We undertake no obligation to update publicly any forward-looking statements for any reason after the date of this report to conform these statements to actual results or to changes in our expectations.

SUMMARY OF RISK FACTORS

Below is a summary of the principal factors that make an investment in our Common Stock speculative or risky. This summary does not address all of the risks that we face. Additional discussion of the risks summarized in this risk factor summary, and other risks that we face, can be found below under the heading "Risk Factors", and should be carefully considered, together with other information in this Annual Report on Form 10-K and our other filings with the SEC before making an investment decision regarding our Common Stock.

- our ability to continue as a "going concern";
- our short operating history;
- risk of loss associated with our Total Turn-Key Solution ("TTK Solution") Offerings;
- our ability to obtain additional financing;
- risks associated with strategic acquisitions;
- we have substantial debt and other financial obligations, and we may incur even more debt;
- risk associated with potential future impairment charges;
- our concentration of customers;
- our reliance on a limited base of suppliers;
- operational difficulties of our suppliers;
- risks associated with having clients operating in the cannabis industry;
- the inability of our customers to meet their financial or contractual obligations;
- changes in our credit profile with respect to suppliers;
- our reliance on third parties to provide services;
- no assurance that our backlog and qualified pipeline will translate into bookings;
- intense competition for our products and services;

- our ability to protect our core technology and intellectual property and defend against intellectual property claims;
- assertion of intellectual property infringement claims;
- our ability to use net operating losses;
- our management and their affiliates control a substantial interest in us;
- our outstanding loans may not be forgivable;
- the potential for a large number of shares eligible for public sale could depress the market price of our Common Stock;
- our failure to meet the continued listing requirements of The Nasdaq Capital Market (“Nasdaq”) could result in a de-listing of our Common Stock;
- the exercise of all or any number of outstanding warrants or the issuance of stock-based awards may dilute your holding of shares of our Common Stock;
- provisions in our charter documents and Nevada law may prevent a change in control of our company;
- we have no intention to declare any dividends to our shareholders;
- risks associated with a shortage of raw materials;
- litigation that may adversely affect our business, financial condition, and results of operations;
- a prolonged economic downturn;
- risks related to the employment market and wages;
- liquidity of our common stock;
- material weaknesses and ability to remediate them;
- risks related to trading ability of our common stock if our shares become subject to penny stock rules;
- the risk to our shareholders if we were to dissolve;
- risks related to analyst reports about us, our business or our market, or recommendations relating to our stock; and
- inherent risks related to our financial and operational projections.

MARKET, INDUSTRY AND OTHER DATA

Unless otherwise indicated, information contained in this Annual Report on Form 10-K concerning our industry and the markets in which we operate, including our general expectations and market position, market opportunity and market size, is based on information from various sources, on assumptions that we have made that are based on those data and other similar sources and on our knowledge of the markets for our services. These data involve a number of assumptions and limitations, and you are cautioned not to give undue weight to such estimates. We have not independently verified any third-party information and cannot assure you of its accuracy or completeness. While we believe the market position, market opportunity and market size information included in this report is generally reliable, such information is inherently imprecise. In addition, projections, assumptions and estimates of our future performance and the future performance of the industry in which we operate is necessarily subject to a high degree of uncertainty and risk due to a variety of factors, including those described in "Risk Factors" and elsewhere in this report. These and other factors could cause results to differ materially from those expressed in the estimates made by the independent parties and by us.

In addition, we own or have rights to trademarks or trade names that we use in connection with the operation of our business, including our corporate names, logos, and website names. In addition, we own or have the rights to copyrights, trade secrets and other proprietary rights that protect the content of our products. This report may also contain trademarks, service marks and trade names of other companies, which are the property of their respective owners. Our use or display of third parties' trademarks, service marks, trade names or products in this report is not intended to, and should not be read to, imply a relationship with or endorsement or sponsorship of us. Solely for convenience, some of the copyrights, trade names and trademarks referred to in this report are listed without their ©, ® and ™ symbols, but we will assert, to the fullest extent under applicable law, our rights to our copyrights, trade names and trademarks. All other trademarks are the property of their respective owners.

PART I

Item 1. Business.

Unless otherwise stated or the context otherwise requires, references in this report to "Agrify", the "Company," "we," "us," "our," or similar references mean Agrify Corporation and its subsidiaries on a consolidated basis.

Business Overview

We are a leading provider of innovative cultivation and extraction solutions for the cannabis industry, bringing data, science, and technology to the forefront of the market. Our proprietary micro-environment-controlled Agrify Vertical Farming Units ("VFUs") enable cultivators to produce high quality products with what we believe to be unmatched consistency, yield, and return investment at scale. Our comprehensive extraction product line, which includes hydrocarbon, alcohol, solventless, post-processing, and lab equipment, empowers producers to maximize the quantity and quality of extract required for premium concentrates.

Since our inception, we have gone from primarily developing, selling, and supporting our VFUs along with our fully integrated Agrify Insights™ cultivation software ("Agrify Insights™") to being able to offer customers a far more complete set of solutions, products, and services across both cultivation and extraction. This has been a function of both our natural evolution and through a set of strategic mergers and acquisitions. Since 2020, we have integrated six new brands into Agrify's broader organization. Our first acquisition, TriGrow Systems, Inc., was completed in January 2020. TriGrow Systems, Inc. was formerly the exclusive distributor of Agrify's VFUs. We added Harbor Mountain Holdings, LLC to our portfolio on July 21, 2020, to help scale up our manufacturing strategy with engineering, prototyping, manufacturing, testing, warehousing, and installation services. Since October 2021, we have been strategically focused on establishing ourselves as a global leader in the cannabis and hemp extraction equipment industry, complementing our cutting-edge cannabis and hemp cultivation solutions. Over five months, we acquired four of the top brand names in the industry. On October 1, 2021, we acquired Precision Extraction Solutions, a market leader in developing and producing high-quality hydrocarbon and alcohol extraction solutions, and Cascade Sciences, LLC, a market leader in developing and producing high-quality vacuum purge ovens and decarboxylation ovens. On December 31, 2021, we acquired PurePressure, LLC, a market leader in developing and producing high-quality solventless extraction solutions and advanced ice-water hash processing equipment in the cannabis and hemp industry. On February 1, 2022, we completed our acquisition of LS Holdings Corp., a market leader in developing and producing high-quality distillation and solvent separation solutions for the cannabis and hemp industry.

We now offer our customers an extensive ecosystem of solutions, products, training, and service capabilities in what has historically been a highly fragmented market. Our offerings, which are described in more detail below, are compelling on their own. However, we believe what sets us apart is our ability to bring to the market the most comprehensive set of cultivation and extraction solutions from a single provider. As a result, we believe we are well-positioned to capture market share and create a dominant market position in the indoor cannabis sector. We currently have two primary areas of business focus:

- Cultivation Solutions; and
- Extraction Solutions.

Cultivation Solutions

While we do not cultivate, come in contact with, distribute, or dispense cannabis or any cannabis derivatives that are currently prohibited under U.S. federal law, our equipment and business solutions can be used within indoor grow facilities by fully licensed cannabis cultivators. We sell our proprietary cultivation solutions to independent licensed cultivators. The two primary products we sell are the VFUs and Agrify Insights™. We believe we are one of a limited number of companies offering a fully integrated cultivation solution optimized for precision growing with robust automation capabilities in the industry.

Agrify Vertical Farming Unit

Our proprietary VFU technology offers a modular, compartmentalized micro-climate growing system for indoor vertical farming. Our VFU system is designed for craft farmers, single-state operators, and multi-state operators who are looking to consistently produce higher-quality crops at scale. The VFUs are designed to line up horizontally in rows, and can be stacked vertically up to three units tall, taking advantage of unused indoor vertical space with the below benefits:

- ***Superior Floor Space Utilization***. Each VFU provides two tiers of growing canopy. Our units introduce an open-room facility design approach to maximize available cultivation floor space while offering superior risk mitigation via individual compartmentalized cultivation chambers which aim to contain potential biological threats to cultivation facilities.

- ***Precise Environmental Controls***. Each VFU has an Environmental Control Unit that is integrated with our proprietary cultivation software, Agrify Insights™. This integration allows for precise control and automation over light photoperiod and intensity, temperature, humidity, vapor pressure deficit (“VPD”), carbon dioxide, fertigation, and irrigation throughout the lifecycle of the plants.

- ***Modular Scalability***. The VFU is designed to stack up to three units tall, sextupling production volume over the same traditional footprint. Each unit is designed to easily integrate with a mezzanine catwalk system providing unparalleled access to all levels of cultivation.

- ***Worker Safety & Efficiency***. The VFU’s design was thoughtful and intentional; from the ergonomic dimensions that facilitate safe, easy access to plants for scouting and plant husbandry, to the integrated catwalks that allow cultivators to work from a safe sitting or standing position without the need for scissor lifts, ladders or removable platforms.

- ***Biosecurity and Risk Mitigation***. The VFU has a motorized curtain on both sides of the unit that encloses the grow area to prevent light pollution and the spread of disease that would typically lead to facility-wide crop failure. Contamination can be controlled and limited to the affected units, which are designed with sanitation in mind. From the aluminum frame to the selection of antimicrobial plastics and down to the IP65 electronics and polycarbonate-lensed LED lights, the entire VFU can be easily sanitized, especially with the VFU’s High Heat mode, which helps sanitize all internal VFU surfaces effortlessly.

Agrify Insights™

The VFUs are designed to work in conjunction with our Agrify Insights™ software. Each VFU sold includes a license for Agrify Insights™ and a monthly Software-as-a-Service (“SaaS”) subscription fee is charged per VFU. The VFU cannot operate successfully without Agrify Insights™, and we typically charge between $1,500 to $2,400 per VFU sold annually. Agrify Insights™ license agreements are generally for a multi-year term, with an annual auto-renewal.

Agrify Insights™ is a SaaS-based solution that interfaces with our proprietary hardware to provide customers with real-time control and monitoring of facilities, growing conditions and insights into both production and profit optimization. The combination of precise environmental control and automation with data collection and actionable insights empowers our customers to be more efficient, more productive, and more intelligent about how they run their businesses. We believe that the robust data analytics capabilities from our Agrify Insights™ platform, coupled with our VFU system, is enabling our customers to transform their businesses and quality of the product they are cultivating.

Agrify Insights™ is focused on optimizing four key components:

- Optimization at the plant level;
- Optimization at the VFU unit level;
- Optimization at the facility level; and
- Optimization at the business level.

When these key components are combined, they encompass the cultivation operations of an Agrify customer. By reducing human error and providing insights through data collection and analysis, Agrify Insights™ minimizes risk and increases operational efficiencies. Ultimately, our customers seek to produce end products with the highest level of consistency no matter where they are located.

Plant-Level Optimization

Central to our solution is granular control of the cultivation environment. A crop's end-product is determined by the plant's genetics and the environment in which the plants are grown. Control over the growing environment is accomplished through the integration of Agrify Insights™. Agrify Insights collects data from multiple sensors on a per plant basis between 4 and 60 times an hour. This can result in between 100,000 and 151 million data points annually, depending on the number of plants and fluctuations in the VFU microclimate. By recording data points and reproducing specific environments based on the data, cultivators can effectively minimize the variation in their crops and dial-in the maximum quality. Individual plant varietals can be optimized by tailoring the grow plan (recipe for cultivation) to enhance genetic traits; increasing the temperature can speed chemical processes and growth rates and adjusting the length of different phases of a plant's lifecycle can maximize the crop's yield. Additionally, when new varieties of plants are cultivated, having multiple controlled, compartmentalized, growth chambers allow for iterative experiments which offer real insight into how new varieties are best cultivated which is beneficial for research and development purposes.

Our "Grow Plans" are the templates or recipes that define the parameters for each lifecycle. Grow Plans define the environmental settings (light - photoperiod and intensity, temperature, humidity, VPD, CO2, irrigation, fertigation) for each crop variety and cultivator as well as the schedule for completing, as applicable, "plant touching" tasks such as bottoming, pruning, and harvesting. Agrify Insights™ ships to the customer with many pre-developed Grow Plans and customers can create their own Grow Plans, electing to share them with other customers or not.

Individual VFU Level Optimization

Our VFU hardware provides cultivation environmental control within the grow chamber. This hardware and its component valves, motors and sensors are directed and controlled by Agrify Insights™.

- ***Monitor and Control Agrify Hardware***. Agrify Insights™ can either automatically or manually control our hardware. For example, the water-chilled fan coil can keep the temperature in a range accurate to 1.5 degrees Fahrenheit.
- ***Cultivation Environmental Control***. Using Agrify Insights™, users can view environmental charts that plot temperature, humidity, and carbon dioxide over time. It also shows when plant irrigation occurs and whether the unit is in cooling, circulating, or dehumidifying mode. We sample these values every minute and report them back to the cloud every 15 minutes or more often if significant changes occur. Each growing chamber reports millions of data points annually, enabling our clients to perform an in-depth analysis of their grow performance. The manual control screen visualizes the current state of the grow chamber and allows our technicians to take direct control for troubleshooting, if necessary. The device log shows us what decisions were made by Agrify Insights™ and why.

Facility Level Optimization

Our modular VFUs are deployed in scale at a customer's facility with the smallest commercial operation deployment being 60 VFUs to date. Agrify Insights™ is designed to operate these individual VFUs as a combined facility. Agrify Insights™ features at the facility level include:

- ***Production Planning***. The production planning feature is designed to maximize a facility's utilization by executing a "best-fit" scheduling algorithm to selected Grow Plans across VFUs that have been deployed at a customer facility. Since grow plans typically have a different number of growing days that start on staggered schedules, this module is a critical component for optimizing the planting and moving schedules, significantly increasing plant production, and reducing the cost per pound of harvest.

- ***Workforce Management***. Agrify Insights™ includes a workforce planning feature to assign tasks to staff. These tasks can be automatically assigned based on the user role or their knowledge, skills, and abilities. The calendar displays the estimated time required to complete plant-touching tasks on any given day.

- ***Automatic Notification System***. Users can select to subscribe to anomalous events, and users are notified in the order in which they are listed. If a user does not acknowledge the notification within the specified time frame, the next user in the list is notified, providing the business with 24/7 monitoring and notifications.

- ***Preventative Maintenance***. Our equipment and facility preventative maintenance schedules and related tasks are contained, tracked, and monitored within Agrify Insights™.

- ***Facility Infrastructure Controls***. Agrify Insights™ controls the irrigation on a facility level and connects with the water chilled HVAC system and ambient lighting system, providing our customers with a central piece of software for facility management.

Optimization at the Business Level

Agrify Insights™ analysis features enable customers to understand how cultivation decisions impact their overall business. Understanding the data from the cultivation facility can help our customers better plan and make informed decisions that impact downstream parts of their business.

- ***Consumables Procurement Integration***. Each task can also be assigned a set of consumables whose inventory will be reduced when the task is started. This feature can help customers manage supply levels and can automatically create purchase orders so that they never run out of required supplies.

- ***Online Standard Operating Procedures ("SOPs") and Safety Datasheets***. Agrify Insights™ hosts digital copies of our included Standard Operating Procedures and datasheets, or users can upload their own via our content management system, ensuring that the most recent version of SOPs and forms are available to users.

- ***Roles-Based Dashboards***. Ability to obtain access to information specifically suited to your workforce's various needs. Facility owners have access to high-level information about crop yields and equipment usage in an easy-to-understand scorecard. Farm managers receive a worksheet and calendar that lets them manage their workforce and automatically assign plant-touching tasks. This also provides facility managers with an ongoing window into consumables and lets them set inventory levels.

- ***Data Collection***. Agrify Insights™ is a centralized repository for all data relating to the cultivation aspects of our clients' business, including research and development testing data, and the ability to capture and compare test results. By doing so, Agrify Insights™ becomes a customers' cultivation statement of record.

- ***Financial Simulator / What If Scenarios***. Our operating expenses ("OpEx") calculator enables users to evaluate impacts to profitability by changing hundreds of attributes including, but not limited to, changes to costs in labor, electric, water, CO_2, and growing media as well as potential volatility in yields and pricing.

- ***Regulatory Reporting Integration.*** We have integrated our software with Metrc, a leading seed-to-harvest compliance management and tracking solution, which will enable our customers to handle most regulatory reporting directly through Agrify Insights™.

Cultivation Deployment Options

Rapid Deployment Pack ("RDP") Program

The RDP program was established in 2022 to make it easier for a broader range of customers to access our award-winning cultivation technology. Featuring our flagship VFUs in a prepackaged, self-contained, and quick-to-deploy format, the thoughtfully designed and engineered RDPs offer an accelerated path to production, cash flow, and profitability for customers. By removing certain barriers and points of friction with the RDPs, we can provide customers who have properly equipped facilities with best-in-class cultivation capabilities in potentially as little as 90 days. Once installed, the modular nature of the RDPs allows for seamless expansion opportunities, enabling customers the flexibility to grow and scale.

TTK Solution

While we do not intend to enter into any new TTK Solutions for the foreseeable future, we have deployed this program with certain key customers. We also believe that our data-driven TTK Solution for cultivation solutions is unlike any other customer solution being offered and enables our customers to get to market faster by providing them with our seamlessly integrated hardware and software offerings as well as access to capital and a wide range of associated services from experts including consulting, training, design, engineering, and construction to form what we believe is the most complete solution available from a single provider. We engage qualified cannabis operators in the early phases of their business plans and provide critical support, typically over a 10-year period.

Our TTK Solution provides our valued customers with the benefit of working with a single, highly qualified provider in what has historically been a decentralized market full of piecemeal solutions that were not necessarily designed and engineered to work harmoniously with one another. Given the significant shortcomings associated with traditional indoor grow methods across all commercial agriculture segments, it was apparent that a new paradigm in indoor cultivation was needed, which is why we have brought a more modern, manufacturing style approach that is process driven through technology and measured via data and analytics. Overall, our holistic approach to addressing our customers' cultivation needs treats their production facilities as an end-to-end ecosystem whose success depends on all components working together optimally. Despite the rapidly growing cannabis and hemp industry, many growers and processors face some significant obstacles to their operations that pose a serious threat to their long-term viability.

We believe Agrify's proprietary TTK Solution is the key to resolving many of the challenges our customers encounter. We have set ourselves apart by bringing to market a horticulturist expertise, bundled solution of state-of-the-art equipment, software and services that is turn-key, end-to-end, fully integrated and optimized for precision growing and extraction. Agrify's TTK Solution provides customers with the following bundled equipment and services:

- Facility design, lab design, and engineering services
- Facility and lab build-out project management
- Agrify VFUs
- Agrify data driven Agrify Insights™
- Agrify extraction products
- Expert horticulturist training and ongoing support

Extraction Solutions

While we do not extract, come in contact with, distribute, process, or dispense cannabis or hemp or any cannabis or hemp derivatives that are currently prohibited under U.S. federal law, our extraction equipment and business solutions can be used within indoor processing facilities by fully licensed cannabis and hemp cultivators and processors or in some cases, by individual processors for individual use in compliance with applicable law. We sell our proprietary extraction solutions to independent, licensed cultivators and processing labs.

Cannabis represents a potential cornucopia of medicinal and pharmaceutical advancement. Cannabis produces over 550 different phytochemicals, over 120 of which are cannabinoids like tetrahydrocannabinol ("THC") and cannabidiol ("CBD"). Other cannabinoids like varins, cannabigerivarin ("CBGV"), tetrahydrocannabivarin ("THCV"), and cannabidivarin ("CBDV") are less well known and potentially offer significant value. As we continue to learn more about the complex chemical composition of cannabis, the need for distillation solutions is clear. Distillation enables the identification, isolation, and separation of valuable cannabis metabolites. The ability to take cannabis compounds distilled into their pure forms, and then recombine them into specific, purposeful end-products could have significant potential for the pharmaceutical industry in the future.

As stated previously, we strategically acquired four of the top brands in the extraction space in late 2021 and early 2022 in Precision Extraction, PurePressure, Lab Society, and Cascade Sciences. These iconic brands encompass everything from hydrocarbon, alcohol, and solventless extraction to distillation and post-processing and have supported and continue to support over 90% of legal operators in one fashion or another.

Combined, these four acquisitions provide what we believe to be the most comprehensive extraction solutions from a single provider, with over 7,000 customers, including over 30 Multi-State-Operators, and some of the best extraction labs in the industry. Our leading extraction brands provide equipment and solutions for extraction, post-processing, and testing for the cannabis and hemp industries. The extraction, post-processing and testing services are complementary and highly attractive areas of the supply chain.

Our extraction division now offers cutting-edge technologies and end-to-end service solutions. Solutions from the extraction division include equipment, technology, facility and lab design, training, and extensive research and development capabilities. By providing new hardware-as-a-service we intend to capture higher margin recurring revenue and supply chain optimization through streamlined product sourcing, purchasing, manufacturing, and warehousing.

These acquisitions have greatly expanded our product and service offerings in the post-harvest segment of the supply chain. We believe we are positioning Agrify as one of the most vertically integrated total solutions provider for our cannabis and hemp customers. According to a report published by Grand View Research in November 2022, the global cannabis extraction market is expected to potentially grow to $15.5 billion by 2030, and as the cannabis industry continues to experience rapid growth globally, we expect the sales of our extraction solutions to follow a similar growth trajectory.

Cannabis Market Opportunity

While we do not cultivate, come in contact with, distribute or dispense cannabis or any cannabis derivatives that are currently prohibited under U.S. federal law, our cultivation solutions can be used within state-licensed indoor grow facilities by cannabis cultivators if they choose to do so.

In the U.S., the development and growth of the regulated medical and recreational (adult-use) cannabis industry has generally been driven by state law and regulation, and accordingly, the market varies on a state-by-state basis. State laws that legalize and regulate cannabis for medicinal reasons allow patients to consume cannabis with a designated healthcare provider's recommendation, subject to various requirements and limitations. As of January 2024, 39 states have passed laws allowing their citizens to use medical cannabis. On top of this medical condition growth trend, there has been a slow but steady increase in the number of states that have chosen to legalize cannabis for recreational use. As of January 2024, 24 states have passed laws allowing their citizens to use recreational cannabis. Shifting public attitudes and state law and legislative activity are driving this change as indicated by a 2019 poll by Quinnipiac University that found that 93% of Americans support patient access to medical-use cannabis if recommended by a doctor, which was the same level of support from a similar poll conducted by Quinnipiac University in 2018. Similarly, the trend toward further legalization and regulation of cannabis sales is spreading globally. As of the date of this report, over 70 countries outside the U.S. currently have medicinal cannabis regulation in force, and that number is expected to significantly increase over time.

Given that the market size of legal cannabis in the U.S. in 2022 was estimated to be $33.6 billion according to MJBiz Daily, and 88% of legal U.S. cannabis cultivators grow indoors (Fluence 2022 Industry lighting report), we estimate that the indoor segment of the legal U.S. cannabis sector is a $30 billion market with the expectation that there will be even more growth on the horizon. A recent report from Fortune Business Insights projected global cannabis revenue to reach $57.18 billion in 2023, with annual growth rate of 34.03%, with a projected global market volume of $444.34 billion by 2030.

The different cultivation environments for cannabis each have advantages and disadvantages, and this leads to a variance in price points based on quality, actual and perceived, and process. Based on the Fluence 2022 state of the cannabis industry lighting report, 88% of cultivators have some or all of their facilities growing indoors, up 9% over 2021.

Competitive Landscape

We believe our full suite of product offerings forms an unmatched ecosystem for indoor growing and extraction. At this time, our VFUs, Agrify Insights™, extraction solutions, our facility design and build services, and our engineering/installation services are highly differentiated from anything else on the market.

At the same time, our customers are actively being approached by a variety of companies who do offer compelling standalone products and services, so we recognize that our customers do have choices and alternatives, and they also need to factor in opportunity costs whenever they make purchasing decisions. Consequently, we more broadly define our competition as any other company going after the same finite budget dollars as us in the indoor agriculture space. We have highlighted below the most notable players that operate across some of the same functional, highly fragmented areas of agriculture technology that we operate.

- ***mi-Integrated Vertical Cultivation Systems*** - Sprout AI

- ***Aeroponic Systems*** - AEssenceGrows and Thrive Growing

- ***Horticultural Lighting*** - Gavita, Fluence, VividGro, Hydrofarm, GrowGeneration, Hawthorne and Heliospectra

- ***Extraction Solutions*** - ExtractionTek Solutions, Mach Technologies, Decimal Engineering, Low Temp Plates, Whistler Technologies, Maratek and Hashatron

- ***Monitoring Software*** - Grownetics and Trym

- ***Cultivation Software*** - Quantum Leaf, Flourish, and Grow Link

- ***Vertical Cultivation Racking Systems*** - Pipp Horticulture and Montel

Despite the presence of some well-funded and well-established competitors who offer pieces of what we do, we are able to compete on the basis of several defensible factors including our industry experience, our technical expertise, the differentiated value proposition of our individual offerings, and our positioning as a single-source provider. However, we believe above all else, it is our ability to offer an unrivaled level of precision through a total end-to-end turnkey solution that sets us apart from existing competitors and potential new market entrants.

Our Competitive Strengths

We believe our business has, and our future success will be driven by, the following competitive strengths:

- ***Innovative Technology in an Attractive Growing Industry***. Our innovative solutions are aimed at large and growing U.S. domestic and global markets. We believe we are the only provider of a fully integrated end-to-end hardware and software turnkey solution for indoor cultivation and extraction facilities that allows customers to produce high-quality products with consistency at scale while meeting the growing demand and needs of end users at a relatively low cost. As such, we believe we have a first mover advantage due to innovating this new type of smart cannabis and hemp cultivation and processing solution, which is already designed, manufactured, and implemented in several commercial scale deployments across multiple states within the U.S.

- ***Integrated Proprietary Components***. We design and create our own hardware, software, and SOPs from the ground up rather than buying piecemeal from third parties. We take a systems-engineered integrated approach that we believe has inherent advantages over other, ad-hoc systems.

- ***Emphasis on Precision and Consistency Through Our Proprietary Grow Solutions***. While being able to help our customers increase capacity, yield and consequently revenues holds a tremendous amount of value, we believe that our biggest differentiator is our ability to impact the actual quality and consistency of the output by controlling the environment in which the crops are grown and all the variables that influence harvests with an unparalleled level of precision. The by-product of our TTK Solution is that our customers can create consistent high-quality products with repeatability from anywhere similar to any other consumer product company that provides a branded food or drink product.

- ***Emphasis on Precision and Consistency Through Our Extraction Division.*** In addition to our premium grow solutions, we have begun offering our customers industry leading cannabis and hemp extraction equipment, design, and training solutions. By acquiring leading brands earlier this year, we are immediately able to offer our customers premium solutions to meet their processing needs in this rapidly expanding sector.

- ***Market Knowledge and Understanding***. We have extensive experience with controlled agriculture environments, extraction, post-processing, and scale-up manufacturing, as well as industry technical knowledge and relationships. We are keenly aware of the struggles that indoor cultivators and extractors face, and we serve as a credible and collaborative partner through the entire customer lifecycle. We believe that our fully integrated TTK Solution, extraction equipment and ancillary services are the key to resolving many of the challenges our customers face.

- ***Differentiated Business Model***. Unlike many of our competitors, we offer a diversified mix of hardware, software, and services, which leads to potential multiple revenue streams. Given the nature of our deployments, we become deeply embedded in our customers' operations through our numerous product offerings. This puts us in a position where customer success is directly tied to our equipment. Our ability to differentiate our business model provides us with multiple opportunities to expand our installed user base, which we believe will lead to future high-margin and stable recurring SaaS revenues, via our Agrify Insights™ and production fee revenues.

Our Customers

We primarily market and sell our products to newly licensed, well-funded producers in a single market as well as multi-state operators. Our customers choose us for several reasons, including the breadth and availability of the products we offer, our extensive expertise, and the quality of our customer service. For large multi-state operators, our solutions allow operators to produce consistent high-quality products regardless of the geographic locations where they are licensed to operate. Our system removes the variations of local grow environments, and also provides consistent standard operating procedures across different facilities, helping every facility to achieve the highest Good Manufacturing Processes standards. Our ability to provide a "one-stop shop" experience allows us to be the preferred vendor to many of these customers by streamlining their entry or expansion of their cultivation capabilities. In addition, we believe our customers find great value in the advice and recommendations provided by our knowledgeable sales and service associates, which further increases demand for our products.

We believe the nature of our solutions and our high-touch customer service model strengthens relationships, builds loyalty and drives repeat business as our customers' businesses expand. In addition, we feel as if our premium product lines and comprehensive product portfolio position us well to meet our customers' needs. Furthermore, we fully anticipate that we will be able to leverage all the data that we are collecting from our existing customer base to make continuous improvements to our offerings and better serve our current and new customers in the future.

To date, we have customers across the U.S. and internationally in the cannabis and hemp industry and are of all sizes, ranging from small, single location businesses to multi-state enterprise operations that use Agrify's solutions. For the year ended December 31, 2023, no customer represented more than 10% of revenues; however, for the year ended December 31, 2022, we had two customers that represented more than 10% of total revenues at 13% and 15% respectively.

Our Growth Strategy

We have developed a multi-pronged growth strategy as described below to help us capitalize on the sizable opportunity at hand. Through methodical sales and marketing efforts, cultivation and extraction solutions, and scale-up manufacturing, we believe we have implemented several key initiatives we can use to grow our business more effectively. We also intend to opportunistically pursue the strategies described below to continue our upward trajectory and enhance shareholder value. We believe we have significantly improved our new bookings and qualified pipeline. With our expanded product line that includes quality extraction solutions, we have become more attractive to our prospects and customers, enhancing our overall appeal and the scope of opportunities we are able to pursue. We expect our qualified pipeline and new bookings of opportunities to continue to grow.

Sales and Marketing

Rigorous Sales Process and Strong Infrastructure in Place to Drive Revenue Growth

We utilize a highly structured sales process to evaluate potential new opportunities and then advance vetted prospects through the different phases of our qualified pipeline. Our salespeople spend most of their time building relationships and qualifying opportunities to make closing new business more streamlined, collaborative, and organic in nature. There are specific requirements, milestones, and events that we have identified along the sales process that must be met to move prospects through and convert them from vetted opportunities into committed sales orders within a 12-month period. At each phase of the pipeline, a prospect opportunity is assigned a probability value for closing, providing management production forecast ability.

Our sales team works to convert our qualified pipeline of opportunities into confirmed contractual bookings. At the time of this report, our sales team was comprised of one Director of Business Development, Account Managers, Customer Support and Success Manager, Customer Service Support Reps, and a Sales Support Admin. Additionally, we take measures to ensure that all members of the sales organization are cross-trained on cultivation and extraction products.

We believe our business has, and our future success will be driven by, the following sales and marketing strategy:

- ***Direct Marketing***. We capitalize on our direct marketing efforts by utilizing our internal CRM database, as well as the external help of trusted industry databases to target the right audience. Emails go out on a weekly basis and are subdivided by product focus and state, depending on the campaign. We use A/B testing in our email campaign strategy to harness meaningful messages.

- ***Social Media and Thought Leadership.*** Through the creation and promotion of engaging content that positions us as a thought leader, we continue to organically grow our social media audience. We share original videos, photography, industry-related articles, and blog content on a consistent basis. By developing strong relationships with our customers and sharing testimonials as well as live footage of our products being in action, we are better positioning ourselves on social. Furthermore, we promote our social media in our email communications, on our website, and through paid advertising. We also keep our finger on the pulse of trends and competitors in the market, remaining in the know.

- ***Trade Shows.*** Trade shows and events related to the cannabis industry have proven to be highly effective. When attending trade shows and events, we typically position ourselves front and center, with high-level sponsorships, outstanding booth placement, and speaking opportunities. Our product and subject matter experts take advantage of speaking opportunities, positioning Agrify as an industry thought leader. We expect to continue to grow our industry presence by generating leads using conferences as a platform. The trade show plan has been carefully vetted to ensure that these shows are reputable, have a strong business-to-business focus, high foot-traffic rates, as well as hosted in a desirable market.

- ***Paid Advertising***. We utilize paid advertising such as banner ads on high-trafficked media sites that largely focus on cannabis and other relevant topics. We provide content offers and other downloadable materials to capture these leads. As we gain experience through these different marketing initiatives, we will make appropriate spending adjustments with our most effective outlets. We seek to expand our business both nationally and internationally and will do so when we have proven, viable marketing options available to us.

- ***Public Relations Campaigns.*** We have actively utilized press releases, industry and investor events, and interviews and speaking engagements to increase awareness of our brand, solutions, customer engagements, and other relevant company developments. With our industry positioning using thought leadership and ongoing participation in industry conferences, we have been highlighted through the Newswire and featured in a variety of media outlets. We will continue to sponsor and present keynotes at industry-related events including technology and agriculture conferences, podcasts, radio shows and more to continue to gain press and ultimately more exposure.

Scale-Up Manufacturing Capabilities in Order to Meet the Increasing Demand for Our Grow Solutions

We currently use both internal and external manufacturing to support our increasing demand. Internal production is primarily at our Michigan and Colorado facilities. Externally, we use a variety of contract manufacturers ("CMs") in the U.S. and in Asia for prototyping and volume manufacturing, and we plan to expand our capabilities to meet the increasing demand for our grow solutions. We design the systems internally, and then work with our CMs and suppliers to refine, prototype, and test the designs. The designs are documented at a level that allows us to have our products manufactured at multiple CMs, both in the U.S. and abroad. As demand increases beyond our internal capacities additional volume can be shifted to external manufacturing to ensure market demands are met.

Overall, our approach to manufacturing is to use both internal and external manufacturing capabilities to prototype, iterate, and begin initial production, then transition to volume production. As volumes increase, this will also include increasing production in lower-cost geographies, which results in both rapid time-to-market and low production costs. As we grow, we intend to continually analyze and evolve our manufacturing capabilities to best meet our customers' needs while always focusing on ways to maximize operating margins.

Intellectual Property

We rely on a combination of patent, trademark, copyright, and trade secret, including federal, state and common law rights in the U.S. and other countries, nondisclosure agreements, and other measures to protect our intellectual property. We require our employees, consultants, and advisors to execute confidentiality agreements and to agree to disclose and assign to us all inventions conceived under their respective employment, consultant, or advisor agreement, using our property, or which relate to our business. Despite any measures taken to protect our intellectual property, unauthorized parties may attempt to copy aspects of our products or to obtain and use information that we regard as proprietary. Our business is affected by our ability to protect against misappropriation and infringement of our intellectual property, including our trademarks, service marks, patents, domain names, copyrights and other proprietary rights.

Patents

We hold 20 patents in the U.S. We also have one pending patent application. These patents and patents applications are directed to, among other things, extraction and processing of botanicals and particular compounds.

Trademarks and Copyrights

We own or have applications for numerous national and state trademarks which are essential to our businesses, including Agrify, Precision, PurePressure, PressWare, Lab Society and Elitelab, among others. In addition, we recognize common-law trademark rights AGRIFY INSIGHTS and AGRINAMICS for SaaS products.

Our subsidiary, Agrify Brands, LLC is the owner of certain common-law trademarks that it licenses to third parties. Marks covered by the license include, DAWG STAR (including multiple logo designs), WESTERN CULTURED (including multiple logo designs), TWISTED LEGION (logo), WAXTRONAUT (including multiple logo designs) and WAXTRONAUT COSMICALLY CURATED EXTRACTS.

Although we have not sought copyright registration for our technology or works to date, we rely on common law copyright and trade secret protections in relation to our TechOps/ Agrify Insights™ computer program for indoor agriculture management. We have registered our Internet domain names related to our business. We license software from third parties and utilize open-source software for integration into our applications.

In addition, while we know that our current product and service capabilities are highly novel and compelling, we do not intend to be complacent. We will continue to learn from our customers and from the market, and if there is an opportunity to deploy a new and improved version of one of our offerings or if we decide there is room in the market for a new type of solution, we fully intend to diligently explore those possibilities to augment our existing business and grow our reach.

Human Capital Resources

As of March 31st, 2024, we had a total of 39 employees, of which 39 are full-time employees. None of our employees are subject to collective bargaining agreements. We consider our relationship with our employees to be good.

We strive to attract and retain diverse, high-caliber employees who raise the talent bar by offering competitive compensation and benefit packages, regardless of their gender, race, or other personal characteristics. We regularly review and survey our compensation and benefit programs against the market to ensure we remain competitive in our hiring practices. We provide employee salaries that are competitive and consider factors such as an employee's role and experience, the location of their job and their performance. In addition to our competitive salaries, to enhance our employees' sense of participation in the company and to further align their interests with those of our stockholders, we offer equity packages to a majority of our employees. The principal purposes of our equity incentive plan are to attract, retain and reward personnel through the granting of stock-based compensation awards, in order to increase stockholder value and the success of our company by motivating such individuals to perform to the best of their abilities and achieve our objectives.

We strive to hire, develop, and retain talent that continuously raises the performance bar. We encourage, support, and compensate our employees based on our philosophy of recognizing and rewarding exceptional performance. We believe that performance and development is an ongoing process in which all employees should be active participants. Individual and company key performance goals are linked to employee compensation.

Regulatory Implications of Providing Equipment and Services in the Cannabis and Hemp Industry

We sell products and services that end users may purchase for use in industries or segments, including the growing and processing of cannabis and hemp, which are subject to varying, inconsistent, and rapidly changing laws, regulations, administrative practices, enforcement approaches, judicial interpretations, and consumer perceptions. For example, certain countries and 36 U.S. states have adopted frameworks that authorize, regulate, and tax the cultivation, processing, sale, and use of cannabis for medicinal and/or non-medicinal use, while the U.S. Controlled Substances Act and the laws of other U.S. states prohibit growing cannabis. In addition, with the passage of the Farm Bill in December 2018, hemp cultivation is now broadly permitted. The Farm Bill explicitly allows the transfer of hemp-derived products across state lines for commercial or other purposes. It also removes restrictions on the sale, transport, or possession of hemp-derived products, so long as those items are produced in a manner consistent with the law. Our products are multi-purpose products and may be used on a wide range of plants and are purchased by cultivators who may grow any variety of plants, including cannabis and hemp.

Although the majority of states now have laws that regulate or decriminalize various types of cannabis use, marijuana remains a Schedule I drug under the Controlled Substances Act, making it illegal under federal law in the U.S. to, among other things, cultivate, distribute or possess cannabis in the U.S. In those states in which the use of marijuana has been legalized, its use remains a violation of federal law pursuant to the Controlled Substances Act. The Controlled Substances Act classifies marijuana as a Schedule I controlled substance, and as such, medical and adult cannabis use is illegal under U.S. federal law. Unless and until the U.S. Congress amends the Controlled Substances Act with respect to marijuana (and the President approves such amendment), there is a risk that federal authorities may enforce current federal law. Financial transactions involving proceeds generated by, or intended to promote, cannabis-related business activities in the U.S. may form the basis for prosecution under applicable U.S. federal money laundering legislation. The approach to enforcement of such laws by the federal government in the U.S. has trended toward non-enforcement against individuals and businesses that comply with medical or adult-use cannabis regulatory programs in states where such programs are legal, strict compliance with state laws with respect to cannabis.

In most states that have legalized medical- and recreational-use cannabis in some form, the growing, processing and/or dispensing of cannabis generally requires that the operator obtain one or more licenses in accordance with applicable state requirements. In addition, many states regulate various aspects of the growing, processing and/or dispensing of cannabis and hemp. Local governments in some cases also impose rules and regulations on the manner of operating cannabis and hemp businesses. As a result, applicable state and local laws and regulations vary widely, including, but not limited to, regulations governing the medical cannabis program, product testing, the level of enforcement by state and local authorities on non-licensed cannabis operators, state and local taxation of regulated cannabis products, local municipality bans on operations and operator licensing processes and renewals.

As part of its rigorous due diligence policy on all potential customers, the Company carefully reviews the appropriate licensure of each potential customer in the cannabis and hemp industry for compliance with applicable local, state, and federal laws. The Company is not involved in the cultivation, processing, or retail of cannabis products and never takes a controlling interest in any of the operations of its cannabis customers as a matter of state law.

Environmental Regulations

We are not aware of any environmental laws that have been enacted, nor are we aware of any such laws being contemplated for the future, that directly impact our business.

Implications of Being an Emerging Growth Company and Smaller Reporting Company

We qualify as an "emerging growth company" as defined in the Jumpstart Our Business Startups Act of 2012, which we refer to as the JOBS Act. As a result, we are permitted to, and intend to, rely on exemptions from certain disclosure requirements that are applicable to other companies that are not emerging growth companies. Accordingly, for so long as we are an "emerging growth company," we will not be required to:

- engage an auditor to report on our internal controls over financial reporting pursuant to Section 404(b) of the Sarbanes-Oxley Act of 2002, or the Sarbanes-Oxley Act;

- comply with any requirement that may be adopted by the Public Company Accounting Oversight Board, or the PCAOB, 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 shareholder advisory votes, such as "say-on-pay," "say-on-frequency," and "say-on-golden parachutes;" or

- disclose certain executive compensation-related items such as the correlation between executive compensation and performance and the comparison of the chief executive officer's compensation to median employee compensation.

In addition, the JOBS Act provides that an "emerging growth company" can use the extended transition period for complying with new or revised accounting standards.

We will remain an "emerging growth company" until the earliest to occur of:

- our reporting $1 billion or more in annual gross revenues;
- our issuance, in a three-year period, of more than $1 billion in non-convertible debt;
- the end of the fiscal year in which the market value of our Common Stock held by non-affiliates exceeds $700 million on the last business day of our second fiscal quarter; and
    - December 31, 2026.

We cannot predict if investors will find our securities less attractive because we may rely on these exemptions, which could result in a less active trading market for our securities and increased volatility in the price of our securities.

Finally, we are a "smaller reporting company" (and may continue to qualify as such even after we no longer qualify as an emerging growth company) and accordingly may provide less public disclosure than larger public companies, including the inclusion of only two years of audited financial statements and only two years of management's discussion and analysis of financial condition and results of operations disclosure. As a result, the information that we provide to our stockholders may be different than you might receive from other public reporting companies in which you hold equity interests.

Corporate Information

Our executive offices are located at 2468 Industrial Row, Dr., Troy, Michigan 48084. Our telephone number at our executive offices is (855) 420-0020.

Agrify Corporation was incorporated in the state of Nevada on June 6, 2016, originally incorporated as Agrinamics, Inc. ("Agrinamics"). On September 16, 2019, Agrinamics amended its articles of incorporation to reflect a name change to Agrify Corporation.

Available Information

The Company's 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 Securities Exchange Act of 1934, as amended (the "Exchange Act"), are filed with the SEC. We are subject to the informational requirements of the Exchange Act and file or furnish reports, proxy statements and other information with the SEC. Such reports and other information filed by us with the SEC are available free of charge at https://ir.agrify.com/financials-and-filings/sec-filings when such reports are available on the SEC's website. The SEC maintains an Internet site that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC at www.sec.gov. We periodically provide other information for investors on our corporate website, www.agrify.com, and our investor relations website, investor.gnln.com. This includes press releases and other information about financial performance, information on corporate governance and details related to our annual meeting of shareholders. The information contained on the websites referenced in this Form 10-K is not incorporated by reference into this filing. Further, our references to website URLs are intended to be inactive textual references only.

Item 1A. Risk Factors.

Investing in our Common Stock involves a high degree of risk. You should carefully consider the risks and uncertainties described below, together with all of the other information in this Annual Report on Form 10-K, including the section titled "Management's Discussion and Analysis of Financial Condition and Results of Operations" and our consolidated financial statements and related notes, before making a decision to invest in our Common Stock. The risks and uncertainties described below may not be the only ones we face. If any of the risks actually occur, our business, financial condition, results of operations, and prospects could be materially and adversely affected. In that event, the market price of our Common Stock could decline, and you could lose part or all of your investment.

Risks Related to Our Business and Industry

We have a history of losses, expect to continue to incur losses in the near term and may not achieve or sustain profitability in the future, and as a result, our management has identified, and our auditors agreed that there is a substantial doubt about our ability to continue as a going concern.

Our consolidated financial statements have been prepared assuming we will continue as a going concern. Since inception, we have experienced recurring net losses which losses caused an accumulated deficit of approximately $265.8 million as of December 31, 2023. These factors, among others, raise substantial doubt about our ability to continue as a going concern. Our consolidated financial statements do not include any adjustments that might result from the outcome of this uncertainty.

We have a relatively short operating history, which makes it difficult to evaluate our business and future prospects.

We have a relatively short operating history, which makes it difficult to evaluate our business and future prospects. We have been in existence since June 2016 and much of our revenue growth occurred during 2021 and 2022, with a decrease of revenues noted in 2023. We have encountered, and will continue to encounter, risks and difficulties frequently experienced by growing companies in rapidly changing industries, including those related to:

- market acceptance of our current and future products and services;
- changing regulatory environments and costs associated with compliance, particularly as related to our operations in the cannabis sector;
- our ability to compete with other companies offering similar products and services;
- our ability to effectively market our products and services and attract new clients;
- the amount and timing of operating expenses, particularly sales and marketing expenses, related to the maintenance and expansion of our business, operations, and infrastructure;
- our ability to control costs, including operating expenses;
- our ability to manage organic growth and growth fueled by acquisitions;
- public perception and acceptance of cannabis-related products and services generally; and
- general economic conditions and events.

If we do not manage these risks successfully, our business and financial performance will be adversely affected.

Potential risk of loss associated with our TTK Solution Offerings

During 2021, we introduced our TTK Solution, which among other things, includes financing arrangements related to both facility design and build services and equipment. These arrangements require a significant upfront investment over multiple years, before we start to receive repayment on the upfront construction advances and on our recurring monthly SaaS fees and production fees.

During 2022, a significant amount of working capital was invested in funding our TTK Solution's construction and equipment commitments. In 2023, a limited amount was invested in funding the remaining TTK Solution construction and equipment commitments, but we do not intend to enter into any new TTK Solutions in the foreseeable future.

We believe that there is a potential risk of loss associated with our ability to receive anticipated future payments that are in line with our projected financial unit metrics due to a host of variables including, but not limited to the following:

- as we are in the early stages of our TTK Solution offerings, the TTK Solution is an unproven business model;
- the TTK Solution offering requires a significant amount of capital and our collection of advanced amounts is subject to customer credit risk and operational performance;
- our anticipated downstream production fee revenue assumes that our VFUs will successfully produce 35 pounds of product per VFU per year; and
- our anticipated returns are reliant upon our customers' ability to market and sell the products.

During 2022, we established a reserve of approximately $12.5 million specifically related to Greenstone Holdings ("Greenstone") TTK Solution. Greenstone is a related party because one of our former Agrify Brands employees and our VP of Engineering had a minority ownership. We established the reserve based upon our review of Greenstone's financial stability, which would impact collectability, which is primarily the result of unfavorable market conditions within the Colorado market. On April 6, 2023, Denver Greens, LLC ("Denver Greens") acquired certain interests in the Greenstone project through various transactions so that Denver Greens is now the operator of this TTK Solution. The Company wrote off the entire Greenstone loan receivable in 2022.

On September 15, 2022, we provided a notice of default under the Bud & Mary's TTK Agreement between us and Bud & Mary's. On October 5, 2022, Bud & Mary's filed a complaint in the Superior Court of Massachusetts in Suffolk County naming us as the defendant. Bud & Mary's is seeking, among other relief, monetary damages in connection with alleged unfair or deceptive trade practices, breach of contract, and conversion arising from the Bud & Mary's TTK Agreement. In response, we established a reserve of $14.7 million specifically related to Bud & Mary's. We deemed it necessary to fully reserve the $14.7 million outstanding balance in the third quarter of 2022 due to the current litigation and the uncertainty of the customer's ability to repay the outstanding balance. If we are unable to realize revenue from our TTK Solution offerings on a timely basis, or at all, or if we incur additional losses as a result of the Bud & Mary's claim, our business and financial performance will be adversely affected.

As of December 31, 2023 the remaining balance for the TTK allowance for doubtful accounts is at $14.7 million for Bud and Mary and $4.5 million for Hannah - as the facility is approximately 75% built and won't be operational until the remaining 25% of the construction is completed.

We may require additional financing to achieve our goals, and a failure to obtain this necessary capital when needed on acceptable terms, or at all, may force us to delay, limit, reduce, or terminate our product manufacturing and development, and other operations.

At December 31, 2023, we had approximately $430,000 of cash, cash equivalents, and restricted cash. Our restricted cash of $10 million as of December 31, 2022 was associated with a senior secured promissory note in an aggregate principal amount of $65 million (the "SPA Note") which was exchanged for a new senior secured note (the "Exchange Note") as of December 31, 2022. There was no restricted cash as of December 31, 2023. Our operating plan may change because of factors currently unknown to us, and we may need to seek additional funds sooner than planned. Even if we are able to substantially increase revenue and reduce operational expenditures, we may need to raise additional capital, either through borrowings, private offerings, public offerings, or some type of business combination, such as a merger or buyout, and there can be no assurance that we will be successful in such pursuits. Accordingly, if we are unable to generate adequate cash from operations, and if we are unable to find sources of funding, it may be necessary for us to sell one or more lines of business or all or a portion of our assets, enter into a business combination, or reduce or eliminate operations. These possibilities, to the extent available, may be on terms that result in significant dilution to our shareholders or that result in our investors losing all of their investment in our company.

As of April 1, 2023, after which time the ATM program was discontinued, we sold 629,710 shares of Common Stock, under the ATM at an average price of $27.29 per share, resulting in gross proceeds to us of $17.2 million, and net proceeds of $16.7 million after commissions and fees to the Agent totaling $516,000. $3.0 million of the proceeds under the ATM Program were used to repay amounts due to High Trail Special Situations LLC (the "Former Lender") under the Exchange Note.

If we are able to raise additional capital, we do not know what the terms of any such capital raising would be. In addition, any future sale of our equity securities would dilute the ownership and control of your shares and could be at prices substantially below prices at which our shares currently trade. Our inability to raise capital could require us to significantly curtail or terminate our operations. We may seek to increase our cash reserves through the sale of additional equity or debt securities. The sale of convertible debt securities or additional equity securities could result in additional and potentially substantial dilution to our shareholders. The incurrence of indebtedness would result in increased debt service obligations and could result in operating and financing covenants that would restrict our operations and liquidity, and ability to pay dividends. In addition, our ability to obtain additional capital on acceptable terms is subject to a variety of uncertainties. We cannot assure you that financing will be available in amounts or on terms acceptable to us, if at all. Any failure to raise additional funds on favorable terms could have a material adverse effect on our liquidity and financial condition.

We face risks associated with strategic acquisitions.

Since our inception, we have strategically acquired several businesses, and plan to continue to make strategic acquisitions, some of which may be material. These acquisitions may involve a number of financial, accounting, managerial, operational, legal, compliance, and other risks and challenges, including the following, any of which could adversely affect our results of operations:

- any acquired business could under-perform relative to our expectations and the price that we paid for it, or not perform in accordance with its anticipated timetable;
- we may incur or assume significant debt in connection with our acquisitions
- acquisitions could cause our results of operations to differ from our own or the investment community's expectations in any given period, or over the long term; and
- acquisitions could create demands on our management that they may be unable to effectively address, or for which we may incur additional costs.

Additionally, following any business acquisition, we could experience difficulty in integrating personnel, operations, financial and other systems, and in retaining key employees and customers.

We may record goodwill and other intangible assets on our consolidated balance sheet in connection with our acquisitions. If we are not able to realize the value of these assets, we may be required to incur charges relating to the impairment of these assets, which could materially impact our results of operations.

Potential future divestitures or other transactions could adversely affect our costs, revenues, profitability and financial position.

In order to position our business to take advantage of particular future growth opportunities and/or consolidate our more capable businesses, we may in the future pursue a strategy of less product and service integration and/or focus on one or more specialized facets of our products and services. These actions may require that we abandon or divest certain assets or businesses that no longer fit within our evolving strategic direction. Abandoning or divesting certain assets or businesses may entail engaging in discussions, evaluating opportunities and entering into agreements, potentially resulting in transactions involving significant risks and uncertainties that could adversely affect our business, results of operations and financial condition. We may not be able to find potential buyers on favorable terms, we may experience disruption to our business and/or we may divert management attention from other business concerns, lose key employees and possibly retain certain liabilities related to these potential transactions.

We have substantial debt and other financial obligations, and we may incur even more debt. Any failure to meet our debt and other financial obligations or maintain compliance with related covenants could harm our business, financial condition, and results of operations.

On March 14, 2022, we entered into a Securities Purchase Agreement with the Former Lender (the “Securities Purchase Agreement”), pursuant to which we agreed to issue and sell to the Former Lender a senior secured promissory note (the “SPA Note”), in a private placement transaction, in exchange for the payment by the Former Lender of $65 million, less applicable expenses as set forth in the Securities Purchase Agreement, and a warrant (the “SPA Warrant”) to purchase up to an aggregate of 34,406 shares of Common Stock.

On August 18, 2022, we reached an agreement with the Former Lender to amend the existing SPA Note and entered into a Securities Exchange Agreement (the “August 2022 Exchange Agreement”). Pursuant to the August 2022 Exchange Agreement, we partially paid $35.2 million along with approximately $300,000 in repayments for other fees under the SPA Note and exchanged the remaining balance of the SPA Note for the Exchange Note with an aggregate original principal amount of $35.0 million and a new warrant to purchase 71,139 shares of Common Stock (the “Note Exchange Warrant”). Additionally, we exchanged the SPA Warrant for a new warrant for the same number of underlying shares but with a reduced exercise price (the “Modified Warrant” and, collectively with the Note Exchange Warrant, the “August 2022 Warrants”). The Exchange Note will mature on the three-year anniversary of its issuance.

On March 8, 2023, we entered into a second Securities Exchange Agreement with the Former Lender (the “March 2023 Exchange Agreement” and together with the August 2022 Exchange Agreement, the “Exchange Agreements”), pursuant to which we paid approximately $10.3 million in principal under the Exchange Note and exchanged $10.0 million in principal amount under the Exchange Note for a new senior convertible note (the “Convertible Note” and, together with the Exchange Note, the “Notes”) with an original principal amount of $10.0 million. The Convertible Note will mature on August 19, 2025.

On October 27, 2023, CP Acquisitions LLC (the “New Lender”), an entity affiliated with and controlled by Raymond Chang, our Chief Executive Officer, and I-Tseng Jenny Chan, who subsequently joined our Board of Directors, acquired the Notes from the Former Lender.

On January 25, 2024, following stockholder approval at an annual meeting of stockholders on January 8, 2024, we and the New Lender consolidated the outstanding principal and interest due under the Junior Secured Note and the Exchange Note into the Convertible Note and amended and restated the Convertible Note (as amended and restated, the “Restated Note”), with an outstanding principal amount of approximately $18.9 million at the time of issuance of the Restated Note. The Restated Note amended the terms of the Convertible Note by, among other things, (i) reducing the conversion price to $1.46 per share of common stock, (ii) increasing the beneficial ownership limitation to 49.99% with respect to any individual or group, provided that the New Lender may assign its right to receive shares upon conversion to Mr. Chang and/or Ms. Chan or their affiliates, in which case the 49.99% beneficial ownership limitation will apply to each of them individually, (iii) extending the maturity date to December 31, 2025, (iv) increasing the interest rate from 9% to 10% per annum, (v) increasing the default interest from 15% to 18% per annum, and (vi) providing for the payment of interest every six months, or in lieu of cash interest payments, we may issue shares as payments-in-kind at a conversion price equal to the higher of (i) $1.46 or (ii) a 20% discount to our trailing seven-day volume weighted average price as of the date of interest payment. Immediately following the execution of the Restated Note, the New Lender immediately elected to convert approximately $3.9 million of outstanding principal into an aggregate of 2,671,633 shares of common stock, and assigned its rights to receive such shares to entities affiliated with Mr. Chang and Ms. Chan. Following the conversion, there was $15.0 million in principal amount outstanding under the Restated Note.

Pursuant to the terms of the Notes, we are subject to various covenants, including negative covenants that restrict our ability to engage in certain transactions, which may limit our ability to respond to changing business and economic conditions. Such negative covenants include, among other things, limitations on our ability and the ability of our subsidiaries to:

- incur debt;
- incur liens;
- make investments (including acquisitions);
- sell assets; and
- pay dividends on our capital stock.

In addition, the Notes impose certain customary affirmative and negative covenants upon us, as well as covenants that restrict us and our subsidiaries from incurring any additional indebtedness or suffering any liens, subject to specified exceptions, restrict the ability of us and our subsidiaries from making certain investments, subject to specified exceptions, and restrict the declaration of any dividends or other distributions, subject to specified exceptions.

If we are not in compliance with certain of these covenants, in addition to other actions the New Lender may require, the amounts outstanding under the Exchange Agreements may become immediately due and payable. This immediate payment may negatively impact our financial condition. In addition, any failure to make scheduled payments of interest and principal on our outstanding indebtedness would likely harm our ability to incur additional indebtedness on acceptable terms. Our cash flow and capital resources may be insufficient to pay interest and principal on our debt in the future. If that should occur, our capital raising or debt restructuring measures may be unsuccessful or inadequate to meet our scheduled debt service obligations, which could cause us to default on our obligations and further impair our liquidity.

Our ability to make scheduled payments on our debt and other financial obligations and comply with financial covenants depends on our financial and operating performance. Our financial and operating performance will continue to be subject to prevailing economic conditions and to financial, business, and other factors, some of which are beyond our control. Failure within any applicable grace or cure periods to make such payments, comply with the financial covenants, or any other non-financial or restrictive covenant, would create a default under the Notes. Our cash flow and existing capital resources may be insufficient to repay our debt at maturity, in which case we would have to extend such maturity date, or otherwise repay, refinance, and/or restructure the obligations under the Notes, including with proceeds from the sale of assets, and additional equity or debt capital. If we are unsuccessful in obtaining such extension, or entering into such repayment, refinance, or restructure prior to maturity, or any other default existed under the Notes, the New Lender could accelerate the indebtedness under the Notes, foreclose against its collateral, or seek other remedies, which would jeopardize our ability to continue our current operations.

We may be required to record impairment charges against the carrying value of our goodwill and other intangible assets in the future.

During the three-month period ended June 30, 2022, we identified an impairment-triggering event associated with both a sustained decline in our stock price and associated market capitalization, as well as a second-quarter slowdown in the cannabis industry as a whole. Due to these factors, we deemed that there was an impairment to the carrying value of our property and equipment and accordingly performed interim testing as of June 30, 2022.

Based on its interim testing, we noted that the carrying value of equity exceeded the calculated fair value by an amount greater than the aggregate value of our goodwill and intangible assets. Accordingly, we concluded that the entire carrying value of our goodwill and intangible assets were impaired, resulting in a second-quarter impairment charge of $69.9 million. Additional information regarding the interim testing on goodwill may be found in Note 7 - Goodwill and Intangible Assets, Net, included in the notes to the consolidated financial statements.

During the year ended December 31, 2023, our top four customers accounted for 17.4% of our total revenue. In the event of any material decrease in revenue from these customers, or if we are unable to replace the revenue through the sale of our products to additional customers, our financial condition and results of operations could be materially and adversely affected.

This concentration of customers leaves us exposed to the risks associated with the loss of one or both of these significant customers, which would materially and adversely affect our revenues and results of operations. In addition, some customers have experienced and may continue to experience construction delays in building out their facilities and we have been assisting these customers in addressing these delays, including in certain cases extending their payment terms. Any continued delays will likely result in a negative impact on our revenues. Further, if these customers were to significantly reduce their relationship with us, or in the event that we are unable to replace the revenue through the sale of our products to additional customers, our financial condition and results of operations could be negatively impacted, and such impact would likely be significant.

Our reliance on a limited base of suppliers for our products may result in disruptions to our supply chain and business and adversely affect our financial results.

We rely on a limited number of suppliers for our products and other supplies. If we are unable to maintain supplier arrangements and relationships, if we are unable to contract with suppliers at the quantity and quality levels needed for our business, if any of our key suppliers becomes insolvent or experiences other financial distress or if any of our key suppliers is negatively impacted with respect to staffing and shipping of products, we could experience disruptions in our supply chain, which could have a material adverse effect on our financial condition, results of operations, and cash flows.

Many of our suppliers are experiencing operational difficulties, which in turn may have an adverse effect on our ability to provide products to our customers.

Although the ability of our suppliers to timely ship their goods has affected some of our deliveries, currently the difficulties experienced by our suppliers have not yet materially impacted our ability to deliver products to our customers and we do not significantly depend on any one supplier; however, if this continues, it may negatively affect any inventory we may have and more significantly delay the delivery of merchandise to our customers, which in turn will adversely affect our revenues and results of operations. If the difficulties experienced by our suppliers continue, we cannot guarantee that we will be able to locate alternative sources of supply for our merchandise on acceptable terms, or at all. If we are unable to adequately purchase appropriate amounts of supplies for our products, our business and results of operations may be materially and adversely affected.

As a company with clients operating in the cannabis industry, we face many particular and evolving risks associated with that industry.

We currently serve private clients as they operate in the growing cannabis industry. Any risks related to the cannabis industry that may adversely affect our clients and potential clients may, in turn, adversely affect demand for our products. Specific risks faced by companies operating in the cannabis industry include, but are not limited to, the following:

Marijuana remains illegal under U.S. federal law

Marijuana is a Schedule-I controlled substance under the Controlled Substances Act and is illegal under federal law. It remains illegal under U.S. Federal law to grow, cultivate, sell, or possess marijuana for any purpose or to assist or conspire with those who do so. Additionally, 21 U.S.C. 856 makes it illegal to "knowingly open, lease, rent, use, or maintain any place, whether permanently or temporarily, for the purpose of manufacturing, distributing, or using any controlled substance." Even in those states in which the use of marijuana has been authorized, its use remains a violation of federal law. Since federal law criminalizing the use of marijuana is not preempted by state laws that legalize its use, strict enforcement of federal law regarding marijuana would likely result in our clients' inability to proceed with their operations, which would adversely affect demands for our products.

Uncertainty of federal enforcement and the need to renew temporary safeguards

On January 4, 2018, former Attorney General Sessions rescinded the previously issued memoranda (known as the Cole Memorandum) from the U.S. Department of Justice ("DOJ") that had de-prioritized the enforcement of federal law against marijuana users and businesses that comply with state marijuana laws, adding uncertainty to the question of how the federal government will choose to enforce federal laws regarding marijuana. Attorney General Sessions issued a memorandum to all U.S. Attorneys in which the DOJ affirmatively rescinded the previous guidance as to marijuana enforcement, calling such guidance "unnecessary." This one-page memorandum was vague in nature, stating that federal prosecutors should use established principles in setting their law enforcement priorities. Under previous administrations, the DOJ indicated that those users and suppliers of medical marijuana who complied with state laws, which required compliance with certain criteria, would not be prosecuted. As a result, it is now unclear if the DOJ will seek to enforce the Controlled Substances Act against those users and suppliers who comply with state marijuana laws.

Despite former Attorney General Sessions' rescission of the Cole Memorandum, the Department of the Treasury, Financial Crimes Enforcement Network, has not rescinded the "FinCEN Memo" dated February 14, 2014, which de-prioritizes enforcement of the Bank Secrecy Act against financial institutions and marijuana-related businesses which utilize them. This memo appears to be a standalone document and is presumptively still in effect. At any time, however, the Department of the Treasury, Financial Crimes Enforcement Network, could elect to rescind the FinCEN Memo. This would make it more difficult for our clients and potential clients to access the U.S. banking systems and conduct financial transactions, which would adversely affect our operations.

In 2014, Congress passed a spending bill ("2015 Appropriations Bill") containing a provision ("Appropriations Rider") blocking federal funds and resources allocated under the 2015 Appropriations Bill from being used to "prevent such States from implementing their own State medical marijuana law." The Appropriations Rider seemed to have prohibited the federal government from interfering with the ability of states to administer their medical marijuana laws, although it did not codify federal protections for medical marijuana patients and producers. Moreover, despite the Appropriations Rider, the Justice Department maintains that it can still prosecute violations of the federal marijuana ban and continue cases already in the courts. Additionally, the Appropriations Rider must be re-enacted every year. While it was continued in subsequent years and remains in effect, continued re-authorization of the Appropriations Rider cannot be guaranteed. If the Appropriations Rider is no longer in effect, the risk of federal enforcement and override of state marijuana laws would increase.

Further legislative development beneficial to our operations is not guaranteed

One aspect of our business involves selling goods and services to state-licensed cannabis cultivators. The success of our business may partly depend on the continued development of the cannabis industry and the activity of commercial business within the industry. The continued development of the cannabis industry is dependent upon continued legislative and regulatory authorization of cannabis at the state level and a continued laissez-faire approach by federal enforcement agencies. Any number of factors could slow or halt progress in this area. Further regulatory progress beneficial to the industry cannot be assured. While there may be ample public support for legislative action, numerous factors impact the legislative and regulatory process, including election results, scientific findings, or general public events. Any one of these factors could slow or halt progressive legislation relating to cannabis and the current tolerance for the use of cannabis by consumers, which could adversely affect demand for our products and operations.

The cannabis industry could face strong opposition from other industries

We believe that established businesses in other industries may have a strong economic interest in opposing the development of the cannabis industry. Cannabis may be seen by companies in other industries as an attractive alternative to their products, including recreational marijuana as an alternative to alcohol, and medical marijuana as an alternative to various commercial pharmaceuticals. Many industries that could view the emerging cannabis industry as an economic threat are well established, with vast economic and federal and state lobbying resources. It is possible that companies within these industries could use their resources to attempt to slow or reverse legislation legalizing cannabis. Any inroads these companies make in halting or impeding legislative initiatives that would be beneficial to the cannabis industry could have a detrimental impact on some of our clients and, in turn, on our operations.

The legality of marijuana could be reversed in one or more states

The voters or legislatures of states in which marijuana has already been legalized could potentially repeal applicable laws which permit the operation of both medical and retail marijuana businesses. These actions might force businesses, including those that are our clients, to cease operations in one or more states entirely.

Changing legislation and evolving interpretations of law

Laws and regulations affecting the medical and adult-use marijuana industry are constantly changing, which could detrimentally affect some of our clients and, in turn, our operations. Local, state, and federal marijuana laws and regulations are broad in scope and subject to evolving interpretations, which could require our clients and thus us to incur substantial costs associated with modification of operations to ensure such clients' compliance. In addition, violations of these laws, or allegations of such violations, could disrupt our clients' businesses and result in a material adverse effect on our operations. In addition, it is possible that regulations may be enacted in the future that will limit the amount of cannabis growth, or related products that our commercial clients are authorized to produce. We cannot predict the nature of any future laws, regulations, interpretations, or applications, nor can we determine what effect additional governmental regulations or administrative policies and procedures, when and if promulgated, could have on our operations.

Our business depends in part on client licensing

Our business is partly dependent on certain of our customers obtaining various licenses from various municipalities and state licensing agencies. There can be no assurance that any or all licenses necessary for our clients to operate their businesses will be obtained, retained, or renewed. If a licensing body were to determine that a client of ours had violated applicable rules and regulations, there is a risk the license granted to that client could be revoked, which could adversely affect our operations. There can be no assurance that our existing clients will be able to retain their licenses going forward, or that new licenses will be granted to existing and new market entrants.

Banking regulations could limit access to banking services

Since the use of marijuana is illegal under federal law, there is a compelling argument that banks cannot lawfully accept for deposit funds from businesses involved with marijuana. Consequently, businesses involved in the cannabis industry often have trouble finding a bank willing to accept their business. The inability to open bank accounts may make it difficult for some of our clients to operate and their reliance on cash can result in a heightened risk of theft, which could harm their businesses and, in turn, harm our business. Although the proposal of the Secure and Fair Enforcement Banking Act, also referred to as the SAFE Banking Act, would allow banks to work with cannabis businesses and prevent federal banking regulators from intervening or punishing those banks, the legislation still requires the approval of the U.S. Senate. There can be no assurance that the SAFE Banking Act will become law in the U.S. Additionally, most courts have denied marijuana-related businesses bankruptcy protection, thus making it very difficult for lenders to recoup their investments, which may limit the willingness of banks to lend to our clients and to us.

We may face insurance risks

In the U.S., many marijuana-related businesses are subject to a lack of adequate insurance coverage. In addition, many insurance companies may deny claims for any loss relating to marijuana or marijuana-related operations based on their illegality under federal law, noting that a contract for an illegal transaction is unenforceable.

We participate in an evolving industry

The cannabis industry is not yet well-developed, and many aspects of this industry's development and evolution cannot be accurately predicted. While we have attempted to identify many risks specific to the cannabis industry, you should carefully consider that there are other risks that cannot be foreseen or are not described in this report, which could materially and adversely affect our business and financial performance. We expect that the cannabis market and our business will evolve in ways that are difficult to predict. Our long-term success may depend on our ability to successfully adjust our strategy to meet the changing market dynamics. If we are unable to successfully adapt to changes in the cannabis industry, our operations could be adversely affected.

The inability of our customers to meet their financial or contractual obligations to us may result in disruption to our results of operations and could result in financial losses.

We have exposure to several customers and certain of these customers are experiencing financial difficulties. We have in the past, and may in the future, need to take allowances against and need to write off receivables due to the creditworthiness of these customers. Further, the inability of these customers to purchase our products could materially adversely affect our results of operations.

Changes in our credit profile may affect our relationship with our suppliers, which could have a material adverse effect on our liquidity.

Changes in our credit profile may affect the way our suppliers view our ability to make payments and may induce them to shorten the payment terms of their invoices. Given the large dollar amounts and volume of our purchases from suppliers, a change in payment terms may have a material adverse effect on our liquidity and our ability to make payments to our suppliers and, consequently, may have a material adverse effect on our business and results of operations.

Although we believe our current sales backlog, which consists of purchase orders or purchase commitments, and our qualified pipeline of carefully vetted potential sales opportunities, will translate into future revenue, there can be no assurance that we will be successful in such pursuit.

Although we conduct a detailed due diligence investigation on our current and potential customers and place a heavy emphasis on the qualification process to ensure that all active customer purchase orders and commitments relating to our backlog and all active opportunities in our qualified pipeline have been meticulously vetted, the criteria we rely on and the internal analysis we undertake is subjective. Furthermore, we have a relatively short operating history and do not have significant data relating to the conversion of our backlog into revenue and the conversion of our qualified pipeline into customer contracts. Accordingly, although we believe that a portion of our backlog and qualified pipeline will translate into bookings over the next 12 months, there can be no assurance that we will be successful in such pursuit. In the event our backlog and qualified pipeline do not translate into bookings as projected, it could materially and adversely affect our business and financial performance.

We rely on third parties for certain services made available to our customers, which could limit our control over the quality of the user experience and our cost of providing services.

Some of the applications and services available through our proprietary Agrify cultivation solution, including our flagship hardware product, the Agrify Vertical Farming Unit ("VFU"), and our proprietary SaaS product, Agrify Insights™, are provided through relationships with third party service providers. We do not typically have any direct control over these third-party service providers. These third-party service providers could experience service outages, data loss, privacy breaches, including cyber-attacks, and other events relating to the applications and services they provide that could diminish the utility of these services and which could harm users thereof. Our platform is currently hosted by a third-party service provider. There are readily available alternative hosting services available should we desire or need to move to a different web host. Certain ancillary services provided by us also uses the services of third-party providers, for which, we believe, there are readily available alternatives on comparable economic terms. Offering integrated platforms which rely, in part, on the services of other providers lessens the control that we have over the total client experience. Should the third-party service providers we rely upon not deliver at standards we expect and desire, acceptance of our platforms could suffer, which would have an adverse effect on our business and financial performance. Further, we cannot be assured of entering into agreements with such third-party service providers on economically favorable terms.

The growth and success of our business depends on the continued contributions of Raymond Chang, as our key executive officer, as well as our ability to attract and retain qualified personnel.

Our growth and success are dependent upon the continued contributions made by our Chairman of the Board and Chief Executive Officer, Raymond Chang. We rely on Mr. Chang's expertise in business operations when we are developing new products and services. If Mr. Chang cannot serve us or is no longer willing to do so, we may not be able to find alternatives in a timely manner or at all. This may have a material adverse effect on our business. In addition, our growth and success will depend to a significant extent on our ability to identify, attract, hire, train and retain qualified professional, creative, technical and managerial personnel. Timothy R. Oakes, our Chief Financial Officer, notified us on January 2, 2023 that he intended to resign from his role with us effective as of February 28, 2023 to pursue other opportunities. While we are conducting a search for Mr. Oakes' successor, there is no assurance that we will be able to identify, attract or hire a replacement in a timely manner. Competition for experience and qualified talent in the indoor agriculture marketplace can be intense. We may not be successful in identifying, attracting, hiring, training and retaining such personnel in the future. If we are unable to hire, assimilate and retain qualified personnel in the future, such inability could adversely affect our operations.

We face intense competition that could prohibit us from developing or increasing our customer base.

The indoor agriculture industry is highly competitive. We may compete with companies that have greater capital resources and facilities. More established companies with much greater financial resources which do not currently compete with us may be able to adapt their existing operations more easily to our line of business. In addition, the continued growth of the cannabis industry will likely attract some of these existing companies and incentivize them to produce solutions that are competitive with those offered by us. Our competitors may also introduce new and improved products, and manufacturers may sell equipment direct to consumers. We may not be able to successfully compete with larger enterprises devoting significant resources to compete in our target market space. Due to this competition, there is no assurance that we will not encounter difficulties in increasing revenues and maintaining and/or increasing market share. In addition, increased competition may lead to reduced prices and/or margins for products we sell.

Protecting and defending against intellectual property claims may have a material adverse effect on our business.

Our ability to compete depends, in part, upon the successful protection of our intellectual property relating to our proprietary Agrify cultivation solution, including our flagship hardware product, the VFU, and our proprietary SaaS product, Agrify Insights™. We seek to protect our proprietary and intellectual property rights through patent applications, common law copyright and trademark laws, nondisclosure agreements, and non-disclosure provisions within our licensing and distribution arrangements with reputable companies in our target markets. Enforcement of our intellectual property rights would be costly, and there can be no assurance that we will have the resources to undertake all necessary action to protect our intellectual property rights or that we will be successful. Any infringement of our material intellectual property rights could require us to redirect resources to actions necessary to protect same and could distract management from our underlying business operations. An infringement of our material intellectual property rights and resulting actions could adversely affect our operations.

We cannot assure investors that we will continue to innovate and file new patent applications, or that any current or future patent applications will result in granted patents. Further, we cannot predict how long it will take for such patents to issue, if at all. It is possible that, for any of our patents that may issue in the future, our competitors may design their products around our patented technologies. Further, we cannot assure investors that other parties will not challenge any patents granted to us, or that courts or regulatory agencies will hold our patents to be valid, enforceable, and/or infringed. We cannot guarantee investors that we will be successful in defending challenges made against our patents and patent applications. Any successful third-party challenge or challenges to our patents could result in the unenforceability or invalidity of such patents, or such patents being interpreted narrowly and/or in a manner adverse to our interests. Our ability to establish or maintain a technological or competitive advantage over our competitors and/or market entrants may be diminished because of these uncertainties. For these and other reasons, our intellectual property may not provide us with any competitive advantage. For example:

- we may not have been the first to make the inventions claimed or disclosed in our patent application;

- we may not have been the first to file patent application. To determine the priority of these inventions, we may have to participate in interference proceedings or derivation proceedings declared by the U.S. Patent and Trademark Office (“USPTO”), which could result in substantial cost to us, and could possibly result in a loss or narrowing of patent rights. No assurance can be given that our granted patents will have priority over any other patent or patent application involved in such a proceeding, or will be held valid as an outcome of the proceeding;

- other parties may independently develop similar or alternative products and technologies or duplicate any of our products and technologies, which can potentially impact our market share, revenue, and goodwill, regardless of

- it is possible that our issued patents may not provide intellectual property protection of commercially viable products or product features, may not provide us with any competitive advantages, or may be challenged and invalidated by third parties, patent offices, and/or the courts;

- we may be unaware of or unfamiliar with prior art and/or interpretations of prior art that could potentially impact the validity or scope of our patents or patent applications that we may file

- we take efforts and enter into agreements with employees, consultants, collaborators, and advisors to confirm ownership and chain of title in intellectual property rights. However, an inventorship or ownership dispute could arise that may permit one or more third parties to practice or enforce our intellectual property rights, including possible efforts to enforce rights against us;

- we may elect not to maintain or pursue intellectual property rights that, at some point in time, may be considered relevant to or enforceable against a competitor;

- we may not develop additional proprietary products and technologies that are patentable, or we may develop additional proprietary products and technologies that are not patentable;

- the patents or other intellectual property rights of others may have an adverse effect on our business; and

- we apply for patents relating to our products and technologies and uses thereof, as we deem appropriate. However, we or our representatives or their agents may fail to apply for patents on important products and technologies in a timely fashion or at all, or we or our representatives or their agents may fail to apply for patents in potentially relevant jurisdictions.

To the extent our intellectual property offers inadequate protection, or is found to be invalid or unenforceable, we would be exposed to a greater risk of direct or indirect competition. If our intellectual property does not provide adequate coverage over our competitors' products, our competitive position could be adversely affected, as could our business.

Our success depends in part upon our ability to protect our core technology and intellectual property.

Our success depends in part upon our ability to protect our core technology and intellectual property. To establish and protect our proprietary rights, we rely on a combination of trademark, copyright, patent, trade secret and unfair competition laws of the U.S. and other countries, as well as contract provisions, license agreements, confidentiality procedures, non-disclosure agreements with third parties, employee disclosure and invention assignment agreements, and other contractual rights, as well as procedures governing internet/domain name registrations. However, there can be no assurance that these measures will be successful in any given case. We may be unable to prevent the misappropriation, infringement or violation of our intellectual property rights, breach of any contractual obligations to us, or independent development of intellectual property that is similar to ours, any of which could reduce or eliminate any competitive advantage we have developed, adversely affecting our revenues or otherwise harming our business.

We generally control access to and use of our proprietary technology and other confidential information through the use of internal and external controls, including contractual protections with employees, contractors, customers, and partners, and our software is protected by U.S. copyright laws.

Despite efforts to protect our proprietary rights through intellectual property laws, licenses, and confidentiality agreements, unauthorized parties may still copy or otherwise obtain and use our software and technology. Companies in the Internet, technology, and software industries frequently enter into litigation based on allegations of infringement, misappropriation, or violations of intellectual property rights or other laws. From time to time, we may face allegations that we have infringed the trademarks, copyrights, patents, trade secrets and other intellectual property rights of third parties, including competitors. If it became necessary for us to resort to litigation to protect these rights, any proceedings could be burdensome, costly and divert the attention of our personnel, and we may not prevail. In addition, any repeal or weakening of laws or enforcement in the U.S. or internationally intended to protect intellectual property rights could make it more difficult for us to adequately protect our intellectual property rights, negatively impacting their value and increasing the cost of enforcing our rights.

We have obtained and applied for U.S. trademark and service mark registrations and will continue to evaluate the registration of additional trademarks and service marks or, as appropriate. We cannot guarantee that any of our pending trademark applications will be approved by the applicable governmental authorities. Moreover, even if the trademark applications are approved, third parties may seek to oppose or otherwise challenge these registrations. A failure to obtain registrations for our trademarks could limit and impede our marketing efforts.

We may need to enter into intellectual property license agreements in the future, and if we are unable to obtain these licenses, our business could be harmed.

We may need or may choose to obtain licenses and/or acquire intellectual property rights from third parties to advance our research or commercialization of our current or future products. We also cannot provide any assurances that third-party patents do not exist that might be enforced against our current or future products in the absence of such a license or acquisition. We may fail to obtain any of these licenses or intellectual property rights on commercially reasonable terms. Even if we are able to obtain a license, it may be non-exclusive, thereby giving our competitors access to the same technologies licensed to us. In that event, we may be required to expend significant time and resources to develop or license replacement technology. If we are unable to do so, we may be unable to develop or commercialize the affected products, which could materially harm our business and the third parties owning such intellectual property rights could seek either an injunction prohibiting our sales, or, with respect to our sales, an obligation on our part to pay royalties and/or other forms of compensation.

Others may assert intellectual property infringement claims against us.

Companies in the software and technology industries can own patents, copyrights, trademarks, and trade secrets, and frequently enter into litigation based on allegations of infringement, misappropriation, or other violations of intellectual property or other rights. In addition, various “non-practicing entities” that own patents (colloquially known as “patent trolls”) often attempt to aggressively assert their rights to extract value from technology companies. It is possible that, from time to time, third parties may claim that our products misappropriate or infringe their intellectual property rights. Irrespective of the validity or the successful assertion of any such claims, we could incur significant costs and diversion of resources in defending against these claims, which could adversely affect our operations. We may receive unfavorable preliminary or interim rulings in the course of litigation, and there can be no assurances that favorable final outcomes will be obtained in all cases. We may decide to settle such lawsuits and disputes on terms that are unfavorable to us. As a result, we may also be required to develop alternative non-infringing technology or practices or discontinue the practices. The development of alternative non-infringing technology or practices could require significant effort and expense or may not be feasible. In addition, to the extent claims against us are successful, we may have to pay substantial money damages or discontinue, modify, or rename certain products or services that are found to be in violation of another party’s rights. We may have to seek a license (if available on acceptable terms, or at all) to continue offering products and services, which may significantly increase our operating expenses.

Our ability to use our net operating losses to offset future taxable income may be subject to certain limitations.

As of December 31, 2023, we had net operating loss (“NOL”) carryforwards for federal and state income tax purposes which may be available to offset taxable income in future years. Approximately $675,000 of federal NOLs will expire if not utilized by 2036 and approximately $143.5 million of federal NOLs carryforward indefinitely but are only available to offset 80% of taxable income per year. The $82.3 million state NOLs will begin to expire by 2039. A lack of future taxable income would adversely affect our ability to utilize these NOLs before they expire. The utilization of our NOLs could be subject to annual limitations under Section 382 and 383 of the Internal Revenue Code (“IRC” or the “Code”) of 1986, and similar state tax provisions due to ownership change limitations that may have occurred previously or that could occur in the future. In general, under Section 382, a corporation that undergoes an “ownership change” (as defined under Section 382 of the Code and applicable Treasury Regulations) is subject to limitations on its ability to utilize its pre-change NOLs to offset its future taxable income. As of December 31, 2023, we have not conducted an analysis of an ownership change under Section 382. To the extent that a study is completed, and an ownership change is deemed to occur, in the past or future, our NOLs and any NOLs of companies that we have acquired could be limited to offset any future taxable income.

There is also a risk that due to regulatory changes, such as suspensions on the use of NOLs or other unforeseen reasons, our existing NOLs could expire or otherwise be unavailable to reduce future income tax liabilities for federal and state income tax purposes. For these reasons, we may not be able to utilize a material portion of our NOLs, even if we attain profitability, which could result in increased future tax liability to us and could adversely affect the results of our operations and overall financial condition.

There are no assurances that our outstanding loans will be forgivable in whole or in part.

In May 2020, we entered into a Loan Agreement and Promissory Note with Bank of America pursuant to the Paycheck Protection Program (the “PPP”) under the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”) administered by the U.S. Small Business Administration (the “SBA”). We received total proceeds of approximately $779,000 from the unsecured PPP loan which was originally scheduled to mature in May 2022. We applied for forgiveness on the $779,000 of our PPP loan, but forgiveness was denied by the SBA. On June 23, 2022, we received a letter from Bank of America agreeing to extend the maturity date to May 7, 2025 with interest at a rate of 1.00% per year. The PPP loan is payable in 34 equal combined monthly principal and interest payments of approximately $24,000 that commenced on August 7, 2022.

Risks Related to Ownership of our Common Stock

Concentration of ownership among our existing executive officers, directors and their affiliates may prevent new investors from influencing significant corporate decisions.

Our executive officers, directors and their affiliates beneficially own, in the aggregate, approximately 52.57% of our outstanding shares of Common Stock. In particular, Raymond Chang, our Chairman of the Board and Chief Executive Officer, beneficially owns approximately 49.99% of our outstanding shares of Common Stock, and I-Tseng Jenny Chan, a member of our Board of Directors, beneficially owns approximately 49.99% of our outstanding shares of common stock, primarily as a result of a convertible note that is currently convertible into 10,273,973 shares of common stock that is held by an entity owned and controlled by Mr. Chang and Ms. Chan, which is subject to a 49.99% beneficial ownership limitation. As a result, these stockholders will be able to exercise a significant level of control over all matters requiring stockholder approval, including the election of directors, amendment of our articles of incorporation and approval of significant corporate transactions. This control could have the effect of delaying or preventing a change of control of our company or changes in management and will make the approval of certain transactions difficult or impossible without the support of these stockholders.

The large number of shares eligible for public sale could depress the market price of our Common Stock.

We have filed a registration statement to register the shares of Common Stock underlying outstanding options and shares reserved for future issuance under our equity compensation plans. Upon effectiveness of that registration statement, subject to the satisfaction of applicable exercise periods and subject to our insider trading policy, the shares of Common Stock issued upon exercise of outstanding options will be available for immediate resale in the U.S. in the open market.

Sales of our Common Stock as restrictions end or pursuant to registration rights may make it more difficult for us to sell equity securities in the future at a time and at a price that we deem appropriate. These sales also could cause our stock price to fall and make it more difficult for you to sell shares of our Common Stock.

Our failure to meet the continued listing requirements of Nasdaq could result in a de-listing of our Common Stock.

If we fail to continue to satisfy the continued listing requirements of Nasdaq, such as the corporate governance requirements or the minimum closing bid price requirement, Nasdaq will take steps to delist our common stock. Such a de-listing would likely have a negative effect on the price of our common stock and would impair stockholders' ability to sell or purchase our common stock when they wish to do so, as well as adversely affect our ability to issue additional securities and obtain additional financing in the future.

On April 18, 2023, we received a notice from Nasdaq (the "April Nasdaq Notice") that we were noncompliance with Nasdaq Listing Rule 5250(c)(1) as a result of our failure to file our Annual Report on Form 10-K (the "Form 10-K") with the SEC by the required due date.

On May 17, 2023, we received a second notice from Nasdaq (the "May Nasdaq Notice") that we remained noncompliant with Nasdaq Listing Rule 5250(c)(1) as a result of our failure to file our Quarterly Report on Form 10-Q for the quarter ended March 31, 2023 (the "First Quarter Form 10-Q") with the SEC by the required due date.

On August 16, 2023, we received a third notice from Nasdaq that we remain noncompliant with Nasdaq Listing Rule 5250(c)(1) as a result of our failure to file our Quarterly Report on Form 10-Q for the fiscal quarter ended June 30, 2023 (the "Second Quarter Form 10-Q") with the SEC by the required filing date (the "August Nasdaq Notice" and, together with the April Nasdaq Notice and the May Nasdaq Notice, the "Nasdaq Notices").

On October 17, 2023, we received a Staff Delisting Determination (the "Staff Determination") from the Listing Qualifications Department of Nasdaq notifying us that we were not in compliance with Nasdaq's continued listing requirements under the Listing Rule as a result of our failure to file the First Quarter Form 10-Q, the Second Quarter Form 10-Q and the Form 10-K (collectively, the "Delinquent Reports") in a timely manner. We filed each of the Delinquent Reports between November 28, 2023 and January 3, 2024.

On December 1, 2023, we received a notice Nasdaq stating that because we reported stockholders' equity of $(17.17) million in our Quarterly Report on Form 10-Q for the quarter ended March 31, 2023, we are no longer in compliance with Nasdaq Listing Rule 5550(b)(1), which requires that listed companies maintain a minimum of $2.5 million in stockholders' equity.

We timely requested a hearing before the Nasdaq Hearings Panel (the "Panel"), which hearing was held on January 11, 2024. At the hearing, we presented a plan to regain compliance with Nasdaq Listing Rule 5550(b)(1). On January 30, 2024, we received formal notice that the Panel had granted our request for an exception through April 15, 2024 to evidence compliance with Rule 5550(b)(1), which represents the full extent of the Panel's discretion to grant continued listing. As a result, there can be no assurance that we can regain compliance by the end of the extension period.

Additionally, on March 5, 2024, we received a deficiency letter from the Listing Qualifications Department of Nasdaq notifying us that, for the last 30 consecutive business days, the bid price for our common stock had closed below $1.00 per share, which is the minimum closing price required to maintain continued listing on the Nasdaq Stock Market under Nasdaq Listing Rule 5550(a)(2) (the "Minimum Bid Requirement"). The Notice had no immediate effect on the listing of our common stock on Nasdaq. In accordance with Nasdaq Listing Rule 5810(c)(3)(A), we have 180 calendar days to regain compliance with the Minimum Bid Requirement. To regain compliance with the Minimum Bid Requirement, the closing bid price of our common stock must be at least $1.00 per share for a minimum of 10 consecutive trading days during this 180-day compliance period, unless the Staff exercises its discretion to extend this period pursuant to Nasdaq Listing Rule 5810(c)(3)(H). The compliance period for us will expire on September 3, 2024.

We will take all possible actions to restore our compliance with Nasdaq, but we can provide no assurances that the listing of our common stock will be restored or that we otherwise will remain listed on Nasdaq.

The exercise of all or any number of outstanding warrants or the issuance of stock-based awards may dilute your holding of shares of our Common Stock.

We have issued several securities providing for the right to purchase our common stock. Investors could be subject to increased dilution upon the exercise of our warrants. A total of 3,765,932 warrants were issued and outstanding as of March 31, 2024.

Additionally, 14,865 shares of Common Stock were reserved for issuance of currently outstanding equity-based awards to employees, directors and certain other individuals under our 2022 Omnibus Equity Incentive Plan. The exercise of equity awards, including any restricted stock units that we may grant in the future, and the exercise of warrants and the subsequent sale of shares of Common Stock issued thereby, could have an adverse effect on the market for our Common Stock, including the price that an investor could obtain for their shares.

Investors may experience dilution in the value of their investment upon the exercise of the warrants and any equity awards that may be granted or issued pursuant to the 2022 Omnibus Equity Incentive Plan.

Provisions in our articles of incorporation, our by-laws and Nevada law might discourage, delay or prevent a change in control of our company or changes in our management and, therefore, depress the trading price of our Common Stock.

Provisions of our articles of incorporation, our by-laws and Nevada law may have the effect of deterring unsolicited takeovers or delaying or preventing a change in control of our company or changes in our management, including transactions in which our stockholders might otherwise receive a premium for their shares over then current market prices. In addition, these provisions may limit the ability of stockholders to approve transactions that they may deem to be in their best interests. These provisions include:

- the inability of stockholders to call special meetings; and

- the ability of our board of directors to designate the terms of and issue new series of preferred stock without stockholder approval, which could include the right to approve an acquisition or other change in our control or could be used to institute a rights plan, also known as a poison pill, that would work to dilute the stock ownership of a potential hostile acquirer, likely preventing acquisitions that have not been approved by our board of directors.

The existence of the forgoing provisions and anti-takeover measures could limit the price that investors might be willing to pay in the future for shares of our Common Stock. They could also deter potential acquirers of our company, thereby reducing the likelihood that you could receive a premium for your Common Stock in an acquisition.

We are an "emerging growth company," as defined in the JOBS Act, and a "smaller reporting company" within the meaning of the Securities Act, and we cannot be certain if the reduced disclosure requirements applicable to emerging growth companies or smaller reporting companies will make our Common Stock less attractive to investors.

We are an "emerging growth company," as defined in the JOBS Act. For as long as we continue to be an emerging growth company, we may take advantage of exemptions from various reporting requirements that are applicable to other public companies that are not emerging growth companies, including (1) not being required to comply with the auditor attestation requirements of Section 404 of the Sarbanes-Oxley Act, (2) reduced disclosure obligations regarding executive compensation in this report and our periodic reports and proxy statements and (3) exemptions from the requirements of holding a nonbinding advisory vote on executive compensation and stockholder approval of any golden parachute payments not previously approved. In addition, as an emerging growth company, we are only required to provide two years of audited consolidated financial statements and two years of selected financial data in this report. 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 Common Stock held by non-affiliates exceeds $700 million as of any March 31 before that time or if we have total annual gross revenue of $1.0 billion or more during any fiscal year before that time, after which, in each case, we would no longer be an emerging growth company as of the following December 31 or, if we issue more than $1.0 billion in non-convertible debt during any three-year period before that time, we would cease to be an emerging growth company immediately.

Additionally, we are a "smaller reporting company" as defined in Item 10(f)(1) of Regulation S-K. Smaller reporting companies may take advantage of certain reduced disclosure obligations, including, among other things, providing only two years of audited consolidated 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 shares of Common Stock held by non-affiliates exceeds $250 million as of the prior June 30, or (2) our annual revenues exceeded $100 million during such completed fiscal year and the market value of our ordinary shares 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 comparison of our consolidated financial statements with other public companies difficult or impossible.

After we are no longer an "emerging growth company," we expect to incur additional management time and cost to comply with the more stringent reporting requirements applicable to companies that are deemed accelerated filers or large accelerated filers, including complying with the auditor attestation requirements of Section 404 of the Sarbanes-Oxley Act. We cannot predict or estimate the amount of additional costs we may incur or the timing of such costs.

We have not and do not expect to declare any dividends to our shareholders in the foreseeable future.

We have not and do not anticipate declaring any cash dividends to holders of our Common Stock in the foreseeable future. Consequently, investors may need to rely on sales of their Common Stock after price appreciation, which may never occur, as the only way to realize any future gains on their investment. Investors seeking cash dividends should not purchase our Common Stock.

General Risk Factors

Increases in costs, disruption of supply or shortage of raw materials could harm our business.

We may experience increases in the cost or a sustained interruption in the supply or shortage of raw materials. For example, the tariffs currently imposed for importing goods from China has significantly increased. Any such an increase or supply interruption could materially negatively impact our business, prospects, financial condition and operating results. We use various raw materials in our business including aluminum. The prices for these raw materials fluctuate depending on market conditions and global demand for these materials and could adversely affect our business and operating results. Substantial increases in the prices for our raw materials increase our operating costs and could reduce our margins if we cannot recoup the increased costs through increased prices for our products and services.

Matters relating to the employment market and prevailing wage standards may adversely affect our business.

Our ability to meet our labor needs on a cost-effective basis is subject to numerous external factors, including the availability of qualified personnel in the workforce in the markets in which we operate, unemployment levels within those markets, prevailing wage rates, which have increased significantly, health and other insurance costs and changes in employment and labor laws. In the event prevailing wage rates continue to increase in the markets in which we operate, we may be required to concurrently increase the wages paid to our employees to maintain the quality of our workforce. To the extent such increases are not offset by price increases, our business and operating results could be adversely affected. If we are unable to hire and retain employees capable of meeting our business needs and expectations, our business and reputation may be impaired. Any failure to meet our staffing needs or any material increase in turnover rates of our employees may adversely affect our business, results of operations and financial condition.

Further, we rely on the ability to attract and retain employees on a cost-effective basis. The availability of employees in the markets in which we operate has declined in recent years and competition for such personnel has increased and has provided the obstacle of our ability to attract and retain a sufficient workforce on a cost-effective basis. We may not be able to attract and retain a sufficient workforce on a cost-effective basis in the future. In the event of increased costs of attracting and retaining a workforce, our business and operating results could be adversely affected.

Litigation may adversely affect our business, financial condition and results of operations.

From time to time in the normal course of our business operations, we may become subject to litigation involving intellectual property, data privacy and security, consumer protection, commercial disputes and other matters that may negatively affect our operating results if changes to our business operation are required. Due to our manufacturing and sale of our products, including hardware and software, we may also be subject to a variety of claims including product warranty, product liability, and consumer protection claims related to product defects, among other litigation. We may also be subject to claims involving health and safety, hazardous materials usage, other environmental impacts, or service disruptions or failures. The cost to defend such litigation may be significant and may require a diversion of our resources. There also may be adverse publicity associated with litigation that could negatively affect customer perception of our business, regardless of whether the allegations are valid or whether we are ultimately found liable. As a result, litigation may adversely affect our business, financial condition and results of operations. In addition, insurance may not cover existing or future claims, be sufficient to fully compensate us for one or more of such claims or continue to be available on terms acceptable to us. A claim brought against us that is uninsured or underinsured could result in unanticipated costs, thereby adversely affecting our results of operations and resulting in a reduction in the trading price of our stock.

***An active, liquid, and orderly trading market for our Common Stock may not develop, the price of our stock may be volatile, and you could lose all or part of your investment*.**

The trading price of our Common Stock may be highly volatile and could be subject to wide fluctuations in response to various factors, some of which are beyond our control. Our stock price could be subject to wide fluctuations in response to a variety of factors, which include:

- whether we achieve our anticipated corporate objectives;
- actual or anticipated fluctuations in our quarterly or annual operating results;
- changes in our financial or operational estimates or projections;
- our ability to implement our operational plans;
- termination of the lock-up agreement or other restrictions on the ability of our stockholders to sell shares;
- changes in the economic performance or market valuations of companies similar to ours; and
- general economic or political conditions in the U.S. or elsewhere.

In addition, the stock market in general, and the market for technology companies, has experienced extreme price and volume fluctuations that have often been unrelated or disproportionate to the operating performance of those companies. Broad market and industry factors may seriously affect the market price of companies' stock, including ours, regardless of actual operating performance. In addition, in the past, following periods of volatility in the overall market and the market price of a particular company's securities, securities class action litigation has often been instituted against these companies. This litigation, if instituted against us, could result in substantial costs and a diversion of our management's attention and resources.

***We incur increased costs and demands upon management as a result of complying with the laws and regulations affecting public companies, which could adversely affect our operating results*.**

As a public company, we incur significant legal, accounting, and other expenses that we did not incur as a private company, including costs associated with public company reporting and corporate governance requirements. These requirements include compliance with Section 404 and other provisions of the Sarbanes-Oxley Act, as well as rules implemented by the Securities and Exchange Commission, or ("SEC"), and Nasdaq. In addition, our management team also has to adapt to the requirements of being a public company. We expect complying with these rules and regulations will substantially increase our legal and financial compliance costs and to make some activities more time-consuming and costly.

The increased costs associated with operating as a public company will decrease our net income or increase our net loss and may require us to reduce costs in other areas of our business or increase the prices of our products or services. Additionally, if these requirements divert our management's attention from other business concerns, they could have a material adverse effect on our business, financial condition, and operating results.

As a public company, we also expect that it may be more difficult and more expensive for us to obtain director and officer liability insurance, and we may be required to accept reduced policy limits and coverage or incur substantially higher costs to obtain the same or similar coverage. As a result, it may be more difficult for us to attract and retain qualified individuals to serve on our board of directors or as our executive officers.

***As a public company, we are obligated to develop and maintain proper and effective internal control over financial reporting. These internal controls may not be determined to be effective, which may adversely affect investor confidence in our company and, as a result, the value of our Common Stock*.**

We are required, pursuant to Section 404 of the Sarbanes-Oxley Act, to annually furnish a report by management on, among other things, the effectiveness of our internal control over financial reporting. This assessment includes disclosure of any material weaknesses identified by our management in our internal control over financial reporting, as well as a statement that our auditors have issued an attestation report on effectiveness of our internal controls.

We are in the very early stages of the costly and challenging process of compiling the system and processing the documentation necessary to perform the evaluation needed to comply with Section 404. We may not be able to remediate future material weaknesses, or to complete our evaluation, testing and any required remediation in a timely fashion. During the evaluation and testing process, if we identify one or more material weaknesses in our internal control over financial reporting, we will be unable to assert that our internal controls are effective. If we are unable to assert that our internal control over financial reporting is effective, or if our auditors are unable to express an opinion on the effectiveness of our internal controls, we could lose investor confidence in the accuracy and completeness of our financial reports, which would have a material adverse effect on the price of our Common Stock.

We have identified material weaknesses in our internal control over financial reporting. If we are unable to remediate these material weaknesses, or if we experience additional material weaknesses in the future or otherwise fail to maintain an effective system of internal controls, we may not be able to accurately or timely requirements applicable to public companies, which may adversely affect investor confidence in us, and, as a result, the market price of our common stock.

Our management is responsible for establishing and maintaining adequate internal control over financial reporting designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of consolidated financial statements for external purposes in accordance with GAAP. Our management is likewise required, on a quarterly basis, to evaluate the effectiveness of our internal controls and to disclose any changes and material weaknesses identified through such evaluation in those internal controls. A material weakness is a deficiency, or combination of deficiencies in internal control over financial reporting such that there is a reasonable possibility that a material misstatement of our consolidated financial statements will not be prevented or detected on a timely basis.

As described elsewhere in this Report, we have identified the following material weaknesses:

- inability to close timely;
- lack of technical expertise; and
- accounting for complex financial instruments.

As a result of these material weaknesses, our management concluded that our internal control over financial reporting was not effective as of December 31, 2023.

To respond to these material weaknesses, we have devoted, and plan to continue to devote, significant effort and resources to the remediation and improvement of our internal control over financial reporting. Our plans currently include rebuild of the internal finance function and engagement of external financial consultants. The elements of our remediation plan can only be accomplished over time, and we can offer no assurance that these initiatives will ultimately have the intended effects.

Any failure to maintain such internal control could adversely impact our ability to report our financial position and results from operations on a timely and accurate basis. If our consolidated financial statements are not accurate, investors may not have a complete understanding of our operations. Likewise, if our consolidated financial statements are not filed on a timely basis, we could be subject to sanctions or investigations by Nasdaq, the SEC or other regulatory authorities. In either case, there could result a material adverse effect on our business. Ineffective internal controls could also cause investors to lose confidence in our reported financial information which could have a negative effect on the trading price of our stock.

We can give no assurance that the measures we have taken and plan to take in the future will remediate the material weaknesses identified or that any additional material weaknesses or restatements of financial results will not arise in the future due to a failure to implement and maintain adequate internal control over financial reporting or circumvention of these controls. In addition, even if we are successful in strengthening our controls and procedures, in the future those controls, and procedures may not be adequate to prevent or identify irregularities or errors or to facilitate the fair presentation of our consolidated financial statements.

Data privacy and security concerns relating to our technology and our practices could damage our reputation, cause us to incur significant liability, and deter current and potential users or customers from using our products and services. Software bugs or defects, security breaches, and attacks on our systems could result in the improper disclosure and use of user data and interference with our users and customers' ability to use our products and services, harming our business operations and reputation.

Concerns about our practices with regard to the collection, use, disclosure, or security of personal information or other data-privacy-related matters, even if unfounded, could harm our reputation, financial condition, and operating results. Our policies and practices may change over time as expectations regarding privacy and data change. Our products and services involve the storage and transmission of proprietary information, and bugs, theft, misuse, defects, vulnerabilities in our products and services, and security breaches expose us to a risk of loss of this information, improper use and disclosure of such information, litigation, and other potential liability. Systems and control failures, security breaches and/or inadvertent disclosure of user data could result in government and legal exposure, seriously harm our reputation and brand and, therefore, our business, and impair our ability to attract and retain customers.

We may experience cyber-attacks and other attempts to gain unauthorized access to our systems. We may experience future security issues, whether due to employee error or malfeasance or system errors or vulnerabilities in our or other parties' systems, which could result in significant legal and financial exposure. We may be unable to anticipate or detect attacks or vulnerabilities or implement adequate preventative measures. Attacks and security issues could also compromise trade secrets and other sensitive information, harming our business. As a result, we may suffer significant legal, reputational, or financial exposure, which could harm our business, financial condition, and operating results.

Our operations may be impaired if our information technology systems fail to perform adequately or if we are the subject of a data breach or cyber-attack.

We rely on information technology systems to conduct business, including communicating with employees and our key commercial customers, ordering and managing materials from suppliers, shipping products and providing SaaS services to our customers and analyzing and reporting results of operations. While we have taken steps to ensure the security of our information technology systems, our systems may nevertheless be vulnerable to computer viruses, security breaches and other disruptions from unauthorized users. If our information technology systems are damaged or cease to function properly for an extended period of time, whether as a result of a significant cyber incident or otherwise, our ability to communicate internally as well as with our customers could be significantly impaired, which may adversely impact our business.

Additionally, in the normal course of our business, we collect, store and transmit proprietary and confidential information regarding our customers, employees, suppliers and others, including personally identifiable information. An operational failure or breach of security from increasingly sophisticated cyber threats could lead to loss, misuse or unauthorized disclosure of this information about our employees or customers, which may result in regulatory or other legal proceedings, and have a material adverse effect on our business and reputation. We also may not have the resources or technical sophistication to anticipate or prevent rapidly evolving types of cyber-attacks. Any such attacks or precautionary measures taken to prevent anticipated attacks may result in increasing costs, including costs for additional technologies, training, and third-party consultants. The losses incurred from a breach of data security and operational failures as well as the precautionary measures required to address this evolving risk may adversely impact our financial condition, results of operations and cash flows.

Privacy regulation is an evolving area and compliance with applicable privacy regulations may increase our operating costs or adversely impact our ability to service our clients and market our products and services.

Because we store, process, and use data, some of which contains personal information, we are subject to complex and evolving federal, state, and foreign laws and regulations regarding privacy, data protection, and other matters. While we believe we are currently in compliance with applicable laws and regulations, many of these laws and regulations are subject to change and uncertain interpretation, and could result in investigations, claims, changes to our business practices, increased cost of operations, and declines in user growth, retention, or engagement, any of which could seriously harm our business.

If our shares of Common Stock become subject to the penny stock rules, it would become more difficult to trade our shares.

The SEC has adopted rules that regulate broker-dealer practices in connection with transactions in penny stocks. Penny stocks are generally equity securities with a price of less than $5.00, other than securities registered on certain national securities exchanges or authorized for quotation on certain automated quotation systems, provided that current price and volume information with respect to transactions in such securities is provided by the exchange or system. If we do not retain a listing on Nasdaq and if the price of our Common Stock is less than $5.00, our Common Stock will be deemed a penny stock. The penny stock rules require a broker-dealer, before a transaction in a penny stock not otherwise exempt from those rules, to deliver a standardized risk disclosure document containing specified information. In addition, the penny stock rules require that before effecting any transaction in a penny stock not otherwise exempt from those rules, a broker-dealer must make a special written determination that the penny stock is a suitable investment for the purchaser and receive (i) the purchaser's written acknowledgment of the receipt of a risk disclosure statement; (ii) a written agreement to transactions involving penny stocks; and (iii) a signed and dated copy of a written suitability statement. These disclosure requirements may have the effect of reducing the trading activity in the secondary market for our Common Stock, and therefore stockholders may have difficulty selling their shares.

The financial and operational projections that we may make from time to time are subject to inherent risks.

The projections that our management may provide from time to time (including, but not limited to, those relating to potential peak sales amounts, production, and supply dates, and other financial or operational matters) reflect numerous assumptions made by management, including assumptions with respect to our specific as well as general business, economic, market and financial conditions and other matters, all of which are difficult to predict and many of which are beyond our control. Accordingly, there is a risk that the assumptions made in preparing the projections, or the projections themselves, will prove inaccurate. There will be differences between actual and projected results, and actual results may be materially different from those contained in the projections. The inclusion of the projections in this report should not be regarded as an indication that we or our management or representatives considered or consider the projections to be a reliable prediction of future events, and the projections should not be relied upon as such.

If we were to dissolve, the holders of our securities may lose all or substantial amounts of their investments.

If we were to dissolve as a corporation, as part of ceasing to do business or otherwise, we may be required to pay all amounts owed to any creditors before distributing any assets to the investors. There is a risk that in the event of such a dissolution, there will be insufficient funds to repay amounts owed to holders of any of our indebtedness and insufficient assets to distribute to our other investors, in which case investors could lose their entire investment.

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

The trading market for our Common Stock will be influenced by the research and reports that industry or securities analysts may publish about us, our business, our market or our competitors. If any of the analysts who may cover us change their recommendation regarding our stock adversely, or provide more favorable relative recommendations about our competitors, our stock price would likely decline. If any analyst who may cover us were to cease coverage of our company or fail to regularly publish reports on us, we could lose visibility in the financial markets, which in turn could cause our stock price or trading volume to decline.

Item 1B. Unresolved Staff Comments.

None

Item 1C. Cybersecurity

Risk Management

We have implemented best-practices to assess risks from cybersecurity threats; monitor our information systems for potential vulnerabilities; and test those systems pursuant to our cybersecurity policies, processes, and practices, which are integrated into our overall risk management program (see section “Services Overview” for details on each service we use). To protect our information systems from cybersecurity threats, we rely on various security tools that are designed to help identify, escalate, investigate, resolve, and recover from security incidents in a timely manner. We have chosen Microsoft as our main provider for Cybersecurity and Governance services. Our Technology Risk Management Committee, currently including our Vice President of Information Technology, In-house General Counsel, General Manager, Director of Operations and Vice President of Technical Operations, assesses risks based on probability and potential impact to key business systems and processes. Risks that are considered high are addressed promptly and documented to be incorporated into our overall risk management program. A mitigation plan is developed for each identified high risk, with progress reported to the Technology Risk Management Committee and tracked as part of our overall risk management program overseen by the Audit Committee of our board of directors.

To date, cybersecurity threats, including those resulting from any previous cybersecurity incidents, have not materially affected our Company, including our business strategy, results of operations, or financial condition. We do not believe that cybersecurity threats resulting from any previous cybersecurity incidents of which we are aware are reasonably likely to materially affect our Company.

Governance

Our board of directors oversees our risk management process, including as it pertains to cybersecurity risks, directly and through its committees. The Audit Committee of the board oversees our risk management program, which focuses on the most significant risks we face in the short-, intermediate-, and long-term timeframe. The Audit Committee reviews our cybersecurity risk profile with management on a periodic basis using key performance and/or risk indicators. These key performance indicators are metrics and measurements designed to assess the effectiveness of our cybersecurity program in the prevention, detection, mitigation, and remediation of cybersecurity incidents.

We take a risk-based approach to cybersecurity and have implemented cybersecurity policies throughout our operations that are designed to address cybersecurity threats and incidents.

Services Overview

The following section outlines the services we utilize to facilitate Cyber Security Risk Management:

AWS (Amazon Web Services)

Description of Service

AWS, short for Amazon Web Services, is a comprehensive cloud computing platform offered by Amazon. It provides on-demand access to various computing resources like servers, storage, networking, databases, analytics, machine learning, and more. AWS eliminates the need for physical hardware investments and gives organizations flexibility and scalability.

Key Services

Amazon S3 (scalable object storage), Amazon EC2 (virtual servers), Amazon RDS (managed databases), Amazon CloudFront (Content Delivery Network)

Use Case

Hosting websites/applications, scaling infrastructure, storing/analyzing data, deploying machine learning models, managing databases

Microsoft Azure/EntraID

Description of Service

A cloud computing platform offered by Microsoft, delivering a range of services for building, deploying, and managing applications. Azure supports various programming languages, tools, and frameworks for efficient development and scaling of applications.

Key Services

Virtual machines, Storage, Databases, Networking, Analytics, AI/ML, IoT, DevOps tools

Use Case

Scaling applications, hybrid cloud solutions, data analysis, building predictive models, continuous integration and deployment (CI/CD)

Microsoft 365

Description of Service

A suite of productivity and collaboration tools combining familiar Office apps, cloud-based services, and robust security features.

Key Services

Microsoft Office (Word, Excel, PowerPoint, Outlook, OneDrive), SharePoint, Teams

Use Case

Collaboration, email, document creation, cloud storage, security & compliance, mobile productivity, automation (Power Automate)

Zendesk

Description of Service

Customer service software centralizing and automating customer support for seamless interactions across email, live chat, social media, and self-service portals. Provides ticketing, reporting, analytics, and integrations.

Key Services

Ticketing system, Knowledge base, Live chat, Reporting & analytics

Use Case

Efficient customer support, tracking support performance, self-service options, improving the overall customer experience

Microsoft Defender & Microsoft Defender for O365

Description of Service

Microsoft Defender ATP (Advanced Threat Protection) is a comprehensive security solution developed by Microsoft to protect businesses against advanced cyber threats. It combines endpoint security capabilities, advanced analytics, and cloud-based intelligence to provide real-time threat detection, prevention, and response.

Key Services

Advanced threat detection, Endpoint visibility, Threat hunting, Incident response, Integrates with security tools

Use Case

Proactive cybersecurity, real-time alerts, endpoint analysis

ConnectWise ScreenConnect

Description of Service

Remote support, access, and meeting software for efficient IT troubleshooting, user assistance, presentations, and collaboration.

Key Features

Secure remote connections, Screen sharing, Remote control, File transfer, Chat, Session recording

Use Case

Streamline IT support, troubleshoot remotely, reduce on-site visits

SolidWorks Server

Description of Service

Central storage/collaboration system for managing SolidWorks CAD files within an organization. Provides a secure, scalable, and efficient environment for teams.

Key Features

Centralized storage, Collaboration, Version control, Secure access, Replication, Backup, SolidWorks integration

Use Case

Securely storing design files, efficient collaboration, managing versions/history, streamlining workflows.

Ubiquiti UniFi Dream Machine (UDM)

Description of Service

All-in-one network device for small-to-medium businesses, combining a router, firewall, switch, and wireless access point.

Key Features

UniFi Network Controller (manage network), Wireless connectivity (Wi-Fi 5/6), Firewall & security, Performance optimization, Scalability, Remote management.

Item 2. Properties.

Our corporate headquarters is in Troy, Michigan where we occupy approximately 15,825 square feet of office, warehousing, and light industrial space under a lease that expires in 2026. We lease properties located within various geographic regions in which we conduct business, including Colorado, Georgia, and Michigan. Our properties include office spaces, showrooms, and warehouses used for research and development, operational, sales, management, and administrative purposes. All of our facilities are leased.

We believe our facilities are adequate for our needs and believe that we should be able to renew any of our existing leases or secure similar property without an adverse impact on our operations.

Item 3. Legal Proceedings.

From time to time, we are a party to various legal proceedings or claims arising in the ordinary course of business. For information related to significant legal proceedings in which we are involved, see the discussion under the caption Legal Matters in Note 16 - Commitments and Contingencies and Note 18 - Subsequent Events to our consolidated financial statements included in Part II, Item 8 of this Annual Report on Form 10K, which information is incorporated by reference into this Item 3.

Item 4. Mine Safety Disclosures.

Not applicable.

PART II

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

Market Information

Our Common Stock is traded on the Nasdaq Capital Market under the symbol "AGFY."

Holders of Record

As of March 24, 2024, there were 62 holders of record of our Common Stock. Such numbers do not include beneficial owners holding shares of our Common Stock in nominee or "street" name through various brokerage firms.

Dividends

We have never paid cash dividends on any of our capital stock and currently intend to retain our future earnings, if any, to fund the development and growth of our business.

Securities Authorized for Issuance under Equity Compensation Plans

For information concerning our equity compensation plan, see Part III, Item 12 of this Annual Report on Form 10-K.

Equity Repurchases

None.

Recent Sales of Unregistered Securities

There were no sales of unregistered securities during the year ended December 31, 2023 that were not previously disclosed in a Current Report on Form 8-k or Quarterly Report on Form 10-Q.

Item 6. [Reserved].

Not applicable.

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

You should read the following discussion and analysis of our financial condition and results of our operations together with our consolidated financial statements and the notes thereto appearing elsewhere in this report. This discussion contains forward-looking statements reflecting our current expectations, whose actual outcomes involve risks and uncertainties. Actual results and the timing of events may differ materially from those stated in or implied by these forward-looking statements due to a number of factors, including those discussed in the sections entitled "Risk Factors," "Cautionary Statement regarding Forward-Looking Statements" and elsewhere in this report.

Overview

We are one of the most innovative providers of advanced cultivation and extraction solutions for the cannabis industry, bringing data, science, and technology to the forefront of the market. Our proprietary micro-environment-controlled Agrify VFUs enable cultivators to produce the highest quality products with what we believe to be an unmatched consistency, yield, and Return on Investment at scale. Our comprehensive extraction product line, which includes hydrocarbon, ethanol, solventless, post-processing, and lab equipment, empowers producers to maximize the quantity and quality of extract required for premium concentrates.

Our cultivation and extraction solutions seamlessly combine our integrated hardware and software offerings with a broad range of associated services including consulting, engineering, and construction and are designed to deliver the most complete commercial indoor farming solution available from a single provider. The totality of our product offerings and service capabilities forms an unrivaled ecosystem in what has historically been a highly fragmented market. As a result, we believe we are well situated to create a dominant market position in the indoor agriculture sector.

Agrify Corporation was incorporated in the state of Nevada on June 6, 2016, originally incorporated as Agrinamics, Inc. (“Agrinamics”). On September 16, 2019, Agrinamics amended its articles of incorporation to reflect a name change to Agrify Corporation.

Our corporate headquarters are located in Troy, Michigan. We also lease properties located within various geographic regions in which we conduct business, including Colorado, Georgia and Michigan.

Reverse Stock Splits

On October 18, 2022, we effected a 1-for-10 reverse stock split on our Common Stock.

On July 5th, 2023, we effected a 1-for-20 reverse stock split on our Common Stock. All share and per information has been retroactively adjusted to give effect to the reverse stock splits for all periods presented, unless otherwise indicated.

Recent Business Developments

At the beginning of 2023, we announced a strategic plan to foster sustainable long-term growth through cost efficiencies and enhanced sales and growth initiatives. We have been focused on growing our cultivation business by helping our existing Agrify Total Turn-Key customers to bring their facilities online and driving additional sales through our RDP. As a result, we have successfully installed and commenced our Las Vegas customer, Nevada Holistic Medicine, our Denver Colorado customer, Denver Greens, and signed several new customers such as Golden Lake Business Park in California, and Harvest Works in New Jersey. As a testimony to the Vertical Farming Unit’s (“VFU”) ability to produce high quality flower, Nevada Holistic Medicine is already consistently harvesting 9 pounds of A-grade flower per VFU, or roughly 64 grams per canopy square foot, and seeing 90%+ A-grade flower produced with exceptional color, trichome, and terpene levels.

Similarly, since we have streamlined our expansive extraction portfolio of technologies, we have successfully supported the deployment of several turnkey solvent-based and solventless extraction packages to customers in California, Michigan, and the East Coast. In addition, we have released several new technologies and products into the market based on customer feedback, including our first peer-reviewed Cannabeast 13 Distillation Unit, a Diamond Miner, Stitch-less Double Filtration Rosin Bags, and the revamped PX30 Hydrocarbon Extractor. We have also made significant strides to receive UL Compliance for Precision Extractions’ EXP Explosion Proof Rooms in an effort to continue our commitment to safety and quality within cannabis extraction facilities.

These industry developments illustrate the continuous innovation, and commitment to safety within the cannabis sector as our company adapts to evolving market demands. More importantly, our growing partnership across the Country is a strong testimony to operators’ continued trust in Agrify’s team and technologies in the most competitive markets.

Recent Developments

Note Acquisition and Warrant Issuance

On October 27, 2023, following the execution of the Modification Agreement (as defined below), CP Acquisitions LLC (the “New Lender”), an entity affiliated with and controlled by Raymond Chang, our Chairman and Chief Executive Officer, and I-Tseng Jenny Chan, a member of our Board of Directors, purchased from the Former Lender the Senior Secured Note issued by us to the Former Lender on August 19, 2022 (the “Exchange Note”) and the Senior Secured Convertible Note issued by us to the Former Lender on March 10, 2023 (the “Convertible Note”). As a condition to the Note Purchase, we and the New Lender entered into an acknowledgment and release (the “Release Agreement”) with the Former Lender, pursuant to which we and the New Lender released the Former Lender from any claims, demands, actions, suits, obligations and causes of action arising on or before the date thereof.

On October 27, 2023, as a condition precedent to the Note Purchase, we entered into a letter agreement (the “Letter Agreement”) with the Former Lender. Pursuant to the Letter Agreement, we agreed, immediately prior to the note purchase transaction, to exchange $3.0 million in principal and approximately $1.1 million in accrued but unpaid interest outstanding under the Exchange Note for a warrant (the “Exchange Warrant”) to purchase 2,809,669 shares of common stock. Additionally, we agreed to exchange the 375,629 shares of common stock held in abeyance for the Former Lender under the terms of the letter agreement between us and the Former Lender dated as of April 26, 2023 for a warrant to purchase 375,629 shares of common stock (the “Abeyance Warrant”).

Each of the Exchange Warrant and the Abeyance Warrant has an exercise price of $0.001 per share, became exercisable upon issuance, has a term of five years from the date of issuance and is exercisable on a cash basis or on a cashless exercise basis at the Former Lender’s election. The Former Lender exercised the Exchange Warrant and Abeyance Warrant in full during January and February 2024.

Note Amendment and Secured Promissory Note

On July 12, 2023, we issued an unsecured promissory note in favor of GIC Acquisition, LLC (“GIC”), an entity that is owned and managed by Raymond Chang, our Chairman and Chief Executive Officer. On October 27, 2023, we and GIC amended and restated the Note (the “GIC Note”). Pursuant to the terms of the GIC Note, as restated, the maturity date was extended until December 31, 2023 and we granted a junior security interest in our assets. On January 25, 2024, we and GIC amended and restated the GIC Note to increase the principal amount thereunder to $1.0 million, all of which is currently outstanding under the GIC Note, and to extend the maturity date until June 30, 2024.

Concurrently with the restatement of the GIC Note, we issued a junior secured promissory note (the “Junior Secured Note”) to the New Lender. Pursuant to the Junior Secured Note, the New Lender loaned an aggregate of approximately $4.0 million to us. The Junior Secured Note bore interest at a rate of 10% per annum, had a maturity date of December 31, 2023, and could be prepaid without any fee or penalty. The Junior Secured Note was a junior secured obligation.

Note Amendment, Consolidation and Conversion

On January 25, 2024, following stockholder approval at an annual meeting of stockholders on January 8, 2024, we and the New Lender consolidated the outstanding principal and interest due under the Junior Secured Note and the Exchange Note into the Convertible Note and amended and restated the Convertible Note (as amended and restated, the “Restated Note”), with an outstanding principal amount of approximately $18.9 million at the time of issuance of the Restated Note. The Restated Note amended the terms of the Convertible Note by, among other things, (i) reducing the conversion price to $1.46 per share of common stock, (ii) increasing the beneficial ownership limitation to 49.99% with respect to any individual or group, provided that the New Lender may assign its right to receive shares upon conversion to Mr. Chang and/or Ms. Chan or their affiliates, in which case the 49.99% beneficial ownership limitation will apply to each of them individually, (iii) extending the maturity date to December 31, 2025, (iv) increasing the interest rate from 9% to 10% per annum, (v) increasing the default interest from 15% to 18% per annum, and (vi) providing for the payment of interest every six months, or in lieu of cash interest payments, we may issue shares as payments-in-kind at a conversion price equal to the higher of (i) $1.46 or (ii) a 20% discount to our trailing seven-day volume weighted average price as of the date of interest payment. Immediately following the execution of the Restated Note, the New Lender immediately elected to convert approximately $3.9 million of outstanding principal into an aggregate of 2,671,633 shares of common stock, and assigned its rights to receive such shares to entities affiliated with Mr. Chang and Ms. Chan. Following the conversion, there was $15.0 million in principal amount outstanding under the Restated Note.

Mack Molding Settlement and Warrant Issuance

Immediately prior to the note purchase described above on October 27, 2023, and with an effective date as of October 18, 2023, we entered into a Modification and Settlement Agreement (the "Modification Agreement") with Mack Molding Company ("Mack"). Pursuant to the Modification Agreement, we and Mack agreed to settle an outstanding dispute of approximately $8.24 million under a Supply Agreement between the parties dated December 7, 2020 (the "Supply Agreement") by reducing the aggregate amount due to Mack and extending the timeline for payment. The Modification Agreement requires us to make payments of $500,000 and $250,000 to Mack on or before November 1, 2023 and February 15, 2024, respectively. Following the November 1, 2023 payment, we will be entitled to take possession of certain Vertical Farming Units ("VFUs") that were assembled under the Supply Agreement. The Modification Agreement also requires us to purchase from Mack a minimum of 25 VFUs per quarter for each quarter during 2024 and a minimum of 50 VFUs per quarter for the six quarters beginning with the first quarter of 2025. We are required to pay a storage fee of $25,000 per month for VFUs subject to the Modification Agreement.

Additionally, as part of the Modification Agreement, we agreed to issue to Mack a warrant (the "Mack Warrant") to purchase 750,000 shares of common stock. The Mack Warrant has an exercise price of $4.00 per share, was exercisable upon issuance, has a term of three years from the date of issuance and is exercisable on a cash basis unless at the time of exercise there is no effective registration statement for the resale of the underlying shares, in which case the Mack Warrant may be exercised on a cashless exercise basis at Mack's election.

Nasdaq Notices and Hearing

On April 18, 2023, we received a notice (the "April Nasdaq Notice") from The Nasdaq Stock Market LLC ("Nasdaq") that we were noncompliance with Nasdaq Listing Rule 5250(c)(1) as a result of our failure to file our Annual Report on Form 10-K (the "Form 10-K") with the SEC by the required due date.

On May 17, 2023, we received a second notice from Nasdaq (the "May Nasdaq Notice") that we remained noncompliant with Nasdaq Listing Rule 5250(c)(1) as a result of our failure to file our Quarterly Report on Form 10-Q for the quarter ended March 31, 2023 (the "First Quarter Form 10-Q") with the SEC by the required due date.

On August 16, 2023, we received a third notice from Nasdaq that we remain noncompliant with Nasdaq Listing Rule 5250(c)(1) as a result of our failure to file our Quarterly Report on Form 10-Q for the fiscal quarter ended June 30, 2023 (the "Second Quarter Form 10-Q") with the SEC by the required filing date (the "August Nasdaq Notice" and, together with the April Nasdaq Notice and the May Nasdaq Notice, the "Nasdaq Notices").

On October 17, 2023, we received a Staff Delisting Determination (the "Staff Determination") from the Listing Qualifications Department of Nasdaq notifying us that we were not in compliance with Nasdaq's continued listing requirements under the Listing Rule as a result of our failure to file the First Quarter Form 10-Q, the Second Quarter Form 10-Q and the Form 10-K (collectively, the "Delinquent Reports") in a timely manner. We filed each of the Delinquent Reports between November 28, 2023 and January 3, 2024.

On December 1, 2023, we received a notice Nasdaq stating that because we reported stockholders' equity of $(17.17) million in our Quarterly Report on Form 10-Q for the quarter ended March 31, 2023, we were no longer in compliance with Nasdaq Listing Rule 5550(b)(1), which requires that listed companies maintain a minimum of $2.5 million in stockholders' equity.

We timely requested a hearing before the Nasdaq Hearings Panel (the "Panel"), which hearing was held on January 11, 2024. At the hearing, we presented a plan to regain compliance with Nasdaq Listing Rule 5550(b)(1). On January 30, 2024, we received formal notice that the Panel had granted our request for an exception through April 15, 2024 to evidence compliance with Rule 5550(b)(1), which represents the full extent of the Panel's discretion to grant continued listing. As a result, there can be no assurance that we can regain compliance by the end of the extension period.

Additionally, on March 5, 2024, we received a deficiency letter from the Listing Qualifications Department of Nasdaq notifying us that, for the last 30 consecutive business days, the bid price for our common stock had closed below $1.00 per share, which is the minimum closing price required to maintain continued listing on the Nasdaq Stock Market under Nasdaq Listing Rule 5550(a)(2) (the "Minimum Bid Requirement"). The Notice had no immediate effect on the listing of our common stock on Nasdaq. In accordance with Nasdaq Listing Rule 5810(c)(3)(A), we have 180 calendar days to regain compliance with the Minimum Bid Requirement. To regain compliance with the Minimum Bid Requirement, the closing bid price of our common stock must be at least $1.00 per share for a minimum of 10 consecutive trading days during this 180-day compliance period, unless the Staff exercises its discretion to extend this period pursuant to Nasdaq Listing Rule 5810(c)(3)(H). The compliance period for us will expire on September 3, 2024.

We will take all possible actions to restore our compliance with Nasdaq, but we can provide no assurances that the listing of our common stock will be restored or that we otherwise will remain listed on Nasdaq. If we fail to continue to satisfy the continued listing requirements of Nasdaq, such as the corporate governance requirements or the minimum closing bid price requirement, Nasdaq will take steps to delist our common stock. Such a de-listing would likely have a negative effect on the price of our common stock and would impair stockholders' ability to sell or purchase our common stock when they wish to do so, as well as adversely affect our ability to issue additional securities and obtain additional financing in the future.

Public Offering

On February 27, 2024, we entered into a placement agency agreement with Alexander Capital, LP as placement agent, pursuant to which we agreed to issue and sell an aggregate of 2,760,000 shares of common stock, and, in lieu of common stock to certain investors that so chose, pre-funded warrants to purchase 3,963,684 shares of common stock. The public offering price for each share of common stock was $0.38, and the offering price for each pre-funded warrant was $0.379, which equals the public offering price per share of the common stock, less the $0.001 per share exercise price of each pre-funded warrant. The Offering was made pursuant to a registration statement on Form S-1 that we filed with the Securities and Exchange Commission on January 26, 2024 and was declared effective on February 14, 2024. Raymond Chang, our Chairman and Chief Executive Officer, participated in the offering on the same terms as other investors. The net proceeds from the public offering were approximately $2.2 million, after deducting placement agent fees and commissions and expenses. The public offering closed on February 28, 2024.

Use of Estimates

The preparation of consolidated financial statements in accordance with accounting principles generally accepted in the U.S. (“GAAP”) requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosures of contingent assets and liabilities at the date of the consolidated financial statements, and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates. Significant estimates include assumptions about collection of accounts and notes receivable, the valuation and recognition of stock-based compensation expense, valuation allowance for deferred tax assets, the valuation of inventory, and useful life of fixed assets and intangible assets.

Financial Overview

Critical Accounting Estimates

Our management’s discussion and analysis of our financial position and results of operations is based on our financial statements, which have been prepared in accordance with GAAP. The preparation of consolidated financial statements in conformity with GAAP requires us to make estimates and assumptions that affect the amounts reported in the consolidated financial statements and accompanying notes. On an ongoing basis, we evaluate estimates, which include estimates related to accruals, stock-based compensation expense, reported amounts of revenues and expenses during the reported period, fair value of warrant liabilities, sales tax liabilities, and net realizable value of inventory and collectibility of trade accounts and loans receivable. We base our estimates on historical experience and other market-specific or other relevant assumptions that we believe to be reasonable under the circumstances. Actual results may differ materially from those estimates or assumptions. See below for detail on how certain accounting estimates are determined.

Revenue Recognition

We enter into contracts that may include various combinations of equipment, services and construction, which are generally capable of being distinct and accounted for as separate performance obligations. Contracts with customers often include promises to transfer multiple products and services to a customer. Determining whether products and services are considered distinct performance obligations that should be accounted for separately versus together may require significant judgment. Once we determine the performance obligations, it determines the transaction price, which includes estimating the amount of variable consideration to be included in the transaction price, if any. We then allocate the transaction price to each performance obligation in the contract based on the SSP. The corresponding revenue is recognized as the related performance obligations are satisfied.

Judgment is required to determine the SSP for each distinct performance obligation. We determine SSP based on the price at which the performance obligation is sold separately and the methods of estimating SSP under the guidance of ASC 606-10-32-33. If the SSP is not observable through past transactions, we estimate the SSP, considering available information such as market conditions, expected margins, and internally approved pricing guidelines related to the performance obligations. We license our software as a Software-as-a-Service (“SaaS”) type subscription license, whereby the customer only has a right to access the software over a specified time period. The full value of the contract is recognized ratably over the contractual term of the SaaS subscription, adjusted monthly if tiered pricing is relevant. We typically satisfy our performance obligations for equipment sales when equipment is made available for shipment to the customer; for services sales as services are rendered to the customer and for construction contracts both as services are rendered and when contract is completed.

We utilize the cost-plus margin method to determine the SSP for equipment and build-out services. This method is based on the cost of the services from third parties, plus a reasonable markup that we believe is reflective of a market-based reseller margin.

We determine the SSP for services in time and materials contracts by observable prices in standalone services arrangements.

We estimate variable consideration in the form of royalties, revenue share, monthly fees, and service credits are estimated at contract inception and updated at the end of each reporting period if additional information becomes available. Variable consideration is typically not subject to constraint. Changes to variable consideration were not material for the periods presented.

If a contract has payment terms that differ from the timing of revenue recognition, we will assess whether the transaction price for those contracts includes a significant financing component. We have elected the practical expedient that permits an entity to not adjust for the effects of a significant financing component if we expect that at the contract inception, the period between when the entity transfers a promised good or service to a customer and when the customer pays for that good or service, will be one year or less. For those contracts in which the period exceeds the one-year threshold, this assessment, as well as the quantitative estimate of the financing component and its relative significance, requires judgment. Accordingly, we impute interest on such contracts at an agreed-upon interest rate and will present the financing components separately as financial income. For the years ended December 31, 2023 and 2022, we did not have any such financial income.

Payment terms with customers typically require payment 30 days from the invoice date. Our agreements with customers do not provide for any refunds for services or products and therefore no specific reserve for such is maintained. In the infrequent instances where customers raise a concern over delivered products or services, we have endeavored to remedy the concern and all costs related to such matters have been insignificant in all periods presented.

We have elected to treat shipping and handling activities after the customer obtains control of the goods as a fulfillment cost and not as a promised good or service. Accordingly, we will accrue all fulfillment costs related to the shipping and handling of consumer goods at the time of shipment. We have payment terms with its customers of one year or less and has elected the practical expedient applicable to such contracts not to consider the time value of money. Sales, value add, and other taxes we collect concurrent with revenue-producing activities are excluded from revenue.

We receive payment from customers based on specified terms that are generally less than 30 days from the satisfaction of performance obligations. There are no contract assets related to performance under the contract. The difference in the opening and closing balances of our deferred revenue primarily results from the timing difference between our performance and the customer’s payment. We fulfill obligations under a contract with a customer by transferring products and services in exchange for consideration from the customer. Accounts receivables are recorded when the customer has been billed or the right to consideration is unconditional. We recognize deferred revenue when consideration has been received or an amount of consideration is due from the customer, and we have a future obligation to transfer certain proprietary products.

In accordance with ASC 606-10-50-13, we are required to include disclosure on its remaining performance obligations as of the end of the current reporting period. Due to the nature of our contracts, these reporting requirements are not applicable. The majority of our remaining contracts meet certain exemptions as defined in ASC 606-10-50-14 through 606-10-50-14A, including (i) performance obligation is part of a contract that has an original expected duration of one year or less and (ii) the right to invoice practical expedient.

We generally provide a one-year warranty on our products for materials and workmanship but may provide multiple-year warranties as negotiated, and will pass on the warranties from its vendors, if any, which generally covers this one-year period. In accordance with ASC 450-20-25, we accrue for product warranties when the loss is probable and can be reasonably estimated. The reserve for warranty returns is included in accrued expenses and other current liabilities in our consolidated balance sheets.

Stock Compensation

The fair value of each option is estimated on the date of grant using the Black-Scholes option-pricing model. This model incorporates certain assumptions for inputs including a risk-free market interest rate, expected dividend yield of the underlying Common Stock, expected option life, and expected volatility in the market value of the underlying Common Stock. The Black-Scholes option-pricing model was developed for use in estimating the fair value of traded options, which have no vesting restrictions and are fully transferable. In addition, option valuation models require the input of highly subjective assumptions including the expected stock price volatility. Because our stock options and warrants have characteristics different from those of our traded stock, and because changes in the subjective input assumptions can materially affect the fair value estimate, in management's opinion, the existing models do not necessarily provide a reliable single measure of the fair value of such stock options. The risk-free interest rate is based upon quoted market yields for United States Treasury debt securities with a term similar to the expected term. The expected dividend yield is based upon our history of having never issued a dividend and management's current expectation of future action surrounding dividends. We calculate the expected volatility of the stock price based on the corresponding volatility of our peer group stock price for a period consistent with the underlying instrument's expected term. The expected lives for such grants were based on the simplified method for employees and directors.

In arriving at stock-based compensation expense, we estimate the number of stock-based awards that will be forfeited due to employee turnover. Our forfeiture assumption is based primarily on its turn-over historical experience. If the actual forfeiture rate is higher than the estimated forfeiture rate, then an adjustment will be made to increase the estimated forfeiture rate, which will result in a decrease to the expense recognized in our consolidated financial statements. If the actual forfeiture rate is lower than the estimated forfeiture rate, then an adjustment will be made to lower the estimated forfeiture rate, which will result in an increase to expense recognized in our consolidated financial statements. The expense we recognize in future periods will be affected by changes in the estimated forfeiture rate and may differ significantly from amounts recognized in the current period.

Net Realizable Value of Inventory

The Company values all its inventories, which consist primarily of significant raw material hardware components, at the lower of cost or net realizable value, with cost principally determined by the weighted-average cost method on a first-in, first-out basis. Write-offs of potentially slow-moving or damaged inventory are recorded through specific identification of obsolete or damaged material. The Company takes physical inventory at least once annually at all inventory locations.

Fair Value of Warrant Liabilities

The estimated fair value of the warrant liabilities on December 31, 2023 and 2022 is determined using Level 3 inputs. Inherent in a Black-Scholes option-pricing model are assumptions used in calculating the estimated fair values that represent the Company's best estimate. The volatility rate is determined utilizing the Company's own share price and the share price of competitors over time.

Collectibility of Trade Accounts and Loans Receivable

Accounts receivable, net, primarily consists of amounts for goods and services that are billed and currently due from customers. Accounts receivable and loan receivable balances are presented net of an allowance for credit losses, which is an estimate of billed or borrowed amounts that may not be collectible. In determining the amount of the allowance at each reporting date, management makes judgments about general economic conditions, historical write-off experience, and any specific risks identified in customer or counterparty collection matters, including the aging of unpaid accounts receivable and changes in customer financial conditions. Accounts and loans receivable balances are written off after all means of collection are exhausted and the potential for non-recovery is determined to be probable. Adjustments to the allowance for credit losses are recorded as general and administrative expenses in the consolidated statements of operations.

Sales Tax Liabilities

Prior to acquisition, Precision Extraction NewCo had an unrecorded liability for uncollected sales taxes for sales made in 18 states where state sales tax filings were not submitted, leaving the entity with a potential sales tax liability. To assess Precision Extraction NewCo's potential liability, the company analyzed invoice data encompassing customer details, their location, product/service taxability, and sales prices. Through this analysis, Precision NewCo determined its nexus across various states and estimated the corresponding sales tax liabilities. Of the 18 states identified with tax obligations, sales to tax-exempt customers were excluded from liability calculations. In Q1 2022, Precision NewCo's taxable revenue stood at approximately $4 million, with an associated sales tax liability of around $190,000, equivalent to 4.7% of the taxable revenue for that period. This ratio served as the basis for projecting the sales tax liability for the remainder of 2022. For the assessment of penalties and interest, the company adhered to the guidelines outlined by the State of Michigan. As per Michigan's Sales Tax Return Form 5080, penalties are capped at 25%, while interest is calculated based on the prevailing rates provided on the official.gov website. These penalties and interest charges were factored into the overall sales tax liability in accordance with Michigan's guidelines. Starting from November 1, 2022, all Precision Extraction NewCo customers have been transitioned to Agrify. All sales from November 1, 2022, until today are accounted for under Agrify. Sales tax is accrued and paid under Agrify.

Revenue Recognition

Overview

We generate revenue from the following sources: (1) equipment sales, (2) providing services and (3) construction contracts.

In accordance with ASC 606 "Revenue Recognition", we recognize revenue from contracts with customers using a five-step model, which is described below:

- identify the customer contract;
- identify performance obligations that are distinct;
- determine the transaction price;
- allocate the transaction price to the distinct performance obligations; and
- recognize revenue as the performance obligations are satisfied.

Identify the customer contract

A customer contract is generally identified when there is approval and commitment from both us and its customer, the rights have been identified, payment terms are identified, the contract has commercial substance and collectability, and consideration is probable. Specifically, we obtain written/electronic signatures on contracts and a purchase order, if said purchase orders are issued in the normal course of business by the customer.

Identify performance obligations that are distinct

A performance obligation is a promise by us to provide a distinct good or service or a series of distinct goods or services. A good or service that is promised to a customer is distinct if the customer can benefit from the good or service either on its own or together with other resources that are readily available to the customer, and our promise to transfer the good or service to the customer is separately identifiable from other promises in the contract.

Determine the transaction price

The transaction price is the amount of consideration to which we expect to be entitled in exchange for transferring goods or services to a customer, excluding sales taxes that are collected on behalf of government agencies.

Allocate the transaction price to distinct performance obligations

The transaction price is allocated to each performance obligation based on the relative standalone selling prices ("SSP") of the goods or services being provided to the customer. Our contracts typically contain multiple performance obligations, for which we account for individual performance obligations separately, if they are distinct. The standalone selling price reflects the price we would charge for a specific piece of equipment or service if it was sold separately in similar circumstances and to similar customers.

Recognize revenue as the performance obligations are satisfied

Revenue is recognized when, or as, performance obligations are satisfied by transferring control of a promised product or service to a customer.

Accounting for Business Combinations

We allocated the purchase price of acquired companies to the tangible and intangible assets acquired, including in-process research and development assets, and liabilities assumed, based upon their estimated fair values at the acquisition date. These fair values are typically estimated with assistance from independent valuation specialists. The purchase price allocation process requires us to make significant estimates and assumptions, especially at the acquisition date with respect to intangible assets, contractual support obligations assumed, contingent consideration arrangements, and pre-acquisition contingencies.

Although we believe the assumptions and estimates we have made in the past have been reasonable and appropriate, they are based in part on historical experience and information obtained from the management of the acquired companies and are inherently uncertain.

Examples of critical estimates in valuing certain of the intangible assets we have acquired or may acquire in the future include but are not limited to:

- future expected cash flows from software license sales, support agreements, consulting contracts, other customer contracts, and acquired developed technologies;

- expected costs to develop in-process research and development into commercially viable products and estimated cash flows from the projects when completed;

- the acquired company's brand and competitive position, as well as assumptions about the period of time the acquired brand will continue to be used in the combined company's product portfolio;

- cost of capital and discount rates; and

- estimating the useful lives of acquired assets as well as the pattern or manner in which the assets will amortize.

The fair value estimates related to the various identified intangible assets were determined under various valuation approaches including the Income Approach, Relief-from-Royalty Method, and Discounted Cash Flow Method. These valuation methods require management to project revenues, operating expenses, working capital investment, capital spending and cash flows for the reporting unit over a multiyear period, as well as determine the weighted average cost of capital to be used as a discount rate.

Goodwill and Intangible Assets

Amortization of acquired intangible assets is the result of the acquisition of TriGrow Systems, LLC ("TriGrow"), which occurred in 2020, the acquisition of Precision Extraction NewCo, LLC ("Precision") and Cascade Sciences, LLC ("Cascade") which occurred in 2021, the acquisition of PurePressure, LLC ("PurePressure"), which also occurred in 2021, and the acquisition of Lab Society, which occurred in 2022. As a result of these transactions, customer relationships, acquired developed technology, non-compete agreements and trade names were identified as intangible assets, and are amortized over their estimated useful lives.

We recognize the excess of the purchase price over the fair value of identifiable net assets acquired as goodwill. Goodwill is not amortized but is tested for impairment at least annually in the fourth quarter of the year, or more frequently if events or changes in circumstances indicate that the carrying amount of the goodwill may not be recoverable. We have determined that we are a single reporting unit for the purpose of conducting the goodwill impairment assessment. A goodwill impairment charge is recorded if the amount by which our carrying value exceeds its fair value, not to exceed the carrying amount of goodwill.

Factors that could lead to a future impairment include material uncertainties such as a significant reduction in projected revenues, a deterioration of projected financial performance, future acquisitions and/or mergers, and a decline in our market value as a result of a significant decline in our stock price.

During the three-month ended June 30, 2022, we identified an impairment-triggering event associated with both a sustained decline in our stock price and associated market capitalization, as well as a second-quarter slowdown in the cannabis industry as a whole. Due to these factors, we deemed that there was an impairment to the carrying value of our property and equipment and accordingly performed interim testing as of June 30, 2022. Based on our interim testing, we noted that the entire carrying value of our goodwill and intangible assets should be impaired. Additional information regarding our interim testing on goodwill and intangible assets may be found in Note 7 – Goodwill and Intangible Assets, Net, included elsewhere in the notes to the consolidated financial statements.

Convertible Notes Payable

We evaluate our convertible instruments to determine if those contracts or embedded components of those contracts qualify as derivative financial instruments to be separately accounted for in accordance with ASC Topic 815 Derivatives and Hedging ("ASC 815"). The accounting treatment of derivative financial instruments requires that we identify and record certain embedded conversion options ("ECOs"), certain variable-share settlement features, and any related freestanding instruments at their fair values as of the inception date of the agreement and at fair value as of each subsequent balance sheet date. Any change in fair value is recorded as non-operating, non-cash income or expense for each reporting period at each balance sheet date. We reassess the classification of our derivative instruments at each balance sheet date. If the classification changes as a result of events during the period, the contract is reclassified as of the date of the event that caused the reclassification. Bifurcated embedded conversion options, variable-share settlement features and any related freestanding instruments are recorded as a discount to the host instrument which is amortized to interest expense over the life of the respective note using the effective interest method.

If we determine that an instrument is not a derivative liability, we then evaluate whether there is a beneficial conversion feature ("BCF"), by comparing the commitment date fair value to the effective current conversion price of the instrument. We record a BCF as a debt discount which is amortized to interest expense over the life of the respective note using the effective interest method. BCFs that are contingent upon the occurrence of a future event are recognized when the contingency is resolved.

Warrant Liabilities

We do not use derivative instruments to hedge exposures to cash flow, market, or foreign currency risks. We evaluate all of our financial instruments, including issued private placement stock purchase warrants, to determine if such instruments are derivatives or contain features that qualify as embedded derivatives, pursuant to ASC Topic 480, Distinguishing Liabilities from Equity (“ASC 480”) and ASC 815. We account for warrants as either equity-classified or liability-classified instruments based on an assessment of the warrant’s specific terms and applicable authoritative guidance in ASC 480 and ASC 815. Our assessment considers whether the warrants are freestanding financial instruments pursuant to ASC 480, whether they meet the definition of a liability pursuant to ASC 480, and whether the warrants meet all of the requirements for equity classification under ASC 815, including whether the warrants are indexed to our own Common Stock among other conditions for equity classification.

For issued or modified warrants that meet all of the criteria for equity classification, they are recorded as a component of additional paid-in capital at the time of issuance. For issued or modified warrants that are precluded from equity classification, they are recorded as a liability at their initial fair value on the date of issuance and subject to remeasurement on each balance sheet date with changes in the estimated fair value of the warrants to be recognized as an unrealized gain or loss in the consolidated statements of operations.

Capitalization of Internal Software Development Costs

We capitalize on certain software engineering efforts related to the continued development of Agrify Insights™ cultivation software (“Agrify Insights™”) under ASC 985-20. Costs incurred during the application development phase are only capitalized once technical feasibility has been established and the work performed will result in new or additional functionality. The types of costs capitalized during the application development phase include employee compensation, as well as consulting fees for third-party software developers working on these projects. Costs related to the research and development are expensed as incurred until technical feasibility is established as well as post-implementation activities. Internal-use software is amortized on a straight-line basis over the estimated useful life of the asset, which ranges from two to five years.

Income Taxes

We account for income taxes pursuant to the provisions of ASC Topic 740, “Income Taxes,” which requires, among other things, an asset and liability approach to calculating deferred income taxes. The asset and liability approach requires the recognition of deferred tax assets and liabilities for the expected future tax consequences of temporary differences between the carrying amounts and the tax bases of assets and liabilities. A valuation allowance is provided to offset any net deferred tax assets for which management believes it is more likely than not that the net deferred asset will not be realized.

We follow the provisions of ASC 740-10-25-5, “Basic Recognition Threshold.” When tax returns are filed, it is highly certain that some positions taken would be sustained upon examination by the taxing authorities, while others are subject to uncertainty about the merits of the position taken or the amount of the position that would be ultimately sustained. In accordance with the guidance of ASC 740-10-25-6, the benefit of a tax position is recognized in the consolidated financial statements in the period during which, based on all available evidence, management believes it is more likely than not that the position will be sustained upon examination, including the resolution of appeals or litigation processes, if any. Tax positions taken are not offset or aggregated with other positions. Tax positions that meet the more-likely-than-not recognition threshold are measured as the largest amount of tax benefit that is more than 50 percent likely of being realized upon settlement with the applicable taxing authority. The portion of the benefits associated with tax positions taken that exceeds the amount measured as described above should be reflected as a liability for unrecognized tax benefits in the accompanying balance sheets along with any associated interest and penalties that would be payable to the taxing authorities upon examination. We believe our tax positions are all highly certain of being upheld upon examination. As such, we have not recorded a liability for unrecognized tax benefits.

We recognize the benefit of a tax position when it is effectively settled. ASC 740-10-25-10, “Basic Recognition Threshold” provides guidance on how an entity should determine whether a tax position is effectively settled for the purpose of recognizing previously unrecognized tax benefits. ASC 740-10-25-10 clarifies that a tax position can be effectively settled upon the completion of an examination by a taxing authority. For tax positions considered effectively settled, we recognize the full amount of the tax benefit.

Accounting for Stock-Based Compensation

We follow the provisions of ASC Topic 718, Compensation-Stock Compensation ("ASC 718") which establishes standards surrounding the accounting for transactions in which an entity exchanges our equity instruments for goods or services. ASC 718 focuses primarily on accounting for transactions in which an entity obtains employee services in share-based payment transactions, such as options issued under our Stock Option Plans. Refer to the Critical Accounting Estimates section above for further detail on accounting for stock compensation.

It is important that the discussion of our operating results that follows be read in conjunction with the critical accounting policies disclosed above.

Results of Operations

We have incurred recurring losses to date. Our consolidated financial statements have been prepared assuming that we will continue as a going concern and, accordingly, do not include adjustments relating to the recoverability and realization of assets and classification of liabilities that might be necessary should we be unable to continue in operation.

Our continuation as a going concern is dependent upon our ability to obtain the necessary debt or equity financing to continue operations until we begin generating sufficient cash flows from operations to meet our obligations. If we are unable raise additional funds, we may be forced to cease operations.

Comparison of Years Ended December 31, 2023 and 2022

The following table summarizes our results of operations for the years ended December 31, 2023 and 2022:

	Year Ended December 31,	
(In thousands)	**2023**	**2022**
Revenue (including $0, and $2,417 from related parties, respectively)	$ 16,868	$ 58,259
Cost of goods sold	11,590	90,054
Gross profit (loss)	5,278	(31,795)
General and administrative	19,005	73,354
Selling and marketing	4,134	9,338
Research and development	2,295	8,179
Change in contingent consideration	(1,322)	(2,156)
Gain on disposal on property and equipment	144	—
Impairment of property and equipment	—	2,912
Impairment of goodwill and intangible assets	—	69,904
Total operating expenses	24,256	161,531
Loss from operations	(18,978)	(193,326)
Interest expense, net	(1,853)	(8,750)
Change in fair value of warrant liabilities	4,695	51,461
Loss on extinguishment of long-term debt, net	(4,311)	(38,985)
Other income, net	1,799	1,316
Total other income, net	330	5,042
Net loss before income taxes	(18,648)	(188,284)
Income tax expense	(2)	(23)
Net loss	(18,650)	(188,307)
Income attributable to non-controlling interest	1	134
Net loss attributable to Agrify Corporation	$ (18,649)	$ (188,173)

Revenues

Our goal is to provide our customers with a variety of products to address their entire indoor agriculture needs. Our core product offering includes our VFUs and Agrify Integrated Grow Racks with our Agrify Insights™, which are supplemented with environmental control products, grow lights, facility build-out services, and extraction equipment.

We generate revenue from sales of cultivation solutions, including ancillary products and services, Agrify Insights™, facility build-outs, and extraction equipment and solutions. We believe that our product mix forms an integrated ecosystem that allows us to be engaged with our potential customers from the early stages of the grow cycle - first during the facility build-out, to the choice of cultivation solutions, running the grow business with our Agrify Insights™ and finally, our extraction, post-processing, and testing services to transform harvest into a sellable product. We believe that the delivery of each solution in the various stages of the process will generate sales of additional solutions and services.

The following table provides a breakdown of our revenue for the years ended December 31, 2023 and 2022:

	Year Ended December 31,			
(In thousands)	**2023**	**2022**	**Change**	**% Change**
Cultivation solutions, including ancillary products and services	$ 1,100	$ 711	$ 389	55%
Agrify Insights software	188	74	114	154%
Facility build-outs	882	23,129	(22,247)	(96)%
Extraction solutions	14,698	34,345	(19,647)	(57)%
Total revenue	$ 16,868	$ 58,259	$ (41,391)	(71)%

Revenues decreased by $41.4 million, or 71%, for the year ended December 31, 2023, as compared to the same period in 2022. The comparative decrease in revenue was primarily driven by a $22.2 million reduction in facility build-outs due to winding down TTK solutions Facility build-outs at the end of 2022. Additionally, there was a $19.6 million reduction in Extraction solutions due to an overall down-turn in the cannabis industry and the difficulty of integrating four acquired extraction companies, which was offset by $0.5 million increase in cultivation solutions and Agrify Insights software combined.

Cost of Goods Sold

Cost of goods sold represents a combination of the following: construction-related costs associated with our facility build-outs, internal and outsourced labor and material costs associated with the assembly of both cultivation equipment (primarily VFUs), and extraction equipment, as well as labor and parts costs associated with the sale or provision of other products and services.

The following table provides a breakdown of our cost of goods sold for the years ended December 31, 2023 and 2022:

	Year Ended December 31,			
(In thousands)	**2023**	**2022**	**Change**	**% Change**
Cultivation solutions, including ancillary products and services	$ 1,747	$ 27,513	$ (25,766)	(94)%
Facility build-outs	971	31,588	(30,617)	(97)%
Extraction solutions	8,872	30,953	(22,081)	(71)%
Total cost of goods sold	$ 11,590	$ 90,054	$ (78,464)	(87)%

Cost of goods sold decreased by $78 million, or 87%, for the year ended December 31, 2023, as compared to the same period in 2022. The year-over-year decrease in cost of goods sold is associated with the decreased amount of subcontractor construction costs related to our facility build-outs, the decline in sales of Extraction solutions, internal and outsourced labor and materials costs for the extraction solutions sales, and cultivation solutions, including ancillary products and services.

Gross (Loss) Profit

	Year Ended December 31,			
(In thousands)	**2023**	**2022**	**Change**	**% Change**
Gross profit (loss)	$ 5,278	$ (31,795)	$ 37,073	(117)%

Gross profit totaled $5.3 million, or 31%, of total revenue during the year ended December 31, 2023 compared to a gross loss of $32 million, or 55% of total revenue during the year ended December 31, 2022. The comparative $37.1 million year-over-year increase in gross profit, as well as the comparative increase in gross profit margin, is primarily attributable to reduction in facility build-outs. Although sales of Extraction Solutions decreased, they have higher margins. Additionally, there was a $114 thousand increase in revenue from Agrify insight software which has 90% plus gross profit.

Operating Expenses

	Year Ended December 31,			
(In thousands)	**2023**	**2022**	**Change**	**% Change**
General and administrative	$ 19,005	$ 73,354	$ (54,349)	(74)%
Selling and marketing	4,134	9,338	(5,204)	(56)%
Research and development	2,295	8,179	(5,884)	(72)%
Change in contingent consideration	(1,322)	(2,156)	834	(39)%
Impairment of property and equipment	—	2,912	(2,912)	(100)%
Impairment of goodwill and intangible assets	—	69,904	(69,904)	(100)%
Gain on disposal	144	—	144	100%
Total operating expenses	$ 24,256	$ 161,531	$ (137,275)	(340)%

General and administrative

General and administrative (“G&A”) expenses consist principally of salaries and related costs, including stock-based compensation and travel expenses, for personnel associated with executive and other administrative functions. Other G&A expenses include, but are not limited to, professional fees for legal, consulting, depreciation and amortization, and accounting services, as well as facility-related costs.

G&A expenses decreased by $54.3 million, or 74%, for the year ended December 31, 2023, compared to the same period in 2022. The primary drivers of the year-over-year decrease of G&A expenses were largely attributable to a decrease in bad debt expenses, of approximately $36.8 million, a decrease in depreciation expense, of approximately $1 million, a decrease in stock based compensation, of approximately $1.6 million, a decrease in salaries and related costs for personnel, of approximately $3.4 million, a decrease in insurance expenses of approximately $0.6 million.

Selling and marketing

Selling and marketing expenses consist primarily of salaries and related costs of personnel, travel expenses, trade shows, and advertising expenses.

Selling and marketing expenses decreased by $5.2 million, or 56%, for the year ended December 31, 2023, compared to the same period in 2022. The decrease was primarily attributable to a reduction in salaries and related costs of personnel, of approximately $3.4 million, and a reduction in trade show and advertising costs, of approximately $1.8 million.

Research and development

Research and development ("R&D") expenses consisted primarily of costs incurred for the development of our Agrify Insights™ and next-generation VFUs, which includes:

- employee-related expenses, including salaries, benefits, and travel;
- subcontractor expenses incurred under agreements to provide engineering work related to the development of our next-generation VFUs; and
- expenses related to our facilities, depreciation, and other expenses, which include direct and allocated expenses for rent and maintenance of facilities, insurance, and other supplies

R&D expenses decreased by $5.9 million, or 72%, for the year ended December 31, 2023, compared to the same period in 2022. As a percentage of net revenue, R&D expenses were 14% of total revenue for the year ended December 31, 2023, compared to 14% for same period in 2022.

We expect to continue to invest in future developments for our VFUs, Agrify Insights™, and extraction products. Although we continue to invest in R&D activities, we expect R&D expenses to decrease as a percentage of revenue as our revenue grows.

Change in contingent consideration

Contingent consideration increased $0.8 million for the year ended December 31, 2023, compared to $2.2 million for the same period in 2022.

Impairment of property and equipment

Results from a 50% reserve on equipment to be leased to Hannah Industries due to uncertainty of the project.

Impairment of goodwill and intangible assets

During the three months ended June 30, 2022, we identified an impairment-triggering event associated with both a sustained decline in our stock price and associated market capitalization, as well as a second-quarter slowdown in the cannabis industry as a whole. Due to these factors, we deemed that there was an impairment to the carrying value of our property and equipment and accordingly performed interim testing as of June 30, 2022.

Based on our interim testing, we noted that the current carrying value of equity significantly exceeded the calculated fair value of equity, by an amount greater than the aggregate value of our goodwill and intangible assets. Accordingly, we concluded that the entire carrying value of our goodwill and intangible assets were impaired, resulting in a second-quarter impairment charge of $69.9 million. Additional information regarding our interim impairment testing may be found in Note 7 - Goodwill and Intangible Assets, Net, included in the notes to the consolidated financial statements.

Change in Gain on Disposal

Gain on disposal Increased $0.1 million for the year ended December 31, 2023, compared to $0 for the same period in 2022.

Other Income, Net

	Year Ended December 31,			
(In thousands)	**2023**	**2022**	**Change**	**% Change**
Interest expense, net	$ (1,853)	$ (8,750)	$ 6,897	(79)%
Other income, net	1,799	1,316	483	37%
Change in fair value of warrant liabilities	4,695	51,461	(46,766)	(91)%
Loss on extinguishment of notes payable	(4,311)	(38,985)	34,674	(89)%
Total other income, net	$ 330	$ 5,042	$ (4,712)	(93)%

Interest income, net

Interest expense was approximately $1.9 million for the year ended December 31, 2023 compared to interest expense of approximately $8.8 million for the same period in 2022. The significant decrease in our interest expense was resulted from our continuous efforts to restructure, modify and reduce our SPA Note and Exchange Note.

Other income, net

Other expense, net increased by $483 thousand, or 37%, for the year ended December 31, 2023, compared to the same period in 2022.

Change in fair value of warrant liability

Change in fair value of warrant liability decreased by $46.8 million, or (91)%, for the year ended December 31, 2023, compared to the same period in 2022. The decrease is related to the fair value of warrants discussed in Note 4.

Loss on extinguishment of notes payable

Change in loss on extinguishment of notes payable decreased by $34.7 million, or (89)%, for the year ended December 31, 2023, compared to the same period in 2022. The decrease is related to related to the extinguishment of the SPA Note recorded in prior period discussed in Note 9. Loss on extinguishment of notes payable was $4.3 million for the year ended December 31, 2023, compared to a loss of $39.0 million for the same period in 2022.

Income Tax Expense

	Year Ended December 31,			
(In thousands)	**2023**	**2022**	**Change**	**% Change**
Income tax expense	$ (2)	$ (23)	$ 21	(91)%
Effective tax rate	—%	—%		

Income (Loss) Attributable to Non-Controlling Interest

We consolidate the results of operations of two less than wholly-owned entities into our consolidated statements of operations. On December 8, 2019, we formed Agrify-Valiant, LLC ("Agrify-Valiant"), a joint-venture limited liability company in which we are the 60% majority owner and Valiant-America, LLC owns 40%. Agrify-Valiant started its operations during the second quarter of 2020. On October 27, 2022, we provided notice to Valiant-America of our intention to begin the winding up of Agrify-Valiant. On January 22, 2020, as part of the acquisition of TriGrow, we received TriGrow's 75% interest in Agrify Brands, LLC (formerly TriGrow Brands, LLC), a licensor of an established portfolio of consumer brands that utilize our grow technology. The license for these brands is ancillary to the sale of our VFUs and provides a means to differentiate customers' products in the marketplace. It is not a material aspect of our business and we have not realized any royalty income. Accordingly, we are currently evaluating whether to continue this legacy business from an operational standpoint, as well as from a legal and regulatory perspective.

Income (loss) attributable to non-controlling interest represents the portion of profit (or loss) that is attributable to the non-controlling interest calculated as a product of the net income of the entity multiplied by the percentage of ownership held by the non-controlling interest.

Liquidity and Capital Resources

Operating Capital Requirements

We have incurred operating losses since our inception and have negative cash flows from operations. We have an accumulated deficit of approximately $265.8 million as of December 31, 2023. Our primary sources of liquidity are cash and cash equivalents, with additional liquidity accessible, subject to market conditions and other factors, including limitations that may apply to us under applicable SEC regulations, from the capital markets.

As of December 31, 2023, we had $0.4 million of cash, cash equivalents, and restricted cash. We had no restricted cash and restricted marketable securities associated with the Exchange Note as of December 31, 2023. Current liabilities were $41.2 million as of December 31, 2023.

On October 18, 2022, we entered into the ATM Program with the Agent pursuant to which we could issue and sell, from time to time, shares of our Common Stock having an aggregate offering price of up to $50 million, depending on market demand, with the Agent acting as an agent for sales. The ATM Program allowed us to sell shares of Common Stock pursuant to specific parameters defined by us as well as those defined by the SEC and the ATM Program agreement. Beginning October 18, 2022 through December 31, 2022, we sold 306,628 shares of Common Stock under the ATM at an average price of $50.85, resulting in gross proceeds of $15.6 million and net proceeds of $15.1 million after commissions and fees to the Agent totaling $468 thousand. Subsequent to December 31, 2022 through April 1, 2023, after which time the ATM program was discontinued, we sold an additional 323,082 shares of Common Stock under the ATM at an average price of $4.93, resulting in gross proceeds of $1.6 million and net proceeds of $1.6 million after commissions and fees to the Agent totaling $48 thousand. For the entire period from October 18, 2022 through April 1, 2023, we sold 629,710 shares of Common Stock under the ATM at an average price of $27.29 per share, resulting in gross proceeds of $17.2 million, and net proceeds of $16.7 million after commissions and fees to the Agent totaling $516 thousand. $3.0 million of the proceeds under the ATM Program were used to repay amounts due to the Investor under the Exchange Note. We used the net proceeds generated from the ATM Program for working capital and general corporate purposes, including repayment of indebtedness, funding its transformation initiatives and product category expansion efforts and capital expenditures. Due to the late filing of this Annual Report on Form 10-K, we are no longer eligible to utilize the registration statement on Form S-3 relating to the ATM Program, and do not anticipate any further sales under the ATM Program in the foreseeable future.

Our current working capital needs are to support revenue growth, fund construction and equipment financing commitments associated with our TTK Solutions, manage inventory to meet demand forecasts and support operational growth. Our long-term financial needs primarily include working capital requirements and capital expenditures. We anticipate that we will allocate a significant portion of our current balance of working capital to satisfy the financing requirements of our current and possible future TTK arrangements. These arrangements require a significant amount of upfront capital necessary to fund construction, associated with facility build-outs, and equipment. We do not intend to enter into any new TTK Solutions for the foreseeable future, however, we have deployed this program with certain key customers.

We may opportunistically raise debt capital, subject to market and other conditions. Additionally, as part of our growth strategies, we may also raise debt capital for strategic alternatives and general corporate purposes. If additional financing is required from outside sources, we may not be able to raise such capital on terms acceptable to us or at all. If we are unable to raise additional capital when desired, our business, operating results, and financial condition may be adversely affected.

These consolidated financial statements have been prepared based on the assumption that we will continue as a going concern for the next twelve-months from the date these consolidated financial statements are available to be issued. However, we have incurred operating losses since our inception and have negative cash flows from operations, and our significant operating losses raise substantial doubt about our ability to continue as a going concern. Our continuation as a going concern is dependent upon our ability to obtain the necessary debt or equity financing to continue operations until we begin generating sufficient cash flows from operations to meet our obligations. If we are unable to raise additional funds, we may be forced to cease operations.

There is no assurance that we will ever be profitable. The consolidated financial statements do not include any adjustments to reflect the potential future effects on the recoverability and classification of assets or the amounts and classifications of liabilities that may result should we be unable to continue as a going concern.

Indebtedness

We entered into one Loan Agreement and Promissory Note with Bank of America pursuant to the Paycheck Protection Program (the “PPP”) under the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”) administered by the U.S. Small Business Administration. We received total proceeds of approximately $779 thousand from the unsecured PPP Loan which was originally scheduled to mature in May 2022. We applied for forgiveness on the $779 thousand of our PPP Loan however was denied by the SBA. On June 23, 2022, we received a letter from Bank of America agreeing to extend the maturity date to May 7, 2025 and bears interest at a rate of 1.00% per year. The PPP loan is payable in 34 equal combined monthly principal and interest payments of approximately $24 thousand that commenced on August 7, 2022.

On March 14, 2022, we entered into a Securities Purchase Agreement with an institutional investor. The Purchase Agreement provides for the issuance of the SPA Note in the aggregate amount of $65.0 million and a SPA Warrant to purchase up to an aggregate of 34,406 shares of Common Stock, with the potential for two potential subsequent closings for notes with an original principal amount of $35.0 million each.

On August 18, 2022, we entered into a Securities Exchange Agreement. Pursuant to the August 2022 Exchange Agreement, we partially paid $35.2 million along with approximately $300 thousand in repayments for other fees under the SPA Note and exchanged the remaining balance of the SPA Note for an Exchange Note with an aggregate original principal amount of $35.0 million and a Note Exchange Warrant to purchase 71,139 shares of Common Stock. Additionally, we exchanged the SPA Warrant for a Modified Warrant for the same number of underlying shares but with a reduced exercise price.

On March 8, 2023, the Company entered into a new Securities Exchange Agreement. Pursuant to the March 2023 Exchange Agreement, we prepaid approximately $10.3 million in principal amount under the Exchange Note and exchanged $10.0 million in principal amount of the remaining balance of the Exchange Note for a new senior secured convertible note (the "Convertible Note").

The Convertible Note is a senior secured obligation and will rank senior to all of our indebtedness. The Convertible Note will mature on August 19, 2025 (the "Maturity Date") and has a 9.0% annualized interest rate, with interest to be paid monthly, in cash. The principal amount of the Convertible Note will be payable on the maturity date, provided that the lender will be entitled to a cash sweep of 30% of the proceeds of any at-the-market equity offering and 20% of the proceeds received by us in connection with any other equity financing, which will reduce the outstanding principal amount under the Exchange Note. On October 27, 2023, CP Acquisitions LLC, and entity affiliated with and controlled by Raymond Chang, acquired the Exchange Note and the Convertible Note. As of October 30, 2023, there was approximately $6.7 million outstanding under the Exchange Note and $8.8 million outstanding under the Convertible Note.

At any time, we may prepay all of the Exchange Note by redemption at a price equal to 102.5% of the then-outstanding principal amount under the Note plus accrued but unpaid interest. The holder will also have the option of requiring us to redeem the Exchange Note on the one-year or two-year anniversaries of issuance at a price equal to the then-outstanding principal amount under the Exchange Note plus accrued but unpaid interest, or if we undergo a fundamental change at a price equal to 102.5% of the then-outstanding principal amount under the Exchange Note plus accrued but unpaid interest.

Summary Statement of Cash Flows

The following table presents the major components of net cash flows from and used in operating, investing, and financing activities for the years ended December 31, 2023 and 2022:

(In thousands)	December 31, 2023	December 31, 2022
Net cash (used in) provided by:		
Operating activities	$ (30,974)	$ (72,021)
Investing activities	25,174	(2,317)
Financing activities	(4,227)	72,781
Net decrease in cash, cash equivalents, and restricted cash	$ (10,027)	$ (1,557)

Cash Flows from Operating Activities

For the year ended December 31, 2023, we incurred a net loss of $18.6 million primarily due to the $4.7 million related to the change in fair value of warrant liabilities, $1.9 million of depreciation and amortization, $2.7 million of stock based compensation expense, and $24 thousand of debt issuance costs. Net cash was increased by changes in operating assets and liabilities of $13.7 million.

For the year ended December 31, 2022, cash used in operating activities consists of net income adjusted for non-cash benefits and expenses, and changes in operating assets and liabilities. Our primary source of cash provided by operating activities is cash collections from our customers related to the sale of cultivation and extraction solutions. Our primary uses of cash from our operating activities include payments for employee-related expenditures, payments for inventory due to increased demand forecasts, construction costs related to TTK Solutions, acquisition-related costs and the payment of other operating expenses incurred in the ordinary course of business.

Cash Flows from Investing Activities

For the year ended December 31, 2023, net cash provided by investing activities was approximately $25.2 million, which included cash inflows of $10.5 million in proceeds from sale of securities and $15.1 million in proceeds from repayment of loan receivable, and cash outflows of $0.6 million related to a certain loan issuance of loan and $0.3 million in purchases of property and equipment.

For the year ended December 31, 2022, cash provided by investing activities of $2.3 million. Cash used in investing activities consists primarily of purchases of marketable securities of $294.7 million, proceeds of marketable securities of $329.0 million, payment of contingent contingent liabilities of $3.3 million, cash paid associated with our 2022 acquisition of Lab Society and Sinclair of $2.2 million million, the issuance of loans receivable if $23.0 million in connection with our financing of construction and equipment under its TTK Solutions offering and purchases of property and equipment expenditures. The capital expenditures support growth and investment in property and equipment of $8.1 million, to expand research, development, and testing capabilities and, to a lesser extent, the replacement of existing equipment.

Cash Flows from Financing Activities

For the year ended December 31, 2023, net cash used in financing activities was $4.2 million. Net cash used in financing activities was primarily driven by the repayment of certain of our debt instruments of $10.3 million, and payments on insurance financing loans of $1.3 million, offset by proceeds generated from the sale of securities pursuant to our “at the market” program, net, of $1.5 million and proceeds from issuance of a related party note of $4.4 million.

For the year ended December 31, 2022, cash provided by financing activities was $72.8 million. This consists primarily of proceeds from the issuance of Common Stock of $25.8, and warrants in private placements of $61.8 million, and proceeds from the initial and secondary public offerings of $23.2 million. Cash used in financing activities consists primarily of repayment of debt of $38.0 million.

Item 7A. Quantitative and Qualitative Disclosures About Market Risk.

Not applicable.

Item 8. Financial Statements and Supplementary Data.

The consolidated financial statements required to be filed pursuant to this Item 8 are appended to this Annual Report on Form 10-K, which consolidated financial statements are incorporated by reference in response to this Item 8. An index of those consolidated financial statements is found in "Item 15. Exhibits and Financial Statement Schedules" of this Annual Report on Form 10-K.

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

None.

Item 9A. Controls and Procedures.

Evaluation of Disclosure Controls and Procedures

Management, with the participation of our Chief Executive Officer, evaluated the effectiveness of our disclosure controls and procedures as of December 31, 2023. The term "disclosure controls and procedures," as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act, means controls and other procedures of a company that are designed to ensure that information required to be disclosed by a company in the reports that it files or submits under the Exchange Act is recorded, processed, summarized, and reported, within the time periods specified in the SEC's rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by a company in the reports that it files or submits under the Exchange Act is accumulated and communicated to our management, including our principal executive and principal financial officers, as appropriate to allow timely decisions regarding required disclosure. Management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving their objectives and management necessarily applies its judgment in evaluating the cost-benefit relationship of possible controls and procedures. Our Chief Executive Officer concluded that our disclosure controls and procedures were not effective at the reasonable assurance level as of December 31, 2023.

Management's Report on Internal Control over Financial Reporting

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. Under the supervision and with the participation of our management, including our Chief Executive Officer, we conducted an evaluation of the effectiveness of our internal control over financial reporting based on criteria established in the framework in Internal Control - Integrated Framework (2013) issued by the Committee of Sponsoring Organizations of the Treadway Commission. Based on the results of this evaluation, management has concluded that our internal control over financial reporting was not effective at the reasonable assurance level as of December 31, 2023.

During the year ended December 31, 2023, management identified material weaknesses in internal control over financial reporting. These material weaknesses related to the accounting for complex financial instruments, inadequate design of the controls over the preparation of the consolidated financial statements due to the lack of a timeline and process in place to timely close our annual books and records, and insufficient technical accounting resources and lack of segregation of duties. These deficiencies could result in misstatements to our consolidated financial statements that could be material and may not be prevented or detected on a timely basis.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risks that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

This Annual Report on Form 10-K does not include an attestation report of our independent registered public accounting firm because we are an "emerging growth company," and may take advantage of certain exemptions from various reporting requirements that are applicable to 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.

Remediation of Material Weakness in Internal Control over Financial Reporting

As of December 31, 2023 and through the date of this filing, we were in varying stages of remediating the current and previously reported material weaknesses in our internal control over financial reporting. During the fiscal year ended December 31, 2023, we have improved our technical accounting resources by hiring outside consultants that have strong technical knowledge in financial reporting and accounting. However, the finance team has remained weakened, with the departure of our CFO and VP of Finance. We are in the process of rebuilding the finance function and have engaged outside consultants to assist. We will need to continue to devote specific attention to these aspects of our internal control environment to ensure that these material weaknesses are fully remediated.

The material weaknesses identified will not be considered fully remediated until these additional controls and procedures have operated effectively for a sufficient period of time and management has concluded, through testing, that these controls are effective. Our management will monitor the effectiveness of our remediation plans and will make changes management determines to be appropriate. If not remediated, these material weaknesses could result in material misstatements to our annual or interim consolidated financial statements that may not be prevented or detected on a timely basis or result in a delayed filing of required periodic reports. If we are unable to assert that our internal control over financial reporting is effective, or when required in the future, if our independent registered public accounting firm is unable to express an unqualified opinion as to the effectiveness of the internal control over financial reporting, investors may lose confidence in the accuracy and completeness of our financial reports, the market price of our Common Stock could be adversely affected, and we could become subject to litigation or investigations by the Nasdaq Capital Market, the SEC, or other regulatory authorities, which could require additional financial and management resources.

Changes in Internal Control Over Financial Reporting

Other than the changes to remediate the material weaknesses noted above, there was no change in our internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) during the fiscal year ended December 31, 2022 that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

Item 9B. Other Information.

None.

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

Not applicable.

PART III

Item 10. Directors, Executive Officers and Corporate Governance.

The information required by this Item 10 will be included in our Definitive Proxy Statement to be filed with the SEC with respect to our 2024 Annual Meeting of Stockholders and is incorporated herein by reference.

Item 11. Executive Compensation.

The information required by this Item 11 will be included in our Definitive Proxy Statement to be filed with the SEC with respect to our 2024 Annual Meeting of Stockholders and is incorporated herein by reference.

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

The information required by this Item 12 will be included in our Definitive Proxy Statement to be filed with the SEC with respect to our 2024 Annual Meeting of Stockholders and is incorporated herein by reference.

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

The information required by this Item 13 will be included in our Definitive Proxy Statement to be filed with the SEC with respect to our 2024 Annual Meeting of Stockholders and is incorporated herein by reference.

Item 14. Principal Accountant Fees and Services.

The information required by this Item 14 will be included in our Definitive Proxy Statement to be filed with the SEC with respect to our 2024 Annual Meeting of Stockholders and is incorporated herein by reference.

PART IV

Item 15. Exhibits, Financial Statements and Schedules.

(a) Financial Statements:

(1) The consolidated financial statements required to be included in this report appear after the signature page to this report as a separate section beginning on page F-1.

(2) All supplemental schedules have been omitted since the information is either included in the consolidated financial statements or the notes thereto or they are not required or are not applicable.

(3) The Exhibit Index of this report appears below.

(b) Exhibits:

Exhibit No.	Description
2.1±	Plan of Merger and Equity Purchase Agreement, dated as of September 29, 2021, among the Registrant, Sinclair Scientific, LLC, Mass2Media, LLC dba PX2 Holdings, LLC, and each of the equity holders of Sinclair Scientific, LLC named therein (incorporated by reference to Exhibit 2.1 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on October 5, 2021
2.2	Amendment to Plan of Merger and Equity Purchase Agreement, dated as of October 1, 2021, between the Registrant and Sinclair Scientific, LLC (incorporated by reference to Exhibit 2.2 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on October 4, 2021
2.3±	Membership Interest Purchase Agreement, dated as of December 31, 2021, among the Registrant, PurePressure, LLC, Benjamin Britton as Member Representative, and each of the equity holders of PurePressure, LLC named therein (incorporated by reference to Exhibit 2.1 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on January 5, 2022)
2.4±	Merger Agreement, dated as of February 1, 2022, among the Registrant, LS Holdings Corp., Lab Society NewCo, LLC, Michael S. Maibach Jr. as Owner Representative, and each of the Owners named therein (incorporated by reference to Exhibit 2.1 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on February 2, 2022)
3.1	Articles of Incorporation of the Registrant, as amended (incorporated by reference to Exhibit 3.1 to the Registrant's Amendment No. 1 to Registration Statement on Form S-1 filed with the Securities and Exchange Commission on January 13, 2021)
3.2	Certificate of Amendment to the Articles of Incorporation of the Registrant, filed July 11, 2022 (incorporated by reference to Exhibit 3.1 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on July 14, 2022).
3.3	Certificate of Amendment to the Articles of Incorporation of the Registrant, filed October 17, 2022 (incorporated by reference to Exhibit 3.1 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on October 17, 2022).
3.4	Certificate of Amendment to the Articles of Incorporation of the Registrant, filed March 1, 2023 (incorporated by reference to Exhibit 3.1 to the Registrant's Current Report filed with the Securities and Exchange Commission on March 3, 2023).
3.5	Certificate of Change to Articles of Incorporation of Agrify Corporation, filed June 30, 2023 (incorporated by reference to Exhibit 3.1 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on July 3, 2023).
3.6	Certificate of Amendment to the Articles of Incorporation of the Registrant, filed January 22, 2024 (incorporated by reference to Exhibit 3.1 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on January 25, 2024).
3.7	Amended and Restated Bylaws of the Registrant (incorporated by reference to Exhibit 3.3 to the Registrant's Amendment No. 2 to Registration Statement on Form S-1 filed with the Securities and Exchange Commission on January 26, 2021)
3.8	Third Amended and Restated Certificate of Designations of the Series A Convertible Preferred Stock of the Registrant (incorporated by reference to Exhibit 3.2 to the Registrant's Amendment No. 1 to Registration Statement on Form S-1 filed with the Securities and Exchange Commission on January 13, 2021)

4.1	Form of Common Stock Certificate (incorporated by reference to Exhibit 4.1 to the Registrant's Amendment No. 2 to Registration Statement on Form S-1 filed with the Securities and Exchange Commission on January 26, 2021)
4.2	Form of Representative's Warrant dated February 19, 2021 (incorporated by reference to Exhibit 4.2 to the Registrant's Registration Statement on Form S-1 filed with the Securities and Exchange Commission on February 11, 2021)
4.3	Form of Representative's Warrant dated January 27, 2021 (incorporated by reference to Exhibit 4.2 to the Registrant's Amendment No. 2 to Registration Statement on Form S-1 filed with the Securities and Exchange Commission on January 26, 2021)
4.4	Form of Warrant issued to Noteholders (incorporated by reference to Exhibit 4.3 to the Registrant's Registration Statement on Form S-1 filed with the Securities and Exchange Commission on December 22, 2020)
4.5	Description of Registrant's Securities (incorporated by reference to Exhibit 4.5 to the Registrant's Annual Report on Form 10-K filed with the Securities and Exchange Commission on April 2, 2021)
4.6	Form of Common Stock Purchase Warrant dated January 28, 2022 (incorporated by reference to Exhibit 4.2 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on January 26, 2022)
4.7	Form of Senior Secured Note (incorporated by reference to Exhibit 4.1 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on August 19, 2022).
4.8	Form of Warrant Exchange Warrant (incorporated by reference to Exhibit 4.2 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on August 19, 2022).
4.9	Form of Note Exchange Warrant (incorporated by reference to Exhibit 4.3 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on August 19, 2022).
4.1	Form of Pre-Funded Warrant (incorporated by reference to Exhibit 4.1 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on December 16, 2022)
4.11	Form of Common Warrant (incorporated by reference to Exhibit 4.2 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on December 16, 2022)
4.12	Form of Senior Secured Convertible Note (incorporated by reference to Exhibit 4.1 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on March 9, 2023)
4.13	Amendment to Senior Secured Note (incorporated by reference to Exhibit 4.2 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on March 9, 2023)
4.14	Exchange Warrant, dated October 27, 2023 (incorporated by reference to Exhibit 4.1 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on October 30, 2023)
4.15	Abeyance Warrant, dated October 27, 2023 (incorporated by reference to Exhibit 4.2 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on October 30, 2023)

4.16	Common Stock Purchase Warrant, dated October 27, 2023 (incorporated by reference to Exhibit 4.3 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on October 30, 2023)
4.17	Amended and Restated Junior Secured Promissory Note (incorporated by reference to Exhibit 4.4 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on October 30, 2023)
4.18	Junior Secured Promissory Note (incorporated by reference to Exhibit 4.5 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on October 30, 2023)
4.19	Amendment to Junior Secured Promissory Note, dated December 4, 2023, between Agrify Corporation and CP Acquisitions, LLC (incorporated by reference to Exhibit 4.1 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on December 6, 2023).
4.20	Senior Secured Amended, Restated and Consolidated Convertible Promissory Note dated January 25, 2024 (incorporated by reference to Exhibit 4.1 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on January 25, 2024).
4.21	Second Amended and Restated Junior Secured Promissory Note dated January 25, 2024 (incorporated by reference to Exhibit 4.2 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on January 25, 2024).
4.22	Form of Pre-Funded Warrant (incorporated by reference to Exhibit 4.1 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on February 28, 2024).
4.23	Form of Placement Agent Warrant (incorporated by reference to Exhibit 4.2 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on February 28, 2024).
10.1	Operating Agreement of Agrify-Valiant, LLC dated December 8, 2019 (incorporated by reference to Exhibit 10.1 to the Registrant's Registration Statement on Form S-1 filed with the Securities and Exchange Commission on December 22, 2020)
10.2	Distribution Agreement dated June 7, 2019 between the Registrant and Bluezone Products, Inc.± (incorporated by reference to Exhibit 10.2 to the Registrant's Registration Statement on Form S-1 filed with the Securities and Exchange Commission on December 22, 2020)
10.3	Distribution Agreement dated March 9, 2020 between the Registrant and Enozo Technologies Inc.± (incorporated by reference to Exhibit 10.3 to the Registrant's Registration Statement on Form S-1 filed with the Securities and Exchange Commission on December 22, 2020)
10.4	Purchase Agreement dated as of July 28, 2020 between the Registrant and 4D Bios Inc.± (incorporated by reference to Exhibit 10.4 to the Registrant's Registration Statement on Form S-1 filed with the Securities and Exchange Commission on December 22, 2020)
10.5†	Employment Agreement dated as of January 4, 2021 between the Registrant and Raymond Chang (incorporated by reference to Exhibit 10.5 to the Registrant's Annual Report on Form 10-K filed with the Securities and Exchange Commission on April 2, 2021)
10.6†	2020 Omnibus Equity Incentive Plan (incorporated by reference to Exhibit 10.13 to the Registrant's Registration Statement on Form S-1 filed with the Securities and Exchange Commission on December 22, 2020)
10.7	Intellectual Property Assignment and Transfer Agreement by and among the Registrant, Agrify Brands, LLC and The Holden Company effective as of January 1, 2020 (incorporated by reference to Exhibit 10.16 to the Registrant's Registration Statement on Form S-1 filed with the Securities and Exchange Commission on December 22, 2020)
10.8	Supply Agreement by and among the Registrant and Mack Molding Co. dated December 7, 2020 ± (incorporated by reference to Exhibit 10.15 to the Registrant's Amendment No. 1 to Registration Statement on Form S-1 filed with the Securities and Exchange Commission on January 13, 2021)

10.9	Amended and Restated Operating Agreement of Agrify Brands, LLC effective as of August 12, 2020 (incorporated by reference to Exhibit 10.18 to the Registrant's Registration Statement on Form S-1 filed with the Securities and Exchange Commission on December 22, 2020)
10.1	Form of Indemnification Agreement with directors and executive officers (incorporated by reference to Exhibit 10.18 to the Registrant's Registration Statement on Form S-1 filed with the Securities and Exchange Commission on February 11, 2021)
10.11†	Employment Agreement, dated as of November 10, 2021, between the Registrant and Timothy Oakes † (incorporated by reference to Exhibit 10.2 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on November 15, 2021)
10.12±	Form of Securities Purchase Agreement, dated as of January 25, 2022, between the Registrant and the Purchasers party thereto (incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on January 26, 2022
10.13±	Form of Securities Purchase Agreement, dated as of March 14, 2022, between the Registrant and High Trail Special Situations LLC (incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on March 18, 2022)
10.14†	Agrify Corporation 2022 Omnibus Equity Incentive Plan (incorporated by reference to Appendix A to the Registrant's Definitive Proxy Statement on Schedule 14A filed with the Securities and Exchange Commission on April 29, 2022)
10.15†	Agrify Corporation 2022 Employee Stock Purchase Plan (incorporated by reference to Appendix B to the Registrant's Definitive Proxy Statement on Schedule 14A filed with the Securities and Exchange Commission on April 29, 2022)
10.16†	Separation Agreement of Thomas Massie, dated as of July 8, 2022 (incorporated by reference to Exhibit 10.2 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on July 14, 2022).
10.17†	Employment Agreement, dated as of July 14, 2022, between the Registrant and Stuart Wilcox (incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on July 14, 2022).
10.18±	Exchange Agreement, dated as of August 18, 2022, between the Registrant and High Trail Special Situations LLC (incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on August 19, 2022).
10.19±	Equity Distribution Agreement, dated as of October 18, 2022, between the Registrant and Canaccord Genuity LLC (incorporated by reference to Exhibit 1.1 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on October 18, 2022).
10.20†	Employment Agreement, dated as of July 25, 2022, between the Registrant and Timothy Hayden (incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on January 24, 2023)
10.21±	Exchange Agreement, dated as of March 8, 2023, between the Registrant and High Trail Special Situations LLC (incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on March 9, 2023)
10.22	Company and Investor Acknowledgment, dated as of October 27, 2023, between the Registrant and CP acquisitions LLC (incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on October 30, 2023)

10.23	Letter Agreement, dated as of October 27, 2023, between the Registrant and High Trail Special Situations LLC (incorporated by reference to Exhibit 10.2 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on October 30, 2023)
10.24±	Modification Agreement, effective as of October 18, 2023, between the Registrant and Mack Molding Company (incorporated by reference to Exhibit 10.3 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on October 30, 2023)
14.1	Code of Ethics of Agrify Corporation Applicable To Directors, Officers And Employees (incorporated by reference to Exhibit 14.1 to the Registrant's Registration Statement on Form S-1 filed with the Securities and Exchange Commission on December 22, 2020)
21.1*	Subsidiaries of the Registrant
23.1*	Consent of Independent Registered Public Accounting Firm
31.1*	Certification of Principal Executive Officer and Principal Financial and Accounting Officer Pursuant to Securities Exchange Act Rules 13a-14(a) and 15(d)-14(a), as adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
32.1**	Certification of Principal Executive Officer and Principal Financial and Accounting Officer Pursuant to 18 U.S.C. Section 1350, as adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
97.1*	Agrify Corporation Clawback policy
101.INS	Inline XBRL Instance Document
101.SCH	Inline XBRL Taxonomy Extension Schema Document.
101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase Document.
101.DEF	Inline XBRL Taxonomy Extension Definition Linkbase Document.
101.LAB	Inline XBRL Taxonomy Extension Label Linkbase Document.
101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase Document.
104	Cover Page Interactive Data File (formatted as Inline XBRL and contained in Exhibit 101).

± Certain information has been omitted from this exhibit in reliance upon Item 601(a)(5) of Regulation S-K.

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

* Filed herewith.

** Furnished herewith.

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.

AGRIFY CORPORATION

Date: April 15, 2024

By: /s/ Raymond Chang
Raymond Chang
Chief Executive Officer
(Principal Executive Officer and Principal Financial and Accounting Officer)

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

Signature	Title	Date
/s/ Raymond Chang Raymond Chang	Chief Executive Officer and Director (Principal Executive Officer and Principal Financial and Accounting Officer)	April 15, 2024
/s/ Krishnan Varier Krishnan Varier	Director	April 15, 2024
/s/ Timothy Mahoney Timothy Mahoney	Director	April 15, 2024
/s/ Max Holtzman Max Holtzman	Director	April 15, 2024
/s/ Leonard Sokolow Leonard Sokolow	Director	April 15, 2024
/s/ I-Tseng Jenny Chan I-Tseng Jenny Chan	Director	April 15, 2024

Date: April 15, 2024

AGRIFY CORPORATION
Index to Consolidated Financial Statements

Fiscal Years Ended December 31, 2023 and 2022:

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Shareholders and Board of Directors of
Agrify Corporation and Subsidiaries

Opinion on the Financial Statements

We have audited the accompanying consolidated balance sheets of Agrify Corporation and Subsidiaries (the "Company") as of December 31, 2023 and 2022, the related consolidated statements of operations, stockholders' deficit and cash flows for each of the two years in the 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 two years in the period ended December 31, 2023, in conformity with accounting principles generally accepted in the United States of America.

Explanatory Paragraph – Going Concern

The accompanying consolidated financial statements have been prepared assuming that the Company will continue as a going concern. As more fully described in Note 1, the Company has a significant working capital deficiency, has incurred significant losses and needs to raise additional funds to meet its obligations and sustain its operations. These conditions raise substantial doubt about the Company's ability to continue as a going concern. Management's plans in regard to these matters are also described in Note 1. The consolidated 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 audits 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/ Marcum LLP

Marcum LLP

We have served as the Company's auditor since 2019.

Melville, NY
April 15, 2024

Item 1. Financial Statements

AGRIFY CORPORATION
CONSOLIDATED BALANCE SHEETS
(In thousands, except share and per share data)

	As of December 31,	
	2023	**2022**
Assets		
Current assets:		
Cash and cash equivalents	$ 430	$ 10,457
Restricted cash	—	10,000
Marketable securities	4	460
Accounts receivable, net of allowance for credit losses of $1,887 and $4,605 at December 31, 2023 and 2022, respectively	1,149	1,070
Inventory, net of reserves of $17,599 and $32,422 at December 31, 2023 and 2022, respectively	19,094	21,396
Prepaid expenses and other current assets	3,332	1,510
Total current assets	24,009	44,893
Loan receivable, net of allowance for credit losses of $19,215 and $33,050 at December 31, 2023 and 2022, respectively	11,583	12,214
Property and equipment, net	7,734	10,044
Operating lease right-of-use assets	1,803	2,210
Other non-current assets	141	326
Total assets	$ 45,270	$ 69,687
Liabilities and Stockholders' Deficit		
Current liabilities:		
Accounts payable	$ 20,766	$ 20,543
Accrued expenses and other current liabilities	10,655	16,380
Operating lease liabilities, current	599	734
Long-term debt, current	766	28,833
Related party debt, current	4,444	—
Deferred revenue	4,019	4,112
Total current liabilities	41,249	70,602
Warrant liabilities	1,290	5,985
Other non-current liabilities	—	147
Operating lease liabilities, net of current	1,394	1,587
Long-term debt, net of current	16,047	407
Total liabilities	59,980	78,728
Commitments and contingencies (Note 16)		
Stockholders' deficit:		
Common Stock, $0.001 par value per share, 10,000,000 and 5,000,000 shares authorized at December 31, 2023 and 2022, respectively, 1,701,243 and 1,038,298 shares issued and outstanding at December 31, 2023 and 2022, respectively (1)	2	1
Preferred Stock, $0.001 par value per share, 2,895,000 shares authorized, no shares issued or outstanding	—	—
Preferred A Stock, $0.001 par value per share, 105,000 shares authorized, no shares issued or outstanding	—	—
Additional paid-in capital	250,855	237,875
Accumulated deficit	(265,797)	(247,148)
Total stockholders' deficit attributable to Agrify	(14,940)	(9,272)
Non-controlling interests	230	231
Total liabilities and stockholders' deficit	$ 45,270	$ 69,687

(1) Periods presented have been adjusted to reflect the 1-for-20 reverse stock split on July 5, 2023. Additional information regarding the reverse stock splits may be found in Note 1 – Overview, Basis of Presentation, and Significant Accounting Policies, included in the notes to the consolidated financial statements

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

AGRIFY CORPORATION
CONSOLIDATED STATEMENTS OF OPERATIONS
(In thousands, except share and per share data)

	Year Ended December 31, 2023	Year Ended December 31, 2022
Revenue (including $0, and $2,417 from related parties, respectively)	$ 16,868	$ 58,259
Cost of goods sold	11,590	90,054
Gross profit (loss)	5,278	(31,795)
General and administrative	19,005	73,354
Selling and marketing	4,134	9,338
Research and development	2,295	8,179
Change in contingent consideration	(1,322)	(2,156)
Gain on disposal on property and equipment	144	—
Impairment of property and equipment	—	2,912
Impairment of goodwill and intangible assets	—	69,904
Total operating expenses	24,256	161,531
Loss from operations	(18,978)	(193,326)
Interest expense, net	(1,853)	(8,750)
Change in fair value of warrant liabilities	4,695	51,461
Loss on extinguishment of long-term debt, net	(4,311)	(38,985)
Other income, net	1,799	1,316
Total other income, net	330	5,042
Net loss before income taxes	(18,648)	(188,284)
Income tax expense	(2)	(23)
Net loss	(18,650)	(188,307)
Income attributable to non-controlling interest	1	134
Net loss attributable to Agrify Corporation	$ (18,649)	$ (188,173)
Net loss per share attributable to Common Stockholders – basic and diluted (1)	$ (12.51)	$ (902.19)
Weighted average common shares outstanding - basic and diluted (1)	1,490,871	208,573

(1) Periods presented have been adjusted to reflect the 1-for-20 reverse stock split on July 5, 2023. Additional information regarding reverse stock splits may be found in Note 1 – Overview, Basis of Presentation, and Significant Accounting Policies, included elsewhere in the notes to the consolidated financial statements

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

AGRIFY CORPORATION
CONSOLIDATED STATEMENTS OF STOCKHOLDERS' DEFICIT
(In thousands)

	Common Stock		Preferred Stock		Preferred A Stock		Additional Paid-In-Capital	Accumulated Deficit	Total Stockholders' Equity (Deficit) attributable to Agrify	Non-Controlling Interests	Total Stockholders' Equity (Deficit)
	Shares	Amount	Shares	Amount	Shares	Amount					
Balance at January 1, 2022	111,035	$ —	—	$ —	—	$ —	$ 196,034	$ (58,975)	$ 137,059	$ 365	$ 137,424
Stock-based compensation	—	—	—	—	—	—	4,319	—	4,319	—	4,319
Issuance of Common Stock, warrants, and prefunded warrants in private placement	20,105	—	—	—	—	—	14,824	—	14,824	—	14,824
Confidentially marketed public offering	594,232	1	—	—	—	—	3,269	—	3,270	—	3,270
Issuance of Common Stock through an "at the market" offering, net of fees	306,628	—	—	—	—	—	15,042	—	15,042	—	15,042
Common Stock issued for contingent liabilities	435	—	—	—	—	—	2,220	—	2,220	—	2,220
Acquisition of Lab Society	2,128	—	—	—	—	—	1,904	—	1,904	—	1,904
Exercise of options	43	—	—	—	—	—	20	—	20	—	20
Exercise of warrants	2,443	—	—	—	—	—	243	—	243	—	243
Vesting of restricted stock units	1,249	—	—	—	—	—	—	—	—	—	—
Net Loss	—	—	—	—	—	—	—	(188,173)	(188,173)	(134)	(188,307)
Balance at December 31, 2022	**1,038,298**	**$ 1**	**—**	**$ —**	**—**	**$ —**	**$ 237,875**	**$ (247,148)**	**$ (9,272)**	**$ 231**	**$ (9,041)**

	Common Stock		Preferred Stock		Preferred A Stock		Additional Paid-in-Capital	Accumulated Deficit	Total Stockholders' Deficit attributable to Agrify	Non-Controlling Interests	Total Stockholders' Deficit
	Shares	Amount	Shares	Amount	Shares	Amount					
Balance at January 1, 2023	1,038,298	$ 1	—	$ —	—	$ —	$ 237,875	$ (247,148)	$ (9,272)	$ 231	$ (9,041)
Stock-based compensation	—	—	—	—	—	—	2,662	—	2,662	—	2,662
Issuance of Common Stock through an "at the market" offering, net of fees	323,082	—	—	—	—	—	1,545	—	1,545	—	1,545
Issuance of held-back shares to Lab Society	499	—	—	—	—	—	—	—	—	—	—
Issuance of Common Stock to Pure Pressure	366	—	—	—	—	—	—	—	—	—	—
Vesting of restricted stock units	17	—	—	—	—	—	—	—	—	—	—
Exercise of prefunded warrants in private placement	84,962	—	—	—	—	—	—	—	—	—	—
Issuance of equity classified warrants	—	—	—	—	—	—	1,554	—	1,554	—	1,554
Exchange of private placement debt into equity classified warrants	—	—	—	—	—	—	3,877	—	3,877	—	3,877
Conversion of Exchange Note	69,567	—	—	—	—	—	2,146	—	2,146	—	2,146
Conversion of Convertible Note	153,617	1	—	—	—	—	1,171	—	1,172	—	1,172
Proceeds from Employee Stock Purchase Plan Shares	2,500	—	—	—	—	—	25	—	25	—	25
Reverse stock split fractional share settlement	28,335	—	—	—	—	—	—	—	—	—	—
Net loss	—	—	—	—	—	—	—	(18,649)	(18,649)	(1)	(18,650)
Balance December 31, 2023	**1,701,243**	**$ 2**	**—**	**$ —**	**—**	**$ —**	**$ 250,855**	**$ (265,797)**	**$ (14,940)**	**$ 230**	**$ (14,710)**

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

AGRIFY CORPORATION
CONSOLIDATED STATEMENTS OF CASH FLOWS
(In thousands)

	Year Ended December 31, 2023	Year Ended December 31, 2022
Cash flows from operating activities:		
Net loss attributable to Agrify Corporation	$ (18,649)	$ (188,173)
Adjustments to reconcile net loss attributable to Agrify Corporation to net cash used in operating activities:		
Depreciation and amortization	1,896	3,047
Amortization of debt (premium) discount	(109)	4,459
Interest on investment securities	—	(232)
Amortization of issuance costs	24	420
Deferred income taxes	—	23
Stock based compensation expense	2,663	4,319
Change in fair value of warrant liabilities	(4,695)	(51,461)
Loss on extinguishment of long-term debt, net	4,311	38,985
Impairment of goodwill and intangible assets	—	69,904
(Recovery of) provision for credit losses	(15,261)	36,694
(Recovery of) provision for slow-moving inventory	(14,823)	31,480
(Gain) loss on disposal of property and equipment	(63)	33
Impairment of property and equipment	—	2,912
Change in fair value of contingent consideration	—	(2,156)
Income attributable to non-controlling interests	(1)	(134)
Changes in operating assets and liabilities, net of acquisitions:		
Accounts receivable	1,347	1,540
Inventory	17,158	(30,248)
Prepaid expenses and other current assets	(566)	3,222
Right of use assets, net	299	(731)
Other non-current assets	170	1,138
Accounts payable	(108)	11,236
Accrued expenses and other current liabilities	(4,473)	(8,555)
Operating lease liabilities	(217)	803
Other non-current liabilities	—	79
Deferred revenue	(93)	(625)
Net cash and cash equivalents used in operating activities	(30,974)	(72,021)
Cash flows from investing activities:		
Purchases of property and equipment	(59)	(8,134)
Proceeds from disposal of property and equipment	311	—
Purchase of marketable securities	—	(294,687)
Proceeds from sale of marketable securities	10,456	329,009
Issuance of loans receivable	(591)	(23,009)
Proceeds from repayment of loan receivable	15,057	—
Payments on contingent liabilities	—	(3,330)
Cash received from escrow account related to Sinclair acquisition	—	1,351
Cash paid for business combination, net of cash acquired	—	(3,517)
Net cash and cash equivalents provided by (used in) investing activities	25,174	(2,317)
Cash flows from financing activities:		
Proceeds from issuance of debt and warrants in private placement, net of fees	—	61,817
Proceeds from issuance of Common Stock and warrants in private placement, net of fees	—	25,796
Proceeds from issuance of Common Stock through an “at the market” offering, net of fees	1,545	15,042
Proceeds from Employee Stock Purchase Plan Shares	25	—
Proceeds from exercise of options	—	20
Proceeds from confidentially marketed public offering	—	8,193
Proceeds from issuance of warrants in settlement agreement	1,554	—
Proceeds from issuance of related party notes	4,444	—
Repayments of notes payable, other	(71)	(187)
Repayment of debt in private placement	(10,307)	(35,497)
Payments on other financing loans	(5)	(254)
Payments on insurance financing loans	(1,332)	(1,928)
Payments of financing leases	(80)	(221)
Net cash and cash equivalents (used in) provided by financing activities	(4,227)	72,781
Net decrease in cash and cash equivalents	(10,027)	(1,557)
Cash and cash equivalents at the beginning of period	10,457	12,014
Cash and cash equivalents at the end of period	$ 430	$ 10,457
Cash, cash equivalents, and restricted cash at end of period		
Cash and cash equivalents	$ 430	$ 10,457
Restricted cash	—	10,000
Total cash, cash equivalents, and restricted cash at the end of period	$ 430	$ 20,457

Supplemental disclosures				
Cash paid for interest		76		4,969
Supplemental disclosures of non-cash flow information				
Initial fair value of warrants	$	5,432	$	55,627
Financing of prepaid insurance	$	1,694	$	1,928
Transfer of property and equipment to inventory	$	33	$	—
Conversion of convertible notes	$	3,306	$	—

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

AGRIFY CORPORATION

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

Note 1 — Overview, Basis of Presentation and Significant Accounting Policies

Description of Business

Agrify Corporation ("Agrify" or the "Company") is a leading provider of innovative cultivation and extraction solutions for the cannabis industry, bringing data, science, and technology to the forefront of the market. The Company's proprietary micro-environment-controlled Agrify Vertical Farming Units (or "VFUs") enable cultivators to produce the highest quality products with what we believe to be unmatched consistency, yield, and return investment at scale. The Company's comprehensive extraction product line, which includes hydrocarbon, alcohol, solventless, post-processing, and lab equipment, empowers producers to maximize the quantity and quality of extract required for premium concentrates.

The Company believes it is the only company with an automated and fully integrated grow solution in the industry. The Company's cultivation and extraction solutions seamlessly combine its integrated hardware and software offerings with a broad range of associated services including consulting, engineering, and construction and is designed to deliver the most complete commercial indoor farming solution available from a single provider. The totality of its product offerings and service capabilities forms an unrivaled ecosystem in what has historically been a highly fragmented market. As a result, the Company believes it is well-positioned to capture market share and create a dominant market position in the indoor cannabis sector.

The Company was formed in the State of Nevada on June 6, 2016 as Agrinamics, Inc., and subsequently changed its name to Agrify Corporation. The Company is sometimes referred to herein by the words "we," "us," "our," and similar terminology.

The Company has nine wholly-owned subsidiaries, which are collectively referred to as the "Subsidiaries" and the Company also has ownership interests in certain companies.

Reverse Stock Splits

On October 18, 2022, the Company effected a 1-for-10 reverse stock split of its Common Stock. All share and per share information has been retroactively adjusted to give effect to the reverse stock split for all periods presented unless otherwise indicated.

On July 5, 2023, the Company effected a 1-for-20 reverse stock split of its Common Stock. All share and per share information has been retroactively adjusted to give effect to the reverse stock split for all periods presented unless otherwise indicated.

No fractional shares of Common Stock were issued as a result of these reverse stock splits. Any fractional shares in connection with these reverse stock splits were rounded up to the nearest whole share and no stockholders received cash in lieu of fractional shares. The reverse stock splits had no impact on the number of shares of Common Stock that the Company is authorized to issue pursuant to its articles of incorporation or on the par value per share of the Common Stock. Proportional adjustments were made to the number of shares of Common Stock issuable upon exercise or conversion of the Company's outstanding stock options and warrants, the exercise price or conversion price (as applicable) of the Company's outstanding stock options and warrants, and the number of shares reserved for issuance under the Company's equity incentive plan. All share and per share information included in this Annual Report on Form 10-K has been retroactively adjusted to reflect the impact of these reverse stock splits.

Confidentially Marketed Public Offering

On December 16, 2022, the Company entered into an underwriting agreement (the "Underwriting Agreement") with Canaccord Genuity LLC as the underwriter, pursuant to which the Company agreed to issue and sell an aggregate of 594,232 shares of its Common Stock, and, in lieu of Common Stock to certain investors that so chose, pre-funded warrants (the "Pre-Funded 2022 Warrants") to purchase 75,000 shares of our Common Stock, and accompanying warrants (the "December 2022 Warrants") to purchase 1,338,462 shares of the Company's Common Stock (the "Offering"). The shares of Common Stock (or Pre-Funded 2022 Warrants) and the accompanying December 2022 Warrants will be issued separately but can only be purchased together in this Offering. Additional information regarding the Company's December 2022 Warrants may be found in Note 4 – Fair Value Measures and Note 11 – Stockholders' Equity, included elsewhere in the notes to the consolidated financial statements.

The aggregate gross proceeds to the Company from the Offering were approximately $8.7 million including offering costs of approximately $0.5 million for broker fees and legal expenses, for net proceeds of $8.2 million. The Company has used the net proceeds from the Offering, together with its existing cash resources, for working capital and general corporate purposes, which may include capital expenditures and repayment of debt.

Nasdaq Deficiency Notice

On October 4, 2022, the Company received a deficiency letter from the Listing Qualifications Department (the “Staff”) of The Nasdaq Stock Market, LLC (“Nasdaq”) notifying the Company that, for the last 30 consecutive business days, the bid price for the Company’s Common Stock had closed below $1.00 per share, which is the minimum closing price required to maintain a continued listing on The Nasdaq Capital Market under Nasdaq Listing Rule 5550(a)(2) (the “Minimum Bid Requirement”). In accordance with Nasdaq Listing Rule 5810(c)(3)(A), the Company had 180 calendar days to regain compliance with the Minimum Bid Requirement. To regain compliance with the Minimum Bid Requirement, the closing bid price of the Company’s Common Stock must be at least $1.00 per share for a minimum of 10 consecutive trading days during this 180-day compliance period, unless the Staff exercised its discretion to extend the minimum trading day period pursuant to Nasdaq Listing Rule 5810(c)(3)(G). On October 28, 2022, the Staff notified the Company that the closing bid price for its Common Stock was more than $1.00 for 10 consecutive trading days, and that the Company therefore regained compliance with the Minimum Bid Requirement.

On January 19, 2023, the Company received a new deficiency letter from the Staff of Nasdaq notifying the Company that, for the previous 30 consecutive business days, the bid price for its Common Stock had closed below $1.00 per share, which is the minimum closing price required to maintain a continued listing on The Nasdaq Capital Market under the Minimum Bid Requirement. In accordance with Nasdaq Listing Rule 5810(c)(3)(A), the Company had 180 calendar days to regain compliance with the Minimum Bid Requirement. To regain compliance with the Minimum Bid Requirement, the closing bid price of the Company’s Common Stock must be at least $1.00 per share for a minimum of 10 consecutive trading days during this 180-day compliance period, unless the Staff exercises its discretion to extend the minimum trading day period pursuant to Nasdaq Listing Rule 5810(c)(3)(G). On July 19, 2023, the Company received a notice from Nasdaq confirming its compliance with the minimum bid price rule.

As disclosed in the Current Report on Form 8-K filed on April 17, 2023, the Company’s audit committee concluded that, as a result of inadvertent errors in the accounting for warrants previously issued by the Company, it was appropriate to restate the Company’s previously issued unaudited consolidated interim financial statements as of and for the quarterly periods ended March 31, 2022, June 30, 2022 and September 30, 2022 included in the Company’s Quarterly Reports on Form 10-Q for such periods in amended quarterly reports for the affected periods. As a result of such restatements, the Company was unable to timely file the 2022 Form 10-K, the First Quarter 2023 Form 10-Q and the Second Quarter 2023 Form 10-Q without unreasonable effort or expense.

On April 18, 2023, the Company received a notice from Nasdaq (the “April Nasdaq Notice”) that it was noncompliant with Nasdaq Listing Rule 5250(c)(1) as a result of its failure to file its Annual Report on Form 10-K (the “Form 10-K”) with the SEC by the required due date.

On May 17, 2023, the Company received a second notice from Nasdaq (the “May Nasdaq Notice”) that it remained noncompliant with Nasdaq Listing Rule 5250(c)(1) as a result of its failure to file its Quarterly Report on Form 10-Q for the quarter ended March 31, 2023 (the “First Quarter Form 10-Q”) with the SEC by the required due date.

On August 16, 2023, the Company received a third notice from Nasdaq that it remain noncompliant with Nasdaq Listing Rule 5250(c)(1) as a result of its failure to file its Quarterly Report on Form 10-Q for the fiscal quarter ended June 30, 2023 (the “Second Quarter Form 10-Q”) with the SEC by the required filing date (the “August Nasdaq Notice” and, together with the April Nasdaq Notice and the May Nasdaq Notice, the “Nasdaq Notices”).

The Nasdaq granted the Company an exception until October 16, 2023, to file its 2022 Form 10-K and First and Second Quarter 2023 Forms 10-Q. The Nasdaq Notice had no immediate effect on the listing of the Company’s Common Stock on The Nasdaq Stock Market LLC.

On October 17, 2023, the Company received a Staff Delisting Determination (the “Staff Determination”) from the Listing Qualifications Department of Nasdaq notifying the Company that it was not in compliance with Nasdaq’s continued listing requirements under the Listing Rule as a result of its failure to file the First Quarter Form 10-Q, the Second Quarter Form 10-Q and the Form 10-K (collectively, the “Delinquent Reports”) in a timely manner.

On November 16, 2023, the Company received a notice from Nasdaq that the Company remains noncompliant with the Listing Rule as a result of its failure to file its Quarterly Report on Form 10-Q for the fiscal quarter ended September 30, 2023 with the SEC by the required filing date (the "November Nasdaq Notice" and, together with the April Nasdaq Notice, the May Nasdaq Notice, and the August Nasdaq Notice, the "Nasdaq Notices").

On December 1, 2023, the Company received a notice from The Nasdaq Stock Market LLC ("Nasdaq") stating that because the Company reported stockholders' equity of $(17.17) million in its Form 10-Q for the quarter ended March 30, 2023, the Company was no longer in compliance with Nasdaq Listing Rule 5550(b)(1) (the "Primary Equity Listing Rule"), which requires that listed companies maintain a minimum of $2.5 million in stockholders' equity. In response, the Company timely requested a hearing before a Nasdaq Hearings Panel (the "Panel"), which stayed any further action by the Listing Qualifications Staff. The hearing was held on January 11, 2024. The Company arrived at the hearing having previously cured any additional grounds for delisting as a result of delinquent periodic filings during 2023 that were filed prior to the hearing.

On January 30, 2024, the Company received formal notice that the Panel had granted the Company's request for an exception through April 15, 2024 to evidence compliance with the Listing Rule. The compliance date of April 15, 2024 represents the full extent of the Panel's discretion to grant continued listing while the Company is non-compliant with Nasdaq Listing Rules. Accordingly, there can be no assurance that the Company will be able to regain compliance with the Nasdaq listing rules or maintain its listing on the Nasdaq Capital Market. If the Company's common stock is delisted, it could be more difficult to buy or sell the Company's common stock or to obtain accurate quotations, and the price of the Company's common stock could suffer a material decline. Delisting could also impair the Company's ability to raise capital.

The Paycheck Protection Program

In May 2020, the Company received an unsecured Paycheck Protection Program Loan ("PPP Loan") from Bank of America pursuant to the Paycheck Protection Program (the "PPP") under the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act"), administered by the U.S. Small Business Administration (the "SBA"). The Company received total loan proceeds of approximately $0.8 million from the PPP Loan. On February 18, 2022, the Company applied for forgiveness of the outstanding balance of the PPP Loan and the application was denied by the SBA on March 18, 2022. However, on June 23, 2022, the Company received a letter from Bank of America agreeing to extend the maturity date to May 7, 2025 and the loan will bear interest at a rate of 1.00% per year. The PPP loan is payable in 34 equal combined monthly principal and interest payments of approximately $24 thousand that commenced on August 7, 2022.

Basis of Presentation and Principles of Consolidation

Accounting for Wholly-Owned Subsidiaries

The accompanying consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States ("GAAP") and include the accounts of Agrify Corporation and its wholly-owned subsidiaries, as described above, in accordance with the provisions required by the Consolidation Topic 810 of the Financial Accounting Standards Board ("FASB") Accounting Standards Codification ("ASC"). The Company includes results of operations of acquired companies from the date of acquisition. All significant intercompany transactions and balances are eliminated.

Accounting for Less Than Wholly-Owned Subsidiaries

For the Company's less than wholly-owned subsidiaries, which include, Agrify-Valiant LLC ("Agrify-Valiant"), and Agrify Brands, LLC ("Agrify Brands"), the Company first analyzes whether these entities are a variable interest entity (a "VIE") in accordance with ASC Topic 810, Consolidation ("ASC 810"), and if so, whether the Company is the primary beneficiary requiring consolidation. A VIE is an entity that has (i) insufficient equity to permit it to finance its activities without additional subordinated financial support or (ii) equity holders that lack the characteristics of a controlling financial interest. The financial results of a VIE are consolidated by the primary beneficiary, which is the entity that has both the power to direct the activities that most significantly impact the entity's economic performance and the obligation to absorb losses or the right to receive benefits from the entity that potentially could be significant to the entity. Variable interests in a VIE are contractual, ownership or other financial interests in a VIE that change with changes in the fair value of the VIE's net assets. The Company continuously re-assesses (i) whether the joint-venture is a VIE, and (ii) if the Company is the primary beneficiary of the VIE. If it is determined that the joint-venture qualifies as a VIE and the Company is the primary beneficiary, the Company's financial interest in the VIE is consolidated.

Based on the Company's analysis of these entities, the Company has determined that Agrify-Valiant and Agrify Brands are each a VIE, and that the Company is the primary beneficiary. While the Company owns 60% of Agrify-Valiant's equity interests and 75% of Agrify Brand's equity interests, the remaining equity interests in Agrify-Valiant and Agrify Brands are owned by unrelated third parties, and the agreement with these third parties provides the Company with greater voting rights. Accordingly, the Company consolidates its interest in the financial statements of Agrify-Valiant and Agrify Brands under the VIE rules and reflects the third parties' interests in the consolidated financial statements as a non-controlling interest. The Company records this non-controlling interest at its initial fair value, adjusting the basis prospectively for the third parties' share of the respective consolidated investments' net income or loss or equity contributions and distributions. These non-controlling interests are not redeemable by the equity holders and are presented as part of permanent equity. Income and losses are allocated to the non-controlling interest holders based on its economic ownership percentage.

Going Concern

In accordance with the FASB Accounting Standards Update ("ASU") 2014-15, "Presentation of Financial Statements - Going Concern", the Company's management evaluated whether there are conditions or events that raise substantial doubt about its ability to continue as a going concern within one year after the financial statements' issuance date. The following matters raise substantial doubt about the Company's ability to continue as a going concern within one year after the date the financial statements are issued.

The Company has incurred operating losses since its inception and has negative cash flows from operations and a working capital deficit. The Company also has an accumulated deficit of $265.8 million as of December 31, 2023. The Company's primary sources of liquidity are its cash and cash equivalents and marketable securities, with additional liquidity accessible, subject to market conditions and other factors, including limitations that may apply to the Company under applicable SEC regulations, from the capital market. As of December 31, 2023, the Company had $0.4 million of cash, cash equivalents, and marketable securities. The Company had no restricted cash as of December 31, 2023. Current liabilities were $41.2 million as of December 31, 2023.

These consolidated financial statements have been prepared on a going concern basis, which implies the Company believes these conditions raise substantial doubt about its ability to continue as a going concern within the next twelve-months from the date these consolidated financial statements are available to be issued. The Company's continuation as a going concern is dependent upon its ability to obtain the necessary debt or equity financing to continue operations until the Company begins generating sufficient cash flows from operations to meet its obligations. If the Company is unable raise additional funds, it may be forced to cease operations.

On October 27, 2023, the company executed a financial transaction, issuing a junior secured promissory note to CP Acquisitions, LLC ("CP") with a maximum principal amount of $3.0 million, which was later amended on December 4, 2023 to increase the maximum principal amount to $4.0 million. Additionally, an unsecured promissory note of $0.5 million was issued to GIC Acquisition LLC ("GIC"). Additional information regarding these transactions is included in Note 9 – Debt, included elsewhere in the notes to the consolidated financial statements.

As of February 28, 2024, the company raised net proceeds of $2.2 million via an S-1 offering through Alexander Capital. The company intends to raise additional capital later this year to support its 2024 and 2025 funding needs. The company also continues to make additional adjustments in headcount, salary, travel, sales and marketing spending, but there is no guarantee that these ongoing cost-cutting efforts or capital raises will be sufficient to maintain operations.

There is no assurance that the Company will ever be profitable. The consolidated financial statements do not include any adjustments to reflect the potential future effects on the recoverability and classification of assets or the amounts and classifications of liabilities that may result should the Company be unable to continue as a going concern.

Use of Estimates

The preparation of the Company's consolidated financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities, the disclosure of contingent assets and liabilities at the date of the consolidated financial statements, and the reported amounts of expenses during the reporting period. Significant estimates include assumptions about collection of accounts and notes receivable, the valuation and recognition of stock-based compensation expense, valuation allowance for deferred tax assets, the valuation of inventory, and useful life of fixed assets and intangible assets. The Company bases its estimates on historical experience, known trends and other market-specific information, other relevant factors that it believes to be reasonable under the circumstances, and management's judgement. On an ongoing basis, management evaluates its estimates when there are changes in circumstances, facts, and experience. Changes in estimates are recorded in the period in which they become known. Actual financial results could differ from those estimates.

Reclassifications

The Company effected a 1-for-10 reverse stock split of its Common Stock on October 18, 2022 and a 1-for-20 reverse stock split of its Common Stock on July 5, 2023. All share and per share information has been retroactively adjusted to give effect to the reverse stock split for all periods presented unless otherwise indicated. The shares of Common Stock retained a par value of $0.001 per share. Accordingly, the Stockholders' deficit section of the consolidated balance sheets reflects the reverse stock split by reclassifying from "Common Stock" to "Additional paid-in capital" an amount equal to the par value of the decreased shares resulting from the reverse stock split.

Cash and Cash Equivalents

Cash and cash equivalents consist principally of cash and deposits with maturities of three months or less as of December 31, 2023 and December 31, 2022. All cash equivalents are carried at cost, which approximates fair value. Restricted cash represents cash required to be held as collateral for the Company's Notes. Accordingly, these balances contain restrictions as to their availability and usage and are classified as restricted cash in the consolidated balance sheets. Additional information relating to the Company's Notes may be found in Note 9 - Debt, included elsewhere in the notes to the consolidated financial statements.

Marketable Securities

The Company's marketable security investments primarily include investments held in mutual funds, municipal bonds, and corporate bonds. The mutual funds are recorded at fair value in the accompanying consolidated balance sheets as part of cash and cash equivalents. The municipal and corporate bonds are considered to be held-to-maturity securities and are recorded at amortized cost in the accompanying consolidated balance sheets. The fair value of these investments was estimated using recently executed transactions and market price quotations. The Company considers current assets to be those investments that will mature within the next 12 months, including interest receivable on long-term bonds.

Accounts Receivable, Net and Loan Receivable, Net

Accounts receivable, net, primarily consists of amounts for goods and services that are billed and currently due from customers. The composition of loan receivable, net is detailed in Note 5. Accounts receivable and loan receivable balances are presented net of an allowance for credit losses, which is an estimate of billed or borrowed amounts that may not be collectible. In determining the amount of the allowance at each reporting date, management makes judgments about general economic conditions, historical write-off experience, and any specific risks identified in customer or borrower collection matters, including the aging of unpaid accounts receivable and changes in customer or borrower financial conditions. Accounts and loans receivable balances are written off after all means of collection are exhausted and the potential for non-recovery is determined to be probable. Adjustments to the allowance for credit losses are recorded as general and administrative expenses in the consolidated statements of operations.

Concentration of Credit Risk and Significant Customer

Financial instruments that potentially subject the Company to a concentration of credit risk primarily consist of cash, cash equivalents, restricted cash, marketable securities, and accounts receivable. Cash equivalents primarily consist of money market funds with original maturities of three months or less, which are invested primarily with U.S. financial institutions. Cash deposits with financial institutions, including restricted cash, generally exceed federally insured limits. Management believes minimal credit risk exists with respect to these financial institutions and the Company has not experienced any losses on such amounts.

The tables below show customers who account for 10% or more of the Company's total revenues and 10% or more of the Company's accounts receivable for the periods presented:

Revenue

For the year ended December 31, 2023 and 2022, the Company's customers that accounted for 10% or more of the total revenue were as follows:

	2023		2022	
(In thousands)	**Amount**	**% of Total Revenue**	**Amount**	**% of Total Revenue**
Company Customer Number - 136	*	*	$ 8,005	13.8%
Company Customer Number - 139	*	*	$ 8,761	15.0%

* Customer revenue, as a percentage of total revenue, was less than 10%

Accounts Receivable, Net

As of December 31, 2023 and 2022, the Company's customers that accounted for 10% or more of the total accounts receivable, net, were as follows:

	2023		2022	
(In thousands)	**Amount**	**% of Total Accounts Receivable**	**Amount**	**% of Total Accounts Receivable**
Company Customer Number – 15095	$ 712	62.0%	$ 352	32.9%
Company Customer Number – 10888	$ 251	21.8%	$ 251	23.5%
Company Customer Number - 16491	*	*	$ 123	11.5%

* Customer accounts receivable, as a percentage of total accounts receivable, was less than 10%

Inventories

The Company values all its inventories, which consist primarily of significant raw material hardware components, at the lower of cost or net realizable value, with cost principally determined by the weighted-average cost method on a first-in, first-out basis. Write-offs of potentially slow-moving or damaged inventory are recorded through specific identification of obsolete or damaged material. The Company takes physical inventory at least once annually at all inventory locations.

Property and Equipment

Property and equipment are stated at cost less accumulated depreciation and amortization. Depreciation and amortization expenses are recognized using the straight-line method over the estimated useful life of each asset, as follows:

	Estimated Useful Life (Years)
Computer and office equipment	2 to 3
Furniture and fixtures	2
Software	3
Vehicles	5
Research and development of laboratory equipment	5
Machinery and equipment	3 to 5
Leased equipment	5 to 13
Trade show assets	3 to 5
Leasehold improvements	Lower of estimated useful life or remaining lease term

The estimated useful lives of the Company's property and equipment are periodically assessed to determine if changes are appropriate. The Company charges maintenance and repairs to expense as incurred. When the Company retires or disposes of assets, the carrying cost of these assets and related accumulated depreciation or amortization are eliminated from the consolidated balance sheets and any resulting gain or loss is included in the consolidated statements of operations in the period of retirement or disposal.

Costs for capital assets not yet placed into service are capitalized as construction-in-progress and depreciated once placed into service. During construction, costs are accumulated in a construction-in-progress account, with no depreciation. Upon completion, costs are transferred to the appropriate asset account, and depreciation begins when the asset is placed into service.

Goodwill

Goodwill is defined as the excess of cost over the fair value of assets acquired and liabilities assumed in a business combination. Goodwill is tested for impairment annually, and more frequently if events and circumstances indicate that the asset might be impaired. The Company has determined that it is a single reporting unit for the purpose of conducting the goodwill impairment assessment. A goodwill impairment charge is recorded for the amount by which the Company's carrying value exceeds its fair value, not to exceed the carrying amount of goodwill. Factors that could lead to a future impairment include material uncertainties such as a significant reduction in projected revenues, a deterioration of projected financial performance, future acquisitions and/or mergers, and/or a decline in the Company's market value as a result of a significant decline in the Company's stock price.

During the quarter ended June 30, 2022, the Company identified an impairment-triggering event associated with both a sustained decline in the Company's stock price and associated market capitalization, as well as a second-quarter slowdown in the cannabis industry as a whole. Due to these factors, the Company deemed that there was an impairment to the carrying value of its property and equipment and accordingly performed interim testing as of June 30, 2022.

Based on its interim testing, the Company noted that the carrying value of equity exceeded the calculated fair value by an amount greater than the aggregate value of our goodwill. Accordingly, the Company concluded that the entire carrying value of its goodwill was impaired, resulting in a second-quarter impairment charge of $54.7 million. Additional information regarding the Company's interim testing on goodwill may be found in Note 7 – Goodwill and Intangible Assets, Net, included elsewhere in the notes to the consolidated financial statements.

Intangible Assets

The Company initially records intangible assets at their estimated fair values and reviews these assets periodically for impairment. Identifiable intangible assets, which consist principally of customer-related acquired assets, acquired and/or developed technology, non-compete agreements, and trade names, are reported net of accumulated amortization, and are being amortized over their estimated useful lives at amortization rates that are proportional to each asset's estimated economic benefit. The Company's intangible assets are amortized on a straight-line basis over the estimated useful lives of the assets. The Company reviews the carrying value of these intangible assets annually, or more frequently if indicators of impairment are present.

The useful lives are as follows:

Trade names	5 to 7 years
Acquired developed technology	5 to 8 years
Non-compete agreements	5 years
Customer relationships	5 to 8 years
Capitalized website costs	3 to 5 years

In performing the review of the recoverability of intangible assets, the Company considers several factors, including whether there have been significant changes in legal factors or the overall business climate that could affect the underlying value of an asset. The Company also considers whether there is an expectation that the asset will be sold or disposed of before the end of its remaining estimated useful life. If, as the result of examining any of these factors, the Company concludes that the carrying value of the intangible asset exceeds its estimated fair value, the Company recognizes an impairment charge and reduces the carrying value of the asset to its estimated fair value.

During the quarter ended June 30, 2022, the Company identified an impairment-triggering event associated with both a sustained decline in the Company's stock price and associated market capitalization, as well as a second-quarter slowdown in the cannabis industry as a whole. Due to these factors, the Company deemed that there was an impairment to the carrying value of its property and equipment and accordingly performed interim testing as of June 30, 2022.

Based on its interim testing, the Company noted that the carrying value of equity exceeded the calculated fair value by an amount greater than the aggregate value of our intangible assets. Accordingly, the Company concluded that the entire carrying value of its intangible assets should be impaired, resulting in a second-quarter impairment charge of $15.2 million. Additional information regarding the Company's interim testing on intangible assets may be found in Note 7 – Goodwill and Intangible Assets, Net, included elsewhere in the notes to the consolidated financial statements.

Convertible Notes Payable

The Company evaluates its convertible instruments to determine if those contracts or embedded components of those contracts qualify as derivative financial instruments to be separately accounted for in accordance with ASC Topic 815, Derivatives and Hedging ("ASC 815"). The accounting treatment of derivative financial instruments requires that the Company identify and record certain embedded conversion options ("ECOs"), certain variable-share settlement features, and any related freestanding instruments at their fair values as of the inception date of the agreement and at fair value as of each subsequent balance sheet date. Any change in fair value is recorded as non-operating, non-cash income or expense for each reporting period at each balance sheet date. The Company reassesses the classification of its derivative instruments at each balance sheet date. If the classification changes as a result of events during the period, the contract is reclassified as of the date of the event that caused the reclassification. Bifurcated embedded conversion options, variable-share settlement features, and any related freestanding instruments are recorded as a discount to the host instrument which is amortized to interest expense over the life of the respective note using the effective interest method.

Warrant Liabilities

The Company does not use derivative instruments to hedge exposures to cash flow, market, or foreign currency risks. The Company evaluates all its financial instruments, including issued private placement stock purchase warrants, to determine if such instruments are derivatives or contain features that qualify as embedded derivatives, pursuant to ASC Topic 480, Distinguishing Liabilities from Equity ("ASC 480") and ASC 815. The Company accounts for warrants as either equity-classified or liability-classified instruments based on an assessment of the warrant's specific terms and applicable authoritative guidance in ASC 480 and ASC 815. Management's assessment considers whether the warrants are freestanding financial instruments pursuant to ASC 480, whether they meet the definition of a liability pursuant to ASC 480, and whether the warrants meet all of the requirements for equity classification under ASC 815, including whether the warrants are indexed to the Company's own Common Stock among other conditions for equity classification.

For issued or modified warrants that meet all of the criteria for equity classification, they are recorded as a component of additional paid-in capital at the time of issuance. For issued or modified warrants that are precluded from equity classification, they are recorded as a liability at their initial fair value on the date of issuance and subject to remeasurement on each balance sheet date with changes in the estimated fair value of the warrants to be recognized as an unrealized gain or loss in the consolidated statements of operations.

On August 18, 2022, the Company reached an agreement with its institutional lender to amend its existing Securities Purchase Agreement and entered into a Securities Exchange Agreement (the "August 2022 Exchange Agreement"). Pursuant to the August 2022 Exchange Agreement, the Company issued a new warrant to purchase 71,139 shares of Common Stock (the "Note Exchange Warrant") and modified an existing warrant (the "SPA Warrant") to purchase up to an aggregate of 34,406 shares of Common Stock. The Company exchanged the SPA Warrant for a new warrant for the same number of underlying shares but with a reduced exercise price (the "Modified Warrants" and, collectively with the Note Exchange Warrant, the "August 2022 Warrants"). Additional information regarding the August 2022 Exchange Agreement and August 2022 Warrants may be found in Note 4 – Fair Value Measures and Note 9 – Debt, included elsewhere in the notes to the consolidated financial statements.

Additionally, on April 18, 2023, the Company modified the exercise price of certain warrants, to reduce this from $13.00 per share to $3.45 per share.

Debt Issuance Costs and Debt Discount

The Company may record debt issuance costs and/or debt discounts in connection with the issuance of debt. The Company may cover these costs by paying cash or issuing warrants. These costs are amortized to interest expense over the expected life of the debt. If a conversion of the underlying debt occurs, a proportionate share of the unamortized amounts is immediately expensed.

Original Issue Discount

Certain convertible debt issued by the Company, may provide the debt holder with an original issue discount. The Company would record the original issue discount to debt discount, reducing the face amount of the note, and is then amortized to interest expense over the life of the debt.

Leases

The Company determines at the inception of an asset contract if such arrangement is or contains a lease. A contract is or contains a lease if the contract conveys the right to control the use of an identified asset for a period of time in exchange for consideration. The Company classifies leases at the lease commencement date as operating or finance leases and records a right-of-use asset and a lease liability on its consolidated balance sheet for all leases with an initial lease term of greater than 12 months. A lease with an initial term of 12 months or less is not recorded on the balance sheet, but related payments are recognized as an expense on a straight-line basis over the lease term.

The Company's asset contracts may contain both lease and non-lease components. Non-lease components may include maintenance, utilities, and other operating costs. The Company combines the lease and non-lease components of fixed costs in its lease arrangements as a single lease component. Variable costs, such as utilities or maintenance costs, are not included in the measurement of right-of-use assets and lease liabilities, but rather are expensed when the event determining the amount of variable consideration to be paid occurs.

Lease liabilities and their corresponding right-of-use assets are recorded based on the present value of future lease payments over the expected lease term. The Company determines the present value of future lease payments by using its estimated secured incremental borrowing rate for that lease term as the interest rate implicit in the lease is not readily determinable. The Company estimates its secured incremental borrowing rate for each lease based on the rate of interest that the Company would have to pay to borrow an amount equal to the lease payments on a collateralized basis over a similar term.

Certain of the Company's leases include options to extend or terminate the lease. The amounts determined for the Company's right-of-use assets and lease liabilities generally do not assume that renewal options or early-termination provisions, if any, are exercised unless it is reasonably certain that the Company will exercise such options.

Deferred Revenue

Deferred revenue includes amounts collected or billed in excess of revenue that the Company can recognize. The Company recognizes deferred revenue and non-current deferred revenue as revenue as the related performance obligation is satisfied. The Company records deferred revenue that will be recognized during the succeeding twelve-month period as a current liability on the consolidated balance sheets.

Fair Value of Financial Instruments

The Company's financial instruments consist of cash, accounts receivable, accounts payable and accrued expenses. The estimated fair values of accounts receivable and accounts payable approximate their carrying values due to the short-term nature of these instruments.

Stock-Based Compensation

The Company measures all stock options and other stock-based awards granted to employees, directors and consultants based on the fair value on the date of the grant and recognizes compensation expense of those awards, net of estimated forfeitures, over the requisite service period, which is generally the vesting period of the respective award. Historically, the Company has issued stock options to employees, directors and consultants with only service-based vesting conditions and records the expense for these awards using the straight-line method.

The Company classifies stock-based compensation expense in its consolidated statements of operations in the same manner in which the award recipient's payroll costs are classified.

The Company estimates the fair value of each stock option grant on the date of the grant using the Black-Scholes option-pricing model. Before the IPO, the Company was a private company and therefore lacks company-specific historical and implied volatility information. Therefore, it estimates its expected stock volatility based on the historical volatility of similar publicly-traded companies and expects to continue to do so until such time as it has adequate historical data regarding the volatility of its own traded stock price. The expected term of the Company's stock options has been determined utilizing the "simplified" method for awards that qualify as "plain-vanilla" options. The risk-free interest rate is determined by reference to the U.S. Treasury yield curve in effect at the time of grant of the award for time periods approximately equal to the expected term of the award. The expected dividend yield is based on the fact that the Company has never paid cash dividends and does not expect to pay any cash dividends in the foreseeable future.

Business Combinations

The Company accounts for business acquisitions using the purchase method of accounting, in accordance with which assets acquired and liabilities assumed are recorded at their respective fair values at the acquisition date. The fair value of the consideration paid, including contingent consideration, is assigned to the assets acquired and liabilities assumed based on their respective fair values. Goodwill represents the excess of the purchase price over the estimated fair values of the assets acquired and liabilities assumed.

The Company's management exercises significant judgments in determining the fair value of assets acquired and liabilities assumed, as well as intangibles and their estimated useful lives. Fair value and useful life determinations are based on, among other factors, estimates of future expected cash flows, royalty cost savings and appropriate discount rates used in computing present values. These judgments may materially impact the estimates used in allocating acquisition date fair values to assets acquired and liabilities assumed, as well as the Company's current and future operating results. Actual results may vary from these estimates which may result in adjustments to goodwill and acquisition date fair values of assets and liabilities during a measurement period or upon a final determination of asset and liability fair values, whichever occurs first. Adjustments to the fair value of assets and liabilities made after the end of the measurement period are recorded within the Company's operating results.

For contingent consideration arrangements, the Company recognizes a liability at fair value as of the acquisition date with subsequent fair value adjustments recorded in the consolidated statements of operations. Additional information regarding the Company's contingent consideration arrangements may be found in Note 4 – Fair Value Measures, included elsewhere in the notes to the consolidated financial statements.

Revenue Recognition

Overview

The Company generates revenue from the following sources: (1) equipment sales, (2) providing services and (3) construction contracts.

In accordance with ASC 606 "Revenue Recognition", the Company recognizes revenue from contracts with customers using a five-step model, which is described below:

- identify the customer contract;
- identify performance obligations that are distinct;
- determine the transaction price;
- allocate the transaction price to the distinct performance obligations; and
- recognize revenue as the performance obligations are satisfied.

Identify the customer contract

A customer contract is generally identified when there is approval and commitment from both the Company and its customer, the rights have been identified, payment terms are identified, the contract has commercial substance and collectability is probable. Specifically, the Company obtains written/electronic signatures on contracts and purchase orders, if said purchase orders are issued in the normal course of business by the customer.

Identify performance obligations that are distinct

A performance obligation is a promise by the Company to provide a distinct good or service or a series of distinct goods or services. A good or service that is promised to a customer is distinct if the customer can benefit from the good or service either on its own or together with other resources that are readily available to the customer, and a company's promise to transfer the good or service to the customer is separately identifiable from other promises in the contract.

Determine the transaction price

The transaction price is the amount of consideration to which the Company expects to be entitled in exchange for transferring goods or services to a customer, excluding sales taxes that are collected on behalf of government agencies.

Allocate the transaction price to distinct performance obligations

The transaction price is allocated to each performance obligation based on the relative standalone selling prices ("SSP") of the goods or services being provided to the customer. The Company's contracts typically contain multiple performance obligations, for which the Company accounts for individual performance obligations separately, if they are distinct. The standalone selling price reflects the price the Company would charge for a specific piece of equipment or service if it was sold separately in similar circumstances and to similar customers.

Recognize revenue as the performance obligations are satisfied

Revenue is recognized when, or as, performance obligations are satisfied by transferring control of a promised product or service to a customer.

Significant Judgments

The Company enters into contracts that may include various combinations of equipment, services and construction, which are generally capable of being distinct and accounted for as separate performance obligations. Contracts with customers often include promises to transfer multiple products and services to a customer. Determining whether products and services are considered distinct performance obligations that should be accounted for separately versus together may require significant judgment. Once the Company determines the performance obligations, it determines the transaction price, which includes estimating the amount of variable consideration to be included in the transaction price, if any. The Company then allocates the transaction price to each performance obligation in the contract based on the SSP. The corresponding revenue is recognized as the related performance obligations are satisfied.

Judgment is required to determine the SSP for each distinct performance obligation. The Company determines SSP based on the price at which the performance obligation is sold separately and the methods of estimating SSP under the guidance of ASC 606-10-32-33. If the SSP is not observable through past transactions, the Company estimates the SSP, taking into account available information such as market conditions, expected margins, and internally approved pricing guidelines related to the performance obligations. The Company licenses its SaaS type subscription license, whereby the customer only has a right to access the software over a specified time period. The full value of the contract is recognized ratably over the contractual term of the SaaS subscription, adjusted monthly if tiered pricing is relevant. The Company typically satisfies its performance obligations for equipment sales when equipment is made available for shipment to the customer; for services sales as services are rendered to the customer and for construction contracts both as services are rendered and when the contract is completed.

The Company utilizes the cost-plus margin method to determine the SSP for equipment and build-out services. This method is based on the cost of the services from third parties, plus a reasonable markup that the Company believes is reflective of a market-based reseller margin.

The Company determines the SSP for services in time and materials contracts by observable prices in standalone services arrangements.

The Company estimates variable consideration in the form of royalties, revenue share, monthly fees, and service credits at contract inception and updated at the end of each reporting period if additional information becomes available. Variable consideration is typically not subject to constraint. Changes to variable consideration were not material for the periods presented.

If a contract has payment terms that differ from the timing of revenue recognition, the Company will assess whether the transaction price for those contracts include a significant financing component. The Company has elected the practical expedient that permits an entity to not adjust for the effects of a significant financing component if the Company expects that at the contract inception, the period between when the entity transfers a promised good or service to a customer and when the customer pays for that good or service, will be one year or less. For those contracts in which the period exceeds the one-year threshold, this assessment, as well as the quantitative estimate of the financing component and its relative significance, requires judgment. Accordingly, the Company imputes interest on such contracts at an agreed-upon interest rate and will present the financing components separately as financial income. As of December 31, 2023 and 2022, the Company did not have any such financial income.

Payment terms with customers typically require payment 30 days from the invoice date. The Company's agreements with its customers do not provide for any refunds for services or products and therefore no specific reserve for such is maintained. In the infrequent instances where customers raise concern over delivered products or services, the Company has endeavored to remedy the concern and all costs related to such matters have been insignificant in all periods presented.

The Company has elected to treat shipping and handling activities after the customer obtains control of the goods as a fulfillment cost and not as a promised good or service. Accordingly, the Company will accrue all fulfillment costs related to the shipping and handling of consumer goods at the time of shipment. The Company has payment terms with its customers of one year or less and has elected the practical expedient applicable to such contracts not to consider the time value of money. Sales, value add, and other taxes the Company collects concurrent with revenue-producing activities are excluded from revenue.

The Company receives payment from customers based on specified terms that are generally less than 30 days from the satisfaction of performance obligations. There are no contract assets related to performance under the contract. The difference in the opening and closing balances of the Company's deferred revenue primarily results from the timing difference between the Company's performance and the customer's payment. The Company fulfills obligations under a contract with a customer by transferring products and services in exchange for consideration from the customer. Accounts receivable are recorded when the customer has been billed or the right to consideration is unconditional. The Company recognizes deferred revenue when consideration has been received or an amount of consideration is due from the customer, and the Company has a future obligation to transfer certain proprietary products.

In accordance with ASC 606-10-50-13, the Company is required to include disclosure on its remaining performance obligations as of the end of the current reporting period. Due to the nature of the Company's contracts, these reporting requirements are not applicable. The majority of the Company's remaining contracts meet certain exemptions as defined in ASC 606-10-50-14 through 606-10-50-14A, including (i) performance obligation is part of a contract that has an original expected duration of one year or less and (ii) the right to invoice practical expedient.

The Company generally provides a one-year warranty on its products for materials and workmanship but may provide multiple year warranties as negotiated, and generally transfers to its customers the warranties it receives from its vendors, if any, which generally cover this one-year period. In accordance with ASC 450-20-25, the Company accrues for product warranties when the loss is probable and can be reasonably estimated. The Company maintains a reserve for warranty returns of $0.4 million and $0.6 million as of December 31, 2023 and December 31, 2022, respectively. The Company's reserve for warranty returns is included in accrued expenses and other current liabilities in its consolidated balance sheets. Additional information regarding the Company's warranty reserve may be found in Note 3 – Supplemental Consolidated Balance Sheet Information, included elsewhere in the notes to the consolidated financial statements.

Research and Development Costs

The Company expenses research and development costs as incurred. Research and development expenses include payroll, employee benefits and other expenses associated with product development. The Company incurs research and development costs associated with the development and enhancement of both hardware and software products associated with its cultivation and extraction equipment, as well as its SaaS-based software offering, Agrify Insights™ cultivation software ("Agrify Insights™").

Capitalization of Internal Software Development Costs

The Company capitalizes certain software engineering efforts related to the continued development of Agrify Insights™ under ASC Topic 350-40 The costs incurred in the preliminary stages of development are expensed as incurred as research costs. Once the application has reached the development stage, internal and external costs incurred to develop internal-use software are capitalized and amortized on a straight-line basis over the estimated useful life of the software. Maintenance and enhancement costs, including those costs in the post-implementation stages, are typically expensed as incurred, unless such costs relate to substantial upgrades and enhancements to the software that result in added functionality, in which case the costs are capitalized and amortized on a straight-line basis over the estimated useful life of the software. The types of costs capitalized during the application development phase include employee compensation, as well as consulting fees for third-party software developers working on these projects. The estimated useful life of capitalized internal-use software ranges from two to five years.

Income Taxes

The Company accounts for income taxes pursuant to the provisions of ASC Topic 740, Income Taxes, which requires, among other things, an asset and liability approach to calculating deferred income taxes. The asset and liability approach requires the recognition of deferred tax assets and liabilities for the expected future tax consequences of temporary differences between the carrying amounts and the tax bases of assets and liabilities. A valuation allowance is provided to offset any net deferred tax assets for which management believes it is more likely than not that the net deferred tax asset will not be realized.

When tax returns are filed, it is highly certain that some positions taken would be sustained upon examination by the taxing authorities, while others are subject to uncertainty about the merits of the position taken or the amount of the position that would be ultimately sustained. In accordance with the guidance of ASC 740-10-25-6, the benefit of a tax position is recognized in the consolidated financial statements in the period during which, based on all available evidence, management believes it is more likely than not that the position will be sustained upon examination, including the resolution of appeals or litigation processes, if any. Tax positions taken are not offset or aggregated with other positions. Tax positions that meet the more-likely-than-not recognition threshold are measured as the largest amount of tax benefit that is more than 50 percent likely of being realized upon settlement with the applicable taxing authority. The portion of the benefits associated with tax positions taken that exceeds the amount measured as described above should be reflected as a liability for unrecognized tax benefits in the accompanying balance sheets along with any associated interest and penalties that would be payable to the taxing authorities upon examination. The Company believes its tax positions are all highly certain of being upheld upon examination. As such, the Company has not recorded a liability for unrecognized tax benefits.

The Company recognizes the benefit of a tax position when it is effectively settled. ASC 740-10-25-10, provides guidance on how an entity should determine whether a tax position is effectively settled for the purpose of recognizing previously unrecognized tax benefits. ASC 740-10-25-10 clarifies that a tax position can be effectively settled upon the completion of an examination by a taxing authority. For tax positions considered effectively settled, the Company recognizes the full amount of the tax benefit.

The Company's quarterly provision for income taxes is measured using an annual effective tax rate, adjusted for discrete items within the period presented. To determine the annual effective tax rate, the Company estimates both the total income (loss) before income taxes for the full year and the jurisdictions in which that income (loss) is subject to tax. The actual effective tax rate for the full year may differ from these estimates if income (loss) before income taxes is greater than or less than what was estimated or if the allocation of income (loss) to jurisdictions in which it is taxed is different from the estimated allocations.

The provision for income taxes represents Federal and state and local income taxes. The effective rate differs from statutory rates due to the effect of certain nondeductible expenses. Our effective tax rate will change from quarter to quarter based on recurring and non-recurring factors including, but not limited to, the geographical mix of earnings, enacted tax legislation, and state and local income taxes. In addition, changes in judgment from the evaluation of new information resulting in the recognition, derecognition or re-measurement of a tax position taken in a prior annual period is recognized separately in the quarter of the change.

Tax contingencies are recorded, if needed, to address potential exposure involving tax positions the Company has taken that could be challenged by tax authorities. These potential exposures could result from applications of various statutes, rules, regulations and interpretations. Any estimates of tax contingencies contain assumptions and judgments about potential actions by taxing jurisdictions. Any interest and penalties related to uncertain tax positions would be included as part of the income tax provision. The Company's conclusions regarding uncertain tax positions may be subject to review and adjustment at a later date based upon ongoing analysis of or changes in tax laws, regulations and interpretations thereof as well as other factors.

Net Loss Per Share

The Company presents basic and diluted net loss per share attributable to Common Stockholders in conformity with the two-class method required for participating securities. The Company computes basic loss per share by dividing net loss available to Common Stockholders by the weighted-average number of common shares outstanding. Net loss available to Common Stockholders represents net loss attributable to Common Stockholders reduced by the allocation of earnings to participating securities. Losses are not allocated to participating securities as the holders of the participating securities do not have a contractual obligation to share in any losses. Diluted loss per share adjusts basic loss per share for the potentially dilutive impact of stock options and warrants. As the Company has reported losses for all periods presented, all potentially dilutive securities including stock options and warrants, are anti-dilutive, and accordingly, basic net loss per share equals diluted net loss per share.

Net loss per share calculations for all periods have been adjusted to reflect the reverse stock splits effected on October 18, 2022 and July 5, 2023. Net loss per share was calculated based on the weighted-average number of Common Stock outstanding.

Recently Adopted Accounting Pronouncements

In August 2020, the FASB issued ASU No. 2020-06, Debt—Debt with Conversion and Other Options (Subtopic 470-20), and Derivatives and Hedging —Contracts in an Entity's Own Equity (Subtopic 815-40): Accounting for Convertible Instruments and Contracts in an Entity's Own Equity. The amendments in ASU No. 2020-06 simplify the complexity associated with applying GAAP for certain financial instruments with characteristics of liabilities and equity. More specifically, the amendments focus on the guidance for convertible instruments and derivative scope exceptions for contracts in an entity's own equity. ASU 2020-06 is effective for fiscal years beginning after December 15, 2021, including interim periods within those fiscal years. The Company adopted this standard as of January 1, 2022. The adoption of this new accounting guidance had no impact on the Company's consolidated financial position.

In June 2016, the FASB issued ASU No. 2016-13, Financial Instruments-Credit Losses (Topic 326), which introduces a new methodology for accounting for credit losses on financial instruments, including available-for-sale debt securities and accounts receivable. The guidance establishes a new "expected loss model" that requires entities to estimate current expected credit losses on financial instruments by using all practical and relevant information. Any expected credit losses are to be reflected as allowances rather than reductions in the amortized cost of available-for-sale debt securities. ASU 2016-13 is effective for fiscal years beginning after December 15, 2022. The Company adopted ASU 2016-13 on January 1, 2023. The adoption of this standard did not have a material impact on these consolidated financial statements.

In October 2021, the FASB issued ASU No. 2021-08, Business Combinations (Topic 606): Accounting for Contract Assets and Contract Liabilities from Contracts with Customers, which requires that an entity recognize and measure contract assets and contract liabilities acquired in a business combination in accordance with Topic 606 as if it had originated the contracts. Generally, this should result in an acquirer recognizing and measuring the acquired contract assets and contract liabilities consistent with how they were recognized and measured in the acquiree's financial statements, if the acquiree prepared financial statements in accordance with GAAP. The amendment in this update is effective for fiscal years beginning after December 15, 2022, including interim periods within those fiscal years. Early adoption is permitted, including adoption in an interim period. The Company adopted ASU 2021-08 on January 1, 2023. The adoption of this standard did not have a material impact on these consolidated financial statements.

Recently Announced Accounting Pronouncements

ASU 2023-09, Improvements to Income Tax Disclosures · On December 14, 2023, the FASB issued, ASU 2023-09, Improvements to Income Tax Disclosures, a final standard on improvements to income tax disclosures. The standard requires disaggregated information about a reporting entity's effective tax rate reconciliation as well as information on income taxes paid. The standard applies to all entities subject to income taxes and is intended to benefit investors by providing more detailed income tax disclosures that would be useful in making capital allocation decisions. For public business entities (PBEs), the new requirements will be effective for annual periods beginning after December 15, 2024. The guidance will be applied on a prospective basis with the option to apply the standard retrospectively. The Company is currently in the process of evaluating the effect of this guidance on its financial statements.

Other recent accounting pronouncements did not or are not believed by management to have a material impact on the Company's present or future consolidated financial statements.

Note 2 — Revenue and Deferred Revenue

Revenue

The Company sells its equipment and services to customers under a combination of a contract and purchase order. Equipment revenue includes sales from proprietary products designed and engineered by the Company such a VFUs, container farms, integrated grow racks, and LED grow lights, and non-proprietary products designed, engineered, and manufactured by third parties such as air cleaning systems and pesticide-free surface protection.

Construction contracts normally provide for payment upon completion of specified work or units of work as identified in the contract. Although there is considerable variation in the terms of these contracts, they are primarily structured as time-and-material contracts. The Company enters into time-and-materials contracts under which the Company is paid for labor and equipment at negotiated hourly billing rates and other expenses, including materials, as incurred at rates agreed to in the contract. The Company uses three main sub-contractors to execute the construction contracts.

The following table provides the Company's revenue disaggregated by the timing of revenue recognition:

	Year Ended December 31,	
(In thousands)	**2023**	**2022**
Transferred at a point in time	$ 14,519	$ 34,813
Transferred over time	2,349	23,446
Total revenue	$ 16,868	$ 58,259

The following table provides the Company's revenue disaggregated by revenue type:

(In thousands)	Year Ended December 31, 2023	2022
Cultivation solutions, including ancillary products and services	$ 1,100	$ 711
Agrify Insights™	188	74
Facility build-outs	882	23,129
Extraction solutions	14,698	34,345
Total revenue	$ 16,868	$ 58,259

In accordance with ASC 606-10-50-13, the Company is required to include disclosure on its remaining performance obligations as of the end of the current reporting period. Due to the nature of the Company's contracts, these reporting requirements are not applicable because the majority of the Company's remaining contracts meet certain exemptions as defined in ASC 606-10-50-14 through 606-10-50-14A, including (i) performance obligation is part of a contract that has an original expected duration of one year or less and (ii) the right to invoice practical expedient.

Deferred Revenue

Changes in the Company's current deferred revenue balance for the years ended December 31, 2023 and 2022 were as follows:

(In thousands)	Year Ended December 31, 2023	2022
Deferred revenue – beginning of period	$ 4,112	$ 3,772
Additions	4,905	13,392
Recognized	(4,998)	(13,052)
Deferred revenue – end of period	$ 4,019	$ 4,112

Deferred revenue balances primarily consist of customer deposits on the Company's cultivation and extraction solutions equipment. As of December 31, 2023 and December 31, 2022, all of the Company's deferred revenue balances were reported as current liabilities in the accompanying consolidated balance sheets.

In the year ended December 31, 2023, the Company recognized $2.5 million of revenue that was deferred during 2022. And, during the year ended December 31, 2022, the Company recognized $2.7 million of revenue that was deferred during 2021.

Note 3 — Supplemental Consolidated Balance Sheet Information

Accounts Receivable

Accounts receivable consisted of the following as of December 31, 2023 and December 31, 2022:

(In thousands)	Year Ended December 31, 2023	2022
Accounts receivable, gross	$ 3,036	$ 5,675
Less allowance for credit losses	(1,887)	(4,605)
Accounts receivable, net	$ 1,149	$ 1,070

The changes in the allowance for credit losses accounts consisted of the following:

(In thousands)	Year Ended December 31, 2023	Year Ended December 31, 2022
Allowance for credit losses - beginning of period	$ 4,605	$ 1,415
(Recovery of) allowance for credit losses	(1,426)	4,928
Write-offs of uncollectible accounts	(1,292)	(1,510)
Other adjustments	—	(228)
Allowance for credit losses - end of period	$ 1,887	$ 4,605

The Company recognized a net recovery of credit losses of $1.4 million and a provision credit losses of $4.9 million for the years ended December 31, 2023 and 2022, respectively.

Prepaid Expenses and Other Current Assets

Prepaid expenses and other current assets consisted of the following as of December 31, 2023 and December 31, 2022:

(In thousands)	Year Ended December 31, 2023	Year Ended December 31, 2022
Prepaid settlement asset	$ 2,054	$ —
Other receivables, other	659	424
Prepaid insurance	454	219
Prepaid expenses, other	82	230
Prepaid software	70	129
Prepaid materials	13	45
Deferred issuance costs, net	—	463
Total prepaid expenses and other current assets	$ 3,332	$ 1,510

Property and Equipment, Net

Property and equipment, net consisted of the following as of December 31, 2023 and December 31, 2022:

(In thousands)	December 31, 2023	December 31, 2022
Leased equipment	$ 4,465	$ 602
Leasehold improvements	702	1,111
Machinery and equipment	904	1,049
Software	606	606
Computer and office equipment	588	627
Research and development laboratory equipment	183	260
Furniture and fixtures	116	504
Trade show assets	78	78
Vehicles	43	136
Total property and equipment, gross	7,685	4,973
Accumulated depreciation	(2,894)	(2,372)
Construction in progress	2,943	7,443
Total property and equipment, net	$ 7,734	$ 10,044

Depreciation expense for the years ended December 31, 2023 and 2022 was $1.9 million and $1.7 million, respectively.

Other Non-Current Assets

Other non-current assets consisted of the following as of December 31, 2023 and December 31, 2022:

	Year Ended December 31,	
(In thousands)	**2023**	**2022**
Security deposits	$ 141	$ 153
Long-term deferred commissions expense	—	173
Total other non-current assets	$ 141	$ 326

Accrued Expenses and Other Current Liabilities

Accrued expenses and other current liabilities consisted of the following as of December 31, 2023 and December 31, 2022:

	Year Ended December 31,	
(In thousands)	**2023**	**2022**
Sales tax payable (1)	$ 5,338	$ 5,950
Accrued acquisition liabilities (2)	2,180	3,502
Accrued construction costs	1,412	2,669
Accrued interest expense	321	240
Compensation related fees	474	2,285
Accrued warranty expenses	420	553
Accrued professional fees	457	313
Accrued inventory purchases	10	569
Accrued consulting fees	43	20
Financing lease liabilities	—	152
Other current liabilities	—	127
Total accrued expenses and other current liabilities	$ 10,655	$ 16,380

(1) Sales tax payable primarily represents identified sales and use tax liabilities arising from our acquisition of Precision and Cascade. These amounts are included as part of our initial purchase price allocations and are the subject matter of an indemnification claim under the Precision and Cascade acquisition agreement.

(2) Accrued acquisition liabilities includes both the contingent consideration and the value of held back Common Stock associated with the 2022 acquisition of Lab Society and the 2021 acquisitions of Precision, Cascade and PurePressure.

Accrued Warranty Costs

The following table summarizes the activity related to the Company's accrued liability for estimated future warranty costs:

	Year Ended December 31,	
(In thousands)	**2023**	**2022**
Warranty accrual – beginning of period	$ 553	$ 398
Liabilities accrued for warranties issued during the period	230	264
Warranty accruals paid during the period	(363)	(109)
Warranty accrual – end of period	$ 420	$ 553

Note 4 — Fair Value Measures

Fair Values of Assets and Liabilities

In accordance with ASC Topic 820 "Fair Value Measurement", the Company measures fair value at the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. In determining fair value, the assumptions that market participants would use in pricing an asset or liability (the inputs) are based on a tiered fair value hierarchy consisting of three levels, as follows:

Level 1: Observable inputs such as quoted prices for identical assets or liabilities in active markets.

Level 2: Other inputs that are observable directly or indirectly, such as quoted prices for similar instruments in active markets or for similar markets that are not active.

Level 3: Unobservable inputs for which there is little or no market data which require the Company to develop its own assumptions about how market participants would price the asset or liability.

Valuation techniques for assets and liabilities include methodologies such as the market approach, the income approach or the cost approach, and may use unobservable inputs such as projections, estimates and management's interpretation of current market data. These unobservable inputs are only utilized to the extent that observable inputs are not available or cost-effective to obtain.

At December 31, 2023 and December 31, 2022, the Company's assets and liabilities measured at fair value on a recurring basis were as follows:

	December 31, 2023				December 31, 2022			
	Fair Value Measurements Using Input Types				Fair Value Measurements Using Input Types			
(In thousands)	Level 1	Level 2	Level 3	Total	Level 1	Level 2	Level 3	Total
Assets:								
Mutual funds (included in cash and cash equivalents)	$ —	$ —	$ —	$ —	$ 33	$ —	$ —	$ 33
Money market funds	4	—	—	4	—	—	—	—
Corporate bonds	—	—	—	—	427	—	—	427
Total assets	$ 4	$ —	$ —	$ 4	$ 460	$ —	$ —	$ 460
Liabilities:								
Warrant liabilities - January 2022 warrants	$ —	$ —	$ 1	$ 1	$ —	$ —	$ 4	$ 4
Warrant liabilities - March 2022 warrants	—	—	7	7	—	—	34	34
Warrant liabilities - August 2022 warrants	—	—	18	18	—	—	93	93
Warrant liabilities - December 2022 warrants	—	—	1,264	1,264	—	—	5,854	5,854
Total liabilities	$ —	$ —	$ 1,290	$ 1,290	$ —	$ —	$ 5,985	$ 5,985

Fair Value of Financial Instruments

The Company has certain financial instruments which consist of cash and cash equivalents, marketable securities, warrant liabilities, and contingent consideration. Fair value information for each of these instruments as well as other balances of the Company are as follows:

- Cash and cash equivalents, accounts receivable, accounts payable, accrued expenses, and deferred revenue liabilities approximate their fair value based on the short-term nature of these instruments.

- Marketable securities classified as current held-to-maturity securities are recorded at amortized cost, which at December 31, 2023 and 2022, approximated fair value.

- The Company's deferred consideration was recorded in connection with acquisitions during the year ended December 31, 2023 and fiscal 2022 using an estimated fair value discount at the time of the transactions. As of December 31, 2023 and 2022, the carrying value of the deferred consideration approximated fair value.

- The Company's warrant liabilities are marked-to-market each reporting period with the changes in fair value of warrant liabilities recorded in other income (expense), net in the accompanying consolidated statements of operations until the warrants are exercised. The fair value of the warrant liabilities are estimated using a Black-Scholes option-pricing model.

Marketable Securities

As of December 31, 2023 and 2022, the Company held investments in municipal bonds and corporate bonds. The municipal and corporate bonds are considered held-to-maturity securities and are recorded at amortized cost in the accompanying consolidated balance sheet. The fair values of these investments were estimated using recently executed transactions and market price quotations. The Company considers current assets as those investments which will mature within the next 12 months including, interest receivable on long-term bonds.

The composition of the Company's marketable securities are as follows:

	Year Ended December 31,	
(In thousands)	**2023**	**2022**
Current marketable securities:		
Money market funds	$ 4	$ —
Corporate bonds	—	427
Mutual funds	—	33
	$ 4	$ 460

Contingent Consideration

The Company has classified its net liability for contingent earn-out considerations to the sellers relating to one acquisition completed during the first quarter of 2022 and two acquisitions completed during fiscal 2021. The fair value for the contingent consideration associated with these acquisitions is within Level 3 of the fair value hierarchy because the associated fair value is determined using significant unobservable inputs, which included the key assumptions to model future revenue, costs of goods sold and operating expense projections. The company recorded no change in contingent consideration for the year ended December 31, 2023. The contingent earn-out payments to the sellers for each acquisition are based on the achievement of certain revenue thresholds.

(In thousands)	2022
Contingent consideration – beginning of period	$ 6,137
Accrued contingent consideration	1,420
Accretion of contingent consideration	149
Payments made on contingent liabilities	(5,550)
Change in estimated fair value	(2,156)
Contingent consideration – end of period	$ —

The Company included contingent consideration within accrued expenses and other current liabilities on its consolidated balance sheet as of December 31, 2022.

See below for additional information related to each acquisition's contingent consideration.

Contingent Consideration – PurePressure

The Company, in its review of actual revenue performance as compared to its originally projected revenue estimates, noted that PurePressure's revenue trend is materially below the originally estimated revenue trends incorporated into the Company's original fair value estimates at the time of the acquisition. As a result, the Company has reduced its fair value estimate of achievement for PurePressure's first earn-out period. During the third quarter ended September 30, 2022, the Company reduced the estimated fair value of the contingent consideration liability associated with PurePressure's first earn-out period by approximately $0.6 million and their second earn-out by approximately $0.2 million. As required by ASC Topic 805 Business Combination ("ASC 805"), the change in contingent consideration was recorded as a reduction in operating expenses during the third and fourth quarters of 2022, respectively.

Contingent Consideration – Lab Society

The Company, in its review of actual revenue performance as compared to its originally projected revenue estimates, noted that Lab Society's revenue trend is materially below the originally estimated revenue trends incorporated into the Company's original fair value estimates at the time of the acquisition. As a result, the Company has reduced its fair value estimate of achievement for Lab Society's first earn-out period. During the second quarter ended June 30, 2022, the Company reduced the estimated fair value of the contingent consideration liability associated with Lab Society's first earn-out period by approximately $1.0 million and their second earn-out by approximately $0.5 million. As required by ASC 805, the change in contingent consideration was recorded as a reduction in operating expenses during the second and fourth quarters of 2022, respectively.

Contingent Consideration – Precision and Cascade

The earn-out period for the potential contingent consideration to be earned by the former members of Precision and Cascade concluded on December 31, 2021. The Company, during the second quarter of 2022, increased the amount of the contingent consideration earned by the former members of Precision and Cascade by approximately $0.1 million, to reflect the final contingent consideration amount due. This amount was recorded as an increase in operating expenses during the second quarter of 2022. During the period ended December 31, 2022, the Company made the final payment on the contingent consideration of approximately $5.6 million to the members of Precision and Cascade.

Warrant Liabilities

The estimated fair value of the warrant liabilities on December 31, 2023 and 2022 is determined using Level 3 inputs. Inherent in a Black-Scholes option-pricing model are assumptions used in calculating the estimated fair values that represent the Company's best estimate. The volatility rate is determined utilizing the Company's own share price and the share price of competitors over time.

However, inherent uncertainties are involved. If factors or assumptions change, the estimated fair values could be materially different.

January 2022 Warrants

The following table summarizes the Company's assumptions used in the valuation of December 31, 2023 and December 31, 2022:

	Year Ended December 31,	
	2023	2022
Stock price	$ 1.26	$ 6.66
Exercise price	$ 1,496.00	$ 1,496.00
Expected term (in Years)	3.57	4.58
Volatility	138.00%	98.30%
Discount rate - treasury yield	3.96%	4.05%

The following table sets forth a summary of the changes in the fair value of the Level 3 warrant liabilities of December 31, 2023 and December 31, 2022:

	Year Ended December 31,	
(In thousands)	**2023**	**2022**
Warrant liabilities – beginning of period	$ 4	$ —
Initial fair value of warrant liabilities	—	10,969
Change in estimated fair value	(3)	(10,965)
Warrant liabilities –end of period	$ 1	$ 4

March 2022 Warrants

The following table summarizes the Company's assumptions used in the valuation of December 31, 2023 and December 31, 2022:

	Year Ended December 31,	
	2023	2022
Stock price	$ 1.26	$ 6.66
Exercise price	$ 430.00	$ 430.00
Expected term (in Years)	4.13	5.13
Volatility	136.00%	97.96%
Discount rate - treasury yield	3.91%	3.99%

The following table sets forth a summary of the changes in the fair value of the Level 3 warrant liabilities of December 31, 2023 and December 31, 2022:

	Year Ended December 31,	
(In thousands)	**2023**	**2022**
Warrant liabilities – beginning of period	$ 34	$ —
Initial fair value of warrant liabilities	—	29,522
Change in estimated fair value	(27)	(31,133)
Component of loss on debt extinguishment	—	1,645
Warrant liabilities – end of period	$ 7	$ 34

August 2022 Warrants

The following table summarizes the Company's assumptions used in the valuation of December 31, 2023 and December 31, 2022:

	Year Ended December 31,	
	2023	2022
Stock price	$ 1.26	$ 6.66
Exercise price	$ 246.00	$ 246.00
Expected term (in Years)	4.13	5.13
Volatility	136.00%	97.96%
Discount rate - treasury yield	3.91%	3.99%

The following table sets forth a summary for the changes in the fair value of the Level 3 warrant liabilities of December 31, 2023 and December 31, 2022:

	Year Ended December 31,	
(In thousands)	**2023**	**2022**
Warrant liabilities – beginning of period	$ 93	$ —
Initial fair value of warrant liabilities	—	10,212
Change in estimated fair value	(75)	(9,876)
Warrants settled in period	—	(243)
Warrant liabilities – end of period	$ 18	$ 93

December 2022 Warrants

The following table summarizes the Company's assumptions used in the valuation of December 31, 2023 and December 31, 2022:

	Year Ended December 31,	
	2023	2022
Stock price	$ 1.26	$ 6.66
Exercise price	$ 3.45	$ 13.00
Expected term (in Years)	4.13	4.98
Volatility	136.00%	98.00%
Discount rate - treasury yield	3.91%	3.99%

The following table sets forth a summary for the changes in the fair value of the Level 3 warrant liabilities of December 31, 2023 and December 31, 2022:

	Year Ended December 31,	
(In thousands)	**2023**	**2022**
Warrant liabilities – beginning of period	$ 5,854	$ —
Initial fair value of warrant liabilities	—	4,924
Change in estimated fair value	(4,590)	930
Warrant liabilities – end of period	$ 1,264	$ 5,854

Note 5 — Loans Receivable

A portion of the capital raised from the Company's IPO was allocated to launch the Company's TTK Solution program. The TTK Solution is the industry's first-of-its-kind program in which the Company engages with qualified cannabis operators in the early phases of their business plans and provides critical support, typically over a 10-year period, which includes: access to capital for construction costs, the design and build-out of their cultivation and extraction facilities, state-of-the-art cultivation and extraction equipment, subscription to the Company's Agrify Insights™, process design, training, implementation, proven grow recipes, product formulations, data analytics, and consumer branding.

On September 15, 2022, the Company provided a notice of default under the term loan agreement between the Company and Bud & Mary's (the "Bud & Mary's TTK Agreement"). On October 5, 2022, Bud & Mary's Cultivation, Inc. (the "Bud & Mary's") filed a complaint in the Superior Court of Massachusetts in Suffolk County naming the Company as defendant. Bud & Mary's is seeking, among other relief, monetary damages in connection with alleged unfair or deceptive trade practices, breach of contract and conversion arising from the Bud & Mary's TTK Agreement. In response, the Company established a reserve of $14.7 million specifically related to Bud & Mary's. The Company deemed it necessary to fully reserve the $14.7 million outstanding balance in the third quarter of 2022 due to the current litigation and the uncertainty of the customer's ability to repay the outstanding balance. The Company believes that Bud & Mary's claims have no merit and intends to defend itself vigorously. The Company is taking all necessary steps to pursue repayment from Bud & Mary's and is taking all actions necessary to protect its shareholders' interests.

During the year ended December 31, 2022, the Company established a reserve of approximately $12.5 million specifically related to Greenstone. Greenstone is a related party because one of the Company's former Agrify Brands employees and its VP of Engineering had a minority ownership. The Company established the reserve based upon its review of Greenstone's financial stability, which would impact collectability, which is primarily the result of unfavorable market conditions within the Colorado market. The Company will continue to monitor the operations of Greenstone in an effort to collect all outstanding receivables but due to the uncertain nature of Greenstone's business at this time the Company has made the decision to place a reserve against the receivables. During the quarter ended June 30, 2023, the Greenstone loan was fully written off against the reserve as a result of the sale of Greenstone to Denver Greens. It was agreed that Denver Greens would not have to pay back Greenstone's Loan.

The breakdown of loans receivable by customer as of December 31, 2023 and December 31, 2022 were as follows:

	Year Ended December 31,	
(In thousands)	**2023**	**2022**
Customer 139	$ 14,691	$ 14,691
Customer 136	—	12,457
Customer 125	9,297	9,048
Customer 24096	6,810	5,890
Other – Non-TTK Solution (1)	—	3,178
Allowance for credit losses (2)(3)	(19,215)	(33,050)
Total loan receivable	$ 11,583	$ 12,214

(1) The current portion of loan receivable is included in prepaid expenses and other current assets on the balance sheet.

(2) As of December 31, 2023 The TTK Solution project balance was written off due to the cancellation of the project.

(3) The Company established an allowance for credit losses of approximately $14.7 million related to Bud & Mary's ongoing litigation. Approximately $4.5 million relates to Hannah.

At this time, the Company is not aware of, nor has it identified any risk or potential performance failure associated with any of its TTK Solution arrangements, other than the noted exceptions of Bud & Mary's TTK Solution, Hannah, and Greenstone TTK Solution, which is a related party, as described above.

The Company analyzed whether any of the above customers are a VIE in accordance with ASC 810 and if so, whether the Company is the primary beneficiary requiring consolidation. Based on the Company's analysis, the Company has determined that Greenstone, which is a related party because one of the Company's former Agrify Brands employees and its VP of Engineering had a minority ownership, is a VIE. The Company's loan receivable from Greenstone was written off in full during the quarter ending June 30, 2023.

Note 6 — Inventory

Inventories are stated at the lower of cost or net realizable value, with cost principally determined by the weighted-average cost method on a first-in, first-out basis. Such costs include the acquisition cost for raw materials and operating supplies. The Company's standard payment terms with suppliers may require making payments in advance of delivery of the Company's products. The Company's prepaid inventory is a short-term, non-interest-bearing asset that is applied to the purchase of products once they are delivered.

Inventory consisted of the following as of December 31, 2023 and December 31, 2022:

	Year Ended December 31,	
(In thousands)	**2023**	**2022**
Raw materials	$ 23,449	$ 24,960
Prepaid inventory	924	15,506
Finished goods	7,438	13,352
Inventory for resale	4,882	—
Inventory, gross	36,693	53,818
Inventory reserves	(17,599)	(32,422)
Total inventory, net	$ 19,094	$ 21,396

Inventory Reserves

The Company establishes an inventory reserve for obsolete, slow moving, and defective inventory. The Company calculates inventory reserves for obsolete, slow moving, or defective items as the difference between the cost of inventory and its estimated net realizable value. The reserves are based upon management's expected method of disposition.

Changes in the Company's inventory reserve are as follows:

	Year Ended December 31,	
(In thousands)	**2023**	**2022**
Inventory reserves – beginning of period	$ 32,422	$ 942
(Decrease) increase in inventory reserves	(14,823)	31,480
Inventory reserves – end of period	$ 17,599	$ 32,422

Note 7 — Goodwill and Intangible Assets, Net

Intangible assets are initially recorded at fair value and tested periodically for impairment. Goodwill represents the excess of the purchase price over the fair value of identifiable tangible and intangible assets acquired and liabilities assumed in a business combination and is tested at least annually for impairment. The Company performs its goodwill impairment testing annually during the fourth quarter, or sooner if indicators or circumstances were to occur that would more likely than not reduce the fair value of the Company's reporting unit below its carrying amount. The Company would recognize an impairment charge for the amount by which the carrying amount exceeds the reporting unit's fair value, not to exceed the total amount of goodwill.

The Company has concluded that there was an impairment-triggering event during the quarter ended June 30, 2022 that required the Company to perform a detailed analysis of the current carrying value of its goodwill and intangible assets. For goodwill and intangible asset impairment testing purposes, the Company has one reporting unit.

During the quarter ended June 30, 2022, the Company's market capitalization fell below total net assets. In addition, financial performance continued to weaken during the quarter, which was contrary to prior experience. Management reassessed business performance expectations following persistent adverse developments in equity markets, deterioration in the environment in which the Company operates, lower-than-expected sales, and an increase in operating expenses. These indicators, in the aggregate, required impairment testing for goodwill and intangible assets.

Based on the results of this testing, the Company determined that the carrying values of the aggregate value of its goodwill and intangible assets were not recoverable. The Company recorded impairment charges during the second quarter of 2022, representing a full impairment of the carrying value of its goodwill and intangible assets. The Company recorded an impairment charge of approximately $69.9 million, representing the carrying values of goodwill and intangible assets, which totaled $54.7 million and $15.2 million, respectively.

Changes in goodwill consisted of the following:

(In thousands)	2022
Goodwill - beginning of period	$ 50,090
Goodwill acquired during period	4,368
Goodwill purchase accounting adjustment	289
Goodwill impairment loss	(54,747)
Goodwill - end of period	$ —

Intangible assets, net as of December 31, 2022 were as follows:

	Intangible Assets, Gross			Accumulated Amortization and Impairment			Intangible Assets, Net	
(In thousands)	January 1, 2022	Additions and Retirements, net	December 31, 2022	January 1, 2022	Expense and Retirements, net	December 31, 2022	January 1, 2022	December 31, 2022
Trade names	$ 2,418	$ 317	$ 2,735	$ (227)	$ (2,508)	$ (2,735)	$ 2,191	$ —
Customer relationships	6,176	713	6,889	(302)	(6,587)	(6,889)	5,874	—
Acquired developed technology	4,911	1,432	6,343	(191)	(6,152)	(6,343)	4,720	—
Non-compete	1,202	—	1,202	(60)	(1,142)	(1,202)	1,142	—
Capitalized website costs	245	—	245	(100)	(145)	(245)	145	—
Total	$ 14,952	$ 2,462	$ 17,414	$ (880)	$ (16,534)	$ (17,414)	$ 14,072	$ —

Amortization expense recorded in general and administrative expense in the consolidated statements of operations was zero and $1.4 million for the years ended December 31, 2023, and 2022, respectively.

Note 8 - Business Combinations

Acquisition of Lab Society

On February 1, 2022, the Company entered into an Agreement and Plan of Merger (the “Merger Agreement”) with Lab Society, a newly-formed wholly-owned subsidiary of the Company (“Merger Sub”), Michael S. Maibach Jr., as the Owner Representative thereunder, and each of the shareholders of Lab Society (collectively, the “Owners”), pursuant to which the Company agreed to acquire Lab Society. Concurrently with the execution of the Merger Agreement, the Company consummated the merger of Lab Society with and into Merger Sub, with Merger Sub surviving such merger as a wholly-owned subsidiary of the Company (the “Lab Society Acquisition”).

The aggregate consideration for the Lab Society Acquisition consisted of $4.0 million in cash, subject to certain adjustments for working capital, cash, and indebtedness of Lab Society at closing, 2,128 shares of Common Stock (the “Buyer Shares”), and the Earn-out Consideration (as defined below), to the extent earned.

The Company withheld 638 of the Buyer Shares issuable to the Owners (the “Holdback Lab Buyer Shares”) for the purpose of securing any post-closing adjustment owed to the Company and any claim for indemnification or payment of damages to which the Company may be entitled under the Merger Agreement. During the third quarter of 2022, 139 of the Holdback Lab Buyer Shares were forfeited after the finalization of the net working capital settlement. The remaining 499 Holdback Lab Buyer Shares were released following the twelve-month anniversary of the Closing Date in accordance with and subject to the conditions of the Merger Agreement.

The Merger Agreement includes customary post-closing adjustments, representations and warranties, and covenants of the parties. The Owners may become entitled to additional consideration with a value of up to $3.5 million based on the eligible net revenues achieved by the Lab Society business during the fiscal years ending December 31, 2022 and December 31, 2023, of which 50% will be payable in cash and the remaining 50% will be payable by issuing shares of Common Stock. Additional information regarding the Company’s contingent consideration arrangements may be found in Note 4 - Fair Value Measures, included elsewhere in the notes to the consolidated financial statements.

Transaction and related costs, consisting primarily of professional fees, related to the acquisition, totaled approximately $0 and $66 thousand for the years ended December 31, 2023, and 2022, respectively. All transaction and related costs were expensed as incurred and are included in general and administrative expense.

The Company has prepared purchase price allocations for the business combination. The following table sets forth the components and the allocation of the purchase price for the business combination:

(In thousands)		
Purchase price consideration		
Closing proceeds	$	4,002
Transaction expenses		80
Closing buyer shares		1,904
Holdback buyer shares		816
Earn-out consideration		1,420
Working capital adjustment		(255)
Fair value of total consideration transferred		7,967
Total purchase price, net of cash acquired	$	7,402
Fair value allocation of purchase price		
Cash and cash equivalents	$	565
Accounts receivable		511
Inventory		2,130
Prepaid expenses and other current receivables		55
Right - of-use assets, net		304
Property and equipment, net		177
Prepaid and refundable taxes		194
Accounts payable, accrued expenses, and other current liabilities		(1,224)
Deferred revenue		(963)
Deferred tax liability		(237)
Finance lease liabilities, current		(36)
Finance lease liabilities, non-current		(35)
Operating lease liabilities, current		(112)
Operating lease liabilities, non-current		(192)
Acquired intangible assets		2,462
Goodwill		4,368
Total purchase price	$	7,967

Identified intangible assets consist of trade names, technology, and customer relationships. The fair value of intangible assets and the determination of their respective useful lives were made in accordance with ASC 805 and are outlined in the table below:

(In thousands)		Asset Value	Useful Life
Identified intangible assets			
Trade names	$	317	5 years
Acquired developed technology		1,432	8 years
Customer relationships		713	6 years
Total identified intangible assets	$	2,462	

The Company's initial fair value estimates related to the various identified intangible assets of Lab Society were determined under various valuation approaches including the Income Approach, Relief-from-Royalty Method, and Discounted Cash Flow Method. These valuation methods require management to project revenues, operating expenses, working capital investment, capital spending, and cash flows for the reporting unit over a multiyear period, as well as determine the weighted-average cost of capital to be used as a discount rate.

During the quarter ended June 30, 2022, the Company identified an impairment-triggering event associated with both a sustained decline in the Company's stock price and associated market capitalization, as well as a second-quarter slowdown in the cannabis industry as a whole. Due to these factors, the Company deemed that there was an impairment to the carrying value of its property and equipment and accordingly performed interim testing as of June 30, 2022. Based on its interim testing, the Company noted that the entire carrying value of its goodwill and intangible assets were impaired. Additional information regarding the Company's interim testing on goodwill and intangible assets may be found in Note 7 - Intangible Assets, Net and Goodwill included elsewhere in the notes to the consolidated financial statements.

The amount of revenue of Lab Society included in the consolidated statements of operations from the acquisition date of February 1, 2022 to December 31, 2022 was $4.5 million.

Acquisition of Precision and Cascade

On September 29, 2021 (the "Execution Date"), the Company entered into a Plan of Merger and Equity Purchase Agreement, as amended by an amendment dated October 1, 2021 (as amended, the "Purchase Agreement"), with Sinclair Scientific, LLC, a Delaware limited liability company ("Sinclair"), Mass2Media, LLC, Precision, a Michigan limited liability company; and each of the equity holders of Sinclair named therein (collectively, the "Sinclair Members"). On October 1, 2021, the Company consummated the transactions contemplated by the Purchase Agreement.

Subject to the terms and conditions set forth in the Purchase Agreement, Sinclair transferred to the Company, and the Company purchased (the "Interest Purchase") from Sinclair, 100% of the equity interests of Cascade, a Delaware limited liability company, such that immediately after the consummation of such Interest Purchase, Cascade became a wholly-owned subsidiary of the Company, and Precision merged (the "Merger") with and into a newly-formed wholly-owned subsidiary of the Company, Precision Extraction NewCo, LLC.

The aggregate consideration for the Interest Purchase and the Merger consisted of the sum of $30 million in cash, plus consideration payable to holders of outstanding Sinclair equity awards, subject to certain adjustments for working capital, cash, and indebtedness, payable in connection with the Interest Purchase; the number of shares of Common Stock, subject to adjustment, equal to the quotient of $20.0 million divided by the volume weighted average price per share of Common Stock on The Nasdaq Capital Market for the 30 consecutive trading days ending on the Execution Date (the "VWAP Price"), issuable in connection with the Merger; Holdback Buyer Shares; and the True-Up Buyer Shares, issuable in connection with the Merger.

The Company withheld 588 shares issuable to certain members (the "Holdback Buyer Shares") for the purpose of securing any post-closing adjustment owed to the Company and any claim for indemnification or payment of damages to which the Company may be entitled under the Purchase Agreement. These shares were not released as of December 31, 2023.

The Purchase Agreement included customary post-closing adjustments, representations and warranties, and covenants of the parties. The Sinclair Members became entitled to additional shares of Common Stock (the "True-Up Buyer Shares") and cash (together with the True-Up Buyer Shares, the "Aggregate True-Up Payment") based on the eligible net revenues (as defined in the Purchase Agreement) achieved by the Cascade and Precision businesses during the fiscal year ending December 31, 2021.

On August 10, 2022, the Company entered into a post-closing adjustment settlement agreement ("Agreement") with Sinclair. The Agreement was entered into in connection with the Purchase Agreement. According to the Purchase Agreement, $2.5 million was held by the escrow agent as the Adjustment Escrow Amount, $4.5 million was held by the escrow agent as the Indemnity Escrow Amount. On August 17, 2022, the Company made the final Aggregate True-up Payment of approximately $5.6 million, of which $3.3 million was paid in cash and 435 True-Up Buyer Shares were released to the Sinclair Members, and the Company received $1.4 million from the Adjustment Escrow Amount, and the remaining $1.1 million balance of the Adjustment Escrow Amount became part of the Indemnity Escrow Amount.

Transaction and related costs, consisting primarily of professional fees, related to the acquisition, totaled approximately $0 and $63 thousand for the years ended December 31, 2023, and 2022, respectively. All transaction and related costs were expensed as incurred and are included in general and administrative expense.

The following table sets forth the components and the allocation of the purchase price for the business combination:

(In thousands)		
Purchase price consideration		
Cash paid to Sinclair Members at the close	$	23,000
Cash contributed to escrow accounts at the close		7,000
Cash paid for excess net working capital		1,430
Stock issued at the close		14,535
Fair value of contingent consideration to be achieved		3,953
Fair value of total consideration transferred		49,918
Total purchase price, net of cash acquired	$	48,630
Fair value allocation of purchase price		
Cash and cash equivalents	$	1,288
Accounts receivable		897
Inventory		6,761
Prepaid expenses and other current receivables		1,736
Property and equipment, net		970
Right-of-use assets, net		730
Capitalized web costs, net		2
Accounts payable and accrued expenses		(9,223)
Deferred revenue		(5,419)
Long-term debt		(1,961)
Operating lease liabilities, current		(392)
Operating lease liabilities, non-current		(362)
Acquired intangible assets		9,889
Goodwill		45,002
Total purchase price	$	49,918

Identified intangible assets consist of trade names, technology, non-compete agreements, and customer relationships. The fair value of intangible assets and the determination of their respective useful lives were made in accordance with ASC 805 and are outlined in the table below:

(In thousands)			**Useful Life**
Identified intangible assets			
Trade names	$	1,260	6 to 7 years
Acquired developed technology		3,818	5 years
Non-compete agreements		1,202	5 years
Customer relationships		3,609	7 to 8 years
Total identified intangible assets	$	9,889	

The Company’s initial fair value estimates related to the various identified intangible assets were determined under various valuation approaches including the Income Approach, Relief-from-Royalty Method, and Discounted Cash Flow Method. These valuation methods require management to project revenues, operating expenses, working capital investment, capital spending, and cash flows for the reporting unit over a multiyear period, as well as determine the weighted-average cost of capital to be used as a discount rate.

During the quarter ended June 30, 2022, the Company identified an impairment-triggering event associated with both a sustained decline in the Company's stock price and associated market capitalization, as well as a second-quarter slowdown in the cannabis industry as a whole. Due to these factors, the Company deemed that there was an impairment to the carrying value of its property and equipment and accordingly performed interim testing as of June 30, 2022. Based on its interim testing, the Company noted that the entire carrying value of its goodwill and intangible assets were impaired. Additional information regarding the Company's interim testing on goodwill and intangible assets may be found in Note 7 - Intangible Assets, Net and Goodwill, included elsewhere in the notes to the consolidated financial statements.

Acquisition of PurePressure

On December 31, 2021, the Company entered into a Membership Interest Purchase Agreement (the "Pure Purchase Agreement") with PurePressure, LLC, a Colorado Limited liability company ("PurePressure"), and the members of PurePressure (collectively, the "Members"), Benjamin Britton as the Member Representative thereunder, and each of the Members. Concurrently with the execution of the Pure Purchase Agreement, the Company consummated the acquisition of all the outstanding equity interests of PurePressure, such that immediately after the consummation of such purchase, PurePressure became a wholly-owned subsidiary of the Company (the "Acquisition").

The aggregate consideration for the Acquisition consisted of $4.0 million in cash, subject to certain adjustments for working capital, cash, and indebtedness of PurePressure at closing; 1,646 shares of Common Stock (the "Buyer Shares"); and the Earn-out Consideration (as defined below), to the extent earned.

The Company withheld 444 of the Buyer Shares issuable to certain Members (the "Holdback Buyer Shares") for the purpose of securing any post-closing adjustment owed to the Company and any claim for indemnification or payment of damages to which the Company may be entitled under the Pure Purchase Agreement. During the third quarter of 2022, 72 of the Holdback Buyer Shares were forfeited after the finalization of the net working capital settlement. On January 31, 2023, the remaining 372 Holdback Buyer Shares were released, including 6 Holdback Buyer Shares that were withheld to cover a tax indemnification claim in accordance with the Purchase Agreement.

The Pure Purchase Agreement includes customary post-closing adjustments, representations and warranties, and covenants of the parties. The Members may become entitled to additional consideration with a value of up to $3.0 million based on the eligible net revenues achieved by the PurePressure business during the fiscal years ending December 31, 2022 and December 31, 2023, of which 40% will be payable in cash and the remaining 60% will be payable by issuing shares of Common Stock (collectively, the "Earn-out Consideration"). Additional information regarding the Company's contingent consideration arrangements may be found in Note 4 - Fair Value Measures, included elsewhere in the notes to the consolidated financial statements.

Subject to certain customary limitations, the Members will indemnify the Company and its affiliates, officers, directors, and other agents against certain losses related to, among other things, breaches of the Members' and PurePressure's representations and warranties, indebtedness, transaction expenses, pre-closing taxes, and the failure to perform covenants or obligations under the Pure Purchase Agreement, and the Company will indemnify the Members and their respective affiliates, officers, directors, and other agents against certain losses related to, among other things, breaches of the Company's representations and warranties and the failure to perform covenants or obligations under the Pure Purchase Agreement.

Transaction and related costs, consisting primarily of professional fees, related to the acquisition, totaled approximately $0 and $563 thousand for the years ended December 31, 2023, and 2022, respectively. All transaction and related costs were expensed as incurred and are included in general and administrative expense.

The Company has prepared purchase price allocations for the business combination. The following table sets forth the components and the allocation of the purchase price for the business combination:

(In thousands)		
Purchase price consideration		
Closing proceeds	$	3,613
Indebtedness paid		320
Transaction expenses		115
Closing buyer shares		2,211
Holdback buyer shares		654
Earn-out consideration		707
Working capital adjustment		330
Fair value of total consideration transferred		7,950
Total purchase price, net of cash acquired	$	7,647
Fair value allocation of purchase price		
Cash and cash equivalents		303
Accounts receivable, net		48
Inventory		1,537
Property and equipment, net		219
Right-of-use assets, net		191
Prepaid expenses and other current receivables		61
Other non-current assets		16
Accounts payable and accrued expenses		(765)
Deferred revenue		(762)
Operating lease liabilities, current		(117)
Operating lease liabilities, non-current		(74)
Finance lease liabilities, current		(4)
Finance lease liabilities, non-current		(10)
Notes payable, current		(260)
Notes payable, non-current		(12)
Acquired intangible assets		3,037
Goodwill		4,542
Total purchase price	$	7,950

Identified intangible assets consist of trade names, technology, and customer relationships. The fair value of intangible assets and the determination of their respective useful lives were made in accordance with ASC 805 and are outlined in the table below:

(In thousands)	**Asset Value**		
Identified intangible assets			
Trade name	$	227	5 years
Acquired developed technology		1,093	8 years
Customer relationships		1,717	5 years
Total identified intangible assets	$	3,037	

During the quarter ended June 30, 2022, the Company identified an impairment-triggering event associated with both a sustained decline in the Company's stock price and associated market capitalization, as well as a second-quarter slowdown in the cannabis industry as a whole. Due to these factors, the Company deemed that there was an impairment to the carrying value of its property and equipment and accordingly performed interim testing as of June 30, 2022. Based on its interim testing, the Company noted that the entire carrying value of its goodwill and intangible assets were impaired. Additional information regarding the Company's interim testing on goodwill and intangible assets may be found in Note 7 - Intangible Assets, Net and Goodwill, included elsewhere in the notes to the consolidated financial statements.

Note 9 – Debt

The Company's debt consisted of:

	Year Ended December 31,	
(In thousands)	**2023**	**2022**
Note payable – Exchange Note and Convertible Note	$ 15,928	$ 31,975
PPP Loan	518	656
Navitas loan	7	23
Related party debt	4,444	—
Other notes payable (1)	360	—
Total debt	21,257	32,654
Unamortized debt premium (discount)	—	(3,415)
Total debt, net of debt discount	21,257	29,239
Less: current portion, net of current unamortized debt discount	(5,210)	(28,832)
Long-term debt, net of current	$ 16,047	$ 407

(1) Other notes payable relates to a one-year insurance premium that was financed over nine-months and incurred interest expense of approximately $85 thousand.

Note Payable

Securities Purchase Agreement

On March 14, 2022, the Company entered into a Securities Purchase Agreement (the "Securities Purchase Agreement") with the Investor, pursuant to which the Company agreed to issue and sell to the Investor, in a private placement transaction, in exchange for the payment by the Investor of $65.0 million, less applicable expenses, as set forth in the Securities Purchase Agreement, a senior secured promissory note in an aggregate principal amount of $65.0 million (the "SPA Note"), and a SPA Warrant to purchase up to an aggregate of 34,406 shares of Common Stock.

August 2022 Securities Exchange Agreement

On August 18, 2022, the Company reached an agreement with the Investor to amend its existing senior SPA Note and entered into the August 2022 Exchange Agreement. Pursuant to the August 2022 Exchange Agreement, the Company partially paid $35.2 million along with approximately $0.3 million in repayments for other fees under the SPA Note and exchanged the remaining balance of the SPA Note for an Exchange Note with an aggregate original principal amount of $35.0 million and a new Note Exchange Warrant to purchase 71,139 shares of Common Stock and modified an existing SPA Warrants to purchase up to an aggregate of 34,406 shares of Common Stock. The Company exchanged the SPA Warrant for new August 2022 Warrants.

The Exchange Note is a senior secured obligation of the Company and ranks senior to all indebtedness of the Company. The Exchange Note will mature on the three-year anniversary of its issuance (the "Maturity Date") and contains a 9.0% annualized interest rate, with interest to be paid monthly, in cash, beginning September 1, 2022. The principal amount of the Exchange Note will be payable on the Maturity Date, provided that the Investor will be entitled to a cash sweep of 20% of the proceeds received by the Company in connection with any equity financing, which will reduce the outstanding principal amount under the Exchange Note.

At any time, the Company may prepay all of the Exchange Note by redemption at a price equal to 102.5% of the then-outstanding principal amount under the Note plus accrued but unpaid interest. The Investor will also have the option of requiring the Company to redeem the Exchange Note on the one-year or two-year anniversaries of issuance at a price equal to the then-outstanding principal amount under the Exchange Note plus accrued but unpaid interest, or if the Company undergoes a fundamental change at a price equal to 102.5% of the then-outstanding principal amount under the Exchange Note plus accrued but unpaid interest.

The Exchange Note imposes certain customary affirmative and negative covenants upon the Company, as well as covenants that restrict the Company and its subsidiaries from incurring any additional indebtedness or suffering any liens, subject to specified exceptions, restrict the ability of the Company and its subsidiaries from making certain investments, subject to specified exceptions, restrict the declaration of any dividends or other distributions, subject to specified exceptions, require the Company not to exceed maximum levels of allowable cash spend while the Exchange Note is outstanding, and require the Company to maintain minimum amounts of cash on hand. If an event of default under the Exchange Note occurs, the Investor can elect to redeem the Exchange Note for cash equal to 115% of the then-outstanding principal amount of the Note (or such lesser principal amount accelerated by the Investor), plus accrued and unpaid interest, including default interest, which accrues at a rate per year equal to 15% from the date of a default or event of default.

Until the date the Exchange Note is fully repaid, the Investor has, subject to certain exceptions, the right to participate for up to 30% of any offering of debt, equity (other than an offering of solely Common Stock), or equity-linked securities, including without limitation any debt, preferred stock or other instrument or security, of the Company or its subsidiaries.

The Modified Warrant has an exercise price of $430.00 per share, subject to adjustment for stock splits, reverse stock splits, stock dividends and similar transactions, will be exercisable on and after the six-month anniversary of issuance, have a term of five and one-half years from the date of issuance and will be exercisable on a cash basis, unless there is not an effective registration statement covering the resale of the shares issuable upon exercise of the Modified Warrant (the "Modified Warrant Shares") or if shareholder approval for the full exercise of the Modified Warrant is not received, in which case the Modified Warrant will also be exercisable on a cashless exercise basis at the Investor's election.

The Note Exchange Warrant has an exercise price of $246.00 per share, subject to adjustment for stock splits, reverse stock splits, stock dividends, and similar transactions, were exercisable upon issuance, and have a term of five and one-half years from the date of issuance and will be exercisable on a cash basis, unless there is not an effective registration statement covering the resale of the shares issuable upon exercise of the Warrant (the "Note Exchange Warrant Shares" and, together with the Modified Warrant Shares, the "Exchange Warrant Shares") or if shareholder approval for the full exercise of the Note Exchange Warrant is not received, in which case the Note Exchange Warrant will also be exercisable on a cashless exercise basis at the Investor's election. Until the Company completed a qualified equity financing of at least $15.0 million, which requirement was satisfied with sales under the ATM Program, the Note Exchange Warrant's exercise price would have been reduced to the extent the Company issued securities, subject to certain exceptions, for a lower purchase price. The Note Exchange Warrant also prohibited the Company, until following the completion of such qualified equity financing, from issuing warrants with more favorable or preferential terms and/or provisions.

The August 2022 Warrants will each provide that in no event will the number of shares of Common Stock issued upon exercise of such warrant result in the Investor's beneficial ownership exceeding 4.99% of the Company's shares of Common Stock outstanding at the time of exercise (which percentage may be decreased or increased by the Investor, but to no greater than 9.99%, and provided that any increase above 4.99% will not be effective until the sixty-first day after notice of such request by the Investor to increase its beneficial ownership limit has been delivered to the Company).

Modification of Notes Payable

On March 8, 2023, the Company entered into a Securities Exchange Agreement (the "Exchange Agreement" or "Second Amendment") with the High Trail Special Situations LLC. Pursuant to the Exchange Agreement, at closing the Company will prepay approximately $10.3 million in principal amount under the August 2022 Note and exchange $10.0 in principal amount of the remaining balance of the August 2022 Note for a new senior secured convertible note (the "Convertible Note") with an original principal amount of $10.0 million. After the closing of the Exchange Agreement, the August 2022 Note will remain outstanding with a remaining balance of $11.7 million (the "Modified August 2022 Note" and, collectively with the Convertible Note, the "Notes").

This exchange was deemed to be an extinguishment under ASC 470, as the modified debt added a substantive conversion option that was not inherent in the August 2022 Note. As a result, the Company recognized a loss on the extinguishment of debt of approximately $4.6 million.

Convertible Notes

On March 8, 2023, as a result of the Exchange Agreement, the Company issued a Convertible Note to High Trail Special Situations LLC (the "Lender") with a principal balance of $10 million. The Convertible Note bears a 9.0% annualized interest rate, with interest to be paid monthly, in cash, beginning April 1, 2023. The principal amount of the Convertible Note will be payable on the Maturity Date, provided that the Lender will be entitled to a cash sweep of 30% of the proceeds of any at-the-market equity offering and 20% of the proceeds received by the Company in connection with any other equity financing, which will reduce the outstanding principal amount under the August 2022 Note or the Convertible Note.

At any time, the Company may prepay all of the Convertible Note by redemption at a price equal to 102.5% of the then-outstanding principal amount under the Convertible Note plus accrued but unpaid interest. The Lender will also have the option of requiring the Company to redeem the Convertible Note (i) on August 19, 2023 or August 19, 2024 at a price equal to the then-outstanding principal amount under the Convertible Note plus accrued but unpaid interest, provided that the redemption right on August 19, 2023 will not be exercisable if the Company raises at least $8.0 million in gross proceeds from equity offerings prior to such date, or (ii) if the Company undergoes a fundamental change (as defined below) at a price equal to 102.5% of the then-outstanding principal amount under the Convertible Note plus accrued but unpaid interest.

The Convertible Note will impose certain customary affirmative and negative covenants upon the Company, as well as covenants that will (i) restrict the Company and its subsidiaries from incurring any additional indebtedness or suffering any liens, subject to specified exceptions, (ii) restrict the ability of the Company and its subsidiaries from making certain investments, subject to specified exceptions, and (iii) restrict the declaration of any dividends or other distributions, subject to specified exceptions. If an event of default under the Convertible Note occurs, the Lender can elect to redeem the Convertible Note for cash equal to (A) 115% of the then-outstanding principal amount of the Convertible Note (or such lesser principal amount accelerated by the Investor), plus accrued and unpaid interest, including default interest, which accrues at a rate per annum equal to 15% from the date of a default or event of default, or, only in connection with certain events of default, (B) the greater of the amount under clause (A) or the sum of (i) 115% of the product of (a) the conversion rate in effect as of the trading day immediately preceding the date that the Lender delivers a notice of acceleration; (b) the total then outstanding principal amount under the Convertible Note (in thousands); and (c) the greater of (1) the highest daily volume weighted average price ("VWAP") per share of Common Stock occurring during the fifteen consecutive trading days ending on, and including, the trading day immediately before the date the Lender delivers such notice and (2) the highest daily VWAP per share of Common Stock occurring during the fifteen consecutive trading days ending on, and including, the trading immediately before the date the applicable event of default occurred and (ii) the accrued and unpaid interest on the Convertible Note.

Until the date the Convertible Note is fully repaid, the Lender will have, subject to certain exceptions, the right to participate for up to 30% of any offering of debt, equity (other than an offering of solely Common Stock), or equity-linked securities, including without limitation any debt, preferred stock or other instrument or security, of the Company or its subsidiaries.

If the Lender elects to convert the Convertible Note, the conversion price per share will be $0.3820, subject to customary adjustments for certain corporate events. The conversion of the Convertible Note will be subject to certain customary conditions. The Convertible Note may not be converted into shares of Common Stock if such conversion would result in the Lender and its affiliates owning an aggregate of in excess of 4.99% of the then-outstanding shares of Common Stock, provided that upon 61 days' notice, such ownership limitation may be adjusted by the Lender, but in any case, to no greater than 9.99%.

The Company evaluated the embedded features in accordance with ASC 815-15-25 and the determined embedded features are not required to be bifurcated and separately measured at fair value.

Aggregate interest expense related to the Convertible Note and Exchange Note described above was $1,840,300 as of December 31, 2023.

Note Conversion

Pursuant to the Exchange Agreement the Company entered into with High Trail Special Situations LLC on March 8, 2023, the Lender elected, on April 26, 2023, to convert $1.6 million of the remaining outstanding principal amount on the Convertible Note for 153,617 shares of Common Stock of the Company.

On May 1, 2023, the Company entered into a letter agreement with the above referenced accredited Lender (the "Letter Agreement"), pursuant to which the Company and the Lender agreed to exchange or redeem $2.0 million of the remaining outstanding principal amount under the Exchange Note for a total of 445,196 shares of Common Stock of the Company, subject to a Beneficial Ownership Limitation of 4.99% of the Company's Common Stock. Due to the Beneficial Ownership Limitation of 4.99%, a total of 69,568 shares of Common Stock of the Company were issued to the Lender, with the remaining 375,629 shares held in abeyance until the balance (or portion thereof) may be issued in compliance with such limitations. As a result, the Company recognized a loss on the redemption of approximately $12 thousand.

The total aggregated Exchange Note and Convertible Note is classified as long-term as of December 31, 2023:

Convertible Note Forgiveness

On November 30, 2023, the New Lender (defined below) agreed to forgive $1.0 million of the principal amount outstanding on the Convertible Note (the "Principal Forgiveness"). The Principal Forgiveness was accounted for as a troubled debt restructuring under ASC 470, as 1) the Company was determined to be experiencing financial difficulties as defined by the ASC, and 2) the Principal Forgiveness was deemed a concession by the New Lender. Per ASC 470-60-35-5, a debtor in a troubled debt restructuring involving only modification of terms of a payable (i.e., not involving a transfer of assets or grant of an equity interest) shall account for the effects of the restructuring prospectively from the time of restructuring and shall not change the carrying amount of the payable at the time of the restructuring unless the carrying amount exceeds the total future cash payments specified by the new terms. As the future undiscounted cash flows were greater than or equal to the net carrying value of the original debt, the carrying amount of the debt at the time of the restructuring was not changed.

Related party debt

On July 12, 2023, the Board of Directors of the Company approved the issuance of an unsecured promissory note (the "Related Party Note") in favor of GIC Acquisition, LLC ("GIC"), an entity that is owned and managed by the Company's Chairman and Chief Executive Officer. Pursuant to the Related Party Note, GIC is obligated to lend up to $0.5 million to the Company, $0.3 million of which was delivered at issuance and the remaining $0.2 million delivered on July 31, 2023. The Related Party Note bears interest at a rate of 10% per annum, will mature in full on August 6, 2023, and may be prepaid without any fee or penalty. The Related Party Note ranks junior to all existing secured indebtedness of the Company. On October 27, 2023, the maturity date of the Related Party Note was subsequently amended to December 31, 2024 at which point principal and accrued interest will be repaid in full. Interest expense incurred on the Related Party Note amounted to approximately $25 thousand for the year ended December 31, 2023. As of December 31, 2023, the Company has borrowed approximately $645 thousand under the Related Party Note agreement.

On October 27, 2023, CP Acquisitions LLC (the "New Lender" or "CP"), an entity affiliated with and controlled by the Company's Chief Executive Officer, purchased the Exchange Note and the Convertible Note from their holder (the "Note Purchase"). In connection with the Note Purchase, the New Lender has agreed to waive any events of default under the acquired notes through December 31, 2023. As part of the same transaction, the Company issued a junior secured promissory note (the "Junior Secured Note") to the New Lender. Pursuant to the Junior Secured Note, the New Lender will lend up to $3.0 million to the Company. The Junior Secured Note bears interest at a rate of 10% per annum, will mature in full on December 31, 2023, and may be prepaid without any fee or penalty. On December 4, 2023, the New Lender and the Company amended and restated the Junior Secured Note agreement. Pursuant to the terms of the amendment, the maximum principal amount that may be loaned by CP to the Company was increased to $4.0 million and extended the maturity date thereon to December 31, 2024. As of December 31, 2023, the Company has borrowed $3.8 million and incurred interest expense of approximately $253 thousand.

Paycheck Protection Program Loan

Paycheck Protection Program Loans under the Coronavirus Aid, Relief, and Economic Security Act

In May 2020, the Company entered into a PPP Loan with Bank of America pursuant to the PPP under the CARES Act administered by the SBA.

The Company received total proceeds of approximately $0.8 million from the unsecured PPP Loan, which was originally scheduled to mature on May 7, 2022. The Company applied for forgiveness on the $0.8 million of PPP loan, but forgiveness was denied by the SBA due to failure to comply with the application deadline. On June 23, 2022, the Company received a letter from Bank of America agreeing to extend the maturity date to May 7, 2025 and the loan bears interest at a rate of 1.00% per year. The PPP loan is payable in 34 equal combined monthly principal and interest payments of approximately $24 thousand that commenced on August 7, 2022.

The breakdown of PPP Loan balances by current and non-current as of December 31, 2023 and December 31, 2022 were as follows:

(In thousands)	Balance Sheet Location	December 31, 2023	December 31, 2022
PPP Loan, current	Long-term debt, current	$ 399	$ 255
PPP Loan, non-current	Long-term debt	119	401
Total PPP Loan outstanding		$ 518	$ 656

As of December 31, 2023, future minimum payments on all debt positions were as follows:

(In thousands)	Years Ended December 31,
2024	$ 5,211
2025	16,046
Total future payments	$ 21,257

Accrued interest totaled approximately $321 and $240 thousand as of December 31, 2023 and December 31, 2022, respectively.

Note 10 - Leases

The determination if any arrangement contained a lease at its inception was done based on whether or not the Company has the right to control the asset during the contract period. The lease term was determined assuming the exercise of options that were reasonably certain to occur. Leases with a lease term of 12 months or less at inception were not reflected in the Company’s balance sheet and those lease costs are expensed on a straight-line basis over the respective term. Leases with a term greater than 12 months were reflected as non-current right-of-use assets and current and non-current lease liabilities in the Company’s consolidated balance sheets.

As the implicit interest rate in its leases was generally not known, the Company’s used its incremental borrowing rate as the discount rate for purposes of determining the present value of its lease liabilities. At December 31, 2023 and 2022, the Company’s weighted-average discount rate utilized for its leases was 7.51% and 7.29%, respectively.

When a contract contained lease and non-lease elements, both were accounted for as a single lease component.

The Company had several non-cancelable finance leases for machinery and equipment. As of December 31, 2023 the Company had no active finance leases.

The Company had several non-cancellable operating leases for corporate offices, warehouses, showrooms, research and development facilities and vehicles. The Company’s leases have remaining lease terms of one year to five years, some of which include options to extend. Some leases include payment for communal area maintenance associated with the property.

Additional information on the Company's operating and financing lease activity was as follows:

(In thousands)	Year Ended December 31, 2023	2022
Operating lease cost	$ 838	$ 1,119
Finance lease cost:		
Amortization of right-of-use assets	113	194
Interest on lease liabilities	12	32
Total lease cost	$ 964	$ 1,345

(In thousands)	Year Ended December 31, 2023	2022
Weighted-average remaining lease term – operating leases	3.09 years	3.59 years
Weighted-average remaining lease term – finance leases	0 years	2.30 years
Weighted-average discount rate – operating leases	7.51%	6.76%
Weighted-average discount rate – finance leases	—%	7.83%

(In thousands)	Balance Sheet Location	December 31, 2023	December 31, 2022
Assets			
Right-of-use assets, net	Right-of-use, net	$ 1,803	$ 2,210
Finance lease assets	Property and equipment, net	—	261
Total lease assets		$ 1,803	$ 2,471
Liabilities			
Operating lease liabilities, current	Operating lease liabilities, current	$ 599	$ 734
Operating lease liabilities, non-current	Operating lease liabilities, non-current	1,394	1,587
Total operating lease liabilities		$ 1,993	$ 2,321
Finance lease liabilities, current	Accrued expenses and other current liabilities	$ —	$ 152
Finance lease liabilities, non-current	Other non-current liabilities	—	146
Total finance lease liabilities		$ —	$ 298

Maturities of operating and finance lease liabilities as of December 31, 2023 are as follows:

Years ending December 31 (In thousands),	Operating lease
2024	$ 727
2025	748
2026	560
2027	202
Total minimum lease payments	2,237
Less imputed interest	(244)
Total lease liabilities	$ 1,993

Note 11 — Stockholders' Equity

On July 11, 2022, the Company increased its authorized number of shares to 8,000,000, consisting of: 5,000,000 shares of Common Stock, par value $0.001 per share and 3,000,000 shares of preferred stock, par value $0.001 per share. On January 9, 2020, the Company designated 105,000 shares of the 3,000,000 authorized shares of Preferred Stock, as Series A Convertible Preferred Stock ("Series A Preferred Stock").

On March 1, 2023, the Company further increased its authorized number of shares to 13,000,000, consisting of: 10,000,000 shares of Common Stock, par value $0.001 per share and 3,000,000 shares of preferred stock, par value $0.001 per share.

Private Placement

On January 25, 2022, the Company entered into a Securities Purchase Agreement (the "Securities Agreement") with an institutional investor and other accredited investors for the sale by the Company of 12,253 shares (the "SA Shares") of Common Stock, pre-funded warrants (the "Pre-Funded Warrants") to purchase up to an aggregate of 7,853 shares of Common Stock and warrants to purchase up to an aggregate of 15,079 shares of Common Stock (the "Common Warrants" and, collectively with the Pre-Funded Warrants, the "SA Warrants"), in a private placement offering. The combined purchase price for one share of Common Stock (or one Pre-Funded Warrant) and the accompanying fraction of a Common Warrant was $1,360.00 per share.

Subject to certain ownership limitations, the SA Warrants are exercisable six months from issuance. Each Pre-Funded Warrant was exercisable into one share of Common Stock (as adjusted from time to time in accordance with the terms thereof). Each Common Warrant is exercisable into one share of Common Stock at a price per share of $1,496.00 (as adjusted from time to time in accordance with the terms thereof) and will expire on the fifth anniversary of the initial exercise date. The institutional investor that received the Pre-Funded Warrants fully exercised such warrants in March 2022.

Raymond Chang, Chairman and Chief Executive Officer ("CEO") of the Company, and Stuart Wilcox, who formerly served as our Chief Operating Officer, and at the time he was a member of the Company's Board of Directors, participated in the private placement on essentially the same terms as other investors, except for having a combined purchase price of $1,380.00 per share.

The gross proceeds to the Company from the private placement were approximately $27.3 million, before deducting the placement agent's fees and other offering expenses, and excluding the proceeds, if any, from the exercise of the SA Warrants.

Issuance of Common Stock in Connection with Acquisitions

On October 1, 2021, the Company issued an aggregate of 3,332 shares of its Common Stock to the Precision and Cascade shareholders in connection with the Company's acquisition of Precision and Cascade. On August 17, 2022, the Company issued an additional 435 shares of its Common Stock to the Precision and Cascade shareholders for contingent liabilities.

On December 31, 2021, the Company issued an aggregate of 1,202 shares of its Common Stock to the PurePressure shareholders in connection with the Company's acquisition of PurePressure. On January 31, 2023, the remaining 372 Holdback Buyer Shares were released, including 6 Holdback Buyer Shares that were withheld to cover a tax indemnification claim in accordance with the Purchase Agreement.

On February 1, 2022, the Company issued an aggregate of 1,491 shares of its Common Stock to the Lab Society shareholders in connection with the Company's acquisition of Lab Society. On April 28, 2023, the Company issued the remaining 499 Holdback Buyer Shares to the Lab Society Owners in accordance with the Lab Society Merger Agreement.

At The Marketing Offering

On October 18, 2022, the Company entered into the ATM Program with the Agent pursuant to which it may issue and sell, from time to time, shares of its Common Stock having an aggregate offering price of up to $50 million, depending on market demand, with the Agent acting as an agent for sales. The ATM Program allowed the Company to sell shares of Common Stock pursuant to specific parameters defined by the Company as well as those defined by the SEC and the ATM Program agreement. As of December 31, 2022, the Company sold 306,628 shares of Common Stock, under the ATM at an average price of $50.85 per share, resulting in gross proceeds of $15.6 million, and net proceeds of $15.0 million after commissions and fees to the Agent totaling $0.5 million and legal fees totaling $0.1 million. $3.0 million of the proceeds under the ATM Program were used to repay amounts due to the Investor under the Exchange Note. The Company used net proceeds generated from the ATM Program for working capital and general corporate purposes, including repayment of indebtedness, funding its transformation initiatives and product category expansion efforts and capital expenditures. Due to the late filing of this Annual Report on Form 10-K, the Company is no longer eligible to utilize the registration statement on Form S-3 relating to the ATM Program, and does not anticipate any further sales under the ATM Program in the foreseeable future.

Confidentially Marketed Public Offering

On December 16, 2022, the Company issued 594,232 shares of its Common Stock, Pre-Funded 2022 Warrants to purchase 75,000 shares of its Common Stock and accompanying December 2022 Warrants to purchase 1,338,471 shares of the Company's Common Stock. The Company received net proceeds from the Offering of approximately $8.2 million, after deducting underwriting discounts and commissions and estimated expenses. The Company intends to use the net proceeds from the Offering, together with its existing cash resources, for working capital and general corporate purposes, which may include capital expenditures and repayment of debt.

The Pre-Funded 2022 Warrants were exercisable immediately upon issuance at an exercise price of $0.001 per share and do not have an expiration date. The December 2022 Warrants were exercisable immediately and have a term of exercise equal to five years from the initial exercise date at an exercise price of $13.00 per share. The offering price for the securities was $13.00 per share (or $12.98 for each Pre-Funded 2022 Warrant).

The December 2022 Warrants may not be exercised by the holder to the extent that the holder, together with its affiliates, would beneficially own, after such exercise more than 4.99% of the shares of the Company's Common Stock then outstanding (subject to the right of the holder to increase or decrease such beneficial ownership limitation upon notice to the Company, provided that such limitation cannot exceed 9.99%) and provided that any increase in the beneficial ownership limitation shall not be effective until the sixty-first day after such notice is delivered.

The Pre-Funded 2022 Warrants were classified as a component of permanent equity and the December 2022 Warrants were liability-classified and were recorded at the issuance date using a relative fair value allocation method. The Pre-Funded 2022 Warrants are equity-classified because they are freestanding financial instruments that are legally detachable and separately exercisable from the equity instruments, are immediately exercisable, and permit the holders to receive a fixed number of shares of Common Stock upon exercise. In addition, such warrants do not provide any guarantee of value or return. The December 2022 Warrants are liability-classified as there is a volatility floor and these warrants are not indexed to the Company's own stock.

As of December 31, 2023 and 2022, the Company valued the December Warrants using the Black-Scholes option-pricing model and determined the fair value at $1.3 million and $5.9 million, respectively. The key inputs to the valuation model included the annualized volatility of 98.0% and the expected term of about 5 years.

Raymond Chang, Chairman and CEO, participated in the Offering and purchased 115,385 shares of Common Stock and 230,769 December 2022 Warrants for an aggregate purchase price of approximately $1.5 million.

Additional information regarding the Company's December 2022 Warrants may be found in Note 1 – Overview, Basis of Presentation, and Significant Accounting Policies and Note 4 – Fair Value Measures, included elsewhere in the notes to the consolidated financial statements.

Mack Warrants

In October 2023, the Company issued 750,000 warrants to Mack Molding Co. in conjunction with the Modification and Settlement Agreement (the "Mack Warrants"). The warrants have a three-year term and an exercise price of $4.00 per share, and are subject to adjustment for stock splits, reverse stock splits, stock dividends, and similar transactions. The warrants will be exercisable on a cash basis, unless there is not an effective registration statement covering the resale of the shares issuable upon exercise of the warrants or if shareholder approval for the full exercise of the warrants are not received, in which case the Modified Warrant will also be exercisable on a cashless exercise basis at the Investor's election.

The measurement of fair value of the Mack Warrants were determined utilizing a Black-Scholes model considering all relevant assumptions current at the date of issuance (i.e., share price of $2.79, exercise price of $4.00, term of three years, volatility of 138%, risk-free rate of 5.03%, and expected dividend rate of 0%). The grant date fair value of these Investor Warrants was estimated to be $1.6 million on October 18, 2023 and is reflected within additional paid-in capital as of December 31, 2023.

Warrant Issuance

On October 27, 2023, as a condition precedent to the Note Purchase, the Company entered into a letter agreement (the "October Letter Agreement") with the holder of the Exchange Note and the Convertible Note. Pursuant to the agreement, the Company agreed to exchange $3.0 million in principal, approximately $95,000 in unamortized debt premium, and approximately $1.1 million in accrued but unpaid interest outstanding under the Exchange Note for a warrant to purchase 2,809,669 shares of common stock (the "Exchange Warrant"). Additionally, the Company agreed to exchange the 375,629 shares of common stock held in abeyance for the Investor under the terms of the Letter Agreement for a warrant to purchase 375,629 shares of common stock (the "Abeyance Warrant"). The Company concluded that the Exchange Warrant and the Abeyance Warrant are both equity classified at issuance and recorded within additional paid-in capital in the accompanying consolidated balance sheet. The Company recognized the Exchange Warrant and Abeyance Warrant at fair value at issuance in the amounts of $3.9 million and $0.4 million, respectively. Resulting from the exchange within the October Letter Agreement, the Company recognized a gain on debt extinguishment of $320,125 included within the accompanying consolidated statement of operations for the year ended December 31, 2023.

Each warrant has an exercise price of $0.001 per share, was exercisable upon issuance, has a term of five years from the date of issuance and is exercisable on a cash basis or on a cashless exercise basis at the holder's election.

The Exchange Warrant provides that in the event that Raymond Chang or his affiliates acquire securities from the Company, exercise convertible securities or amend the terms of convertible securities at a purchase or conversion price lower than $1.46, then the number of shares of common stock underlying Exchange Warrant will be increased to an amount equal to $3.0 million divided by such purchase or conversion price, subject to proportional adjustment in the event the Exchange Warrant has been partially exercised. Additionally, in the event that the Company has not issued equity securities in exchange for gross proceeds of at least $3.0 million to Mr. Chang or his affiliates (subject to certain offsets) by the third calendar day after the date when the Company receives stockholder approval, then on December 26, 2023, the number of shares of common stock underlying Exchange Warrant will be increased to an amount equal to $3.0 million divided by the Minimum Price as defined under Nasdaq listing rules, subject to proportional adjustment in the event the Exchange Warrant has been partially exercised.

The Letter Agreement requires that the Company issue equity securities to Mr. Chang or his affiliates for aggregate gross proceeds of at least $3.0 million, minus any funds advanced by Mr. Chang to the Company since July 1, 2023.

Note 12 — Stock-Based Compensation and Employee Benefit Plans

2022 Omnibus Equity Incentive Plan

On April 29, 2022, the Company's Board of Directors, and on June 8, 2022, the Company's stockholders, adopted and approved the 2022 Omnibus Equity Incentive Plan (the "2022 Plan"), which replaced the 2020 Stock Option Plan (the "2020 Plan"). The 2022 Plan provides for the grant of stock options, stock appreciation right awards, performance share awards, restricted stock awards, restricted stock unit awards, other stock-based awards and cash-based awards. The aggregate number of shares of Common Stock that may be reserved and available for grant and issuance under the 2022 Plan is 26,483 shares, which includes the 10,000 shares authorized under the 2022 Plan, plus the rollover of 16,483 issued and outstanding awards under the 2020 Plan. Shares will be deemed to have been issued under the 2022 Plan solely to the extent actually issued and delivered pursuant to an award. If any award granted under the 2020 Plan or the 2022 Plan expires, is canceled, terminates unexercised or is forfeited, the number of shares subject thereto is again available for grant under the 2022 Plan. The 2022 Plan shall continue in effect, unless sooner terminated, until the tenth anniversary of the date on which it is adopted by the Board of Directors. As of December 31, 2023, there were 10,310 shares of Common Stock available to be granted under the Company's 2022 Plan.

The Company's stock compensation expense was $2.7 million and $4.3 million for the year ended December 31, 2023 and 2022, respectively.

Stock Options

Stock options granted under the Company's 2022 Plan are generally non-qualified and are granted with an exercise price equal to the market price of the Company's Common Stock on the date of grant. The fair value of each option grant was estimated on the date of the grant using the Black-Scholes option-pricing model. This model incorporates certain assumptions for inputs including a risk-free market interest rate, expected dividend yield of the underlying Common Stock, expected option life, and expected volatility in the market value of the underlying Common Stock. No stock options were granted during the years ended December 31, 2023 and 2022.

The Black-Scholes option-pricing model was developed for use in estimating the fair value of traded options, which have no vesting restrictions and are fully transferable. In addition, option valuation models require the input of highly subjective assumptions including the expected stock price volatility. The risk-free interest rate is based upon quoted market yields for United States Treasury debt securities with a term similar to the expected term. The expected dividend yield is based upon the Company's history of having never issued a dividend and management's current expectation of future action surrounding dividends. The Company calculates the expected volatility of the stock price based on the corresponding volatility of the Company's peer group stock price for a period consistent with the underlying instrument's expected term. The expected lives for such grants were based on the simplified method for employees and directors.

In arriving at stock-based compensation expense, the Company estimates the number of stock-based awards that will be forfeited due to employee turnover. The Company's forfeiture assumption is based primarily on its employee turnover historical experience. If the actual forfeiture rate is higher than the estimated forfeiture rate, then an adjustment will be made to increase the estimated forfeiture rate, which will result in a decrease to the expense recognized in the Company's consolidated financial statements. If the actual forfeiture rate is lower than the estimated forfeiture rate, then an adjustment will be made to lower the estimated forfeiture rate, which will result in an increase to expense recognized in the Company's consolidated financial statements. The expense the Company recognizes in future periods will be affected by changes in the estimated forfeiture rate and may differ significantly from amounts recognized in the current period.

The following table presents option activity under the Company's stock option plans for the years ended December 31, 2023 and 2022:

(In thousands, except share and per share data)	Number of Options	Weighted-Average Exercise Price	Aggregate Intrinsic Value
Options outstanding at January 1, 2021	17,822	$ 1,436.00	$ 62.64
Exercised	(43)	458.42	
Forfeited	(2,363)	1,018.82	
Expired	(1,977)	1,394.70	
Options outstanding at December 31, 2022	13,439	$ 1,518.05	$ —
Forfeited	(217)	7.61	
Expired	(2912)	52.85	
Options outstanding at December 31, 2023	10,310	$ 1,595.92	$ —
Options vested and exercisable as of December 31, 2023	9,962	$ 1,567.14	
Options vested and expected to vest as of December 31, 2023	10,310	$ 1,595.92	

As of December 31, 2023, total unrecognized compensation expense related to unvested options under the Company's 2022 Plan was $0.4 million, which is expected to be recognized over a weighted average period of 0.2 years.

The following table summarizes information about options vested and exercisable at December 31, 2023:

	Options Vested and Exercisable		
Price ($)	Number of Options	Weighted-Average Remaining Contractual Life (Years)	Weighted-Average Exercise Price
$ 456.00	2,884	4.50	$ 456.00
$ 972.00	2,839	4.71	$ 972.00
$ 1,536.00	45	6.42	$ 1,536.00
$ 1,840.00	160	8.01	$ 1,840.00
$ 2,768.00	4,034	6.88	$ 2,768.00

The following table summarizes information about options expected to vest after December 31, 2023:

	Options Vested and Expected to Vest		
Price ($)	Number of Options	Weighted-Average Remaining Contractual Life (Years)	Weighted-Average Exercise Price
$ 456.00	2,884	4.50	$ 456.00
$ 972.00	2,856	4.71	$ 972.00
$ 1,536.00	50	6.42	$ 1,536.00
$ 1,840.00	250	8.01	$ 1,840.00
$ 2,768.00	4,270	6.88	$ 2,768.00

Restricted Stock Units

Under the 2022 Plan, the Company may grant restricted stock units to employees, directors and officers. The restricted stock units granted generally vest equally over periods ranging from one to three years. The fair value of restricted stock units is determined based on the closing market price of the Company's Common Stock on the date of grant. Compensation expense related to the restricted stock units is recognized using a straight-line attribution method over the vesting period.

On November 28, 2023, the Company granted an aggregate of 1,774,409 restricted stock units pursuant to its 2022 Plan to its officers, directors and employees. The vesting of the RSUs is subject to future shareholder approval of an amendment to the Plan to increase the shares available for issuance thereunder by an amount that is sufficient for issuance of the underlying shares.

The following table presents restricted stock unit activity under the 2022 Plan for the year ended December 31, 2023:

	Number of Shares	Weighted-Average Grant Date Fair Value
Unvested at December 31, 2021	—	$ —
Granted	9,440	252.40
Vested	(1,249)	365.66
Forfeited	(500)	302.41
Unvested at December 31, 2022	7,691	$ 230.75
Vested	(2,413)	230.80
Forfeited	(3,142)	230.80
Unvested at December 31, 2023	2,136	$ 230.80

As of December 31, 2023, total unrecognized compensation expense related to unvested restricted stock units was $0.4 million, which is expected to be recognized over a weighted average period of 1.67 years.

2022 Employee Stock Purchase Plan

On April 29, 2022, the Company's Board of Directors, and on June 8, 2022, the Company's stockholders, adopted and approved the 2022 Employee Stock Purchase Plan ("ESPP"). The Company has initially reserved 2,500 shares of Common Stock for issuance under the ESPP. On December 31, 2023, 2,500 shares were available for future issuance.

Under the ESPP, eligible employees are granted options to purchase shares of Common Stock at the lower of 85% of the fair market value of the stock at the time of grant or 85% of the fair market value at the time of exercise. Options to purchase shares are granted twice yearly on or about August 1 and February 1 and are exercisable on or about the succeeding January 31 and July 31, respectively, of each year. No participant may purchase more than $25,000 worth of Common Stock annually. No Common Stock was granted under the 2022 ESPP during the year ended December 31, 2023.

Employee Benefit Plan

The Company maintains an employee's savings and retirement plan under Section 401(k) of the Internal Revenue Code (the "401(k) Plan"). All full-time U.S. employees become eligible to participate in the 401(k) Plan. The Company's contribution to the 401(k) Plan is discretionary. During the year ended December 31, 2023 and 2022, the Company did not contribute to the 401(k) Plan.

Note 13 — Stock Warrants

The following tables present all warrant activity of the Company for the year ended December 31, 2023 and 2022:

	Number of Warrants	Weighted-Average Exercise Price
Warrants outstanding at December 31, 2021	1,360	$ 4.00
Issued	1,541,937	38.57
Exercised	(10,296)	47.97
Canceled	(3,000)	246.00
Warrants outstanding at December 31, 2022	1,530,001	$ 38.07
Issued	3,935,298	0.01
Exercised	(84,962)	0.00
Forfeited	(38)	0.00
Warrants outstanding at December 31, 2023	5,380,299	$ 10.83

The Company received proceeds from the exercise of cashless warrants of $0 and $2 thousand for the for the years ended December 31, 2023, and 2022, respectively.

Note 14 — Income Taxes

For financial reporting purposes, the net pre-tax book income and/or loss for the U.S. and foreign entities, in the aggregate, was:

(In thousands)	**December 31, 2023**	**December 31, 2022**
United States	(18,690)	(188,613)
Foreign	—	
Total	(18,690)	(188,613)

Income tax expense consisted of the following for the years ended December 31, 2023 and December 31, 2022:

(In thousands)	December 31, 2023	December 31, 2022
Current:		
Federal	$ —	$ —
State	2	—
Foreign	—	—
Subtotal	2	—
Deferred:		
Federal	—	(10)
State	—	(13)
Foreign	—	—
Subtotal	—	(23)
Total	$ 2	$ (23)

The reconciliation between the Company's effective tax rate on income from continuing operations and the statutory tax rate for the years ended December 31, 2023 and December 31, 2022 is as follows:

(In thousands)	December 31, 2023	December 31, 2022
Current tax at U.S. statutory rate	$ (3,925)	$ (39,609)
Nondeductible/nontaxable items	(336)	7,423
State taxes	(458)	(5,951)
Rate change	1,613	47
Foreign operations	—	—
True-up and other	2,621	(814)
Valuation allowance	487	38,881
Income tax expense	$ 2	$ (23)

Deferred income taxes reflect the net tax effects of temporary differences between carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for income tax purposes. Realization of net deferred tax assets is dependent upon future earnings, if any, the timing and amount of which are uncertain.

The following items comprise the Company's net deferred tax assets and liabilities as of December 31, 2023 and December 31, 2022:

(In thousands)	December 31, 2023	December 31, 2022
Deferred tax assets :		
Net operating loss carryforward	$ 35,491	$ 24,295
Accruals, reserves, and other	11,559	20,082
Stock-based compensation	706	1,578
Research and development tax credit carryforward	—	1,260
Lease liability	464	577
Fixed assets	246	68
Intangible assets	3,104	3,534
Capitalized sec. 174 R&E	2,068	1,937
Credits	—	—
Total Deferred Tax Asset	53,638	53,331
Valuation allowance	(53,219)	(52,730)
Deferred income tax assets, net of VA	419	601
Deferred tax liabilities:		
Prepaid Expenses	—	(52)
Depreciation	—	
Right-of-Use Asset	(419)	(549)
Amortization		
Total Deferred Tax Liability	(419)	(601)
Net Deferred Tax Asset/(Liability)	$ —	$ —

The Company continually evaluates the likelihood of the realization of deferred tax assets and adjusts the carrying amount of the deferred tax assets by the valuation allowance to the extent the future realization of the deferred tax assets is more likely than not. The Company considers many factors when assessing the likelihood of future realization of its deferred tax assets, including its recent cumulative earnings experience by taxing jurisdiction, expectation of future taxable income or loss, the carryforward periods available to the Company for tax reporting purposes, and other relevant factors.

As of December 31, 2023, based on the Company's history of earnings and its assessment of future earnings, management believes that it is more likely than not that future taxable income will not be sufficient to realize the deferred tax assets. Therefore full valuation allowance has been applied to deferred tax assets.

Effective for tax years beginning after December 31, 2021, taxpayers are required to capitalize any expenses incurred that are considered incidental to research and experimentation (R&E) activities under IRC Section 174. While taxpayers historically had the option of deducting these expenses under IRC Section 174, the December 2017 Tax Cuts and Jobs Act mandates capitalization and amortization of R&E expenses for tax years beginning after December 31, 2021. Expenses incurred in connection with R&E activities in the US must be amortized over a 5-year period if incurred, and R&E expenses incurred outside the US must be amortized over a 15-year period. R&E activities are broader in scope than qualified research activities that are considered under IRC Section 41 (relating to the research tax credit).

For the year ended December 31, 2023, the Company performed an analysis based on available guidance and determined that it will not impact (increase) taxable income. The Company will continue to monitor this issue for future developments and its impact on taxable income.

As of the year ended December 31, 2023, the Company has federal and state net operating loss carryforwards of approximately $144.2 million and $87.7 million respectively. Federal net operating loss carryforwards in the amount of $0.7 million begin expiring in 2036 and approximately $143.5 million have an indefinite life. Federal NOL carryforwards generated after tax year 2021 are subject to an 80% limitation on taxable income, do not expire and will carryforward indefinitely. State net operating loss carryforwards in the amount of $82.3 million begin expiring in 2039 and approximately $5.4 million have an indefinite life.

The utilization of the Company's net operating losses may be subject to a U.S. federal limitation due to the "change in ownership provisions" under Section 382 of the Internal Revenue Code and other similar limitations in various state jurisdictions. Such limitations may result in a reduction of the amount of net operating loss carryforwards in future years and possibly the expiration of certain net operating loss carryforwards before their utilization.

(In thousands)	**December 31, 2023**
Jurisdiction	**NOL Available**
Federal	675
Federal - Indefinite	143,552
Subtotal - Federal	144,227
State	85,245
State - Indefinite	8,038
Subtotal - Federal	93,283
Foreign	—
Foreign - Indefinite	—
Subtotal - Foreign	—

The Company files tax returns as prescribed by the tax laws of the jurisdictions in which it operates. In the normal course of business, the Company is subject to examinations by federal, foreign, and state and local jurisdictions, where applicable. There are currently no pending tax examinations. The Company's tax years are still open under statute from 2018 to the present in the U.S. and from 2016 to present in the Company's foreign operations. To the extent the Company has tax attribute carryforwards, the tax years in which the attribute was generated may still be adjusted upon examination by the Internal Revenue Service and state and local tax authorities to the extent utilized in a future period.

The Company is also subject to certain non-income taxes such as value added taxes, sales taxes, and property taxes. The Company has taken certain positions that management feels, although not free from doubt, should not result in a successful challenge by certain tax authorities.

As required by the uncertain tax position guidance in ASC No. 740, Income Tax the Company recognizes the financial statement benefit of a tax position only after determining that the relevant tax authority would more likely than not sustain the position following an audit. For tax positions meeting the more-likely-than-not threshold, the amount recognized in the financial statements is the largest benefit that has a greater than 50% likelihood of being realized upon ultimate settlement with the relevant tax authority. The Company applied the uncertain tax position guidance in ASC No. 740, Accounting for Income to all tax positions for which the statute of limitations remained open. Any estimates of tax contingencies contain assumptions and judgments about potential actions by taxing jurisdictions. Any interest and penalties related to uncertain tax positions would be included as part of the income tax provision.

The Company's conclusions regarding uncertain tax positions may be subject to review and adjustment at a later date based upon ongoing analysis of or changes in tax laws, regulations and interpretations thereof as well as other factors.

On August 16, 2022, the Inflation Reduction Act of 2022 (the "IRA") was enacted and signed into law. Regarded as the reduced version of the proposed Build Back Better Act, the IRS contains two main corporate income tax provisions, including a 15% minimum tax on the average annual adjusted financial statement income of corporations with profits over $1 billion over a three-year period, as well as a 1% excise tax on the corporate stock buybacks by domestic publicly traded corporations. The Company is currently evaluating the impact of the IRA on its financial statements for tax year 2023 but does not expect a material impact to the Company's tax position.

Note 15 — Net Loss Per Share

Net loss per share calculations for all periods have been adjusted to reflect the Company's reverse stock splits. Net loss per share was calculated based on the weighted-average number of the Company's Common Stock outstanding.

Basic net loss per share is calculated using the weighted-average number of Common Stock outstanding during the periods. Diluted net loss per share is computed by giving effect to all potential shares of Common Stock, including outstanding stock options, stock related to unvested restricted stock units, and outstanding warrants to the extent dilutive. Net loss per share, assuming dilution, is equal to basic net loss per share because the effect of dilutive securities outstanding during the periods, including options and warrants computed using the treasury stock method, is anti-dilutive.

The components of basic and diluted net loss per share were as follows:

	Year Ended December 31,	
(In thousands, except share and per share data)	**2023**	**2022**
Numerator:		
Net loss available for common shareholders	$ (18,649)	$ (188,173)
Denominator:		
Weighted-average common shares outstanding – basic and diluted	1,490,871	208,573
Net loss per share attributable to Common Stockholders – basic and diluted	$ (12.51)	$ (902.19)

The Company's potential dilutive securities, which include stock options, restricted stock units, and warrants, have been excluded from the computation of diluted net loss per share as the effect would be to reduce the net loss per share. Therefore, the weighted-average number of Common Shares outstanding used to calculate both basic and diluted net loss per share attributable to Common Stockholders is the same. The Company excluded the following potential Common Stock equivalents presented based on amounts outstanding at each period end, from the computation of diluted net loss per share attributable to Common Stockholders for the periods indicated because including them would have had an anti-dilutive effect:

	Year Ended December 31,	
	2023	**2022**
Shares subject to outstanding stock options	9,962	13,439
Shares subject to unvested restricted stock units	2,136	7,691
Shares subject to outstanding warrants	5,380,299	1,530,001
	5,392,397	1,551,131

Note 16 — Commitments and Contingencies

Legal Matters

From time to time, we may become involved in material legal proceedings or be subject to claims arising in the ordinary course of our business. However, litigation is subject to inherent uncertainties, and an adverse result in these or other matters may arise from time to time that may harm our business.

Bud & Mary's Litigation

On September 15, 2022, the Company provided a notice of default to Bud & Mary's and certain related parties notifying such parties that Bud & Mary's was in default of its obligations under the Bud & Mary TTK Agreement. On October 5, 2022, Bud & Mary's filed a complaint in the Superior Court of Massachusetts in Suffolk County, naming the Company as the defendant. Bud & Mary's is seeking, among other relief, monetary damages in connection with alleged unfair or deceptive trade practices, breach of contract and conversion arising from the Agreement. While the Company believes the claim is without merit and will continue to vigorously defend itself against Bud & Mary's allegations, litigation is inherently unpredictable and there can be no assurance that the Company will prevail in this matter. During the third quarter of 2022, the Company deemed it necessary to fully reserve for the outstanding $14.7 million note receivable balance due to the current litigation and the uncertainty of the customer's ability to repay the balance. The $14.7 million represents the amount of the contingent loss that the Company has determined to be reasonably possible and estimable. The actual cost of resolving this matter may be higher or lower than the amount the Company has reserved. If the Company is unable to realize revenue from its TTK Solution offerings on a timely basis or at all, or if it incurs an additional loss as a result of the Bud & Mary's claim, the Company's business and financial performance will be adversely affected. On November 14, 2022, the Company filed its answers and affirmative defenses to the Bud & Mary's complaint and counterclaims. The Company is seeking, among other relief, monetary damages in connection with the breach of contract, breach of the implied covenant of good faith and fair dealing, unjust enrichment, and enforcement of the guarantees. Bud & Mary's is permitted to file an amended complaint, and Agrify will be permitted to make responsive filings, which may include an answer and counterclaim.

Bowdoin Construction Corp. Litigation

On February 22, 2023, Bowdoin Construction Corp. ("Bowdoin") filed a complaint (the "Bowdoin Complaint") in the Superior Court of Massachusetts in Norfolk County naming the Company, Bud & Mary's and certain related parties as defendants, captioned Bowdoin Construction Corp. v. Agrify Corporation, Bud & Mary's Cultivation, Inc. and BMLC2, LLC, case no. 2382CV00173. The Bowdoin Complaint relates to a construction contract between Bowdoin and the Company relating to the property that is the subject of the Bud & Mary's Complaint, and alleges breach of contract by Bud & Mary's and by the Company due to nonpayment of approximately $6.3 million due under the contract and related indemnification claims and mechanics' liens. The Company is entitled to indemnification by Bud & Mary's and intends to vigorously defend this claim.

Mack Molding Co.

In December 2020, the Company entered into a five-year supply agreement with Mack Molding Co. ("Mack") pursuant to which Mack will become a key supplier of VFUs. In February 2021, the Company placed a purchase order with Mack amounting to approximately $5.2 million towards the initial production of VFUs during 2021. Since February 2021, the Company increased the purchase order with Mack to approximately $26.5 million towards production of VFUs during 2021 and 2022. The Company believed the supply agreement with Mack would provide the Company with increased scaling capabilities and the ability to meet the potential future demand of its customers more efficiently. The supply agreement contemplates that, following an introductory period, the Company will negotiate a minimum percentage of the VFU requirements that the Company will purchase from Mack each year based on the agreed-upon pricing formula. The introductory period is not time-based but rather refers to the production of an initial number of units after which the parties have rights to adjust pricing and negotiate a certain minimum requirements percentage. The Company believed this approach would result in both parties making a more informed decision with respect to the pricing and other terms of the supply agreement with Mack. On October 11, 2022, the Company received a $9.4 million invoice from Mack for inventory purchased on the Company's behalf to build VFUs. As part of the terms of the contract manufacturing agreement, Mack had the contractual right to bill the Company for any inventory that had aged greater than nine months. Due to the slowdown in the demand for the VFUs and the lack of a demand forecast that the Company could provide to the vendor, Mack exercised the right to invoice the Company for the slow-moving inventory. As of December 31, 2022, the Company owed Mack $8.4 million for purchased inventory on behalf of the Company to produce VFUs, which is included in accounts payable in the consolidated balance sheet. On March 2, 2023, Mack filed an arbitration action seeking the amounts owed to Mack for purchased inventory. On October 27, 2023, and effective as of October 18, 2023, Mack and the Company entered into a Modification and Settlement Agreement (the "Modification Agreement")with respect to the dispute.

The Modification Agreement requires the Company to make payments of $500,000 and $250,000 to Mack on or before November 1, 2023 and February 15, 2024, respectively. The Company has made the first of these two payments in the amount of $500,000. Following the November 1, 2023 payment, the Company is entitled to take possession of certain VFUs that were assembled under the Supply Agreement. The Modification Agreement also requires the Company to purchase from Mack a minimum of 25 VFUs per quarter for each quarter during 2024 and a minimum of 50 VFUs per quarter for the six quarters beginning with the first quarter of 2025. The Company is required to pay a storage fee of $25,000 per month for VFUs subject to the Modification Agreement.

TRC Electronics Litigation

The Company was named as a defendant in a complaint filed by TRC Electronics, Inc. (“TRC”) on April 13, 2023 in the United States District Court for the Eastern District of Pennsylvania. In the Complaint, TRC asserts two causes of action against the Company: (1) breach of contract, and (2) promissory estoppel. TRC’s claims are based on allegations that the Company failed to make payments due under three purchase orders for commercial electronics parts. TRC seeks damages in the amount of $565,210, plus attorneys’ fees, costs, and post-judgment interest. The Company has filed an answer denying liability on TRC’s claims and is proceeding with discovery.

Sinclair Scientific Litigation

On June 15, 2023, the Company and its wholly-owned subsidiary Precision Extraction Newco, LLC (“Precision”), filed an Amended Verified Complaint in the Court of Chancery of the State of Delaware against Sinclair Scientific, LLC (“Sinclair”) and certain individual defendants (the “Delaware Action”). The claims filed in the Delaware Action concern various breaches of the Plan of Merger and Equity Purchase Agreement dated September 29, 2021, by and between the Company, Sinclair, Mass2Media, LLC, and certain of their members (the “Merger Agreement”). In response to the Delaware Action, certain of the defendants filed counterclaims for breach of contract and declaratory judgment against the Company and Precision alleging breach of the Merger Agreement. Pursuant to a Settlement and Release Agreement, dated December 14, 2023, the Company and Sinclair dismissed all legal claims and entered into a settlement for an undisclosed amount.

Other Litigation

In September 2023, the Company settled a legal dispute with a specific customer which resulted in the recognition of a gain of approximately $0.9 million, of which $0.3 million was paid in October 2023, with the remaining approximate $0.6 million to be paid in equal monthly installments, beginning in January, 2024. This gain was recognized as part of other income, net per the consolidated statement of operations for the year ended December 31, 2023, with the approximate $0.9 million receivable balance recognized as part of prepaid expenses and other current assets, per the consolidated balance sheet, as of December 31, 2023. The settlement also resulted in the return of equipment to the Company in October 2023.

In addition to the above, the Company entered into several additional vendor settlement agreements during the year ended December 31, 2023, which resulted in an aggregate gain being recognized for the year ended December 31, 2023, and a corresponding reduction in accounts payable owing by the Company, as of December 31, 2023, of approximately $1 million.

Commitments

Committed Purchase Agreement with Related Party – Ora Pharm

In June 2022, the Company entered into an agreement with Ora Pharm (“Ora”) pursuant to which Ora will purchase approximately $1.6 million in equipment from the Company, and Ora may purchase software services from the Company in the future. Stuart Wilcox, the Company’s former Chief Operating Officer, is the Chairman of Ora.

Other Commitments and Contingencies

The Company is potentially subject to claims related to various non-income taxes (such as sales, value-added, consumption, and similar taxes) from various tax authorities, including in jurisdictions in which the Company already collects and remits such taxes. If the relevant taxing authorities successfully pursue these claims, the Company could be subject to additional tax liabilities.

Refer to Note 9 – Debt, included elsewhere in the notes to the consolidated financial statements for details of the Company’s future minimum debt payments. Refer to Note 10 – Leases, included elsewhere in the notes to the consolidated financial statements for details of the Company’s future minimum lease payments under operating and financing lease liabilities. Refer to Note 14 – Income Taxes, included elsewhere in the notes to the consolidated financial statements for information regarding income tax contingencies.

Note 17 — Related Parties

Some of the officers and directors of the Company are involved in other business activities and may, in the future, become involved in other business opportunities that become available.

The following table describes the net purchasing (sales) activity with entities identified as related parties to the Company:

	Year Ended December 31,	
(In thousands)	**2023**	**2022**
Bluezone	$ 4	$ 5
4D Bios	—	3
Cannae Policy Group	—	25
Topline Performance Group	(1)	71
NEIA	(43)	(1,769)
Greenstone Holdings	(2)	394
Valiant Americas, LLC (1)	—	10,520

(1) On October 27, 2022, the Company provided notice to Valiant-America, LLC of its intention to begin winding up of Agrify-Valiant.

The following table summarizes net related party (payable) receivable as of December 31, 2023 and December 31, 2022:

	Year Ended December 31,	
(In thousands)	**2023**	**2022**
Bluezone	$ (4)	$ —
Valiant Americas, LLC (1)	1	(1)
Topline Performance Group	—	1

(1) On October 27, 2022, the Company provided notice to Valiant-America, LLC of its intention to begin winding up of Agrify-Valiant.

On July 12, 2023, the Company issued an unsecured promissory note in favor of GIC Acquisition, LLC, an entity that is owned and managed by the Company's Chairman and Chief Executive Officer. Refer to Note 9 - Debt for further disclosure related to this Related Party Note.

On October 27, 2023, CP Acquisitions LLC, an entity affiliated with and controlled by Company's Chairman and Chief Executive Officer, purchased the Exchange Note and the Convertible Note. In addition, the Company issued to CP a Junior Secured Note. Refer to Note 9 - Debt for further disclosure related to this Related Party Note.

Note 18 — Subsequent Events

The Company evaluated subsequent events and transactions that occurred after the balance sheet date up to the date that the financial statements were issued.

Omnibus Equity Incentive Plan Amendment

On January 8, 2024, the shareholders of the Company approved an amendment to the Company's 2022 Omnibus Equity Incentive Plan to increase the number of shares of Common Stock available for issuance thereunder by 250,000 shares and to revise the minimum vesting provision (the "Plan Amendment").

Amendment and Restatement of Convertible and Junior Secured Promissory Note

On January 25, 2024, the Company and the New Lender consolidated the outstanding principal and interest due under the Junior Secured Note and the Exchange Note into the Convertible Note and amended and restated the Convertible Note consistent with the Note Restatement Proposal (the "Restated Note"), with an outstanding principal amount of approximately $18.9 million at the time of issuance of the Restated Note. The Restated Note reduced the conversion price to $1.46 per share of common stock, increased the beneficial ownership limitation to 49.99% with respect to any individual or group, provided that the New Lender may assign its right to receive shares upon conversion to Mr. Chang and/or Ms. Chan or their affiliates, in which case the 49.99% beneficial ownership limitation will apply to each of them individually, extended the maturity date to December 31, 2025, increased the interest rate from 9% to 10% per annum, increased the default interest from 15% to 18% per annum, and provided for the payment of interest every six months, or in lieu of cash interest payments, the Company may issue shares as payments-in-kind at a conversion price equal to the higher of $1.46 or a 20% discount to its trailing seven-day volume weighted average price as of the date of interest payment. Following the execution of the Restated Note, the New Lender immediately elected to convert approximately $3.9 million of outstanding principal into an aggregate of 2,671,633 shares of common stock, and assigned its rights to receive such shares to entities affiliated with Mr. Chang and Ms. Chan. Following the conversion, there was $15.0 million in principal amount outstanding under the Restated Note.

On January 25, 2024, GIC Acquisition, LLC ("GIC") and the Company amended and restated the Junior Note to increase the principal amount thereunder to $1.0 million and to extend the maturity date until June 30, 2024 (as amended and restated, the "Restated Junior Note").

Nasdaq Deficiency Notices

On January 30, 2024, the Company received formal notice that the Nasdaq Hearing Panel had granted the Company's request for an exception through April 15, 2024 to evidence compliance with the Listing Rule. The compliance date of April 15, 2024 represents the full extent of the Panel's discretion to grant continued listing while the Company is non-compliant with Nasdaq Listing Rules.

Accordingly, on March 5, 2024, the Company received a deficiency letter from the Listing Qualifications Department of Nasdaq notifying the Company that, for the last 30 consecutive business days, the bid price for the Company's common stock had closed below $1.00 per share, which is the minimum closing price required to maintain continued listing on the Nasdaq Stock Market under Nasdaq Listing Rule 5550(a)(2) (the "Minimum Bid Requirement"). The Notice has no immediate effect on the listing of the Company's common stock on Nasdaq. In accordance with Nasdaq Listing Rule 5810(c)(3)(A), the Company has 180 calendar days to regain compliance with the Minimum Bid Requirement. To regain compliance with the Minimum Bid Requirement, the closing bid price of the Company's common stock must be at least $1.00 per share for a minimum of 10 consecutive trading days during this 180-day compliance period, unless the Staff exercises its discretion to extend this period pursuant to Nasdaq Listing Rule 5810(c)(3)(H). The compliance period for the Company will expire on September 3, 2024.

There can be no assurance that the Company will be able to regain compliance with the Nasdaq listing rules or maintain its listing on the Nasdaq Capital Market. If the Company's common stock is delisted, it could be more difficult to buy or sell the Company's common stock or to obtain accurate quotations, and the price of the Company's common stock could suffer a material decline. Delisting could also impair the Company's ability to raise capital.

Restricted Stock Units

On November 28, 2023, the Company granted an aggregate of 1,774,409 restricted stock units pursuant to its 2022 Plan to its officers, directors and employees. Of the total shares granted, 860,486 restricted stock units were approved by the shareholder committee on January 8, 2024. The vesting of the remaining RSUs is subject to future shareholder approval of an amendment to the Plan to increase the shares available for issuance thereunder by an amount that is sufficient for issuance of the underlying shares.

Public Offering

On February 27, 2024, the Company entered into a placement agency agreement (the "Agency Agreement") with Alexander Capital, LP as placement agent (the "Placement Agent"), pursuant to which the Company agreed to issue and sell an aggregate of 2,760,000 shares of its common stock, and, in lieu of common stock to certain investors that so chose, pre-funded warrants (the "Pre-Funded Warrants") to purchase 3,963,684 shares of its common stock (the "Offering"). The public offering price for each share of common stock was $0.38, and the offering price for each Pre-Funded Warrant is $0.379, which equals the public offering price per share of the common stock, less the $0.001 per share exercise price of each Pre-Funded Warrant. The Pre-Funded Warrants are exercisable at any time. A holder of Pre-Funded Warrants may not exercise the warrant if the holder, together with its affiliates, would beneficially own more than 4.99% (or such other percentage, up to 9.99%, as may be required by the investor) of the number of shares of common stock outstanding immediately after giving effect to such exercise. A holder of Pre-Funded Warrants may increase or decrease this percentage, but not in excess of 9.99%, by providing at least 61 days' prior notice to the Company.

Exhibit 21.1

Subsidiaries of the Registrant

Entity Name	Jurisdiction of Organization	Percent of Ownership (direct or indirect)
TriGrow Systems LLC	Nevada	100%
AGM Service Company LLC	Delaware	100%
Ariafy Finance, LLC	Massachusetts	100%
Agxion, LLC	Nevada	100%
Harbor Mountain Holdings, LLC	Georgia	100%
Cascade Sciences, LLC	Delaware	100%
Precision Extraction NewCo, LLC	Michigan	100%
PurePressure, LLC	Colorado	100%
Pure Services LLC	Colorado	100%
Lab Society NewCo, LLC	Colorado	100%
Agrify Brands, LLC	Nevada	75%
Agrify-Valiant LLC	Massachusetts	60%
Teejan Podponics International LLC	Oman	50%

Exhibit 23.1

INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM'S CONSENT

We consent to the incorporation by reference in this Registration Statement of Agrify Corporation and Subsidiaries on Form S-8 (File No. 333-257340 & 333-265950) of our report dated April 15, 2024 with respect to our audits of the consolidated financial statements of Agrify Corporation and Subsidiaries as of December 31, 2023 and 2022 and for the years ended December 31, 2023 and 2022 appearing in the Annual Report on Form 10-K of Agrify Corporation and Subsidiaries for the year ended December 31, 2023. We also consent to the reference to our firm under the heading "Experts" in the Prospectus, which is part of this Registration Statement.

/s/ Marcum LLP

Marcum LLP
Melville, NY
APRIL 15, 2024

Exhibit 31.1

CERTIFICATION OF CHIEF EXECUTIVE OFFICER
PURSUANT TO RULE 13A-14(A) UNDER THE SECURITIES EXCHANGE ACT OF 1934, AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, **Raymond Chang,** certify that:

1. I have reviewed this Annual Report on Form 10-K of Agrify Corporation for the year ended December 31, 2023;

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. I am 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 my supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to me 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 to be designed under my 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 my 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 that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting;

5. I have disclosed, based on my 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 15, 2024

By: /s/ Raymond Chang
Name: Raymond Chang
Title: Chief Executive Officer
(Principal Executive Officer and Principal Financial and Accounting Officer)

Exhibit 32.1

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

In connection with the Annual Report on Form 10-K of Agrify Corporation (the “Company”) for the year ended December 31, 2023, as filed with the Securities and Exchange Commission on the date hereof (the “Report”), the undersigned, in the capacity and on the date indicated below, hereby certifies 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 results of operations of the Company.

Date: April 15, 2024

By: /s/ Raymond Chang
Name: Raymond Chang
Title: Chief Executive Officer
(Principal Executive Officer and Principal Financial and Accounting Officer)

AGRIFY CORPORATION

CLAWBACK POLICY

1. Introduction

The Board of Directors (the "**Board**") of Agrify Corporation (the "**Company**") believes that it is in the best interests of the Company and its shareholders to create and maintain a culture that emphasizes integrity and accountability and that reinforces the Company's pay-for-performance compensation philosophy. The Board has therefore adopted this policy which provides for the recoupment of certain executive compensation in the event of an Accounting Restatement resulting from material noncompliance with financial reporting requirements under the federal securities laws (the "**Policy**"). This Policy is designed to comply with Section 10D of the Securities Exchange Act of 1934 (the "**Exchange Act**").

2. Administration

This Policy shall be administered by the Board or, if so designated by the Board, the Compensation Committee, in which case references herein to the Board shall be deemed references to the Compensation Committee. Any determinations made by the Board shall be final and binding on all affected individuals.

3. Covered Executives

This Policy applies to each individual who served or serves as a current or former Covered Executive, at any time during the applicable performance period for any performance-based compensation Received by such executive on or after the Effective Date.

4. Recoupment; Accounting Restatement

In the event the Company is required to prepare an Accounting Restatement of its financial statements due to the Company's material noncompliance with any financial reporting requirement under the securities laws, the Board will:

a) review, with respect to each Covered Executive, all performance-based compensation Received by such Covered Executive during the applicable period,

b) determine the amount of excess Incentive Compensation Received by such Covered Executive during the applicable period;

c) require reimbursement or forfeiture of any excess Incentive Compensation Received by any Covered Executive during the three completed fiscal years immediately preceding the date on which the Company is required to prepare an Accounting Restatement; and

d) reasonably promptly but in any event no later than 60 days after the date an Accounting Restatement is filed with the SEC, provide to each Covered Executive a written notice containing the amount of excess Incentive Compensation and a demand for repayment or return, as applicable.

5. Incentive Compensation

For purposes of this Policy, Incentive Compensation means any of the following; provided that, such compensation is granted, earned, or vested based wholly or in part on the attainment of a financial reporting measure:

- Annual bonuses and other short- and long-term cash incentives.
- Stock options.
- Stock appreciation rights.
- Restricted stock.
- Restricted stock units.
- Performance shares.
- Performance units.

Financial reporting measures include:

- Company stock price.
- Total shareholder return.
- Revenues.
- Net income.
- Earnings before interest, taxes, depreciation, and amortization (EBITDA).
- Funds from operations.
- Liquidity measures such as working capital or operating cash flow.
- Return measures such as return on invested capital or return on assets.
- Earnings measures such as earnings per share.

6. Excess Incentive Compensation: Amount Subject to Recovery

The amount to be recovered will be the excess of the Incentive Compensation paid to the Covered Executive based on the erroneous data over the Incentive Compensation that would have been paid to the Covered Executive had it been based on the restated results, as determined by the Board.

If the Board cannot determine the amount of excess Incentive Compensation Received by the Covered Executive directly from the information in the Accounting Restatement, then it will make its determination based on a reasonable estimate of the effect of the Accounting Restatement.

7. Method of Recoupment

The Board will determine, in its sole discretion, the method for recouping Incentive Compensation hereunder based on all applicable facts and circumstances which may include, without limitation:

a) requiring reimbursement of cash Incentive Compensation previously paid;

b) seeking recovery of any gain realized on the vesting, exercise, settlement, sale, transfer, or other disposition of any equity-based awards;

c) offsetting the recouped amount from any compensation otherwise owed by the Company to the Covered Executive;

d) cancelling outstanding vested or unvested equity awards; and/or

e) taking any other remedial and recovery action permitted by law, as determined by the Board.

Notwithstanding anything herein to the contrary, the Company shall not be required to seek recoupment to the extent the Board determines that recoupment would be impracticable in a manner consistent with Rule 10D-1 of the Exchange Act and the listing standards of the national securities exchange on which the Company's securities are listed, because either the direct expenses paid to a third party to assist in enforcing this Policy against a Covered Executive would exceed the amount to be recovered from that Covered Executive, after the Company has made a reasonable attempt to recover the excess Incentive Compensation.

8. Reporting and Disclosure

The Company shall file all disclosures with respect to this Policy with the SEC in accordance with the requirements of all applicable securities laws and shall provide any documentation with respect thereto to Nasdaq in accordance with the listing rules.

9. No Indemnification

The Company shall not indemnify any Covered Executives or their beneficiaries against the loss of any incorrectly awarded Incentive Compensation pursuant to the terms of this Policy or otherwise indemnify or provide advancement of any costs related to the Company's enforcement of this Policy.

10. Interpretation

The Board is authorized to interpret and construe this Policy and to make all determinations necessary, appropriate, or advisable for the administration of this Policy. It is intended that this Policy be interpreted in a manner that is consistent with the requirements of Nasdaq Listing Rule 5608, any other applicable rules of Nasdaq and Section 10D of the Exchange Act and any applicable rules or standards adopted by the SEC.

11. Effective Date

This Policy shall be effective as of October 2, 2023 (the "**Effective Date**") and shall apply to Incentive Compensation that is Received by any Covered Executive on or after that date.

12. Amendment; Termination

The Board may amend or terminate this Policy from time to time in its discretion and shall amend this Policy as it deems necessary, including as and when it determines that it is legally required by any federal securities laws, SEC rule or rules of any national securities exchange or national securities association on which the Company's securities are listed. Notwithstanding anything herein to the contrary, no amendment or termination of this Policy shall be effective if such amendment or termination would (after taking into account any actions taken by the Company contemporaneously with such amendment or termination) cause the Company to violate any federal securities laws, SEC rule or the rules of any national securities exchange or national securities association on which the Company's securities are listed.

13. Other Recoupment Rights

The Board intends that this Policy will be applied to the fullest extent of the law. The Board may require that any employment agreement, equity award agreement, or similar agreement entered into on or after the Effective Date shall, as a condition to the grant of any benefit thereunder, require a Covered Executive to agree to abide by the terms of this Policy. Any right of recoupment under this Policy is in addition to, and not in lieu of, any other remedies or rights of recoupment that may be available to the Company pursuant to the terms of any similar policy in any employment agreement, equity award agreement, or similar agreement and any other legal remedies available to the Company.

14. Successors

This Policy shall be binding and enforceable against all Covered Executives and their beneficiaries, heirs, executors, administrators or other legal representatives.

15. Definitions

For purposes of this Policy, the following terms shall have the following meanings:

a) "**Accounting Restatement**" means an accounting restatement due to the material noncompliance of the Company with any financial reporting requirement under the securities laws, including any required accounting restatement to correct an error in previously issued financial statements that is material to the previously issued financial statements, or that would result in a material misstatement if the error were corrected in the current period or left uncorrected in the current period.

b) "**Covered Executive**" means each executive officer, as determined by the Board in accordance with Section 10D of the Exchange Act and the listing standards of the national securities exchange on which the Company's securities are listed.

c) "**Received**" means the date of actual or deemed receipt, and for purposes of the foregoing, Incentive Compensation shall be deemed received in the Company's fiscal period during which the applicable financial reporting measure is attained, even if payment or grant of the Incentive Compensation occurs after the end of that period.

d) "**SEC**" means the U.S. Securities and Exchange Commission.