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

FORM 10-K

(Mark One)

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

For the fiscal year ended December 31, 2025

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: 001-40867

Empery Digital Inc.

(Exact Name of Registrant as Specified in Its Charter)

Delaware	**84-4882689**
(State or Other Jurisdiction of Incorporation or Organization)	(I.R.S. Employer Identification No.)
3121 Eagles Nest Street, Suite 120, Round Rock, TX	**78665**
(Address of Principal Executive Offices)	(Zip Code)

(512) 400-4271
(Registrant's Telephone Number, Including Area Code)

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

Title of each class	**Trading symbol**	**Name of each exchange on which registered**
Common Stock	EMPD	The NASDAQ Stock Market LLC

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

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

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

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

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

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or an emerging growth company. See 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 Exchange Act). Yes ☐ No ☒

As of March 25, 2026, there were 30,247,668 outstanding shares of our common stock. The aggregate market value of shares of common stock held by non-affiliates as of June 30, 2025 was $3,709,736 based on the closing sale price as reported by the NASDAQ Stock Market.

DOCUMENTS INCORPORATED BY REFERENCE

Portions of the registrant's proxy statement related to its 2025 Annual Stockholders' Meeting to be filed subsequently are incorporated by reference into Part III of this Form 10-K. Except as expressly incorporated by reference, the registrant's proxy statement shall not be deemed to be part of this report.

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Special Note Regarding Forward-Looking Statements

This Annual Report on Form 10-K, together with other statements and information publicly disseminated by our Company, contains forward-looking statements. These forward-looking statements generally can be identified by the use of words such as “anticipate,” “expect,” “plan,” “could,” “may,” “believe,” “estimate,” “forecast,” “goal,” “potentially,” “project,” and other words of similar meaning. All statements, other than statements related to present facts or current conditions or historical facts, contained in this Annual Report on Form 10-K are forward-looking statements, including statements regarding our strategy, future operations, future financial position, including the Company’s digital asset-treasury strategy, the effects of the Company’s stockholder rights plan, statements relating to the sale of Bitcoin and use of proceeds for repaying outstanding debt and share repurchases and whether it will increase NAV per share, whether the Company will be able to continue to generate proceeds from derivative trades and the Company’s ability to continue reducing corporate expenses.

Each forward-looking statement is subject to risks and uncertainties that could cause actual results to differ materially from those expressed or implied in such statements. Applicable risks and uncertainties include the risks and uncertainties regarding, among other things

- changes in business, market, financial, political and regulatory conditions;
- risks relating to the Company’s operations and business, including the highly volatile nature of the price of Bitcoin and other cryptocurrencies;
- the risk that the Company’s stock price may be highly correlated to the price of the digital assets that it holds;
- risks related to increased competition in the industries in which the Company operates;
- risks relating to significant legal, commercial, regulatory and technical uncertainty regarding digital assets generally;
- risks relating to the treatment of crypto assets for U.S. and foreign tax purpose;
- the Company’s ability to keep pace with new technology and changing market needs; changes in business, market, financial, political and regulatory conditions;
- the Company may not be able to generate revenues from sales, generate cash from financing of inventory, sale of our products and Bitcoin derivatives to offset expenses from operations and interest expense from the Company’s borrowings;
- a significant decrease in the market value of the Company’s Bitcoin holdings could adversely affect the Company’s ability to satisfy its financial obligations due to collateral required to be held by lenders for borrowings;
- the Company’s ability to obtain additional financing through equity or debt offerings, obtain borrowings from financing arrangements or generate cash from the sale of Bitcoin may not be sufficient to satisfy the Company’s outstanding borrowings, fund share repurchases, purchase additional Bitcoin and fund operations;
- if the Company’s third-party service providers experience a security breach or cyberattack and unauthorized parties obtain access to our Bitcoin, or if our private keys are lost or destroyed, or other similar circumstances or events occur, the Company may lose some or all of our Bitcoin and our financial condition and results of operations could be materially adversely affected;
- the Company’s ability to successfully find third-parties to design and manufacture the Company’s products may impact the Company’s ability to bring new products to market to increase revenue and generate cash flow from operations;

- the Company's ability of third-party manufacturers to produce its vehicles in accordance with the Company's design and quality specifications, with sufficient scale to satisfy customers and within a reasonable cost;
- the Company's facing product warranty claims or product recalls;
- the Company's facing adverse determinations in significant product liability claims;
- the Company's ability to increase inventory financing revenue with its current customers or obtain new customers to finance their inventory purchases;
- tariffs and currency exchange rates may increase the cost of the Company's products or our inventory financing customers products and make them unprofitable for sale;
- the potential impact that actions by *activist* stockholders could have on the pursuit of our business strategies; and
- other risks and uncertainties include those identified under the heading "Part I, Item 1A. Risk Factors" contained in this Annual Report on Form 10-K and in any subsequent filings with the SEC.

As a result of these and other factors, we may not achieve the plans, intentions or expectations disclosed in our forward-looking statements, and you should not place undue reliance on our forward-looking statements. The forward-looking statements contained in this Annual Report on Form 10-K reflect our views as of the date hereof. We do not assume and specifically disclaim any obligation to update any forward-looking statements, whether as a result of new information, future events or otherwise, except as required by law. Our business is subject to substantial risks and uncertainties, including those referenced above. Investors, potential investors, and others should give careful consideration to these risks and uncertainties.

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 "Part I, Item 1A. 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 losses from operations could raise substantial doubt regarding our ability to continue as a going concern. Our ability to continue as a going concern requires that we obtain sufficient funding to finance our operations.
- We have not remediated the material weaknesses in our internal control over financial reporting identified in our 2020 audit. If we or our auditor identify 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 report our financial condition or results of operations, which may adversely affect our business and stock price.
- Our operating results, revenues, and expenses may fluctuate significantly, which could have an adverse effect on the market price of our common stock.
- A significant decrease in the market value of our Bitcoin holdings could adversely affect our ability to satisfy our financial obligations or liquidity needs and could have an adverse effect on the market price paid for our common stock.
- Our business may not generate sufficient funds, and we may otherwise be unable to maintain sufficient cash reserves to pay amounts due under our indebtedness and our cash needs may increase in the future.
- The Company's repurchases of its common stock may not be successful in increasing NAV per share.
- Bitcoin and other digital assets are novel assets, and are subject to significant legal, commercial, regulatory and technical uncertainty, which could materially adversely affect the Company's financial position, operations and prospects.
- Changes in regulatory interpretations could require us to register as a money services business or money transmitter, leading to increased compliance costs or operational shutdowns.
- We are not subject to legal and regulatory obligations that apply to investment companies such as mutual funds and exchange-traded funds, or to obligations applicable to investment advisers.
- Due to the unregulated nature and lack of transparency surrounding the operations of many digital asset trading venues, digital asset trading venues may experience greater fraud, security failures or regulatory or operational problems than trading venues for more established asset classes, which may result in a loss of confidence in digital asset trading venues and adversely affect the value of digital assets, and the Company's financial position, operations and prospects.
- Our indebtedness and liabilities could limit the cash flow available for our operations, expose us to risks that could adversely affect our business, financial condition and results of operations and impair our ability to satisfy our obligations under our debt instruments when they come due.
- The concentration of our Bitcoin holdings enhances the risks inherent in our Bitcoin strategy.
- The Company will face risks relating to the custody of its digital assets. If we or our third-party service providers experience a security breach or cyberattack and unauthorized parties obtain access to our digital assets, or if our private keys are lost or destroyed, or other similar circumstances or events occur, we may lose some or all of our digital assets and our financial condition and results of operations could be materially adversely affected.

- We are subject to significant competition in the growing digital asset industry and the Company's business, operating results, and financial condition may be adversely affected if the Company is unable to compete effectively.
- We rely on an international third-party manufacturer who assists us with design , development and manufacturing of our E-Bikes which subjects us to risk of product delivery delays, reduced control over product costs and quality control.
- We are subject to risks associated with our reliance on foreign manufacturing, suppliers and imports for our products.
- Our third-party manufacturer operates outside of the U.S., subjecting us to risks of international operations.
- Anti-takeover provisions in our governing documents and a stockholder rights plan adopted in February 2026 may discourage, delay or prevent a change of control of our Company.
- Our business and operations could be negatively affected if we become subject to stockholder activism, which could cause us to incur significant expense, hinder execution of our business and growth strategy, and impact our stock price.
- Your ownership may be diluted if additional capital stock is issued to raise capital, to purchase digital assets, repay outstanding debt, finance our operations, to complete acquisitions or in connection with strategic transactions.
- If our stock price fluctuates, you could lose a significant part of your investment.

PART I

ITEM 1. BUSINESS

Overview

Empery Digital Inc. ("Empery Digital" or the "Company") was formed on February 21, 2020, as a Delaware corporation, under the name Frog ePowersports, Inc. The Company was renamed Volcon, Inc. on October 1, 2020. The Company was renamed Empery Digital Inc. on July 30, 2025, in connection with which the Company changed its Nasdaq ticker symbol from VLCN to EMPD.

Digital Asset Treasury Strategy

On July 17, 2025, the Company announced its entry into securities purchase agreements with certain institutional and accredited investors in private placements for the purchase and sale of 44,414,189 shares of common stock of the Company, par value $0.00001 per share and pre-funded warrants to purchase up to an aggregate of 5,728,662 shares of common stock with an exercise price of $0.00001, at a price of $10.00 per share, for aggregate gross proceeds of approximately $501.0 million which includes payment in Bitcoin ("BTC" or "Bitcoin") of $28.0 million, before deducting placement agent fees and other offering expenses (the "Private Placements"). The Private Placements closed on July 21, 2025. The Company has used the net proceeds of $452.0 million from the Private Placements (excluding the $28.0 million of BTC received) to purchase or otherwise acquire BTC and for the establishment of the Company's cryptocurrency treasury operations. In connection with the announcement of the Private Placements, the Company announced the launch of its digital asset treasury strategy, pursuant to which the Company plans to pursue a number of strategic initiatives to acquire additional BTC and potentially other digital assets.

The key component of the digital asset strategy is to optimize the Company's capital structure to increase BTC per share to drive stockholder value. This includes issuing equity when market conditions allow us to raise capital at a premium to net asset value ("NAV"), defined as the value of BTC holdings plus cash, minus debt divided by adjusted outstanding shares which includes common stock outstanding plus all pre-funded warrants outstanding. On October 18, 2024, the Company entered into an At-The-Market Issuance Sales Agreement with Aegis Capital Corp., as placement agent ("Aegis"), as amended by Amendment No. 1 to the At-The-Market Issuance Sales Agreement on July 14, 2025 (the "ATM Sales Agreement"), pursuant to which the Company established an At The Market ("ATM") program pursuant to which the Company can sell up to $1.1 billion of common stock. Since the inception of the digital asset treasury strategy through March 25, 2026, the Company has sold 136,053 shares of common stock for $1.5 million, including commissions, at an average price of $10.90. The Company may also complete other equity or convertible debt issuances if it determines market conditions are appropriate.

In addition, our strategy includes repurchasing our common stock when our common stock is trading below NAV per share. The Company also has a share repurchase program that allows it to repurchase up to $150.0 million of common stock as of December 31, 2025, which was expanded to $200.0 million on February 2, 2026 and through March 25, 2026 has bought 23,114,391 shares of common stock for $135.6 million, including commissions, at an average price of $5.87. Share repurchases have been funded with proceeds from two borrowing arrangements, that allow for borrowings of up to $150.0 million, of which $95.0 million has been drawn as of March 25, 2026, and sales of BTC. Some of our BTC is held by these lenders as collateral for outstanding borrowings, which we may repay with future equity offerings or by selling BTC. See Note 7 to the consolidated financial statements for further discussion of these borrowing arrangements.

Additionally, a significant component of the digital asset treasury strategy is to reduce costs across the Company so that cash generated from operations can be used to pay operating expenses and any excess cash generated can be used to purchase more BTC or repurchase shares of our common stock. We also generated, and may continue to generate income through buying and selling derivatives on BTC, including the use of short-term put and call contracts. Since the inception of our digital asset strategy through March 25, 2026, the Company generated income of $2.0 million from trading these derivatives, which is recorded in Other income in the consolidated statement of operations.

The Company also recognizes the risk that digital assets pose with respect to digital wallets being compromised and the Company uses institutional-grade custodians to hold its BTC in wallets, some of which are isolated from the internet, referred to as cold storage, to minimize this risk. We view our BTC as long-term holdings, although there are no restrictions on selling BTC that is not held as collateral by our lenders. As of March 25, 2026 we have 3,359 BTC, of which 2,891 are restricted by lenders as collateral for outstanding loan balances.

The BTC market has been characterized by significant volatility in price, relative anonymity, a developing regulatory landscape, potential susceptibility to market abuse and manipulation, compliance and internal control failures at exchanges, and various other risks that are, or may be, inherent in its entirely electronic, virtual form and decentralized network. For example, since the implementation of our digital asset treasury strategy through March 25, 2026, BTC has traded at a high of $126,117 and a low of $60,019 on the Gemini exchange.

Unrealized losses on digital assets significantly contributed to our results of operations for the year ended December 31, 2025. The unrealized loss on digital assets of $122.7 million was recorded, representing 79.3%, of our operating expenses for the year.

Electric Vehicles

The Company began its operations as an all-electric, off-road powersports vehicle business. Beginning in 2021, we began efforts to sell off-road powersports vehicles beginning with an electric two-wheeled motorcycle that we discontinued in March 2025. In 2022 we introduced an E-Bike, the Brat, and continue to sell this product. In late 2024 we began selling the HF1 UTV, the MN1 Adventurer and MN1 Tradesman UTV, along with a line of upgrades and accessories. As discussed below, in October 2025, we sold the HF1 and MN1 product lines.

Venom Supply Agreement

On February 24, 2025, we entered into a supply agreement with Venom-EV LLC ("Venom") to supply Venom with certain golf carts. This agreement was amended and restated on April 25, 2025 (the "Venom Supply Agreement"). The Venom Supply Agreement allows Venom to purchase up to $2.0 million of golf carts with payment terms of the earlier of 100 days from the date the golf carts are shipped from the manufacturer's facility or upon sale to Venom's dealers or to consumers. These golf carts will be purchased through a manufacturer specified in the Venom Supply Agreement and we will receive consideration of the cost of the golf carts plus a five percent margin. We received an initial order from Venom for $2.0 million golf carts and paid a deposit to the manufacturer of $0.6 million on May 2, 2025 and paid $0.8 million in September 2025 for the golf carts which were shipped in September 2025. The remaining $0.6 million was paid in the fourth quarter of 2025. All units were shipped by the manufacturer to Venom and Venom paid all amounts due on this purchase as of December 31, 2025.

On October 29, 2025, the Venom Supply Agreement was amended to increase the available amount to purchase by $0.7 million and Venom agreed to purchase the remaining 138 MN1 units ordered by the Company under the Super Sonic Distribution Agreement (as defined below) discussed below. Payment terms are the earlier of 60 days from receipt or upon sale by Venom. All of these units were received by Venom by January 30, 2026 and payment is due by March 31, 2026.

On November 17, 2025, the Venom Supply Agreement was amended to increase the available amount to purchase by $2.5 million (for an aggregate total of $4.5 million, excluding the October 29, 2025, amendment. Subsequent to December 31, 2025 through March 25, 2026, the Company has paid $0.9 million to the manufacturer for orders placed by Venom, and additional payments due to be paid for orders placed by Venom as of March 25, 2026, are $1.4 million. Payment terms are the earlier of 60 days from receipt of inventory by Venom or upon sale by Venom.

We expect that we will complete additional financing transactions for Venom under the Venom Supply Agreement and we are actively in discussions for the opportunity to fund inventory purchases with other companies that sell golf carts and UTVs.

Venom Asset Purchase Agreement

On October 15, 2025, the Company entered into an asset purchase agreement with Venom (the "Venom APA"), to divest the Volcon brand in exchange for a non-dilutable 10% equity position in Venom's reorganized Delaware corporation on a fully-diluted basis. The Company transferred all Volcon intellectual property, brand assets, trademarks, sales and distribution networks and engineering documentation associated with the Volcon brand (the "Volcon IP") other than its E-Bike, the Brat. The Company will have the right to appoint one director to Venom's board and may continue to finance Venom's inventory purchases. In the event that Venom does not complete its corporate reorganization within six months, the Company will have the option to repurchase the Volcon IP for a nominal amount.

The Company expects that this agreement will reduce Empery Digital's future product liability exposure by transferring ownership of Volcon's four-wheel vehicle business to Venom. The Company also plans to expand its vehicle financing operations for golf carts and UTVs to generate positive cash flow by leveraging the spread between the Company's cost of capital and interest income from vehicle financing. The Company has been transitioning its powersports dealers to Venom but will continue ongoing warranty support through the remaining warranty period of vehicles the Company sold within these channels.

The Company's decision to sell these assets represents a strategic shift in operations as the Company does not currently plan to sell any four-wheel products after 2025. Therefore, in accordance with applicable accounting guidance, the results of the four-wheel product lines are presented as discontinued operations in the Consolidated Statements of Income and, as such, have been excluded from both continuing operations and segment results for all periods presented in this Annual Report on Form 10-K. All amounts and disclosures for all periods presented in this Annual Report on Form 10-K reflect only the continuing operations unless otherwise noted. See Note 18 to the consolidated financial statements for further discussion.

Super Sonic Distribution Agreement

In January 2025, we entered into a distribution agreement with a golf cart manufacturer, Super Sonic Company Ltd. (Super Sonic), located in Vietnam, a subsidiary of Odes Industry (the "Super Sonic Distribution Agreement"), to supply golf carts to other companies in the U.S. who sell golf carts. On September 18, 2025, we received a notice of termination from Super Sonic pursuant to which Super Sonic terminated this distribution agreement. The termination, which was effective upon receipt of the notice from Super Sonic, was effected pursuant to the terms of the Super Sonic Distribution Agreement on the grounds that the Company has failed to meet the minimum purchase requirement under the Super Sonic Distribution Agreement for two consecutive months, which gave Super Sonic the right to immediately terminate the Super Sonic Distribution Agreement. The termination also eliminates any obligation of the Company to issue equity to Super Sonic pursuant to the terms of the Super Sonic Distribution Agreement. The Company is not subject to any early termination penalties related to the termination of the Super Sonic Distribution Agreement.

Two-Wheeled Products

We began selling the Grunt off-road motorcycle in September 2021 and the Grunt EVO off-road motorcycle replaced the Grunt in September 2023. Due to the manufacturing cost of the Grunt EVO, we terminated the manufacturing contract for it in December 2024. As of March 31, 2025, we have sold all of the remaining Grunt EVO units.

Beginning in the second quarter of 2024, we began evaluating other potential electric motorcycle offerings. We are determining what features and specifications would be included for new offerings including considering a street legal version that would be dual purpose as an on-road/off-road motorcycle (not highway legal). We have identified one new model which we are working on developing with a third-party manufacturer. We received prototypes in February 2025 and we are testing them to evaluate the feasibility to have them manufactured at a reasonable cost and sell them for an acceptable profit. Provided testing is successful and whether the product cost, including tariffs, allows us to sell this product, we expect to start selling this product in the second half of 2026.

In the fourth quarter of 2022, we began selling an E-Bike, the Brat, which is manufactured by a third-party. The Brat is a class 2 E-Bike and can be used on-road or off-road. We have developed a line of accessories for the Brat that include color panels, headlight cowl, and seat, among other things. We are also developing a new model of the Brat that will incorporate some of these accessories in the base model.

Following the divestiture of the four-wheel products noted above, the Company expects to concentrate on its two-wheel business, including the launch of new products in European markets in the second half of 2026. We expect to continue to evaluate other potential two-wheel product offerings in 2026.

Customers

Dealers

Prior to the divestiture of our four-wheel product lines, we sold our products through powersports dealers, bicycle retailers, and golf cart dealers. We expect to continue to utilize our bicycle dealers. We are transitioning our powersports and golf cart dealers to Venom but will continue to support these dealers for service and warranty obligations for products sold to them.

International Distributors

We also sell our two-wheel products internationally through importers. Each importer buys vehicles and accessories and sells them to local dealers or directly to consumers. Payment for vehicle orders is required in advance of shipment. Local dealers or the importer will provide warranty and repair services for vehicles purchased in their country and we will reimburse them for any parts or labor incurred for warranty repairs. As of March 25, 2026, we have one importer in Mexico, one for the Caribbean Region, and one in New Zealand to sell our two-wheel vehicles and accessories in their assigned countries/markets.

Consumers

Consumers can purchase the Brat from our website and have it delivered to a location of their choosing in the continental U.S.

Manufacturers

We outsource the manufacturing of all our two-wheel products and accessories to an international third-party manufacturer, Huaian PX Intelligent Manufacturing Co., Ltd ("PXID"). The estimated fulfillment of all two-wheeled orders we have received, or will receive, assumes that PXID can successfully meet our order quantities and deadlines. In the past we have experienced delays due to PXID being unable to timely meet our order deadlines, and there is no assurance that we will not experience delays in the future until such time as we are able to source products from multiple manufacturers or from larger, more established manufacturers. If the manufacturer is unable to satisfy orders on a timely basis, our customers may cancel their orders. Also, due to the Company currently only having PXID manufacture our two-wheel products, if they experience financial hardship and cannot manufacture our products, our customers may cancel their orders which will harm our sales. Due to new and increased tariffs and other trade policies introduced or threatened by the U.S. government since the beginning of 2025, the cost of our products will increase without a decrease in manufacturing costs and may increase further if additional changes in import laws or tariffs occur. We could also experience delays in receiving shipments of our products if there are delays in getting carriers to ship our products or delays at the port of entry.

Venom currently sources its golf cart and accessory purchases from one international third-party manufacturer. Risks related to future purchases of their products from this manufacturer are similar to those of our two-wheel products noted above and could result in delays in ordering and receiving products that could impact the amount of inventory purchases that Venom may finance through the Company.

Intellectual Property

As discussed above, prior to the Venom APA, we had registrations for the trademarks VOLCON, GRUNT, and GRUNT EVO in the U.S. We have also applied to register additional trademarks – including VOLCON, VOLCON BRAT, EMPOWERING ADVENTURE, STAG, VOLCON STAG, VLCN, VLCN BRAT, VLCN HF1, VLCN MN1, VLCN FT1, VLCN HT1, VLCN SK1, and VLCN RV1 - in the U.S., Canada, New Zealand, Australia and certain additional countries in Latin America, and many of these trademarks are now allowed or registered in these countries. Subsequent to the Venom APA, we only hold trademarks on the Volcon Brat and VLCN Brat in various countries.

Upon the changing of the Company's name to Empery Digital Inc., we began registering trademarks for Empery in the U.S. and a number of other countries. Our efforts to secure trademark registrations for Empery are ongoing and we may encounter resistance from other companies, particularly as we register in additional territories. If we receive objections from other entities and are unsuccessful in obtaining agreements or otherwise resolving the matters with these entities, we will need to consider the use of different trademarks for our Company and our products.

Competition

According to an article by CNBC dated December 5, 2025, there are approximately 190 public companies employing digital asset treasury strategies that hold BTC, with another 10 to 20 companies employing digital asset treasury strategies that hold other digital assets. These companies are estimated to collectively hold approximately $100.0 billion worth of cryptocurrencies combined, according to data from The Block. Many of these companies with digital asset treasury strategies hold more BTC than us and some have operations in other industries and generate cash to cover their operating costs. Some of these companies' securities trade at or above their NAV per share, while many also trade below their NAV per share. We believe our ability to compete successfully with these competitors depends on our ability to increase NAV through the strategic sale or repurchase of equity as market conditions warrant and to generate cash from derivative trading and operations to pay our expenses.

There are dozens of companies that sell E-Bikes in the U.S. and even more globally, many of which may have greater financial and marketing resources than us and have a stronger established brand name and product line, like Super 73. The markets for E-Bikes are highly competitive based on a number of factors, including innovation, performance, price, technology, product features, styling, fit and finish, brand recognition, quality and distribution. We believe our ability to compete successfully in these markets depends on our ability to capitalize on our competitive strengths and build brand recognition.

There are also many companies in the U.S. that finance inventory purchases. These companies may have access to substantially more cash or can borrow cash at interest rates lower than ours.

Government regulations

We are not registered as an investment company under the Investment Company Act of 1940, as amended, and stockholders do not have the protections associated with ownership of shares in a registered investment company, nor the protections afforded by the Commodity Exchange Act of 1936.

The laws and regulations applicable to Bitcoin and digital assets are evolving and subject to interpretation and change. Governments around the world have reacted differently to digital assets; certain governments have deemed them illegal, and others have allowed their use and trade without restriction, while in some jurisdictions, such as the U.S., digital assets are subject to overlapping, uncertain and evolving regulatory requirements.

As digital assets have grown in both popularity and market size, the U.S. Executive Branch, Congress and a number of U.S. federal and state agencies, including the Financial Crimes Enforcement Network, the Commodity Futures Trading Commission ("CFTC"), the SEC, the Financial Industry Regulatory Authority, the Consumer Financial Protection Bureau, the Department of Justice, the Department of Homeland Security, the Federal Bureau of Investigation, the Internal Revenue Service ("IRS") and state financial regulators, have been examining the operations of digital asset networks, digital asset users and digital asset exchanges, with particular focus on the extent to which digital assets can be used to violate state or federal laws, including to facilitate the laundering of proceeds of illegal activities or the funding of criminal or terrorist enterprises, and the safety and soundness and consumer-protective safeguards of exchanges or other service-providers that hold, transfer, trade or exchange digital assets for users. Many of these state and federal agencies have issued consumer advisories regarding the risks posed by digital assets to investors. In addition, federal and state agencies, and other countries have issued rules or guidance regarding the treatment of digital asset transactions and requirements for businesses engaged in activities related to digital assets.

Depending on the regulatory characterization of Bitcoin, the markets for Bitcoin in general, and our activities in particular, our business and our Bitcoin strategy may be subject to regulation by one or more regulators in the U.S. and globally. Ongoing and future regulatory actions may alter, to a materially adverse extent, the nature of digital assets markets, the participation of industry participants, including service providers and financial institutions in these markets, and our ability to pursue our Bitcoin strategy. Additionally, U.S. state and federal and foreign regulators and legislatures have taken action against industry participants, including digital assets businesses, and enacted restrictive regimes in response to adverse publicity arising from hacks, consumer harm, or criminal activity stemming from digital assets activity. U.S. federal and state energy regulatory authorities are also monitoring the total electricity consumption of cryptocurrency mining, and the potential impacts of cryptocurrency mining to the supply and dispatch functionality of the wholesale grid and retail distribution systems. Many state legislative bodies have passed, or are actively considering, legislation to address the impact of cryptocurrency mining in their respective states.

The CFTC takes the position that Bitcoin, as well as some other digital assets, fall within the definition of a "commodity" under the Commodity Exchange Act (the "CEA"). Under the CEA, the CFTC has broad enforcement authority to police market manipulation and fraud in spot digital assets markets in which we may transact. Beyond instances of fraud or manipulation, the CFTC generally does not oversee cash or spot market exchanges or transactions involving digital asset commodities that do not utilize margin, leverage, or financing. In addition, CFTC regulations and CFTC oversight and enforcement authority apply with respect to futures, swaps, other derivative products and certain retail leveraged commodity transactions involving digital asset commodities, including the markets on which these products trade.

The SEC and its staff have taken the position that certain other digital assets, including certain spot crypto assets, fall within the definition of a "security" under the U.S. federal securities laws. Public statements made by senior officials and senior members of the staff at the SEC indicate that the SEC does not consider Bitcoin to be a security under the federal securities laws. However, such statements are not official policy statements by the SEC and reflect only the speakers' views, which are not binding on the SEC or any other agency or court and cannot be generalized to any other digital assets.

In addition, since transactions in Bitcoin provide a degree of anonymity, they are susceptible to misuse for criminal activities, such as money laundering. This misuse, or the perception of such misuse, could lead to greater regulatory oversight of Bitcoin and Bitcoin platforms, and there is the possibility that law enforcement agencies could close or blacklist Bitcoin platforms or other Bitcoin-related infrastructure with little or no notice and prevent users from accessing or retrieving Bitcoin held via such platforms or infrastructure. For example, the U.S. Treasury Department's Office of Foreign Assets Control has issued updated advisories regarding the use of virtual currencies, added a number of digital asset exchanges and service providers to the Specially Designated Nationals and Blocked Persons list and engaged in several enforcement actions, including a series of enforcement actions that have either shut down or significantly curtailed the operations of several smaller digital asset exchanges associated with Russian and/or North Korean nationals.

Activities involving Bitcoin and other digital assets may fall within the jurisdiction of more than one financial regulator and various courts and such laws and regulations are rapidly evolving and increasing in scope. On January 23, 2025, President Trump issued an executive order titled, Strengthening American Leadership in Digital Financial Technology. While the executive order did not mandate the adoption of any specific regulations, the executive order identifies certain key objectives to guide agencies involved in crypto regulation, including (i) protecting the sovereignty of the U.S, dollar by promoting the development of U.S. dollar-backed stablecoins, (ii) providing regulatory clarity and certainty built on technology-neutral regulations for individuals and firms involved in digital assets, including through well-defined jurisdictional regulatory boundaries, and (iii) taking measures to protect Americans from the risks of Central Bank Digital Currencies. To achieve these objectives, the executive order established a working group on digital asset markets within the National Economic Council, comprised of representatives from key federal agencies, with a tight timeline for examining existing regulations and proposing a new regulatory framework. This working group released a report on July 30, 2025 that recommended regulatory and legislative proposals to advance the policies established in the executive order. The SEC also established a Crypto Task Force in furtherance of these objectives. Among other things, the Crypto Task Force is charged with helping to draw clear regulatory lines and to appropriately distinguish securities from non-securities. The work of the Crypto Task Force is in its early stages and it is not yet clear whether it will result in material changes to the existing regulatory framework of digital assets. In addition, Congress has considered legislation to establish additional regulation and oversight of the digital asset markets. The GENIUS Act (Guiding and Establishing National Innovation for U.S. Stablecoins Act), which regulates payment stablecoins, was signed into law in July 2025. The Digital Asset Market Clarity Act of 2025 (H.R. 3633), which establishes a framework for digital assets, passed the U.S. House of Representatives in July 2025. This bill distinguishes between digital commodities and digital securities, and provides the CFTC with jurisdiction to oversee digital commodities, exchanges and brokers. As of January 2026, the U.S. Senate is considering its own legislation to establish a framework for digital asset markets.

Vehicles

Federal, state, and local governments have promulgated and/or are considering promulgating laws and regulations relating to the safety of our products. In the U.S., the Consumer Product Safety Commission (CPSC) has federal oversight over product safety issues related to E-Bikes. We believe that our products comply with all applicable CPSC safety standards as well as all other applicable safety standards in the U.S.

E-Bikes sold internationally are subject to the local laws of each jurisdiction in which we have or may sell our product. Our international distributors are responsible for ensuring that our products comply with the jurisdiction in which they are importing the product. Costs associated with compliance are the responsibility of the distributor. These regulations may result in increased costs and expenses, which may materially and adversely affect the distributors' business where it may not be economically feasible to sell our products locally, which in turn will adversely impact our results of operations or financial condition.

Human Capital

Employees

As of December 31, 2025, the Company employed 15 employees, all of whom were full time employees. None of our employees are represented by a labor union or subject to a collective bargaining agreement. We have not experienced any material work stoppages, and we consider our relations with our employees to be good.

Employee Engagement

Our Co-CEO, Ryan Lane, and COO, Tim Silver, who were hired when the Company initiated its digital asset strategy, have significant experience investing in various markets and asset classes.

Our Co-CEO, John Kim, has extensive experience with the development and sales of E-Bikes. He was the founder of Super 73, one of the first and industry leading E-Bike brands prior to selling Super 73. Our employees and contractors serving the E-Bike and inventory financing operations focus on customer care, developing and sourcing our products, and building our marketing channels.

We believe we offer competitive benefits and programs to develop employees' expertise, performance, and engagement, while implementing corporate policies to provide a safe, harassment-free work environment. This work environment is guided by principles of fair and equal treatment and prioritizes effective communication and employee engagement.

We are committed to building a strong culture with high levels of employee engagement. We hold ad hoc meetings where management discusses various topics with employees including operational updates, vehicle development, financing activities, company policies and safety. Management is also committed to being available to discuss any employee concerns on a one-on-one basis.

Available Information

Our website is at www.emperydigital.com. We make available, free of charge, live up to date information about our financial position on our corporate website, our annual report on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K and amendments to those reports filed or furnished pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), as soon as reasonably practicable after they are electronically filed with the SEC. 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. Information contained on our website does not, and shall not be deemed to, constitute part of this Annual Report on Form 10-K. Our reference to the URL for our website is intended to be an inactive textual reference only.

We also use other mediums, including the following social media channels as a means of disclosing information about the company, our products, our planned financial and other announcements and attendance at upcoming investor and industry conferences, and other matters and for complying with our disclosure obligations under Regulation FD:

Website Homepage: https://www.emperydigital.com/

Treasury Dashboard: https://www.emperydigital.com/treasury-dashboard

X (f/k/a Twitter) Account: https://x.com/EMPD_BTC

Instagram Account: https://www.instagram.com/empd_btc

YouTube Account: https://www.youtube.com/@emperydigital

Instagram Account: https://www.instagram.com/Volcon.ev/

These channels may be updated from time to time on our investor relations website at https://ir.EmperyDigital.com. The information we post through these channels may be deemed material. Accordingly, investors should monitor them in addition to following our investor relations website, press releases, SEC filings, and public conference calls and webcasts. This list may be updated from time to time. The information we post through these channels is not a part of this Annual Report on Form 10-K.

ITEM 1A. RISK FACTORS

Investing in our common stock involves a high degree of risk. You should carefully consider each of the following risks, together with all other information set forth in this Annual Report on Form 10-K, including the financial statements and the related notes, in evaluating an investment in our common stock. If any of the following risks actually occurs, our business could be harmed. In that case, the trading price of our common stock could decline, and you may lose all or part of your investment. Additional risks not presently known to us or that we currently deem immaterial may also impair our business operations.

Risks Related to Our Business in General

Our losses from operations could raise substantial doubt regarding our ability to continue as a going concern. Our ability to continue as a going concern requires that we obtain sufficient funding to finance our operations.

To date we have funded operations through equity and debt offerings. As of December 31, 2025, we have an accumulated deficit of $321.8 million.

Management anticipates that our cash on hand as of December 31, 2025, plus cash expected to be generated from operations and net proceeds from derivative trading, cash available from borrowings available on our credit facility and the cash received from the sale of Bitcoin will be sufficient to fund planned operations and repay borrowings.

We have not remediated the material weaknesses in our internal control over financial reporting identified in our 2020 audit. If we or our auditor identify 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 report our financial condition or results of operations, which may adversely affect our business and stock price.

The material weaknesses identified by our independent registered public accounting firm in our internal control over financial reporting in our 2020 audit have not been remediated as of December 31, 2025. 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 annual or interim consolidated financial statements will not be prevented or detected on a timely basis. These material weaknesses are as follows:

- Inadequate segregation of duties within account processes due to limited personnel
- Insufficient formal written policies and procedures for accounting, IT, financial reporting and record keeping

In addition to hiring more finance and accounting personnel in 2021 to improve our segregation of duties, we have made further progress towards remediating these material weaknesses. We have hired more experienced accounting and finance personnel. We have prepared some formal written policies and procedures for accounting, IT, and financial reporting and record keeping. We have also started the process of documenting our internal controls.

While we believe these efforts have improved the internal control over financial reporting, they did not fully remediate the material weaknesses as we have not fully documented all of our policies or procedures and we have not performed any testing of our internal controls.

We cannot assure you that the measures we have taken to date and may take in the future, will be sufficient to remediate the control deficiencies that led to our material weaknesses in internal control over financial reporting or that they will prevent or avoid potential future material weaknesses. The effectiveness of our internal control over financial reporting is subject to various inherent limitations, including cost limitations, judgments used in decision making, assumptions about the likelihood of future events, the possibility of human error and the risk of fraud. If we are unable to remediate the material weakness, our ability to record, process and report financial information accurately, and to prepare financial statements within the time periods required of public companies could be adversely affected which, in turn, may adversely affect our reputation and business and the market price of our common stock. In addition, any such failures could result in litigation or regulatory actions by the SEC or other regulatory authorities, loss of investor confidence, delisting of our securities and harm to our reputation and financial condition, or diversion of financial and management resources from the operation of our business.

Our operating results, revenues, and expenses may fluctuate significantly, which could have an adverse effect on the market price of our common stock.

Our operating results, revenues, and expenses have varied in the past and may vary significantly in the future from period to period. These fluctuations could have an adverse effect on the market price of our common stock.

Our operating results may fluctuate, in part, as a result of:

- fluctuations in the price of Bitcoin, of which we have significant holdings and with respect to which we may continue to make future purchases, and potential fair value changes associated therewith;
- any sales by us of our Bitcoin at prices above or below their carrying value, which would result in our recording gains or losses upon sale of our Bitcoin;
- regulatory, commercial, and technical developments related to Bitcoin or the Bitcoin blockchain, or digital assets more generally;
- the incurrence of additional interest charges on our outstanding debt or additional future borrowings;
- the impact of war, terrorism, infectious diseases, natural disasters and other global events, and government responses to such events, on the global economy and the market for and price of Bitcoin; and
- significant changes to our E-Bike and inventory financing business, including significant changes in our product sales or operating expenses, or the timing of announcements of new offerings or product development costs.

Our expenses are fixed and we have a limited ability to adjust expenses.

Many of our expenses, such as interest expense on our debt, insurance costs, facility leases and certain personnel costs, are relatively fixed. We do not expect the cash generated by our E-Bike, inventory financing operations and net proceeds from derivative trading of Bitcoin to be sufficient to cover such expenses during 2026, and we expect to use proceeds from equity or debt financings, or sale of Bitcoin to pay our expenses and satisfy our liquidity needs that are in excess of our operating cash flows. If we are unable to secure equity or debt financing in a timely manner, on favorable terms, or if the price of Bitcoin declines, we may not be able to satisfy our financial obligations. Such actions could cause significant variation in our operating results in any quarter.

A significant decrease in the market value of our Bitcoin holdings could adversely affect our ability to satisfy our financial obligations or liquidity needs and could have an adverse effect on the market price of our common stock.

Bitcoin's market value has fluctuated significantly since the inception of our digital asset treasury strategy. For example, a decline in the price of Bitcoin at September 30, 2025 from the weighted average price we paid for purchasing Bitcoin when we implemented our digital asset treasury strategy in July 2025 resulted in our experiencing a $14.1 million unrealized loss on digital assets for the quarter ended September 30, 2025, while decrease in the price of Bitcoin at December 31, 2025 from the price at September 30, 2025 resulted in our experiencing a $108.6 million unrealized loss on digital assets for the quarter ended December 31, 2025. Additionally, it is possible that additional declines in Bitcoin may occur and the market price of our common stock may decline further.

As of March 25, 2026, our outstanding indebtedness was $95.0 million ($50.0 million of which is due in August 2026) with a weighted average interest rate of 7.98%. Collateral for this outstanding indebtedness is 2,891 Bitcoin. If the value of Bitcoin declines to certain levels, a margin call will occur and we will be required to provide additional Bitcoin to our lender as collateral. If we do not have sufficient Bitcoin to meet the margin call or if we miss the deadline to provide the additional Bitcoin (twelve hours), the lender may liquidate some of the Bitcoin held as collateral to repay the principal and interest due at the time of the margin call.

As part of our Bitcoin strategy, we expect to incur or continue to incur additional indebtedness and fixed charges. For the year ended December 31, 2025, our vehicle and inventory financing business and our Bitcoin derivative trades did not generate positive cash flow from operations, and we do not expect our E-Bike sales, inventory financing business and Bitcoin derivative trades to generate sufficient cash flow from operations to satisfy our financial obligations or liquidity needs over the next twelve months. If our E-Bike and inventory financing business and Bitcoin derivative trades do not generate cash flows in future periods sufficient to satisfy our financial obligations and liquidity needs, including repayment of principal and payment of interest on our debt, we intend to fund such payments using cash proceeds from equity or debt financings and sale of our Bitcoin. Our ability to obtain equity or debt financing may, in turn, depend on, among other factors, the value of our Bitcoin holdings, investor sentiment and the general public perception of Bitcoin, our strategy and our value proposition. Accordingly, a significant decline in the market value of our Bitcoin holdings or a negative shift in these other factors may create liquidity and credit risks as such a decline or such shifts may adversely impact our ability to secure sufficient equity or debt financing and sell our Bitcoin to satisfy our financial obligations and liquidity needs.

As Bitcoin constitutes the vast majority of assets on our balance sheet, if we are unable to secure equity or debt financing in a timely manner, on favorable terms, or at all, we may be required to sell Bitcoin to satisfy our financial obligations or liquidity needs, and we may be required to make such sales at prices below our cost basis or on terms that are otherwise unfavorable. For the period from January 1, 2026 to March 25, 2026, we sold 722 Bitcoin for proceeds of $50.0 million and realized a loss of $3.2 million. Any future sales of Bitcoin may have a material adverse effect on our operating results and financial condition and could impair our ability to secure additional equity or debt financing in the future. Our inability to secure additional equity or debt financing in a timely manner, on favorable terms or at all, or to sell our Bitcoin in amounts and at prices sufficient to satisfy our financial obligations or liquidity needs, including our debt service, could cause us to default under such obligations. Any default on our current or future indebtedness could have a material adverse effect on our financial condition. See “Risks Related to Our Outstanding and Potential Future Indebtedness” for additional details about the risks which may impact us if we are unable to satisfy our debt service and cash dividend obligations.

Our business may not generate sufficient funds, and we may otherwise be unable to maintain sufficient cash reserves, to continue repurchasing our common stock under the repurchase programs or to pay amounts due under our indebtedness and our cash needs may increase in the future.

We cannot guarantee that we will be able to implement our share repurchase programs or that they will achieve their objectives.

Our Board of Directors has authorized a share repurchase program. We plan to fund repurchases under this program from our future cash flow generation, as well as from additional potential sources of cash. For example, we have in the past entered into master repurchase agreements pursuant to which we have incurred indebtedness to fund share repurchases and may in the future incur additional indebtedness to fund share repurchases. Under this program, share repurchases may be made at our discretion from time to time in open market transactions, privately negotiated transactions, or other means. This program does not obligate us to repurchase any specific dollar amount or to acquire any specific number of shares of our common stock. The actual timing, number and value of shares repurchased under the program will be determined by management at its discretion and will depend on a number of factors, including the market price of the common stock, general market and economic conditions, applicable legal requirements and the Company’s efforts to increase Bitcoin per share of common stock. Our Board of Directors will review this program periodically and may authorize adjustments of its terms, as it may deem appropriate. As a result, there can be no guarantee around the timing or volume of our share repurchases. This program could affect the price of our common stock, increase volatility and diminish our cash reserves. This program may be suspended or terminated at any time and, even if fully implemented, may not be effective in enhancing long-term stockholder value or increase the Bitcoin per share of common stock.

Risks Related to Our Bitcoin Strategy and Holdings

Our historical financial statements do not reflect the potential variability in earnings that we may experience in the future relating to our holding of digital assets. Accordingly, it may be difficult to evaluate the Company’s business and future prospects, and the Company may not be able to achieve or maintain profitability in any given period.

Our historical financial statements do not fully reflect the potential variability in earnings that we may experience in the future from holding or selling digital assets. The price of digital assets generally has historically been subject to dramatic price fluctuations and is highly volatile. As a result, volatility in our earnings may be significantly more than what we experienced in prior periods.

The concentration of our Bitcoin holdings enhances the risks inherent in our Bitcoin strategy.

As of March 25, 2026, we held approximately 3,359 Bitcoin that were acquired at an aggregate purchase price of $395.4 million and we intend to purchase additional Bitcoin and increase our overall holdings of Bitcoin in the future by generating proceeds from the sale of our common stock or additional indebtedness. The concentration of our Bitcoin holdings limits the risk mitigation that we could achieve if we were to purchase a more diversified portfolio of assets, and the absence of diversification enhances the risks inherent in our Bitcoin strategy. Any future significant declines in the price of Bitcoin would have a more pronounced impact on our financial condition than if we used our cash to purchase a more diverse portfolio of assets.

The Company's repurchases of its common stock may not be successful in increasing NAV per share.

The Company has adopted a strategy to increase NAV per share by repurchasing shares of its common stock when its shares of common stock trade at a discount to NAV per share, and to leverage its balance sheet, including reducing its Bitcoin holdings, to fund such share repurchases and potentially repay additional portions of outstanding borrowings. Despite such efforts to increase NAV per share, the Company's shares of common stock currently trade at a discount to NAV per share and the Company's future share repurchases and other efforts to increase NAV per share may be unsuccessful.

Our indebtedness and liabilities could limit the cash flow available for our operations, expose us to risks that could adversely affect our business, financial condition and results of operations and impair our ability to satisfy our obligations under our debt instruments when they come due.

The Company has incurred indebtedness pursuant to a number of borrowing arrangements and facilities. For example, in October 2025, the Company entered into the MLA, which was amended on February 10, 2026, pursuant to which the Company may borrow an aggregate principal amount of up to $100.0 million collateralized with a security interest in the Bitcoin that we post as collateral. On September 26, 2025, the Company entered into a Master Repurchase Agreement and related transaction confirmation (together, the "Repo Facility") with a third-party lender, providing for $50.0 million in cash advances to the Company in exchange for purchased securities in the form of Bitcoin. As of March 25, 2026, we have $95.0 million outstanding under these borrowing arrangements.

We may also incur additional indebtedness to meet future financing needs. Our indebtedness could have significant negative consequences for our security holders and our business, results of operations and financial condition by, among other things:

- increasing our vulnerability to adverse economic and industry conditions;
- limiting our ability to obtain additional financing on acceptable terms or at all;
- requiring the dedication of a substantial portion of our cash flow from operations to service our indebtedness, which will reduce the amount of cash available for other purposes;
- limiting our flexibility to plan for, or react to, changes in our business; and
- placing us at a possible competitive disadvantage with competitors that are less leveraged than us or have better access to capital.

The Company has in the past and may in the future use the net proceeds from any sales under its ATM program to purchase or otherwise acquire Bitcoin, the price of which has been, and will likely continue to be, highly volatile. The Company's operating results and share price may significantly fluctuate, including due to the highly volatile nature of the price of Bitcoin and erratic market movements.

We have in the past and intend in the future to use the net proceeds from future sales pursuant to our ATM program, if any, when market conditions allow the Company to issue equity at a premium to NAV per share to purchase or otherwise acquire Bitcoin. Bitcoin generally is a highly volatile asset. In addition, Bitcoin does not pay interest or other returns and so the ability to generate a return on investment from the net proceeds of any capital raises will depend on whether there is appreciation in the value of Bitcoin following our purchases of Bitcoin with the net proceeds from such capital raisings. Future fluctuations in Bitcoin trading prices may result in our converting Bitcoin into cash with a value substantially below what we paid for such Bitcoin.

Bitcoin and other digital assets are novel assets, and are subject to significant legal, commercial, regulatory and technical uncertainty, which could materially adversely affect the Company's financial position, operations and prospects.

Bitcoin and other digital assets are relatively novel and are subject to significant uncertainty, which could adversely impact their price. The application of state and federal securities laws and other laws and regulations to digital assets is unclear in certain respects, and it is possible that regulators in the United States or foreign countries may interpret or apply existing laws and regulations in a manner that adversely affects the price of Bitcoin or other digital assets.

The U.S. federal government, states, regulatory agencies, and foreign countries may also enact new laws and regulations, or pursue regulatory, legislative, enforcement or judicial actions, that could materially impact the price of Bitcoin or the ability of individuals or institutions such as us to own or transfer Bitcoin. For example, the U.S. executive branch, SEC, the European Union's Markets in Crypto Assets Regulation, among others, have been active in recent years, and in the U.K., the Financial Services and Markets Act 2023, or FSMA 2023 became law. It is not possible to predict whether, or when, any of these developments will lead to Congress granting additional authorities to the SEC, Commodity Futures Trading Commission ("CFTC"), or other regulators, or whether, or when, any other federal, state or foreign legislative bodies will take any similar actions. It is also not possible to predict the nature of any such additional authorities, how additional legislation or regulatory oversight might impact the ability of digital asset markets to function or the willingness of financial and other institutions to continue to provide services to the digital assets industry, nor how any new regulations or changes to existing regulations might impact the value of digital assets generally and Bitcoin specifically. The consequences of increased regulation of digital assets and digital asset activities could adversely affect the market price of Bitcoin and in turn adversely affect the market price of our common stock.

Moreover, the risks of engaging in a digital asset treasury strategy are relatively novel and have created, and could continue to create complications due to the lack of experience that third parties have with companies engaging in such a strategy, such as increased costs of director and officer liability insurance or the potential inability to obtain such coverage on acceptable terms in the future.

The growth of the digital assets industry in general, and the use and acceptance of Bitcoin in particular, may also impact the price of Bitcoin and is subject to a high degree of uncertainty. The pace of worldwide growth in the adoption and use of Bitcoin may depend, for instance, on public familiarity with digital assets, ease of buying, accessing or gaining exposure to Bitcoin, institutional demand for Bitcoin as an investment asset, the participation of traditional financial institutions in the digital assets industry, consumer demand for Bitcoin as a means of payment, and the availability and popularity of alternatives to Bitcoin. Even if growth in Bitcoin adoption occurs in the near or medium-term, there is no assurance that Bitcoin usage will continue to grow over the long-term.

Because Bitcoin has no physical existence beyond the record of transactions on the Bitcoin blockchain, a variety of technical factors related to the Bitcoin blockchain could also impact the price of Bitcoin. For example, malicious attacks by miners, inadequate mining fees to incentivize validating of Bitcoin transactions, hard "forks" of the Bitcoin blockchain into multiple blockchains, and advances in digital computing, algebraic geometry, and quantum computing could undercut the integrity of the Bitcoin blockchain and negatively affect the price of Bitcoin. The liquidity of Bitcoin may also be reduced and damage to the public perception of Bitcoin may occur, if financial institutions were to deny or limit banking services to businesses that hold Bitcoin, provide Bitcoin-related services or accept Bitcoin as payment, which could also decrease the price of Bitcoin. Similarly, the open-source nature of the Bitcoin blockchain means the contributors and developers of the Bitcoin blockchain are generally not directly compensated for their contributions in maintaining and developing the blockchain, and any failure to properly monitor and upgrade the Bitcoin blockchain could adversely affect the Bitcoin blockchain and negatively affect the price of Bitcoin.

The liquidity of Bitcoin may also be impacted to the extent that changes in applicable laws and regulatory requirements negatively impact the ability of exchanges and trading venues to provide services for Bitcoin and other digital assets.

Due to the unregulated nature and lack of transparency surrounding the operations of many digital asset trading venues, digital asset trading venues may experience greater fraud, security failures or regulatory or operational problems than trading venues for more established asset classes, which may result in a loss of confidence in digital asset trading venues and adversely affect the value of digital assets, and the Company's financial position, operations and prospects.

Digital asset trading venues are relatively new and, in many cases, unregulated. Furthermore, there are many digital asset trading venues that do not provide the public with significant information regarding their ownership structure, management teams, corporate practices and regulatory compliance. As a result, the marketplace may lose confidence in digital asset trading venues, including prominent exchanges that handle a significant volume of such trading and/or are subject to regulatory oversight, in the event one or more digital asset trading venues cease or pause for a prolonged period the trading of digital assets, or experience fraud, significant volumes of withdrawal, security failures or operational problems.

Negative perception, a lack of stability in the broader digital asset markets and the closure, temporary shutdown or operational disruption of digital asset trading venues, lending institutions, institutional investors, institutional miners, custodians, or other major participants in the digital asset ecosystem, due to fraud, business failure, cybersecurity events, government-mandated regulation, bankruptcy, or for any other reason, may result in a decline in confidence in digital assets and the broader digital asset ecosystem and greater volatility in the price of digital assets. The price of our listed securities may be affected by the value of our future digital asset holdings, and the failure of a major participant in the ecosystem could have a material adverse effect on the market price of our listed securities.

Digital asset holdings are less liquid than cash and cash equivalents and may not be able to serve as a source of liquidity for us to the same extent as cash and cash equivalents.

Historically, the digital asset market has been characterized by significant volatility in price, limited liquidity and trading volumes compared to sovereign currencies markets, relative anonymity, a developing regulatory landscape, potential susceptibility to market abuse and manipulation, compliance and internal control failures at exchanges, and various other risks inherent in its entirely electronic, virtual form and decentralized network. During times of market instability, we may not be able to sell our digital assets at favorable prices or at all. As a result, digital asset holdings may not be able to serve as a source of liquidity for us to the same extent as cash and cash equivalents. Further, digital assets we hold with our custodians and transact with our trade execution partners does not enjoy the same protections as are available to cash or securities deposited with or transacted by institutions subject to regulation by the Federal Deposit Insurance Corporation or the Securities Investor Protection Corporation. Additionally, we may be unable to enter into term loans or other capital raising transactions collateralized by our unencumbered digital assets or otherwise generate funds using our digital asset holdings, including in particular during times of market instability or when the price of digital assets has declined significantly. If we are unable to sell our digital assets, enter into additional capital raising transactions, including capital raising transactions using Bitcoin as collateral, or otherwise generate funds using our Bitcoin holdings, or if we are forced to sell our digital assets at a significant loss, in order to meet our working capital requirements, our business and financial condition could be negatively impacted.

The Company faces risks relating to the custody of its digital assets. If we or our third-party service providers experience a security breach or cyberattack and unauthorized parties obtain access to our digital assets, or if our private keys are lost or destroyed, or other similar circumstances or events occur, we may lose some or all of our digital assets and our financial condition and results of operations could be materially adversely affected.

We expect our primary counterparty risk with respect to our Bitcoin will be custodian performance obligations under the custody arrangements we enter into. A series of recent high-profile bankruptcies, closures, liquidations, regulatory enforcement actions and other events relating to companies operating in the digital asset industry, the closure or liquidation of certain financial institutions that provided lending and other services to the digital assets industry, SEC enforcement actions against other providers, or placement into receivership or civil fraud lawsuit against digital asset industry participants have highlighted the perceived and actual counterparty risk applicable to digital asset ownership and trading. Legal precedent created in these bankruptcy and other proceedings may increase the risk of future rulings adverse to our interests in the event one or more of our custodians becomes a debtor in a bankruptcy case or is the subject of other liquidation, insolvency or similar proceedings.

While our custodians are subject to regulatory regimes intended to protect customers in the event of a custodial bankruptcy, receivership or similar insolvency proceeding, no assurance can be provided that our custodially-held Bitcoin will not become part of the custodian's insolvency estate if one or more of our custodians enters bankruptcy, receivership or similar insolvency proceedings. Additionally, if we pursue any strategies to create income streams or otherwise generate funds using our Bitcoin holdings, we would become subject to additional counterparty risks. We need to carefully evaluate market conditions, including price volatility as well as service provider terms and market reputations and performance, among others, prior to implementing any such strategy, all of which could affect our ability to successfully implement and execute on any such future strategy. These risks, along with any significant non-performance by counterparties, including in particular the custodian or custodians with which we custody substantially all of our Bitcoin, could have a material adverse effect on our business, prospects, financial condition, and operating results.

The irreversibility of digital asset transactions exposes us to risks of theft, loss and human error, which could negatively impact our business.

Digital asset transactions are not, from an administrative perspective, reversible without the consent and active participation of the recipient of the transaction or, in theory, control or consent of a majority of the processing power on that digital asset network. Once a transaction has been verified and recorded in a block that is added to the blockchain, an incorrect transfer of digital assets or a theft of digital assets generally will not be reversible, and we may not be capable of seeking compensation for any such transfer or theft.

Although we plan to regularly transfer digital assets to or from vendors, consultants and services providers, it is possible that, through computer or human error, or through theft or criminal action, such assets could be transferred in incorrect amounts or to unauthorized third parties.

To the extent we are unable to seek a corrective transaction to identify the third-party which has received our digital assets through error or theft, we will be unable to revert or otherwise recover the impacted digital assets, and any such loss could adversely affect our business, results of operations and financial condition.

The lack of legal recourse and insurance for digital assets increases the risk of total loss in the event of theft or destruction.

Digital assets that we acquire will not be insured against theft, loss or destruction. If an event occurs where we lose our digital assets, whether due to cyberattacks, fraud or other malicious activities, we may not have any viable legal recourse or ability to recover the lost assets. Unlike funds held in insured banking institutions, our digital assets are not protected by the Federal Deposit Insurance Corporation or the Securities Investor Protection Corporation. If our digital assets are lost under circumstances that render another party liable, there is no guarantee that the responsible party will have the financial resources to compensate us. As a result, we and our stockholders could face significant financial losses.

We are subject to significant competition in the growing digital asset industry and the Company's business, operating results, and financial condition may be adversely affected if the Company is unable to compete effectively.

The Company operates in a competitive environment and competes against other companies and other entities with similar strategies, including companies with significant holdings in Bitcoin and other digital assets, and the Company's business, operating results, and financial condition may be adversely affected if the Company is unable to compete effectively.

The emergence or growth of other digital assets, including those with significant private or public sector backing, including by governments, consortiums or financial institutions, could have a negative impact on the price of Bitcoin and adversely affect the Company's securities.

As a result of our Bitcoin strategy, our assets are concentrated in Bitcoin holdings. Accordingly, the emergence or growth of digital assets other than Bitcoin may have a material adverse effect on our financial condition. As of December 31, 2025, Bitcoin was the largest digital asset by market capitalization. However, there are numerous alternative digital assets and many entities, including consortiums and financial institutions, are researching and investing resources into private or permissioned blockchain platforms or digital assets that do not use proof-of-work mining like the Bitcoin network. For example, in late 2022, the Ethereum network transitioned to a "proof-of-stake" mechanism for validating transactions that requires significantly less computing power than proof-of-work mining. The Ethereum network has completed another major update since then and may undertake additional updates in the future. If the mechanisms for validating transactions in Ethereum and other alternative digital assets are perceived as superior to proof-of-work mining, those digital assets could gain market share relative to Bitcoin.

Other alternative digital assets that compete with Bitcoin in certain ways include "stablecoins," which are designed to maintain a constant price related to or based on some other asset or traditional currency because of, for instance, their issuers' promise to hold high-quality liquid assets (such as U.S. dollar deposits and short-term U.S. treasury securities) equal to the total value of stablecoins in circulation. In July 2025, the "GENIUS Act" was passed, which established a federal framework for "payment stablecoins," treating them as payment systems, not securities, and mandating fiat-backed reserves, monthly disclosures, anti-money laundering safeguards, and similar measures. Stablecoins have grown rapidly as an alternative to Bitcoin and other digital assets as a medium of exchange and store of value, particularly on digital asset trading platforms, and their use as an alternative to Bitcoin could expand further if the GENIUS Act is enacted as law. As of June 30, 2025, two of the seven largest digital assets by market capitalization were U.S. dollar-pegged stablecoins.

Additionally, central banks in some countries have started to introduce digital forms of legal tender. For example, China's central bank digital currency ("CBDC") project was made available to consumers in January 2022, and governments including the United States, the United Kingdom, the European Union, and Israel have been discussing the potential creation of new CBDCs. Whether or not they incorporate blockchain or similar technology, CBDCs, as legal tender in the issuing jurisdiction, could also compete with, or replace, Bitcoin and other digital assets as a medium of exchange or store of value. As a result, the emergence or growth of these or other digital assets could cause the market price of Bitcoin to decrease, which could have a material adverse effect on our business, prospects, financial condition, and operating results.

The availability of spot exchange-traded products for Bitcoin and other digital assets may adversely affect the market price of our common stock and our ability to execute our Bitcoin strategy.

Investors in the United States now have multiple means to gain direct exposure to Bitcoin through traditional investment channels, including through spot Bitcoin exchange-traded products ("ETPs") that were approved by the SEC for listing and trading on U.S. national securities exchanges beginning in January 2024. To the extent investors view our common stock as providing exposure to Bitcoin, it is possible that any premium in the value of our common stock relative to the value of our Bitcoin holdings may have been attributable, in part, to the prior scarcity of traditional investment vehicles providing investment exposure to Bitcoin, and that such premium may decline due to investors now having a greater range of options to gain exposure to Bitcoin.

Although we are an operating company and we believe we offer a different value proposition than a Bitcoin investment vehicle such as a spot Bitcoin ETP, investors may nevertheless view our common stock as an alternative to an investment in a spot Bitcoin ETP and choose to purchase shares of a spot Bitcoin ETP instead of our common stock. Investors may do so for a variety of reasons, including if they believe that spot Bitcoin ETPs offer "pure play" exposure to Bitcoin that is generally not subject to federal income tax at the entity level as we are, or the other risk factors applicable to an operating business such as ours. Additionally, unlike spot Bitcoin ETPs, we (i) do not seek for our shares of common stock to exactly and consistently track the value of the underlying Bitcoin we hold before payment of expenses and liabilities, (ii) do not benefit from various exemptions and relief under the Exchange Act, including Regulation M, and other securities laws, which enable ETPs to continuously align the value of their shares to the price of the underlying assets they hold through share creation and redemption, and (iii) are a Delaware corporation rather than a statutory trust and do not operate pursuant to a trust agreement that would require us to pursue one or more stated investment objectives.

Furthermore, on May 23, 2024, the SEC approved rule changes permitting the listing and trading of spot ETPs that invest in ether, the principal digital asset supporting the Ethereum blockchain. The listing and trading of spot ETPs for ether offers investors another alternative to gain exposure to digital assets, which could result in a decline in the trading price of Bitcoin as well as a decline in the value of our common stock relative to the value of our Bitcoin holdings. Based on how we are viewed in the market relative to spot Bitcoin ETPs, and other vehicles which offer economic exposure to Bitcoin, such as Bitcoin futures exchange-traded funds, leveraged Bitcoin futures exchange-traded funds, and similar vehicles offered on international exchanges, any premium or discount in our common stock relative to the value of our Bitcoin holdings may increase or decrease in different market conditions. As a result of the foregoing factors, the availability of spot ETPs for Bitcoin and other digital assets could have a material adverse effect on the market price of our common stock.

Our Bitcoin strategy exposes us to risk of non-performance by counterparties.

Our Bitcoin strategy exposes us to the risk of non-performance by counterparties, whether contractual or otherwise. Risk of non-performance includes inability or refusal of a counterparty to perform because of a deterioration in the counterparty's financial condition and liquidity or for any other reason. For example, our execution partners, custodians, or other counterparties might fail to perform in accordance with the terms of our agreements with them, which could result in a loss of Bitcoin, a loss of the opportunity to generate funds, or other losses. Additionally, with more companies adopting a Bitcoin strategy similar to ours, our counterparties and service providers may experience increased demand for their services, which could impact the level or quality of service we receive, or the pricing of these services in the future.

Our primary counterparty risk with respect to our Bitcoin is custodian performance obligations under the various custody arrangements we have entered into. A series of recent high-profile bankruptcies, closures, liquidations, regulatory enforcement actions and other events relating to companies operating in the digital asset industry, including the filings for bankruptcy protection by Three Arrows Capital, Celsius Network, Voyager Digital, FTX Trading and Genesis Global Capital, the closure or liquidation of certain financial institutions that provided lending and other services to the digital assets industry, including Signature Bank and Silvergate Bank, SEC enforcement actions against Coinbase, Inc., Binance Holdings Ltd., and Kraken, the placement of Prime Trust, LLC into receivership following a cease-and-desist order issued by Nevada's Department of Business and Industry, and the filing and subsequent settlement of a civil fraud lawsuit by the New York Attorney General against Genesis Global Capital, its parent company Digital Currency Group, Inc., and former partner Gemini Trust Company have highlighted the perceived and actual counterparty risk applicable to digital asset ownership and trading. Although these bankruptcies, closures and liquidations have not resulted in any loss or misappropriation of our Bitcoin, nor have such events adversely impacted our access to our Bitcoin, legal precedent created in these bankruptcy and other proceedings may increase the risk of future rulings adverse to our interests in the event one or more of our custodians becomes a debtor in a bankruptcy case or is the subject of other liquidation, insolvency or similar proceedings.

While all of our custodians are subject to regulatory regimes intended to protect customers in the event of a custodial bankruptcy, receivership or similar insolvency proceeding, no assurance can be provided that our custodially-held Bitcoin will not become part of the custodian's insolvency estate if one or more of our custodians enters bankruptcy, receivership or similar insolvency proceedings. Additionally, if we pursue any strategies to create income streams or otherwise generate funds using our Bitcoin holdings, we would become subject to additional counterparty risks. Any significant non-performance by counterparties, including in particular the custodians with which we custody substantially all of our Bitcoin, could have a material adverse effect on our business, prospects, financial condition, and operating results.

Digital asset lending arrangements may expose us to risks of borrower default, operational failures and cybersecurity threats.

Although we are not initially planning to lend Bitcoin, from time to time, we may generate income through lending of digital assets, which carries significant risks. The volatility of such digital assets increases the likelihood that borrowers may default due to market downturns, liquidity crises, fraud or other financial distress. These lending transactions may be unsecured, and so may be subordinated to secured debt of the borrower. If a borrower becomes insolvent, we may be unable to recover the loaned Bitcoin, leading to substantial financial losses.

Additionally, digital asset lending platforms are vulnerable to operational and cybersecurity risks. Technical failures, software bugs or system outages could disrupt lending activities, delay transactions or result in inaccurate record-keeping. Cybersecurity threats, including hacking, phishing and other malicious attacks, pose further risks, potentially leading to the loss, theft or misappropriation of our loaned Bitcoin. A successful cyberattack or security breach could materially and adversely impact our financial position, reputation and ability to conduct future lending activities.

We may have exposure to greater than anticipated tax liabilities.

If we sold any of our Bitcoin at prices greater than the cost basis of the Bitcoin sold, we would incur a tax liability with respect to any gain recognized, and such tax liability could be material. Although the Company has a history of losses the utilization of the Company's net operating losses to offset tax liabilities from the sale of Bitcoin may be subject to limitation, including due to the "change in ownership provisions" under Section 382 of the Internal Revenue Code. The Company's cumulative net operating loss carry forward of $120.7 million as of December 31, 2025, may be limited in future years depending on future taxable income in any given fiscal year. The net operating losses can be carried forward indefinitely.

Unrealized fair value gains on our Bitcoin holdings could cause us to become subject to the corporate alternative minimum tax under the Inflation Reduction Act of 2022.

The U.S. enacted the Inflation Reduction Act of 2022 (the "IRA") in August 2022. Unless an exemption applies, the IRA imposes a 15% corporate alternative minimum tax ("CAMT") on a corporation with respect to an initial tax year and subsequent tax years if the average annual adjusted financial statement income for any consecutive three-tax-year period preceding the initial tax year exceeds $1 billion. On September 12, 2024, the Department of the Treasury and the Internal Revenue Service issued proposed regulations with respect to the application of CAMT.

We are required to measure our Bitcoin holdings at fair value in our statement of financial position under Accounting Standards Update 2023-08, with gains and losses from changes in the fair value of our Bitcoin recognized in net income each reporting period. When determining whether we are subject to CAMT and when calculating any related tax liability for an applicable tax year, the proposed regulations provide that, among other adjustments, our adjusted financial statement income must include any unrealized gains or losses reported in the applicable tax year.

On September 30, 2025, the IRS announced that it intends to revise the proposed regulations and provided interim guidance that, for purposes of determining whether CAMT applies, companies may exclude unrealized gains or losses with respect to certain assets such as Bitcoin, assuming certain requirements are met. Taxpayers are generally allowed to rely on such interim guidance until such proposed regulations are issued. However, there is no assurance that the proposed regulations, when finalized, will provide such relief or that the interim guidance will continue to be applicable.

As a result of the enactment of the IRA and our adoption of ASU 2023-08, unless the IRA is amended or the proposed regulations with respect to CAMT, when finalized, are revised to provide relief (or other interim relief is granted), we could become subject to the CAMT in the 2026 tax year and beyond. If we become subject to CAMT, it could result in a material tax obligation that we would need to satisfy in cash, which could materially affect our financial results, including our earnings and cash flow, and our financial condition.

The Company's Bitcoin strategy subjects the Company to enhanced regulatory oversight and could have accounting, regulatory and other impacts.

We have pledged a portion of our Bitcoin holdings as collateral pursuant to our debt arrangements and may in the future incur additional indebtedness or enter into other financial instruments that may be collateralized by our digital asset holdings. For example, we have pledged Bitcoin as collateral to delayed draw term loan borrowings pursuant to the Master Loan Agreement the Company entered into on October 12, 2025, as amended on February 10, 2026 (the "MLA"). As of March 25, 2026, the Company held 2,891 Bitcoin with a carrying value of approximately $204.8 million as collateral by lenders for borrowing arrangements. We may in the future also consider pursuing strategies to create income streams or otherwise generate funds using our Bitcoin holdings. These types of Bitcoin-related transactions are the subject of enhanced regulatory oversight. These and any other Bitcoin-related transactions we may enter into, beyond simply acquiring and holding Bitcoin, may subject us to additional regulatory compliance requirements and scrutiny, including under federal and state money services regulations, money transmitter licensing requirements and various commodity and securities laws and regulations. In addition, fluctuations in the price of Bitcoin may result in additional holding of Bitcoin to be pledged as collateral pursuant to such debt agreements, which could impact the accounting treatment and classification of our Bitcoin on our balance sheet.

Changes in regulatory interpretations could require us to register as a money services business or money transmitter, leading to increased compliance costs or operational shutdowns.

The regulatory regime for digital assets in the U.S. and elsewhere is uncertain. The Company may be unable to effectively react to proposed legislation and regulation of digital assets, which could adversely affect its business.

If regulatory changes or interpretations require us to register as a money services business with FinCEN under the U.S. Bank Secrecy Act, or as a money transmitter under state laws, we may be subject to extensive regulatory requirements, resulting in significant compliance costs and operational burdens. In such a case, we may incur extraordinary expenses to meet these requirements or, alternatively, may determine that continued operations are not viable. If we decide to cease certain operations in response to new regulatory obligations, such actions could occur at a time that is unfavorable to investors.

Multiple states have implemented or proposed regulatory frameworks for digital asset businesses. Compliance with such state-specific regulations may increase costs or impact our business operations. Further, if we or our service providers are unable to comply with evolving federal or state regulations, we may be forced to dissolve or liquidate certain operations, which could materially impact our investors.

If Bitcoin or any of the digital assets that we may purchase are classified as a security, we may be subject to extensive regulation, which could result in significant costs or force us to cease operations.

Regulatory changes or interpretations that classify digital assets that we hold as a security under the Securities Act of 1933, as amended, or Investment Company Act of 1940, as amended (the "Investment Company Act"), could require us to register and comply with additional regulations. Compliance with these requirements could impose extraordinary, non-recurring expenses on our business. If the costs and regulatory burdens become too great, we may be forced to modify or cease certain operations, which could be detrimental to our investors.

The SEC has previously indicated that certain digital assets may be considered securities depending on their structure and use. Future developments could change the legal status of digital assets that we may hold, requiring us to comply with securities laws. If we fail to do so, we may be forced to discontinue some or all of our business activities, negatively impacting investments in our securities.

If the SEC or other regulators determine that digital assets that we may hold qualify as securities, we may be required to register as an investment company under the Investment Company Act. This classification would subject us to additional periodic reporting, disclosure requirements, and regulatory compliance obligations, significantly increasing our operational costs. In addition, if Bitcoin or another digital asset we hold were determined to constitute a security for purposes of the federal securities laws, we would likely take steps to reduce the percentage of Bitcoin or such other digital assets that constitute investment assets under the Investment Company Act. These steps may include, among others, selling Bitcoin that we might otherwise hold for the long term and deploying our cash in non-investment assets, and we may be forced to sell our Bitcoin or other digital assets at unattractive prices.

Although we do not currently engage in investing, reinvesting, or trading securities, and we do not hold ourselves out as an investment company, we could inadvertently be deemed one under the Investment Company Act. If we are unable to rely on an exclusion, we would be required to register with the SEC, which could impose additional financial and regulatory burdens.

Further, state regulators may conclude that the digital assets we hold are securities under state laws, requiring us to comply with state-specific securities regulations. States like California have stricter definitions of "investment contracts" than the SEC, increasing the risk of additional regulatory scrutiny.

The classification of Bitcoin that we hold, or any digital asset we may purchase in the future, as a commodity could subject us to additional CFTC regulation, resulting in significant compliance costs or the cessation of certain operations.

Under current interpretations, Bitcoin is classified as a commodity under the Commodity Exchange Act and is subject to regulation by the CFTC. If our activities require CFTC registration, we may be required to comply with extensive regulatory obligations, which could result in significant costs and operational disruptions. Additionally, current and future legislative or regulatory developments, including new CFTC interpretations, could further impact how Bitcoin and Bitcoin derivatives are classified and traded.

If Bitcoin is further regulated as a commodity, we may be required to register as a commodity pool operator and register the Company as a commodity pool with the CFTC through the National Futures Association. Compliance with these additional regulatory requirements could result in substantial, non-recurring expenses, adversely affecting an investment in our securities. If we determine not to comply with such regulations, we may be forced to cease certain operations, which could negatively impact our investors.

We are not subject to legal and regulatory obligations that apply to investment companies such as mutual funds and exchange-traded funds, or to obligations applicable to investment advisers.

Mutual funds, ETFs and their directors and management are subject to extensive regulation as "investment companies" and "investment advisers" under U.S. federal and state law; this regulation is intended for the benefit and protection of investors. We are not subject to, and do not otherwise voluntarily comply with, these laws and regulations. This means, among other things, that the execution of our changes to our digital asset strategy, our use of leverage, our ability to engage in transactions with affiliated parties and our operating and investment activities generally are not subject to the extensive legal and regulatory requirements and prohibitions that apply to investment companies and investment advisers.

Intellectual property disputes related to the open-source structure of digital asset networks exposes us to risks related to software development, security vulnerabilities and potential disruptions to digital asset technology could threaten our ability to operate.

Digital asset networks are open-source projects and, although there may be an influential group of leaders in the network community, generally there is no official developer or group of developers that formally controls the digital asset network. Without guaranteed financial incentives, there may be insufficient resources to address emerging issues, upgrade security or implement necessary improvements to the network in a timely manner. If the digital asset network's software is not properly maintained or developed, it could become vulnerable to security threats, operational inefficiencies and reduced trust, all of which could negatively impact the digital assets' long-term viability and our business.

Risks Related to Our E-Bike and Inventory Financing Business Strategy

We rely on an international third-party manufacturer who assists us with design, development and manufacturing of our E-Bikes which subjects us to risk of product delivery delays, reduced control over product costs and quality control.

Our business success will depend in large part on PXID's ability to economically produce our products at sufficient capacity to meet the demands of our customers.

Our reliance on PXID for the manufacture, design and development of our E-Bikes exposes us to a number of risks which are outside our control, including:

- delays due to design and development of our products to meet our product specifications;
- delays due to defective parts or components;
- unexpected increases in manufacturing costs;
- unexpected increases in tariffs and shipping costs;
- interruptions in vehicle deliveries if a third-party vendor is unable to complete production or design in a timely manner;
- shipping delays due to availability of ships, trains, trucks or containers to ship products or delays at ports to ship products to us or to our customers; and
- inability to control the quality of finished products.

Our reliance on a third-party reduces our control over the manufacturing, design and development processes, including reduced control over timing to release products, quality, product costs and product supply. We have experienced delays in the design and development of previous vehicles we were seeking to develop with other third-party manufacturers.

We can provide no assurance that we will not realize future delays in production or our costs will stay at levels that allow us to sell our products profitably. Since we do not have multiple manufacturers or manufacture our products internally, our ability to release products on the timeline we expect will be dependent on our current outside manufacturer.

If PXID or its suppliers suffer interruptions, experience delays in shipments or issues concerning product quality, supply chain or disruptions, including by reason of natural disasters, work stoppages or capacity constraints, our ability to ship products to customers would be delayed. Additionally, if PXID experiences quality control problems in its operations, we could be required to cover the repair or replacement of any defective products. These delays or product quality issues could have an immediate and material adverse effect on our ability to fulfill orders and could have a negative impact on our operating results. In addition, such delays or issues with product quality could harm our reputation and our relationship with our customers.

We are utilizing a single vendor to assist us with the manufacturing, development and design of our E-Bike and the inability of this vendor to complete our respective design requirements may delay our ability to release these vehicles for production, which could have a material adverse effect on our financial condition and operating results.

We have entered into a manufacturing, design and development agreement with PXID who has experience in the manufacturing, design and development of two-wheel products to assist us with the development of certain aspects of and manufacturing of our products. Although PXID has successfully assisted us and other companies with manufacturing, design and development of two-wheeled products, they may not be able to successfully design, develop and manufacture new products. PXID may experience delays in fulfilling their obligations under these contracts due to their inability to source parts from other vendors, lack of employees available to work on our projects due to labor shortages or other competing projects from other customers. Failure of PXID to complete the contracted design, development and manufacture projects for our products will result in delays in obtaining regulatory approvals and delay production and release of the products for sale, which could have a material adverse effect on our business, reputation, results of operations or financial condition.

Our third-party manufacturer operates outside of the U.S., subjecting us to risks of international operations.

Our third-party manufacturer, PXID, operates outside of the U.S. and as a result we are increasingly exposed to the challenges and risks of doing business outside the U.S., which could reduce our revenues or profits, increase our costs, result in significant liabilities or sanctions, or otherwise disrupt our business. These challenges include: (1) compliance with complex and changing laws, regulations and policies of governments that may impact our operations, such as foreign ownership restrictions, import and export controls, tariffs, and trade restrictions; (2) compliance with U.S. and foreign laws that affect the activities of companies abroad, such as anti-corruption laws, competition laws, currency regulations, and laws affecting dealings with certain nations; (3) the difficulties involved in managing an organization doing business in many different countries; (4) uncertainties as to the enforceability of contract and intellectual property rights under local laws; and (5) rapid changes in government policy, political or civil unrest, acts of terrorism, or the threat of international boycotts or U.S. anti-boycott legislation.

Our E-Bikes are currently manufactured for us in China which is subject to any uncertainty of trade relations between China and the U. S., and could cause the cost of our products manufactured there to rise, or result in our inability to continue to use third-party manufacturers in China, resulting in a need to find alternative sources of manufacture, which could result in the delay of manufacture and supply of our products, increase our cost of manufacture, and cause a delay in our shipments to customers and a delay or cancellation of orders. Our future operating results and financial condition could be materially affected to the extent any of these actions occur.

In addition, the prosecution of intellectual property infringement and trade secret theft outside of the U.S. may be more difficult than in the U.S. Although we take precautions to protect our intellectual property, using our third-party manufacturers in China could subject us to an increased risk that unauthorized parties will be able to copy or otherwise obtain or use our intellectual property, and we may be unsuccessful in monitoring and enforcing our intellectual property rights against them, which could harm our business. We may also have limited legal recourse in the event we encounter patent or trademark infringers, which could adversely affect our business, results of operations, and financial condition. While we take measures to protect our trade secrets, the use of third-party manufacturers may also risk disclosure of our innovative and proprietary manufacturing methodologies, which could adversely affect our business.

We are dependent on our third-party manufacturer, who is dependent on their suppliers, some of which could be single-source suppliers. The inability of these suppliers to deliver necessary components for our vehicles according to our schedule and at prices, quality levels and volumes acceptable to us, or our inability to efficiently manage this third-party manufacturer and their suppliers has in the past and could in the future have a material adverse effect on our financial condition and operating results.

Our E-Bikes contain numerous purchased parts that PXID either (a) sources globally from direct suppliers, some of whom could be single-source suppliers, or (b) manufacture themselves from components or materials. Any significant unanticipated demand would require PXID to procure or manufacture additional components in a short amount of time. While we believe PXID would be able to secure additional or alternate sources of supply for most of our components and raw materials in a relatively short time frame, there is no assurance that they will be able to do so or develop their own replacements for certain highly customized components of our products. We have in the past realized production delays due to delays from other third-party manufacturers in sourcing certain parts from single-source suppliers. We can provide no assurance that we will not in the future realize additional such delays.

If PXID encounters unexpected difficulties with key suppliers, and if they are unable to fill these needs from other suppliers, we could experience production delays and potential loss of access to important technology and parts for producing, servicing and supporting our products. This limited, and in many cases single-source, supply chain exposes PXID and us to multiple potential sources of delivery failure or component shortages for the production of our products. The loss of any single or limited source supplier or the disruption in the supply of components from these suppliers could lead to design changes and delays in product deliveries to our customers, which could hurt our relationships with our customers and result in negative publicity, damage to our brand and reputation, and a material and adverse effect on our business, prospects, financial condition and operating results**.**

We are subject to risks associated with our reliance on foreign manufacturing, suppliers and imports for our products.

We procure our E-Bikes from PXID located in China. As a result, our business highly depends on global trade, as well as trade and other factors that impact the specific country where our supplier's manufacturing facilities are located. Our future success will depend in large part upon our ability to maintain our existing foreign supplier and vender relationships and to develop new ones based on the requirements of our business and any changes in trade dynamics that might dictate changes in the locations for sourcing of products.

Events that have in the past and could in the future cause disruptions to our supply chain include but are not limited to, the imposition of additional trade laws or regulations; public health crises; political instability, international conflicts, acts of terrorism or natural disasters; the imposition of additional duties, tariffs and other charges on imports and exports; foreign currency fluctuations; theft; and restrictions on the transfer of funds. The occurrence of any of the foregoing could materially increase the cost and reduce or delay the supply of our products, which could materially and adversely affect our business, financial condition, results of operations, liquidity and stock price.

All of our vehicles imported into the U.S. and are subject to import taxes or costs, including new or increased tariffs, or similar duties, some of which could be applied retroactively, and modification to or withdrawal from free trade agreements or trade relationships, could increase the cost of the products that we distribute. For example, Since the beginning of 2025, the U.S. government has announced several different measures regarding tariffs, including the imposition of new tariffs on products imported into the U.S. from a number of countries, including Vietnam, and China, and could propose additional tariffs or increases to those already in place. On July 31, 2025, the U.S. administration issued a formal Executive Order modifying the reciprocal tariff regime under the International Emergency Powers Act ("IEEPA"). For example, after announcing proposed blanket tariff rates of 46% on imports from Vietnam in April 2025, the U.S. and Vietnam governments announced a trade deal between the countries that imposes 20% tariffs on all products imported to the U.S. from Vietnam. The 20% rate became effective August 7, 2025, under the aforementioned Executive Order and is currently in force.

On February 20, 2026, the U.S. Supreme Court ruled that the IEEPA does not authorize the U.S. administration to impose tariffs. The tariffs paid by importers under the Executive order are subject to refund, however the process to obtain such refunds is currently being evaluated. Effective February 24, 2026, the U.S. administration has imposed a 10% global tariff under Section 122 of the Trade Act of 1974 that could remain in place for up to 150 days.

These tariffs, as well as a government's adoption of "buy national" and similar policies or retaliation by another government against such tariffs or policies could introduce significant uncertainty into the market and may affect the prices of and supply of the products available to us. Tariffs also can impact our or our suppliers' ability to source product efficiently or create other supply chain disruptions. We may not be able to fully or substantially mitigate the impact of these or future tariffs, pass price increases on to our customers or secure adequate alternative sources of vehicles, which would have a material adverse effect on our business, operating results and financial performance.

We also face uncertainty in the interpretation of new tariffs and their applicability, including with respect to customs valuation, product classification and country-of-origin determinations. Although we and our vendors seek to comply with applicable customs laws and regulations, the application of rules regarding new tariffs can be subject to varying interpretations or future re-interpretations. It is possible that U.S. Customs and Border Protection or other relevant authorities could, upon review or audit, disagree with the valuation, rules of origin or classification methods applied to certain merchandise. Any such disagreement could result in the retroactive assessment of additional duties with interest, the imposition of penalties, or other enforcement actions without the ability to mitigate such penalties, thereby adversely affecting our operations or financial results.

Our third-party manufacturer may be unable to meet our growing sales and delivery plans, which could harm our business and prospects.

Our sales growth and delivery plan contemplate achieving and sustaining increases in E-Bike deliveries. Our ability to achieve this plan depends upon several factors, including the ability of PXID to meet our forecasted demand and meet our quality levels and optimize design and product changes or our ability to identify other third-party manufacturers who can meet our forecasted demand while maintaining our desired quality levels and optimize design and product changes. Although we believe that PXID has the ability to meet our forecasted demand, there is no assurance that they will be successful in these efforts. In addition, as we do not have a long-term history of sales, our forecasted demand may be materially incorrect, which could cause us to either fail to meet unforeseen demand or incur higher costs for excess inventory purchased to meet our forecast. If we are unable to realize our sales and delivery plan, our brand, business, prospects, financial condition, and operating results could be materially damaged.

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

PXID may experience increases in the cost or a sustained interruption in the supply or shortage of materials. Any such increase, supply interruption or shortage could materially and negatively impact our business, prospects, financial condition and operating results. The prices for these materials fluctuate, and their available supply may be unstable, depending on market conditions and global demand for these materials, including as a result of increased production of E-Bikes and electric vehicle (EV) products by our competitors, and could adversely affect our business and operating results. For instance, we are exposed to multiple risks relating to batteries.

These risks include:

- an increase in the cost, or decrease in the available supply, of materials used in the battery;
- disruption in the supply of batteries due to quality issues or recalls by battery cell manufacturers;
- sanctions imposed by the U.S. on countries in which our products are manufactured or where parts are manufactured for our third-party manufacturers; and
- tariffs on the products we source in China.

Our business is dependent on the continued supply of battery cells for the batteries used in our E-Bikes. Any disruption in the supply of battery cells could disrupt production of our products. Substantial increases in the prices charged to us, such as those charged by battery cell suppliers, would increase our operating costs, and could reduce our margins if we cannot recoup the increased costs through increased selling prices of our vehicles. Any attempts to increase prices in response to increased material costs could result in the cancellation of vehicle orders and therefore materially and adversely affect our brand, image, business, prospects and operating results.

We have and could continue to experience delays and other complications in the design, manufacture, launch and production ramp of our vehicles and our future planned vehicles, which could harm our brand, business, prospects, financial condition and operating results.

We have encountered unanticipated challenges, such as supply chain constraints, that led to initial delays in producing our vehicles. We have experienced longer lead times with certain suppliers to obtain parts, especially those imported where shipping delays from outbound and inbound ports have caused delays or required us to use air freight and incur higher shipping costs. We have outsourced the manufacturing of our products and plan to outsource all manufacturing for the foreseeable future. We also reduced headcount in all our departments, as we have outsourced the design and development of our vehicles. Any significant delay or other complications in the production of our vehicles or the development, manufacture, and production ramp of our future products, including complications associated with our third-party manufacturers' supply chains or obtaining or maintaining regulatory approvals, could materially damage our brand, business, prospects, financial condition and operating results.

We are currently taking orders for the Brat E-Bike and if the Brat fails to perform as expected, our reputation could be harmed and our ability to develop, market and sell our E-Bikes could be harmed.

If the Brat or any new E-Bikes we develop were to contain defects in design and manufacture that cause them not to perform as expected or that require repair or take longer than expected to deliver, our ability to develop, market and sell our E-Bikes could be harmed. While we intend to perform internal testing on these products, our frame of reference by which to evaluate detailed long-term quality, reliability, durability and performance characteristics of our vehicles is based on limited historical data. Although we have procedures to test all of our products for defects, there can be no assurance that we will be able to detect and fix all defects in our products prior to their sale to consumers. Any product defects, delays, or other failure of our products to perform as expected could harm our reputation and result in delivery delays, product recalls, product liability claims, significant warranty and other expenses, and could have a material adverse impact on our business, financial condition, operating results and prospects.

Significant product repair and/or replacement due to product warranty claims or product recalls could have a material adverse impact on our business, results of operations or financial condition.

We provided a one-year warranty against defects for the Grunt EVO and Brat and a two-year warranty on the battery. We provided warranties on the HF1 and MN1 products we sold prior to the sale of these product lines in the Venom APA which have varying warranty terms depending on the part but are generally from 6 months up to 2 years. The manufacturers of the HF1 and MN1 products provide the warranty and we are reimbursed for warranty claims provided we obtain approval of the claim from the manufacturer.

Our warranty will generally require us to repair or replace defective products during such warranty periods at no cost to the consumer. Some of the parts are warranted by the part manufacturer where others are not. We record provisions based on an estimate of product warranty claims, but there is the possibility that actual claims may exceed these provisions and therefore negatively impact our results of operations of financial condition.

In addition, we may in the future be required to make product recalls or could be held liable in the event that some of our products do not meet safety standards or statutory requirements on product safety, even if the defects related to any such recall or liability are not covered by our limited warranty. The repair and replacement costs that we could incur in connection with a recall could have a material adverse effect on our business, results of operations or financial condition. Product recalls could also harm our reputation and cause us to lose customers, particularly if recalls cause consumers to question the safety or reliability of our products, which could have a material adverse effect on our business, results of operations or financial condition.

An adverse determination in any significant product liability claim against us could materially adversely affect our business, results of operations or financial condition.

The development, production, marketing, sale and usage of our products will expose us to significant risks associated with product liability claims. The powersports vehicles industry in particular is vulnerable to significant product liability claims, and we may face inherent risk of exposure to claims in the event our vehicles do not perform or are claimed to not have performed as expected. If our products are defective, malfunction or are used incorrectly by our customers, it may result in bodily injury, property damage or other injury, including death, which could give rise to product liability claims against us. Any losses that we may suffer from any liability claims and the effect that any product liability litigation may have upon the brand image, reputation and marketability of our products could have a material adverse impact on our business, results of operations or financial condition. No assurance can be given that material product liability claims will not be made in the future against us, or that claims will not arise in the future in excess or outside of our insurance coverage and contractual indemnities with suppliers and manufacturers. We believe we have adequate product liability insurance; however, as we release new products, we may not be able to obtain adequate product liability insurance or the cost of doing so may be prohibitive. Adverse determinations of material product liability claims made against us could also harm our reputation and cause us to lose customers and could have a material adverse effect on our business, results of operations or financial condition.

We sell the Brat and accessories through a network of third-party dealers and international distributors in addition to our website, and there is no assurance that we will be able to successfully build out this network.

In the U.S., we began to sell the Brat on our website in 2023, in addition to our dealer network and bicycle dealers. We also began selling the Brat through a national retailer in 2025, Dick's Sporting Goods, in a limited number of its stores where we hope to expand this nationally. We do not intend to compete with our dealers or retailers who sell these products and we provide price protection to them in the event we are selling these products below the retail price they are selling them for in order for them to maintain their margin.

We also sell the Brat and accessories internationally through international distributors. As of March 25, 2026, we have one importer in Mexico, one importer for the Caribbean Region, and one in New Zealand to sell our two-wheel vehicles and accessories in their assigned countries/markets. We are relying on these distributors to market, promote, sell and service the Brat and sell accessories in their designated countries/territories. We plan to add new E-Bike models and we plan to expand this distributor network to other countries in Europe assuming that our products can meet the regulatory requirements of these countries.

We believe our success will be highly dependent on our ability to build out this network in the major markets in which we intend to compete for customers, and to maintain this network in the future. Our business model is dependent not only on our ability to create the foregoing network, but also on the commitment and motivation of these third parties to promote our brand and products.

We may be unable to improve our existing products and develop and market new products that respond to customer needs and preferences and achieve market acceptance.

We may not be able to compete as effectively with our competitors, and ultimately satisfy the needs and preferences of our customers, unless we can successfully enhance current products, develop new innovative products, maintain or lower product costs and distinguish our products from our competitors' products through innovation and design. Product development requires significant financial, technological, and other resources. There can be no assurance that we will be able to incur a level of investment in research and development that will be sufficient to successfully make us competitive in product innovation and design. In addition, even if we are able to successfully enhance existing products and develop new products, there is no guarantee that the markets for our existing products and new products will progress as anticipated. If any of the markets in which our existing products compete do not develop as expected, our business, results of operations or financial condition could be materially adversely affected.

We may not succeed in establishing, maintaining and strengthening our brand, which could materially and adversely affect customer acceptance of our products, which could in turn materially affect our business, results of operations or financial condition.

Our business and prospects heavily depend on our ability to develop, maintain and strengthen the Company's brand. We sold the Volcon brand name and our four-wheel products in October 2025 after renaming the Company as Empery Digital Inc. If we are unable to establish, maintain and strengthen our new brand, we may lose the opportunity to build and maintain a critical mass of customers. Our ability to develop, maintain and strengthen our brand will depend heavily on the success of our marketing efforts. Failure to develop and maintain a strong brand could materially and adversely affect customer acceptance of our vehicles, could result in suppliers and other third parties being less likely to invest time and resources in developing business relationships with us, and could materially adversely affect our business, results of operations or financial condition.

We have a limited history of financing inventory purchases and parties to inventory financing agreements may default on amounts owed to us which could materially adversely affect our business, results of operations or financial condition.

We have a limited history of financing inventory purchases. On April 17, 2025, we entered into the Venom Supply Agreement to finance inventory purchases with Venom to finance Venom's golf cart and accessory purchases from their international third-party supplier. The Venom Supply Agreement allowed Venom to purchase up to $2.0 million of golf carts with payment terms of earlier of 100 days from the date the golf carts leave the supplier's facility or upon sale of the inventory by Venom and the Company would receive a 5% fee for the total cost of inventory ordered by Venom. Inventory purchased by Venom under the Venom Supply Agreement is collateral for the amount financed by the Company. The Venom Supply Agreement was amended on October 29, 2025 ("Amendment 1") to increase the amount of inventory purchases by $700,000 with payment terms of the earlier of 60 days from when the inventory was received by Venom or upon sale of the inventory. Amendment 1 was completed to allow Venom to purchase MN1 Tradesman and MN1 Adventurers that the Company ordered but had not received from Super Sonic prior to the Venom APA being signed. The Venom Supply Agreement was further amended on November 17, 2025 to increase the amount of inventory purchases by $2.5 million.

Venom has fully paid for the initial inventory ordered under the Venom Supply Agreement as of December 31, 2025. As of March 25, 2026, all payments for the inventory under Amendment 1 and Amendment 2 were paid by the Company to the suppliers, payments of $610,808 have been received from Venom for these orders and $2,354,591 remains outstanding. Although the Company completed a background check of Venom and its owners, there is no guarantee that Venom will be able to pay for the amounts outstanding under Amendments 1 and 2 to the Venom Supply Agreement. Although the Company has a security interest in the inventory, the Company does not have a dealer network or access to Venom's dealer network to sell the inventory immediately.

We are evaluating other opportunities to finance inventory purchases from other vendors, some of which may not be in an industry or for products which we have experience with, however such financing arrangements may not be available with favorable terms to us, or at all. Default by customers on inventory purchases financed by us could have a material adverse effect on our business, results of operations or financial condition.

Increased tariffs or a global trade war could increase the costs of products for the customers we finance inventory purchases, and could increase the costs of our products, which could adversely impact the competitiveness of theirs or our products and our financial results.

Venom's products are manufactured for them by an international third-party manufacturer. The Brat is manufactured in China and our future E-Bike products are expected to be manufactured in China and depend on materials from China, namely batteries, which is the main component of the E-Bikes. We cannot predict what actions may be taken with respect to tariffs or trade relations between the U.S., China and other countries, what products may be subject to such actions, or what actions may be taken by China or other countries in retaliation. The adoption and expansion of trade restrictions, the occurrence of a trade war, or other governmental action related to tariffs, trade agreements or related policies have the potential to adversely impact Venom's and our supply chain and access to equipment, Venom's and our costs and Venom's and our product margins. Any such cost increases or decreases in availability could slow our growth and reduce Venom's inventory purchases. Other potential customers considering inventory financing opportunities with us may defer purchases or not purchase inventory at all if tariffs make their costs too high to sell profitably which could have a material adverse effect on our business, results of operations or financial condition.

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

Others, including our competitors, may hold or obtain patents, copyrights, trademarks or other proprietary rights that could prevent, limit or interfere with our ability to make, use, develop, sell or market our products and services, which could make it more difficult for us to operate our business. From time to time, the holders of such intellectual property rights may assert their rights and may bring suits alleging infringement or misappropriation of such rights. In addition, if we are determined to have infringed upon a third-party's intellectual property rights, we may be required to cease making, selling or incorporating certain components or intellectual property into the products we offer, to pay substantial damages and/or license royalties, to redesign our products, and/or to establish and maintain alternative branding for our products.

Prior to the Venom APA, we had registrations for the trademarks VOLCON, GRUNT, and GRUNT EVO in the U.S. We have also applied to register additional trademarks – including VOLCON, VOLCON BRAT, EMPOWERING ADVENTURE, STAG, VOLCON STAG, VLCN, VLCN BRAT, VLCN HF1, VLCN MN1, VLCN FT1, VLCN HT1, VLCN SK1, and VLCN RV1 - in the U.S., Canada, New Zealand, Australia and certain additional countries in Latin America, and many of these trademarks are now allowed or registered in these countries. Other than the VOLCON BRAT and VLCN BRAT, we sold all these trademarks to Venom.

Upon the changing of the Company's name to Empery Digital Inc., we began registering trademarks for Empery in the U.S. and other countries. Our efforts to secure trademark registrations for Empery are ongoing and we may encounter resistance from other companies, particularly as we register in additional territories. If we receive objections from other entities and are unsuccessful in obtaining agreements or otherwise resolving the matters with these entities, we will need to consider the use of different trademarks for our Company and our products.

In the event that we were required to take one or more such actions, our business, prospects, operating results and financial condition could be materially adversely affected. In addition, any litigation or claims, whether or not valid, could result in substantial costs, negative publicity and diversion of resources and management attention.

We could be negatively impacted by cybersecurity attacks and are subject to evolving privacy laws in the U.S. and other jurisdictions that could adversely impact our business and require that we incur substantial costs.

We use a variety of information technology systems in the ordinary course of business, which are potentially vulnerable to unauthorized access, computer viruses, ransomware software viruses and other similar types of malicious activities and cyber-attacks, including cyber-attacks to our information technology infrastructure and attempts by others to gain access to our proprietary or sensitive information, and ranging from individual attempts to advanced persistent threats. Additionally, our vendors and potentially our customers, such as federal, state and local governments, require us to maintain and protect our information technology infrastructure to specified standards in order to protect not only our sensitive information, but also their sensitive information. Further, ransomware attacks are becoming increasingly prevalent and severe. To alleviate the financial, operational, and reputational impact of a ransomware attack, it may be preferable to make extortion payments, but we may be unwilling or unable to do so, including, for example, if applicable laws or regulations prohibit such payments. The procedures and controls we use to monitor these threats and mitigate our exposure may not be sufficient to prevent cybersecurity incidents. The results of these incidents could include misstated financial data, theft of trade secrets or other intellectual property, liability for disclosure of confidential customer, supplier or employee information, increased costs arising from the implementation of additional security protective measures, litigation and reputational damage, which could materially adversely affect our financial condition, business or results of operations. Any remedial costs or other liabilities related to cybersecurity incidents may not be fully insured or indemnified by other means. Moreover, we or our third-party vendors or business partners may be more vulnerable to such attacks in remote work environments, which increased in response to the COVID-19 pandemic. Additionally, security breaches could result in a violation of applicable U.S. and international privacy and other laws and subject us to governmental investigations and proceedings, which could result in our exposure to material civil or criminal liability.

Risks Related to our Common Stock

Anti-takeover provisions in our governing documents and a stockholder rights plan adopted in February 2026 may discourage, delay or prevent a change of control of our company.

Our certificate of incorporation and bylaws contain certain provisions that may discourage, delay or prevent a change in our management or change of control, including that they, collectively: authorize the issuance of "blank check" preferred stock that could be issued by our board of directors to thwart a takeover attempt; provide that, subject to the special rights of the holders of one or more series of preferred stock, special meetings of the stockholders may be called only by or at the direction of the Board of Directors, the Chairperson of the Board of Directors, the Chief Executive Officer or President, and shall not be called by any other person or persons. prohibit stockholder action by written consent, thereby requiring all actions to be taken at a meeting of the stockholders; and establish advance notice requirements for nominations of candidates for election as directors or to bring other business before an annual meeting of our stockholders.

Additionally, in February 2026, we adopted a stockholder rights plan, pursuant to which we issued a dividend of one preferred share purchase right (a "Right") for each share of our common stock then outstanding. In the event of certain takeover events not authorized by our board of directors, the holders of Rights may purchase additional shares of common stock at a discount, diluting the ownership stake of any potential acquirer and making a takeover more expensive and difficult.

These provisions in our certificate of incorporation and bylaws and the Rights could prevent our stockholders from receiving the benefit from any premium to the market price of our common stock offered by a bidder in a takeover context. Their impact that delays, deters, renders more difficult or prevents a change in our control in a takeover attempt may not be in the best interests of our stockholders. Even in the absence of a takeover attempt, the existence of these provisions and the Rights could adversely affect the prevailing market price of our common stock if their impact is perceived by investors as detrimental. Also, they could make it more difficult for stockholders to replace or remove our management and thus facilitate management entrenchment.

Our business and operations could be negatively affected if we become subject to stockholder activism, which could cause us to incur significant expense, hinder execution of our business and growth strategy, and impact our stock price.

We have been, and may in the future be, subject to informal private or public inquiries and formal proxy actions or proposals from stockholders or others that may not align with our business strategies or the interests of our other stockholders. Stockholder activism, which could take many forms or arise in a variety of situations, has been increasing in recent years. Volatility in the stock price of our common stock or the adoption and execution of our Bitcoin treasury strategy or other reasons may in the future cause us to become the target of stockholder activism. Responding to such actions can be costly and time-consuming, disrupt our business and operations, and divert the attention of our Board of Directors, management, and employees from the pursuit of our business strategies.

We strive to maintain constructive, ongoing communications with all stockholders, and we welcome constructive input from all stockholders toward the shared goal of enhancing long-term stockholder value. Nonetheless, we may not be successful in engaging constructively with one or more stockholders, and any resulting activist campaign that contests, or seeks to change, our Board of Directors, management, strategic direction or business could have an adverse effect on us because (i) responding to proxy contests and other actions by activist stockholders can be costly and time-consuming, disrupting our operations and diverting the attention of management and our Board of Directors, (ii) perceived uncertainties as to our future direction caused by activist stockholders could result in the loss of potential business opportunities, make it more difficult to attract and retain qualified personnel and business partners, and affect our relationships with suppliers and other service providers, and (iii) if individuals are elected to our Board of Directors with a specific agenda, it may adversely affect our ability to effectively implement our business strategy and create additional value for our stockholders. Our stock price could also be subject to significant fluctuations or otherwise be adversely affected by the events, risks and uncertainties of any stockholder activism. In addition, we may be required to incur significant legal fees and other expenses related to any stockholder activism matters and our stock price could be subject to significant fluctuation or otherwise be adversely affected by the events, risks and uncertainties of any stockholder activism. As a result, the actions of stockholder activists could materially and adversely impact our business, operating results, and financial condition.

Your ownership may be diluted if additional capital stock is issued to raise capital, to purchase digital assets, repay outstanding debt, finance our operations, to complete acquisitions or in connection with strategic transactions.

If we need to raise additional funds to purchase digital assets, repay outstanding debt, finance our operations, to complete acquisitions or to develop strategic relationships by issuing equity or convertible debt securities, which would reduce the percentage ownership of our existing stockholders. Our board of directors has the authority, without action or vote of the stockholders, to issue all or any part of our authorized but unissued shares of common or preferred stock. Our certificate of incorporation authorizes us to issue up to 250,000,000 shares of common stock and 5,000,000 shares of preferred stock. Future issuances of common or preferred stock would reduce your influence over matters on which stockholders vote and would be dilutive to earnings per share. In addition, any newly issued preferred stock could have rights, preferences and privileges senior to those of the common stock. Those rights, preferences and privileges could include, among other things, the establishment of dividends that must be paid prior to declaring or paying dividends or other distributions to holders of our common stock or providing for preferential liquidation rights. These rights, preferences and privileges could negatively affect the rights of holders of our common stock, and the right to convert such preferred stock into shares of our common stock at a rate or price that would have a dilutive effect on the outstanding shares of our common stock.

If our stock price fluctuates, you could lose a significant part of your investment.

Our share price has historically been highly volatile and closed at $4.35 on March 25, 2026. The market price of our common stock is subject to wide fluctuations in response to, among other things, the risk factors described in this filing and other factors beyond our control, such as the market value of Bitcoin and fluctuations in the valuation of companies perceived by investors to be comparable to us. Furthermore, the stock markets have experienced price and volume fluctuations that have affected and continue to affect the market prices of equity securities of many companies. These fluctuations often have been unrelated or disproportionate to the operating performance of those companies. These broad market and industry fluctuations, as well as general economic, political, and market conditions, such as recessions, interest rate changes or international currency fluctuations, may negatively affect the market price of our common stock. In the past, many companies that have experienced volatility in the market price of their stock have been subject to securities class action litigation. We may be the target of this type of litigation in the future. Securities litigation against us could result in substantial costs and divert our management's attention from other business concerns, which could seriously harm our business.

We have in the past failed to maintain compliance with all applicable continued listing requirements of the Nasdaq Global Select Market, and if we fail to maintain compliance with all applicable continued listing requirements of the Nasdaq Global Select Market in the future, we will not be afforded traditional cure periods under Nasdaq rules and our common stock will be delisted from Nasdaq, which could have an adverse impact on the liquidity and market price of our common stock.

On May 13, 2025, the Company received a notice from Nasdaq that it was not in compliance with Nasdaq's Listing Rule 5550(a)(2), as the minimum bid price of its common stock had been below $1.00 per share for 30 consecutive business days. The Company submitted a hearing request to Nasdaq's Hearings Department for this matter, which stayed the suspension of the Company's common stock. The Company participated in a hearing with Nasdaq's Hearings Department on June 24, 2025. On July 17, 2025, Nasdaq informed the Company that it had regained compliance with the above listing rules and had to remain in compliance with the minimum bid price rule through November 10, 2025, which the Company did.

In the event that the Company does not maintain compliance in the future our common stock could be delisted from Nasdaq and trading of our common stock could be conducted only in the over-the-counter market or on an electronic bulletin board established for unlisted securities such as the Pink Sheets or the OTC Bulletin Board. In such an event, it could become more difficult to dispose of, or obtain accurate price quotations for, our common stock, and there would likely also be a reduction in our coverage by securities analysts and the news media, which could cause the price of our common stock to decline further. Also, it may be difficult for us to raise additional capital if we are not listed on a major exchange.

We may be subject to material litigation, including individual and class action lawsuits, as well as investigations and enforcement actions by regulators and governmental authorities. These matters are often expensive and time consuming, and, if resolved adversely, could harm our business, financial condition, and operating results.

We may from time to time become subject to claims, arbitrations, individual and class action lawsuits with respect to a variety of matters, including employment, consumer protection, advertising, and securities. In addition, we may from time to time become subject to government and regulatory investigations, inquiries, actions or requests, other proceedings and enforcement actions alleging violations of laws, rules, and regulations, both foreign and domestic. The scope, determination and impact of claims, lawsuits, government and regulatory investigations, enforcement actions, disputes and proceedings to which we are subject cannot be predicted with certainty, and may result in:

- substantial payments to satisfy judgments, fines, or penalties;
- substantial outside counsel, advisor and consultant fees and costs;
- additional compliance and licensure requirements;
- loss or non-renewal of existing licenses or authorizations, or prohibition from or delays in obtaining additional licenses or authorizations required for our business;
- loss of productivity and high demands on employee time;
- criminal sanctions or consent decrees;
- termination of certain employees, including members of our executive team;
- barring of certain employees from participating in our business in whole or in part;
- orders that restrict our business or prevent us from offering certain products or services;
- changes to our business model and practices;
- an inability to deliver on our strategy;
- delays to planned transactions, product launches, or improvements; and
- damage to our brand and reputation.

Regardless of the outcome, any such matters can have an adverse impact, which may be material, on our business, operating results, or financial condition because of legal costs, diversion of management resources, reputational damage, and other factors. Due to our business activities, including our bitcoin treasury strategy, it is possible that in the future we may be subject to investigations and inquiries by U.S. federal and state regulators and foreign regulators, many of which have broad discretion to audit and examine our business. The complexity of U.S. federal and state and international regulatory and enforcement regimes, coupled with the evolving global regulatory environment, could result in a single event prompting a large number of overlapping investigations and legal and regulatory proceedings by multiple government authorities in different jurisdictions. Any of the foregoing could, individually or in the aggregate, harm our reputation, damage our brand and business, and adversely affect our operating results and financial condition.

We do not intend to pay dividends in the foreseeable future.

We have never declared or paid any cash dividends on our capital stock. We do not expect to pay any cash dividends on our common stock in the foreseeable future. Payment of future dividends, if any, will be at the discretion of our board of directors and will depend on our financial condition, results of operations, capital requirements, restrictions contained in any financing instruments, provisions of applicable law and other factors the board deems relevant.

As an "emerging growth company" under the Jumpstart Our Business Startups Act, or JOBS Act, we are permitted to, and intend to, rely on exemptions from certain disclosure requirements.

As an "emerging growth company" under the JOBS Act, we are permitted to, and intend to, rely on exemptions from certain disclosure requirements. We are an emerging growth company until the earliest of:

- the last day of the fiscal year during which we have total annual gross revenues of $1.235 billion or more;
- the last day of the fiscal year following the fifth anniversary of our initial public offering;
- the date on which we have, during the previous 3-year period, issued more than $1 billion in non-convertible debt; or
- the date on which we are deemed a "large accelerated issuer" as defined under the federal securities laws.

For so long as we remain an emerging growth company, we will not be required to:

- have an auditor report on our internal control over financial reporting pursuant to the Sarbanes-Oxley Act of 2002;
- comply with any requirement that may be adopted by the Public Company Accounting Oversight Board regarding mandatory audit firm rotation or a supplement to the auditor's report providing additional information about the audit and the financial statements (auditor discussion and analysis);
- submit certain executive compensation matters to stockholders advisory votes pursuant to the "say on frequency" and "say on pay" provisions (requiring a non-binding stockholder vote to approve compensation of certain executive officers) and the "say on golden parachute" provisions (requiring a non-binding stockholder vote to approve golden parachute arrangements for certain executive officers in connection with mergers and certain other business combinations) of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010; and
- include detailed compensation discussion and analysis in our filings under the Securities Exchange Act of 1934, as amended, and instead may provide a reduced level of disclosure concerning executive compensation.

Additionally, for so long as we remain an emerging growth company, we:

- may present only two years of audited financial statements and only two years of related Management's Discussion and Analysis of Financial Condition and Results of Operations, or MD&A; and
- are eligible to claim longer phase-in periods for the adoption of new or revised financial accounting standards under §107 of the JOBS Act.

For fiscal 2026, we will no longer qualify as an emerging growth company and will be required to comply with of all of these reporting requirements and lose the exemptions under §107 of the JOBS Act.

Certain of these reduced reporting requirements and exemptions were already available to us due to the fact that we also qualify as a "smaller reporting company" under SEC rules. However, if we no longer qualify as a smaller reporting company, wee will be required to obtain an auditor attestation and report regarding management's assessment of internal control over financial reporting; provide a compensation discussion and analysis; provide a pay-for-performance graph or CEO pay ratio disclosure; and present three years of audited financial statements and related MD&A disclosure.

ITEM 1B. UNRESOLVED STAFF COMMENTS

None.

ITEM 1C. CYBERSECURITY

Risk Management and Strategy

We have established policies and procedures for assessing, identifying, and managing material risk from cybersecurity threats. We monitor cybersecurity threats, including any potential unauthorized occurrence on or conducted through our information systems that we use through third-party providers that may result in adverse effects on the confidentiality, integrity, or availability of our information systems or any information residing therein.

We conducted a NIST risk assessment and performed as needed updates to our risks to identify cybersecurity threats, as well as assessments in the event of a material change in our business practices that may affect information systems that are vulnerable to such cybersecurity threats. We engage a managed service provider ("MSP") and other third parties in connection with our cybersecurity and information technology risk assessment processes and our MSP also assists us with managing and monitoring our network and local computer systems. These service providers assist us in designing and implementing our cybersecurity policies and procedures, as well as monitoring and testing our safeguards. Personnel at all levels and departments are made aware of our cybersecurity policies through communications.

As of December 31, 2025, and through the date of the filing of this report, we are not aware of any cybersecurity incidents that have materially affected or are reasonably likely to materially affect us, including our business strategy, results of operations or financial condition. Despite our continuing efforts, we cannot guarantee that our cybersecurity safeguards will prevent breaches or breakdowns of our or our third-party service providers' information technology systems, particularly in the face of continually evolving cybersecurity threats and increasingly sophisticated threat actors. A cybersecurity incident may materially affect our business, results of operations or financial condition, including where such an incident results in reputational, competitive or business harm or damage to our brand, lost sales, reduced demand, loss of intellectual property rights, significant costs or government investigations, litigation, fines or damages. For additional information regarding risks from cybersecurity threats, please refer to Item 1A, "Risk Factors," in this Annual report on Form 10-K.

Governance

One of the key responsibilities of our board of directors is informed oversight of our risk management process, including risks from cybersecurity threats. Our board of directors is responsible for monitoring and assessing strategic risk exposure, and our executive officers are responsible for the day-to-day management of the material risks we face. The Audit Committee of our Board of Directors has primary responsibility for oversight of cybersecurity and is briefed on cybersecurity risks at least once each year and following any material cybersecurity incidents.

At the management level, our Chief Financial Officer ("CFO") is primarily responsible for assessing and managing our material risks from cybersecurity threats. In this regard, our CFO has assistance from service providers, other consultants and third parties. Our CFO has served as an executive officer for four years and prior to this was an audit and advisory partner at a public accounting firm overseeing financial statement audits of public and private companies. Audit procedures performed for his clients included evaluating internal controls and risk assessment evaluations over information technology and cybersecurity policies.

Our CFO oversees our cybersecurity policies and procedures, including those described in "Risk Management and Strategy" above. Under such policies and procedures, our CFO is responsible for reporting to our Board of Directors and the Audit Committee regarding any cybersecurity incident including the results of cybersecurity risk assessments.

ITEM 2. PROPERTIES

Our corporate headquarters is located in Round Rock, Texas, where we currently lease approximately 17,600 square feet of space across two facilities. We also lease approximately 3,000 square feet of office space in New York, New York for four of our employees including our Co-Chief Executive Officer and Chairman of the Board of Directors (Ryan Lane), Chief Operating Officer and Vice President - Legal.

We currently plan to leave the facilities in Round Rock, Texas, when the leases expire in August 2026, if not sooner if the landlord can identify a replacement tenant. We believe that suitable replacement and additional space, if necessary, will be available in the future on commercially reasonable terms.

ITEM 3. LEGAL PROCEEDINGS

From time to time in the ordinary course of our business, we may be involved in legal proceedings, the outcomes of which may not be determinable. The results of litigation are inherently unpredictable. Any claims against us, whether meritorious or not, could be time consuming, result in costly litigation, require significant amounts of management time and result in diversion of significant resources. We are not able to estimate an aggregate amount or range of reasonably possible losses for those legal matters for which losses are not probable and estimable. We have insurance policies covering potential losses where such coverage is cost-effective.

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 listed on the NASDAQ Stock Market LLC under the symbol "EMPD".

Stockholder Rights Plan

On February 3, 2026, our Board of Directors declared a dividend of one preferred share purchase right (a "Right"), payable on February 13, 2026, for each share of Common Stock, outstanding on February 13, 2026 to the stockholders of record on that date. In connection with the distribution of the Rights, the Company entered into a Rights Agreement (the "Rights Agreement"), dated as of February 3, 2026, between the Company and Computershare Trust Company, N.A., as rights agent. Each Right entitles the registered holder to purchase from the Company one one-thousandth of a share of Series A Preferred Stock, par value $0.00001 per share (the "Preferred Shares"), of the Company at a price of $15.00 per one one-thousandth of a Preferred Share represented by a Right (the "Purchase Price"), subject to adjustment.

The Rights are in all respects subject to and governed by the provisions of the Rights Agreement. The following description of the Rights Agreement does not purport to be complete and is qualified in its entirety by reference to the full text of the Rights Agreement, which is attached hereto as Exhibit 4.29 and incorporated herein by reference.

Initially, the Rights are attached to all common stock certificates and no separate certificates evidencing the Rights ("Right Certificates") will be issued. Until the Distribution Date (as defined below), the Rights will be transferred with and only with the common stock. As long as the Rights are attached to the common stock, the Company will issue one Right with each new Common Stock so that all such Common Stock will have Rights attached.

The Rights will separate and begin trading separately from shares of Common Stock, and Right Certificates will be caused to evidence the Rights, on the earlier to occur of (i) the Close of Business (as such term is defined in the Rights Agreement) on the 10th day following a public announcement, or the public disclosure of facts indicating (or the Board of Directors becoming aware), that a Person (as such term is defined in the Rights Agreement) or group of affiliated or associated Persons has acquired Beneficial Ownership (as defined below) of 12.5% or more of the outstanding common stock (an "Acquiring Person") (or, in the event the Board of Directors determines to effect an exchange in accordance with Section 24 of the Rights Agreement and the Board of Directors determines that a later date is advisable, then such later date) or (ii) the Close of Business on the 10th Business Day (as such term is defined in the Rights Agreement) (or such later date as may be determined by action of the Board of Directors prior to such time as any Person becomes an Acquiring Person) following the commencement of a tender offer or exchange offer the consummation of which would result in the Beneficial Ownership by a Person or group of 12.5% or more of the outstanding common stock (the earlier of such dates, the "Distribution Date"). As soon as practicable after the Distribution Date, unless the Rights are recorded in book-entry or other uncertificated form, the Company will prepare and cause the Right Certificates to be sent to each record holder of common stock as of the Distribution Date.

Additional information regarding the Rights Plan is available in the Company's Current Reports on Form 8-K filed February 3, 2026.

Holders

As of March 25, 2026, we had 25 stockholders of record and 30,247,668 outstanding shares.

Dividends

We have never declared or paid any cash dividends on our capital stock. The payment of dividends in the future will be contingent upon our revenues and earnings, if any, capital requirements and general financial condition. We currently intend to retain earnings, if any, to finance the growth and development of our business. We do not expect to pay any cash dividends on our common stock in the foreseeable future. Payment of future dividends, if any, will be at the discretion of our board of directors and will depend on our financial condition, results of operations, capital requirements, restrictions contained in any financing instruments, provisions of applicable law and other factors the board deems relevant.

As noted under the heading "Stockholder Rights Plan" above, on February 3, 2026, our Board of Directors declared a dividend of one preferred share purchase right, payable on February 13, 2026, for each share of Common Stock outstanding on February 13, 2026 to the stockholders of record on that date.

Issuer Purchases of Equity Securities

The following table provides information relating to the purchases of our common stock during the three months ended December 31, 2025 in accordance with Item 703 of Regulation S-K:

Period	(a) Total Number of Shares (or Units) Purchased	(b) Average Price Paid per Share (or Unit) ($)	(c) Total Number of Shares (or Units) Purchased as Part of Publicly Announced Plans or Programs (1)	(d) Maximum Number (or Approximate Dollar Value) of Shares that May Yet Be Purchased Under the Plan or Program
October 1, 2025 – October 31, 2025	4,991,977	7.32	4,991,977	74,573,346
November 1, 2025 – November 30, 2025	3,514,987	5.75	3,514,987	54,374,156
December 1, 2025 – December 31, 2025	29,964	4.85	29,964	54,228,939
Three Month period ended December 31, 2025	8,536,928		8,536,928	$ 54,228,939

(1) On March 17, 2025, the Company's Board of Directors adopted a stock repurchase program of up to $2.0 million of shares of its outstanding common stock. This repurchase program was set to expire on March 7, 2026. On July 24, 2025, the Board approved a $100.0 million common stock repurchase program effective through July 24, 2027 and increased by the Board to $150.0 million on October 10, 2025 (increased to $200.0 million on February 2, 2026 which is not included in the amounts above), subject to extension or earlier termination by the Board at any time. The March 2025 repurchase program was terminated upon the approval of the July 2025 repurchase program.

Recent Sales of Unregistered Securities

None.

ITEM 6. [RESERVED]

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

The following discussion and analysis of our financial condition and results of operations is intended as a review of significant factors affecting the Company's financial condition and results of operations for the periods indicated. This discussion and analysis should be read in conjunction with the financial statements and related notes appearing elsewhere in this Annual Report on Form 10-K, which contains audited financial statements of the Company as of and for the year ended December 31, 2025, Results for the year ended December 31, 2025 are not necessarily indicative of results for the year ending December 31, 2026 or any future period. Some of the information contained in this discussion and analysis, including information with respect to our plans and strategy for our business, includes forward-looking statements that involve risks and uncertainties. Our actual results may differ materially from management's expectations as a result of various factors. Factors that could cause or contribute to these differences include, but are not limited to, those identified below and those discussed in the "Special Note Regarding Forward-Looking Statements" section and in the "Risk Factors" section in this Annual Report on Form 10-K.

Overview

Digital Asset Treasury Strategy

On July 17, 2025, the Company announced its entry into securities purchase agreements with certain institutional and accredited investors in private placements for the purchase and sale of 44,414,189 shares of common stock of the Company, par value $0.00001 per share and pre-funded warrants to purchase up to an aggregate of 5,728,662 shares of common stock with an exercise price of $0.00001, at a price of $10.00 per share, for aggregate gross proceeds of approximately $501.0 million which includes payment in BTC of $28.0 million, before deducting placement agent fees and other offering expenses. The Private Placements closed on July 21, 2025. The Company has used the net proceeds of $452.0 million from the Private Placements (excluding the $28.0 million of BTC received) to purchase or otherwise acquire BTC and for the establishment of the Company's cryptocurrency treasury operations. In connection with the announcement of the Private Placements, the Company announced the launch of its digital asset treasury strategy, pursuant to which the Company plans to pursue a number of strategic initiatives to acquire additional BTC and potentially other digital assets.

The key component of the digital asset strategy is to optimize the Company's capital structure to increase BTC per share to drive stockholder value. This includes issuing equity when market conditions allow us to raise capital at a premium to NAV, defined as the value of BTC holdings plus cash, minus debt divided by adjusted outstanding shares which includes common stock outstanding plus all pre-funded warrants outstanding. Pursuant to the ATM Sales Agreement with Aegis, the Company can sell up to $1.1 billion of common stock under the ATM program, and since the inception of the digital asset treasury strategy through March 25, 2026, the Company has sold 136,053 shares of common stock for $1.5 million, including commissions, at an average price of $10.90. The Company may also complete other equity or convertible debt issuances if it determines market conditions are appropriate.

In addition, our strategy includes repurchasing our common stock when market conditions allow, when our common stock is trading below NAV per share. The Company also has a share repurchase program that allows it to repurchase up to $150.0 million of common stock as of December 31, 2025, which was expanded to $200.0 million on February 2, 2026 and through March 25, 2026 has bought 23,114,391 shares of common stock for $135.6 million, including commissions, at an average price of $5.87. Share repurchases have been funded with proceeds from two borrowing arrangements, that allow for borrowings of up to $150.0 million, of which $95.0 million has been drawn as of March 25, 2026, and sales of BTC. Some of our BTC is held by these lenders as collateral for outstanding borrowings which we may repay with future equity offerings or by selling BTC. See Note 7 to the consolidated financial statements for further discussion of these borrowing arrangements.

Additionally, a significant component of the digital asset treasury strategy is to reduce costs across the Company so that cash generated from operations can be used to pay operating expenses and any excess cash generated can be used to purchase more BTC or repurchase shares of our common stock. We also generated income through buying and selling derivatives on BTC, including the use of short-term put and call contracts. Since the inception of our digital asset strategy through March 25, 2026, the Company generated income of $2.0 million from trading derivative contracts, which is recorded in Other income in the consolidated statement of operations.

The Company also recognizes the risk that digital assets pose with respect to digital wallets being compromised and the Company uses institutional-grade custodians to hold its BTC in wallets, some of which are isolated from the internet, referred to as cold storage, to minimize this risk. We view our BTC as long-term holdings, although there are no restrictions on selling BTC that is not held as collateral by our lenders. As of March 25, 2026 we have 3,359 BTC, of which 2,891 are restricted by lenders as collateral for outstanding loan balances.

The BTC market has been characterized by significant volatility in price, relative anonymity, a developing regulatory landscape, potential susceptibility to market abuse and manipulation, compliance and internal control failures at exchanges, and various other risks that are, or may be, inherent in its entirely electronic, virtual form and decentralized network. For example, since the implementation of our digital asset treasury strategy through March 25, 2026, BTC has traded at a high of $126,117 and a low of $60,019 on the Gemini exchange.

Unrealized losses on digital assets significantly contributed to our results of operations for the year ended December 31, 2025. The unrealized loss on digital assets of $122.7 million was recorded, representing 79.3%, of our operating expenses for the year.

Electric Vehicles

The Company began its operations as an all-electric, off-road powersports vehicle business. Beginning in 2021, we began efforts to sell off-road powersports vehicles beginning with an electric two-wheeled motorcycle that we discontinued in March 2025. In 2022 we introduced an E-Bike, the Brat, and continue to sell this product. In late 2024 we began selling the HF1 UTV, the MN1 Adventurer and MN1 Tradesman UTV, along with a line of upgrades and accessories. As discussed below, in October 2025, we sold the HF1 and MN1 product lines.

Venom Supply Agreement

On February 24, 2025, we entered into the Venom Supply Agreement with Venom to supply Venom with certain golf carts. The Venom Supply Agreement was amended and restated on April 25, 2025. The Venom Supply Agreement allows Venom to purchase up to $2.0 million of golf carts with payment terms of the earlier of 100 days from the date the golf carts are shipped from the manufacturer's facility or upon sale to Venom's dealers or to consumers. These golf carts will be purchased through a manufacturer specified in the Venom Supply Agreement and we will receive consideration of the cost of the golf carts plus a five percent margin. We received an initial order from Venom for $2.0 million golf carts and paid a deposit to the manufacturer of $0.6 million on May 2, 2025 and paid $0.8 million in September 2025 for the golf carts, which were shipped in September 2025. The remaining $0.6 million was paid in the fourth quarter of 2025. All units were shipped by the manufacturer to Venom, and Venom paid all amounts due on this purchase as of December 31, 2025.

On October 29, 2025, the Venom Supply Agreement was amended to increase the available amount to purchase by $0.7 million and Venom agreed to purchase the remaining 138 MN1 units ordered by the Company under the Super Sonic Distribution Agreement discussed below. Payment terms are the earlier of 60 days from receipt or upon sale by Venom. All of these units were received by Venom by January 30, 2026 and payment is due by March 31, 2026.

On November 17, 2025, the Venom Supply Agreement was amended to increase the amount by $2.5 million (for a total of $4.5 million excluding the October 29, 2025 amendment). Subsequent to December 31, 2025 through March 25, 2026, the Company has paid $0.9 million to the manufacturer for orders placed by Venom and additional payments due to be paid for orders placed by Venom as of March 25, 2026, are $1.4 million. Payment terms are the earlier of 60 days from receipt of inventory by Venom or upon sale by Venom.

We expect that we will complete additional financing transactions for Venom under the Venom Supply Agreement and we are actively in discussions for the opportunity to fund inventory purchases with other companies that sell golf carts and UTVs.

Venom Asset Purchase Agreement

On October 15, 2025, the Company entered into the Venom APA with Venom to divest the Volcon brand in exchange for a non-dilutable 10% equity position in Venom's reorganized Delaware corporation on a fully-diluted basis. The Company transferred all Volcon IP, including all Volcon intellectual property, brand assets, trademarks, sales and distribution networks and engineering documentation associated with the Volcon IP other than its E-Bike, the Brat. The Company will have the right to appoint one director to Venom's board and may continue to finance Venom's inventory purchases. In the event that Venom does not complete its corporate reorganization within six months, the Company will have the option to repurchase the Volcon IP for a nominal amount.

The Company expects that this agreement will reduce Empery Digital's future product liability exposure by transferring ownership of Volcon's four-wheel vehicle business to Venom. The Company also plans to expand its vehicle financing operations for golf carts and UTVs to generate positive cash flow by leveraging the spread between the Company's cost of capital and interest income from vehicle financing. The Company has been transitioning its powersports dealers to Venom but will continue ongoing warranty support through the remaining warranty period of vehicles the Company sold within these channels.

The Company's decision to sell these assets represents a strategic shift in operations as the Company does not currently plan to sell any four-wheel products after 2025. Therefore, in accordance with applicable accounting guidance, the results of the four-wheel product lines are presented as discontinued operations in the Consolidated Statements of Income and, as such, have been excluded from both continuing operations and segment results for all periods presented in this Annual Report on Form 10-K. All amounts, and disclosures for all periods presented in this Annual Report on Form 10-K reflect only the continuing operations unless otherwise noted. See Note 18 to the consolidated financial statements for further discussion.

Super Sonic Distribution Agreement

In January 2025, we entered into the Super Sonic Distribution Agreement with Super Sonic, a golf cart manufacturer, to supply golf carts to other companies in the U.S. who sell golf carts. On September 18, 2025, we received a notice of termination from Super Sonic pursuant to which Super Sonic terminated this distribution agreement. The termination, which was effective upon receipt of the notice from Super Sonic, was affected pursuant to the terms of the Super Sonic Distribution Agreement on the grounds that the Company has failed to meet the minimum purchase requirement under the Super Sonic Distribution Agreement for two consecutive months, which gave Super Sonic the right to immediately terminate the Super Sonic Distribution Agreement. The termination also eliminates any obligation of the Company to issue equity to Super Sonic pursuant to the terms of the Super Sonic Distribution Agreement. The Company is not subject to any early termination penalties related to the termination of the Super Sonic Distribution Agreement.

Two-Wheeled Products

We began selling the Grunt off-road motorcycle in September 2021 and the Grunt EVO off-road motorcycle replaced the Grunt in September 2023. Due to the manufacturing cost of the Grunt EVO, we terminated the manufacturing contract for it in December 2024. As of March 31, 2025, we have sold all of the remaining Grunt EVO units.

Beginning in the second quarter of 2024, we began evaluating other potential electric motorcycle offerings. We are determining what features and specifications would be included for new offerings including considering a street legal version that would be dual purpose as an on-road/off-road motorcycle (not highway legal). We have identified one new model which we are working on developing with a third-party manufacturer. We received prototypes in February 2025 and we are testing them to evaluate the feasibility to have them manufactured at a reasonable cost and sell them for an acceptable profit. Provided testing is successful and whether the product cost, including tariffs, allows us to sell this product, we expect to start selling this product in the second half of 2026.

In the fourth quarter of 2022, we began selling an E-Bike, the Brat which is manufactured by a third-party. The Brat is a class 2 E-Bike and can be used on-road or off-road. We have developed a line of accessories for the Brat that include color panels, headlight cowl, and seat, among other things. We are also developing a new model of the Brat that will incorporate some of these accessories in the base model.

Following the divestiture of the four-wheel products noted above, the Company expects to concentrate on its two-wheel business, including the launch of new products in European markets in the second half of 2026. We will continue to evaluate other potential two-wheel product offerings in 2026.

Customers

Dealers

Prior to the divestiture of our four-wheel product lines, we sold our products through powersports dealers, bicycle retailers, and golf cart dealers. We expect to continue to utilize our bicycle dealers. We are transitioning our powersports and golf cart dealers to Venom but will continue to support these dealers for service and warranty obligations for products sold to them.

International Distributors

We also sell our two-wheel products internationally through importers. Each importer buys vehicles and accessories and sells them to local dealers or directly to consumers. Payment for vehicle orders is required in advance of shipment. Local dealers or the importer will provide warranty and repair services for vehicles purchased in their country and we will reimburse them for any parts or labor incurred for warranty repairs. As of March 25, 2026, we have one importer in Mexico, one for the Caribbean Region and one in New Zealand to sell our two-wheel vehicles and accessories in their assigned countries/markets.

Consumers

Consumers can purchase the Brat from our website and have it delivered to a location of their choosing in the continental U.S.

Manufacturers

We outsource the manufacturing of all our two-wheel products and accessories to an international third-party manufacturer, PXID. The estimated fulfillment of all two-wheeled orders we have received, or will receive, assumes that PXID can successfully meet our order quantities and deadlines. We have experienced delays in the past due to other third-party manufacturers being unable to timely meet our order deadlines, and there is no assurance that we will not experience delays in the future until such time as we are able to source products from multiple manufacturers or from larger, more established manufacturers. If PXID is unable to satisfy orders on a timely basis, our customers may cancel their orders. Also, due to the Company currently only having PXID for design, development and manufacturing of our two-wheel products, if they experience financial hardship and cannot manufacture our products, our customers may cancel their orders which will harm our sales. Due to new and increased tariffs and other trade policies introduced or threatened by the U.S. government since the beginning of 2025, the cost of our products will increase without a decrease in manufacturing costs and may increase further if additional changes in import laws or tariffs occur. We could also experience delays in receiving shipments of our products if there are delays in getting carriers to ship our products or delays at the port of entry.

Venom currently sources its golf cart and accessory purchases from one international third-party manufacturer. Risks related to future purchases of their products from this manufacturer are similar to those of our two-wheel products noted above and could result in delays in ordering and receiving products that could impact the amount of inventory purchases that Venom may finance through the Company.

Results of Operations

The following financial information is for the years ended December 31, 2025 and 2024.

	2025	2024
Revenue	$ 974,977	$ 3,983,466
Cost of goods sold	1,337,595	17,987,951
Gross margin	(362,618)	(14,004,485)
Operating expenses:		
Sales and marketing	1,458,006	2,228,027
Product development	398,605	1,857,391
General and administrative	28,602,049	7,567,874
Unrealized loss on digital asset	122,659,151	–
Total operating expenses	153,117,811	11,653,292
Loss from operations	(153,480,429)	(25,657,777)
Interest and other expense	(474,386)	(18,496,282)
Loss from continuing operations before taxes	(153,954,815)	(44,154,059)
Tax benefit	5,383,973	–
Loss from continuing operations	(148,570,842)	(44,154,059)
Discontinued operations	(1,481,644)	(1,356,250)
Net loss	$ (150,052,486)	$ (45,510,309)

Revenue

Revenue for the year ended December 31, 2025 was $974,977 which represents sales of Grunt EVOs of $302,841, which were discontinued in March 2025, Brats of $437,144 and accessories and parts of $116,009. The Company also realized $98,448 of finance revenue where the Company provided the financing services for the purchase of inventory.

Revenue for the year ended December 31, 2024, was $3,983,466 which represents sales of Brats of $1,561,555, Grunt EVOs of $1,280,739, Stags of $371,552 (which we stopped selling in the third quarter of 2024), Volcon Youth of $286,680 (which we stopped selling as of June 30, 2024), and accessories and parts of $264,338. Revenue during 2024 was also higher due to the reversal of unclaimed dealer rebates and price adjustment credits in the amount of $350,093 offset by discounts due to various promotions in the amount of $125,859.

In 2026 we expect our sales to decrease due to the sale of our four-wheel products to Venom, discontinuing the Grunt EVO motorcycle and our transition to financing inventory purchases for other golf cart and four-wheel product companies.

Cost of goods sold

Cost of goods sold for the year ended December 31, 2025 was $1,337,595, including payroll costs of $297,244 for employees performing product fulfillment, logistics management, and service and warranty and facilities costs of $430,426. Inventory adjustments were $129,289 offset by a benefit from the reversal of our warranty accrual of $199,957 due to the expiration of product warranties. Product costs were $235,147 for Grunt EVOs and $459,449 for Brats.

Cost of goods sold for the year ended December 31, 2024 were $17,987,951 including payroll costs of $268,745 for employees performing product fulfillment, logistics management, and service and warranty, partially offset by a stock-based compensation benefit of ($11,827) for the reversal of previously recognized stock-based compensation on stock options that did not vest due to employee terminations. Product costs for Brats and Grunt EVOs sold during the period were $1,523,053 and $1,427,562, (before the finished goods inventory write down discussed below), respectively. Volcon Youth product costs were $186,813 before the additional expense of $81,911 for the write down of all Volcon Youth inventory as the Company could no longer sell Volcon Youth motorcycles or parts after June 30, 2024.

Stag product costs were $950,424, which includes an expense of $112,168 for the loss the Company realized due to agreeing to provide additional units to a customer at a sales price less than the manufactured cost of the units. As noted above, the Company also wrote off all Stag parts inventory and prepaid inventory deposits resulting in an expense of $8,712,644. The Company also recognized an expense of $976,420 for a settlement agreement with a vendor who supplies certain suspension components for the Stag, an expense of $2,526,410 for a settlement agreement with the manufacturer of the Stag and $35,000 for a settlement to a vendor of Grunt parts. These expenses were offset by a credit of $700,000 for an amendment to the original settlement agreement with Torrot whereby the Company agreed to settle the future payment obligation by making a one-time lump sum payment and returning all unsold units and parts to Torrot. The Company also wrote down the Grunt EVO finished goods inventory by $674,379 due to the Company lowering the sales price to dealers and distributors.

The Company recorded a loss on disposal of assets of $817,736 primarily tooling related to Stag, Grunt EVO and Runt. The Company also recorded $175,000 as an offset to expenses for the partial recovery of a previously written off prepaid inventory deposit. Facilities costs for the year ended December 31, 2024 were $408,217 for our warehouse facility and third-party warehousing costs.

In 2026 we expect cost of goods sold to decrease due to lower revenue from product sales as noted above.

Sales and marketing

Sales and marketing expenses relate to costs to increase exposure and awareness of our digital asset strategy, for our products and developing our network of U.S. dealers and international distributors.

Sales and marketing expenses were $1,458,006 for the year ended December 31, 2025 and were primarily related to expenses associated with promoting our products and promoting the Empery Digital brand after the announcement of our digital asset treasury strategy and name change in July 2025 of $753,643, employee payroll costs of $250,787, and professional fees of $182,376 for fees paid to a third-party distributor, third-party sales consultants and legal fees. Travel expenses were $81,748, facilities expenses were $73,657, and software fees were $88,216.

Sales and marketing expenses were $2,228,027 for the year ended December 31, 2024 and were primarily related to expenses associated with promoting our products and brand of $617,098, employee payroll costs of $778,306, stock-based compensation of $37,062 for share-based awards granted to employees and consultants, and travel costs of $84,374 primarily related to costs incurred for travel to build our dealer and distributor network and to attend events to promote our products. Facilities costs were $116,959. Professional fees were $189,984, mainly related to legal fees of $19,506 related to entering into international distribution agreements and sales consultants in the amount of $125,785. Depreciation expense, primarily for demo vehicles, was $157,950.

For 2026 we expect sales expenses to decrease as we transition away from selling four-wheeled products to financing inventory purchases. We expect marketing expenses to remain consistent as we develop the Empery Digital brand and increase awareness of our digital asset strategy.

Product Development Expense

Product development expenses relate to development of our products and process to manufacture these products.

Product development expenses were $398,605 for the year ended December 31, 2025 and were primarily related to expenses associated with employee payroll costs of $177,480, depreciation expense of $49,864 and facilities costs of $96,978.

Product development expenses were $1,857,391 for year ended December 31, 2024 and were primarily related to expenses associated with employee payroll costs of $923,353, stock-based compensation of $126,337 for share-based awards granted to employees, facilities costs of $220,310, prototype costs of $148,845 and software fees related to product development in the amount of $77,837, travel expenses of $94,434 and depreciation expense of $100,782.

For 2026 we expect product development costs related to employee costs to decrease due to lower headcount as fewer products are in development compared to 2025, partially offset by an increase for product prototype costs for purchases of samples of new E-Bike products being considered for sale.

General and Administrative Expense

General and administrative expenses relate to costs for our finance, accounting and administrative functions to support the operations, development, marketing and sales of our products.

General and administrative expenses were $28,602,049 for the year ended December 31, 2025, and include expenses associated with employee payroll costs of $2,355,795, including the $225,000 signing bonus paid to the new Co-CEO, and bonuses of $375,000 paid to the Company's existing CEO and CFO, as noted above. The Company also recognized $17,850,071 of stock-based compensation including $1,125,802 for share-based awards granted to the Company's CEO and CFO in May 2025, $8,755,514 for inducement stock options granted to three new employees upon completion of the Private Placements, $249,413 for warrants granted to a consultant for the Private Placements and $7,719,342 for vesting of some of the warrants granted to Gemini as discussed above. In July 2025, the Company entered into a settlement agreement with Highbridge for $2,000,000. Period expenses also include professional fees of $1,508,040 (including auditor fees of $199,318, consultant fees of $266,085 and legal fees of $1,042,637), software costs of $491,614, insurance costs of $1,740,383, travel expenses of $125,845, and facilities costs of $240,335. Additionally, the period includes Board compensation expense of $875,000, which includes $600,000 paid to the Company's Board as noted above. The remaining Board compensation represents fees paid quarterly. The Company also had other public company costs of $171,326 for transfer agent and other miscellaneous services, and annual meeting costs of $74,450. The Company also had costs of $713,185 for BTC Custody fees.

For the year ended December 31, 2024, general and administrative expenses were $7,567,874 and were primarily related to expenses associated with employee payroll costs of $2,120,064, stock-based compensation of $159,388 for share-based awards granted to employees, professional fees of $1,130,595 (including legal fees of $574,952, tax and accounting fees of $82,116 and audit fees of $242,200), software costs of $549,238, insurance costs of $2,494,892, travel expenses of $63,305, facilities expense of $177,435, annual and special stockholder meeting costs of $201,268, Board compensation expense of $125,000 and other public company expense costs of $327,774.

For 2026, we expect general and administrative expenses to decrease when compared to 2025 as we have substantially established our digital asset strategy and do not expect to incur certain one-time costs such as the $2,000,000 settlement with Highbridge, bonuses of $600,000 paid to management, $600,000 fees paid to existing independent Board members in connection with the July 2025 Private Placements. We also expect our insurance costs related to product liability, property and general liability to decrease by over $400,000 and although we have several underutilized facilities the Company currently leases through August 2026, we are actively working with our real estate broker and landlord to sublease these facilities and we do not plan to renew these leases at expiration. We also expect lower stock-based compensation for inducement stock awards granted to new employees as 80 percent of the awards are vested as of December 31, 2025 which may be offset by increased stock-based compensation if our 2025 Stock Plan and stock options granted from the July 2025 Private Placement are approved by stockholders at our 2026 annual meeting of stockholder (the "2026 Annual Meeting of Stockholders").

We anticipate an increase in legal and professional fees in fiscal year 2026 due to certain corporate governance and stockholder engagement matters, including fees associated with stockholder activist matters.

Unrealized Loss on Digital Assets

The Company's digital assets are initially recorded at cost and are measured at fair value as of each reporting period. The Company determines the fair value of its Bitcoin based on quoted (unadjusted) prices on the Gemini exchange, the active exchange that the Company has determined is its principal market for BTC. The Company's average BTC purchase price was $117,516 for all BTC purchased by the Company in the year ended December 31, 2025, including the BTC received as payment in the Private Placements. Based on the price as of December 31, 2025 of $87,464, the Company recognized an unrealized loss of $122,659,151.

Interest and Other Expenses, net

Net Interest and other income/expenses for the year ended December 31, 2025 was net expense of $474,386. This includes interest expense of $2,253,819 primarily from borrowings to repurchase our common stock and interest expense on vendor settlement liabilities that were recorded on a discounted cash flow basis, interest income of $292,623 primarily from interest earned on cash held in a money market account, net income of $1,493,789 generated from BTC derivative contracts as noted above and the loss of $125,377 on repayment of a credit facility.

Interest and other income/expenses for the year ended December 31, 2024 was $18,496,282. Non-cash interest expense of $314,838 was recognized for the amortization of debt issuance costs and accretion of principal on the May 2023 Notes through the date these notes were exchanged for Preferred Stock in March 2024. We recorded a loss on the conversion of some of these notes of $333,544 and a loss from the exchange of these notes for Preferred Stock of $1,314,065. We recognized a loss of $1,470,554 when we repaid the outstanding principal of the May 2024 Notes with the proceeds received from our July 2024 equity offering. Non-cash interest expense of $238,965 was recognized for the amortization of debt issuance costs and accretion of principal on the May 2024 Notes until they were repaid. We recorded a loss on the change in the estimated fair value of the Series A and Series B Warrant liabilities of $14,933,739 which was partially offset by a gain of $165,355 from the exercise of some of the Series B Warrants.

For fiscal year 2026, we expect interest expense to increase due to increased borrowings on our term loan and delayed draw credit facility for common stock repurchases. If market conditions allow, the Company may issue equity or sell Bitcoin to repay outstanding loans or obtain other loan facilities with lower interest rates that could reduce interest expense in the future.

Income tax benefit

The income tax benefit for the year ended December 31, 2025 is a result of the Company receiving BTC of $28.0 million for the purchase of common stock and pre-funded warrants in the Private Placement from two investors. The Company's basis in the BTC is carried over from the investors' basis which resulted in the Company having a tax basis of $3,578,522. The Company recorded a deferred tax liability for the tax effect of the difference in the tax basis and the $28.0 million as a reduction to additional paid in capital. As a result the Company released the same amount of its previously recorded valuation allowance on its deferred tax assets as a tax benefit.

Due to recurring losses, there is no tax provision for the year ended December 31, 2024.

Net Loss From Continuing Operations

Net loss from continuing operations for the year ended December 31, 2025 was $153,954,815, compared to $44,154,059 for the year ended December 31, 2024 primarily due to explanations noted above.

Liquidity and Capital Resources

On December 31, 2025, we had cash and restricted cash of $9.1 million, including $105,000 of restricted cash, and we had a working capital deficit of $38.5 million. Since inception we have funded our operations from proceeds from debt and equity sales.

Cash used in operating activities

Net cash used in operating activities was $17.8 million for the year ended December 31, 2025 and includes all of our operating costs, except non-cash costs of depreciation and amortization, loss on change in derivative financial liabilities all of which were insignificant for the period and stock-based compensation of $17.8 million and unrealized loss on Bitcoin of $122.7 million. Significant uses/contributions of cash used in operating activities includes a decrease of $0.8 million in inventory and inventory deposits, an increase in prepaid assets of $1.4 million due to inventory financing prepayments, and a decrease of $2.9 million in accrued liabilities primarily due to payments on vendor settlements and payment of management bonuses that were accrued at the end of 2024.

Net cash used in operating activities was $16.0 million for year ended December 31, 2024 and includes all of our operating costs except depreciation and amortization of $0.4 million, write down of Stag, Grunt EVO and Volcon Youth inventory and inventory deposits of $9.3 million, non-cash interest expense for the amortization of debt issuance costs and accretion of principal on the May 2023 Notes and May 2024 Notes of $0.6 million, loss on change in derivative financial liabilities of $14.8 million, losses on conversion and extinguishment of Convertible Notes of $1.6 million, $1.5 million loss on repayment of the May 2024 Notes, $0.8 million from the loss on disposal of fixed assets, and stock-based compensation of $0.3 million. Cash used in operating activities includes a decrease in accounts receivable of $0.1 million due to collections, a decrease of $0.8 million in prepaid inventory deposits due to inventory being received, a decrease of $0.9 million in inventory, a decrease of $0.9 million in prepaid assets primarily due to lower insurance costs, a decrease of $0.5 million in accounts payable, and an increase of $1.6 million in accrued liabilities primarily due to the vendor settlements noted above and $0.4 million used to pay our lease liabilities. As of December 31, 2024, we had a decrease of $0.2 million in customer deposits, primarily due to orders being fulfilled for two of our Latin American distributors for shipments of Brats and Grunt EVOs paid for previously.

Cash used in investing activities

Net cash used in investing activities was $453.8 million for the year ended December 31, 2025, primarily consisting of the purchase of Bitcoin of $451.6 million, the purchase of a certificate of deposit of $2.0 million as collateral for our dealer floor plan financing and $0.2 million for purchases of equipment and tooling.

Net cash used in investing activities was $0.2 million for the year ended December 31, 2024, primarily consisting of $0.3 million of purchases of equipment and tooling offset by $0.1 million received from an insurance settlement for a vehicle that was totaled in the period.

Cash provided by financing activities

Cash provided by financing activities for the year ended December 31, 2025, was $478.4 million and was primarily related to net proceeds of $452.3 million from the sale of common stock and pre-funded warrants from the Private Placements, proceeds of $10.3 million from the sale of common stock under the Company's ATM program established in October 2024, proceeds of $10.7 million from the sale of common stock units and pre-funded warrant units, proceeds of $100.0 million from borrowing arrangements, proceeds of $1.8 million from warrant exercises, partially offset by share repurchases of $96.3 million.

Cash provided by financing activities for the year ended December 31, 2024, was $10.4 million and was primarily related to the net proceeds from the issuance of common stock and pre-funded warrants in July 2024 for net proceeds of $10.8 million and net proceeds from the issuance May 2024 Senior Notes and May 2024 Note Warrants of $2.3 million offset by the repayment of the May 2024 Senior Notes of $2.9 million. We also received net proceeds of $0.2 million for the issuance of common stock from our ATM and proceeds of $0.1 million for the exercise of Series B warrants.

Our continuation as a going concern is dependent upon our ability to attain profitable operations and if necessary, obtain continued financial support from the issuance of debt or equity. As of December 31, 2025, we had incurred an accumulated deficit of $316.4 million since inception.

Management anticipates that our cash on hand as of December 31, 2025, plus cash expected to be generated from operations and premium from derivative trading, cash available from borrowings available on our credit facility and the cash received from the sale of Bitcoin will be sufficient to fund planned operations and repay borrowings due beyond one year from the date of the issuance of the financial statements as of and for the year ended December 31, 2025.

As of December 31, 2025, we had stockholders' equity of $269.2 million.

JOBS Act Accounting Election

The recently enacted JOBS Act provides that an "emerging growth company" can take advantage of the extended transition period provided in Section 7(a)(2)(B) of the Securities Act of 1933, as amended, for complying with new or revised accounting standards. In other words, an "emerging growth company" can delay the adoption of certain accounting standards until those standards would otherwise apply to private companies. We have irrevocably elected not to avail ourselves of this extended transition period and, as a result, we will adopt new or revised accounting standards on the relevant dates on which adoption of such standards is required for other public companies.

We have implemented all new accounting pronouncements that are in effect and may impact our financial statements and we do not believe that there are any other new accounting pronouncements that have been issued that might have a material impact on our financial position or results of operations.

Critical Accounting Policies

None

ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

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

ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Shareholders and Board of Directors of
Empery Digital Inc.

Opinion on the Financial Statements

We have audited the accompanying consolidated balance sheets of Empery Digital Inc. (f/k/a as Volcon, Inc.) and its subsidiary (collectively, the "Company") as of December 31, 2025 and 2024, and the related consolidated statements of operations, stockholders' equity, and cash flows for the years then ended, 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, 2025 and 2024, and the results of its operations and its cash flows for the years then ended, in conformity with accounting principles generally accepted in the United States of America.

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/ MaloneBailey, LLP
www.malonebailey.com
We have served as the Company's auditor since 2021.
Houston, Texas
March 27, 2026

EMPERY DIGITAL INC.
CONSOLIDATED BALANCE SHEETS
AS OF DECEMBER 31, 2025 AND 2024

	2025	2024
ASSETS		
Current assets:		
Cash and cash equivalents	$ 8,963,856	$ 2,193,573
Restricted cash	105,000	105,000
Certificate of deposit	2,049,413	–
Accounts receivable, net of allowance for doubtful accounts of $71,869 and $99,233 at December 31, 2025 and December 31, 2024, respectively	312,106	88,247
Inventory	330,619	1,455,477
Inventory deposits	15,556	191,156
Prepaid expenses and other current assets	2,479,310	1,032,699
Total current assets	14,255,860	5,066,152
Long-term assets:		
Digital assets	126,926,895	–
Digital assets restricted by lenders as collateral for loans	230,048,488	–
Property and equipment, net	234,652	206,138
Intangible asset, net	36,908	15,698
Other long-term assets	155,056	199,281
Right-of-use assets - operating leases	778,235	739,234
Total assets	$ 372,436,094	$ 6,226,503
LIABILITIES AND STOCKHOLDERS' EQUITY (DEFICIT)		
Current liabilities:		
Accounts payable	$ 745,466	$ 385,326
Accrued liabilities	560,761	1,379,191
Vendor settlements - short-term	1,189,184	2,092,975
Term loan	49,890,972	–
Current portion of notes payable	8,047	7,181
Warrant liabilities	64,985	111,658
Right-of-use operating lease liabilities - short-term	322,103	443,950
Customer deposits	3,145	216,522
Total current liabilities	52,784,663	4,636,803
Long-term loan	49,945,046	–
Notes payable, net of current portion	20,485	28,533
Vendor settlements - long-term	–	1,189,184
Right-of-use operating lease liabilities - long-term	471,683	331,222
Total liabilities	103,221,877	6,185,742
COMMITMENTS AND CONTINGENCIES		
Stockholders' equity:		
Preferred stock: $0.00001 par value, 5,000,000 shares authorized, 25,000 shares designated as Series A, no shares issued and outstanding as of December 31, 2025 and December 31, 2024	–	–
Common stock: $0.00001 par value, 250,000,000 shares authorized,33,800,951 shares issued and outstanding as of December 31, 2025 and 78,859 shares issued and outstanding as of December 31, 2024	475	–
Treasury Stock	(96,282,082)	–
Additional paid-in capital	681,864,757	166,357,208
Accumulated deficit	(316,368,933)	(166,316,447)
Total stockholders' equity	269,214,217	40,761
TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY	$ 372,436,094	$ 6,226,503

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

EMPERY DIGITAL INC.
CONSOLIDATED STATEMENTS OF OPERATIONS
FOR THE YEARS ENDED DECEMBER 31, 2025 AND 2024

	2025	2024
Revenue:	$ 974,977	$ 3,983,466
Cost of goods sold	1,337,595	17,987,951
Gross margin	(362,618)	(14,004,485)
Operating expenses:		
Sales and marketing	1,458,006	2,228,027
Product development	398,605	1,857,391
General and administrative expenses	28,602,049	7,567,874
Unrealized loss on digital assets	122,659,151	–
Total operating expenses	153,117,811	11,653,292
Loss from operations	(153,480,429)	(25,657,777)
Other income, net	1,565,515	33,981
Loss on repayment of credit facility	(125,377)	–
Loss on conversion and extinguishment of Convertible Notes	–	(1,647,608)
Loss on repayment of May 2024 Notes	–	(1,470,554)
Gain (loss) on change in fair value of financial liabilities	46,672	(14,768,385)
Interest income	292,623	–
Interest expense	(2,253,819)	(643,716)
Total other expense	(474,386)	(18,496,282)
Loss before provision for income taxes	(153,954,815)	(44,154,059)
Provision for income taxes	–	–
Loss from continuing operations before income tax	(153,954,815)	(44,154,059)
Income tax benefit	5,383,973	–
Loss from continuing operations	(148,570,842)	(44,154,059)
Loss from discontinued operations	(1,481,644)	(1,356,250)
Net loss	$ (150,052,486)	$ (45,510,309)
Earnings per common share		
Loss from continuing operations per common share - basic	$ (8.04)	$ (1,140.20)
Loss from continuing operations per common share - diluted	$ (8.04)	$ (1,140.20)
Loss from discontinued operations per common share - basic	$ (0.08)	$ (35.02)
Loss from discontinued operations per common share - diluted	$ (0.08)	$ (35.02)
Net loss per common share – basic	$ (8.12)	$ (1,175.22)
Net loss per common share – diluted	$ (8.12)	$ (1,175.22)
Weighted average common stock outstanding – basic	18,482,865	38,725
Weighted average common stock outstanding – diluted	18,482,865	38,725

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

EMPERY DIGITAL INC.
CONSOLIDATED STATEMENT OF STOCKHOLDERS' EQUITY
FOR THE YEAR ENDED DECEMBER 31, 2025

	Common stock		Treasury stock		Additional paid-in capital	Accumulated deficit	Total
	Number of Shares	Amount	Number of Shares	Amount			
Balance at January 1, 2025	78,859	$ –	–	$ –	$ 166,357,208	$ (166,316,447)	$ 40,761
Issuance of common stock for exercises of pre-funded warrants	2,538,064	25	–	–	(25)	–	–
Issuance of common stock from the At the Money offering, net of issuance costs of $374,392	356,568	4	–	–	10,288,059	–	10,288,063
Issuance of common stock and pre-funded warrants, net of issuance costs of $1,296,118	53,750	1	–	–	10,703,881	–	10,703,882
Issuance of common stock for disputed shares from November 2024 reverse stock split (see Note 2)	23,617	–	–	–	–	–	–
Purchase fractional shares	(179)	–	–	–	(941)	–	(941)
Exchange of common stock for pre-funded warrants	(4,323)	–	–	–	–	–	–
Issuance of common stock and pre-funded warrants, net of issuance costs of $21,136,401 and deferred taxes of $5,383,973	44,414,189	444	–	–	474,907,637	–	474,908,081
Issuance of common stock for exercises of warrants	111,500	1	–	–	1,783,999	–	1,784,000
Stock-based compensation	–	–	–	–	17,824,939	–	17,824,939
Repurchases of common stock	(13,771,094)	–	13,771,094	(96,282,082)	–	–	(96,282,082)
Net loss	–	–	–	–	–	(150,052,486)	(150,052,486)
Balance at December 31, 2025	33,800,951	$ 475	13,771,094	$ (96,282,082)	$ 681,864,757	$ (316,368,933)	$ 269,214,217

EMPERY DIGITAL INC.
CONSOLIDATED STATEMENT OF STOCKHOLDERS' EQUITY
FOR THE YEAR ENDED DECEMBER 31, 2024

	Series A Convertible Preferred Stock		Common stock		Additional		
	Number of Shares	Amount	Number of Shares	Amount	paid-in capital	Accumulated deficit	Total
Balance at January 1, 2024	–	$ –	162	$ –	$ 101,175,117	$ (120,806,138)	$ (19,631,021)
Issuance of common stock for exercise of pre-funded warrants	–	–	28,293	–	–	–	–
Issuance of common stock for exercise of Series A warrants	–	–	2,166	–	17,352,653	–	17,352,653
Proceeds received for exercise of buydown warrants	–	–	2	–	3,500	–	3,500
Common stock issued for conversion of convertible notes	–	–	622	–	7,395,907	–	7,395,907
Conversion of Convertible Notes for Preferred Stock	24,698	–	–	–	24,716,118	–	24,716,118
Conversion of Preferred Stock for common stock	(24,698)	–	34,881	–	–	–	–
Issuance of common stock for exercise of Series B Warrants	–	–	1,838	–	(1)	–	(1)
Reclassification of warrant liability to equity	–	–	–	–	3,405,662	–	3,405,662
Proceeds received for issuance of warrants with May 2024 Notes, net of issuance costs of $111,194	–	–	–	–	1,023,200	–	1,023,200
Issuance of common stock and pre-funded warrants, net of issuance costs of $1,210,753	–	–	12,826	–	10,789,261	–	10,789,261
Stock-based compensation	–	–	–	–	310,961	–	310,961
Exchange of Common Stock for Pre-funded Warrants	–	–	(12,103)	–	–	–	–
Proceeds from sale of common stock from ATM, net if issuance costs of $112,814	–	–	8,616	–	184,830	–	184,830
Common stock issued for reverse stock split due to rounding	–	–	1,556	–	–	–	–
Net loss	–	–	–	–	–	(45,510,309)	(45,510,309)
Balance at December 31, 2024	–	$ –	78,859	$ –	$ 166,357,208	$ (166,316,447)	$ 40,761

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

EMPERY DIGITAL INC.
CONSOLIDATED STATEMENTS OF CASH FLOWS
FOR THE YEARS ENDED DECEMBER 31, 2025 AND 2024

	2025	2024
Cash flow from operating activities:		
Net loss	$ (150,052,486)	$ (45,510,309)
Adjustments to reconcile net loss to net cash used in operating activities:		
Unrealized loss on digital asset	122,659,151	–
Deferred tax benefit	(5,383,973)	–
Loss on repayment of credit facility	125,377	–
(Gain) loss on change in fair value of financial liabilities	(46,673)	14,933,739
Noncash interest income on certificate of deposit	(49,413)	–
Stock-based compensation	17,824,939	310,961
Loss on write down of inventory and inventory deposits	145,124	9,286,071
Loss on lease termination	72,544	–
Loss on sale/write off of property & equipment	76,349	844,945
Bad debt expense	40,730	29,560
Non-cash interest expense	117,909	553,803
Amortization of right-of-use assets	417,330	396,979
Depreciation and amortization	301,537	362,138
Loss on repayment of May 2024 Notes	–	1,470,554
Loss on extinguishment of convertible notes	–	1,314,065
Loss on conversion of convertible notes to common stock	–	333,544
Gain on exercise of Series B Warrants	–	(165,355)
Changes in operating assets and liabilities:		
Accounts receivable	(264,589)	85,496
Inventory	668,921	(933,844)
Inventory deposits	175,600	(767,410)
Prepaid assets and other current assets	(1,446,611)	871,498
Accounts payable	360,141	(445,859)
Accrued liabilities and vendor settlements	(2,911,405)	1,592,444
Right-of-use liabilities - operating leases	(466,036)	(399,609)
Customer deposits	(213,377)	(200,963)
Net cash used in operating activities	(17,848,911)	(16,037,552)
Cash flow from investing activities:		
Purchase of digital assets	(451,634,534)	–
Proceeds paid for website development	(46,620)	–
Purchase of property and equipment	(204,927)	(312,090)
Proceeds from sale of property and equipment	134,749	23,717
Proceeds from insurance settlement	–	58,060
Purchase of certificate of deposit	(2,000,000)	–
Net cash used in investing activities	(453,751,332)	(230,313)
Cash flow from financing activities:		
Repayment of notes payable	(7,182)	(48,702)
Proceeds from credit facility, net of issuance costs of $194,551	34,805,449	–
Repayment of credit facility	(35,000,000)	–
Proceeds from term loan, net of issuance costs of $149,913	49,850,087	–
Proceeds from Credit facility, net of issuance costs of $62,804	49,937,196	–
Proceeds from issuance of common stock units and pre-funded warrant units from February 2025 public offering, net of issuance costs of $1,296,118	10,703,882	–
Proceeds from issuance of common stock and pre-funded warrants from July 2025 private placement, net of issuance costs of $21,136,401	452,292,054	–
Proceeds from exercise of warrants	1,784,000	–
Proceeds from the issuance of common stock issued from the At the Market Offering, net of issuance costs of $374,392 in 2025 and $112,814 in 2024	10,288,063	184,830
Repurchase of common stock	(96,282,082)	–
Repurchase of fractional shares	(941)	–
Proceeds from issuance of common stock units and pre-funded warrant units from July 2024 public offering, net of issuance costs of $1,210,753	–	10,789,261
Repayment of May 2024 Notes	–	(2,942,170)
Proceeds from issuance of May 2024 Notes and warrants, net of issuance costs of $245,150	–	2,255,851
Proceeds from exercise of Series B Warrants	–	130,522
Proceeds from exercise of buy down warrants	–	3,500
Net cash provided by financing activities	478,370,526	10,373,092
NET CHANGE IN CASH, CASH EQUIVALENTS AND RESTRICTED CASH	6,770,283	(5,894,773)
CASH, CASH EQUIVALENTS AND RESTRICTED CASH AT BEGINNING OF PERIOD	2,298,573	8,193,346
CASH, CASH EQUIVALENTS AND RESTRICTED CASH AT END OF PERIOD	$ 9,068,856	$ 2,298,573

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

EMPERY DIGITAL INC.
CONSOLIDATED STATEMENTS OF CASH FLOWS
FOR THE YEARS ENDED DECEMBER 31, 2025 AND 2024

SUPPLEMENTAL CASH FLOW INFORMATION

	2025	2024
Supplemental disclosure of cash flow information:		
Cash paid for interest	$ 2,135,910	$ 88,710
Cash paid for income taxes	$ –	$ –
Non-cash transactions:		
Issuance of common stock for digital assets	$ 28,000,000	$ –
Transfer of inventory to property & equipment	$ 310,813	$ –
Transfer of digital assets to lender for collateral	$ 230,048,488	$ –
Recognition of right of use asset and liability - operating lease	$ 563,660	$ –
Conversion of Convertible Notes for common stock	$ –	$ 7,414,025
Exchange of Convertible Notes for Preferred Stock	$ –	$ 24,716,118
Reclassification of warrant liability to equity for cashless exercise of Series A Warrants	$ –	$ 17,352,653
Reclassification of warrant liability to equity for modification of Series B Warrants	$ –	$ 3,405,662
Exchange of property & equipment in lieu of payments due for inventory purchases	$ –	$ 60,000
Exchange of finished goods inventory with vendor for raw materials inventory	$ –	$ 417,285
Conversion of preferred stock for common stock	$ –	$ 3
Issuance of common stock for exercise of pre-funded warrants	$ 25	$ 2

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

NOTE 1 – ORGANIZATION, NATURE OF OPERATIONS AND GOING CONCERN

Organization and Nature of Operations

Empery Digital Inc. ("Empery Digital" or the "Company") was formed on February 21, 2020, as a Delaware corporation, under the name Frog ePowersports, Inc. The Company was renamed Volcon, Inc. on October 1, 2020. The Company was renamed Empery Digital Inc. on July 30, 2025, and changed its Nasdaq ticker symbol from VLCN to EMPD.

On January 5, 2021, the Company created Volcon ePowersports, LLC ("Volcon LLC"), a Colorado wholly-owned subsidiary of the Company, to sell the Company's vehicles and accessories in the United States ("U.S."). Since 2023 Volcon LLC has not been used.

Effective as of July 17, 2025, the Company adopted a digital asset treasury strategy with the goal of becoming a leading, low cost, capital efficient, globally trusted aggregator of Bitcoin. Empery Digital Inc. was founded as the first all-electric powersports company sourcing high-quality and sustainable electric vehicles for the outdoor community. Going forward the Company intends to operate the powersports brand under the brand name Empery Mobility.

As discussed in Note 18, on October 15, 2025, the Company entered into an asset purchase agreement with Venom EV, LLC ("Venom") (the "Venom APA"), to divest the Volcon brand in exchange for a non-dilutable 10% equity position in Venom's reorganized Delaware corporation on a fully-diluted basis.

Going Concern

The accompanying consolidated financial statements have been prepared assuming that the Company will continue as a going concern. The Company has recurring losses and has generated negative cash flows from operations since inception.

In February and March 2024, certain holders of the convertible notes issued by the Company in May 2023 (the "May 2023 Convertible Notes") converted approximately $7.4 million of principal to shares of the Company's common stock, par value $0.00001 per share (the "common stock"). In March 2024,the holders exchanged the remaining $24.7 million outstanding principal amount of May 2023 Convertible Notes for Series A Convertible Preferred Stock ("Preferred Stock") with a $1,000 per share value and an initial conversation price of $8,512 per share for common stock (see Note 9). All covenants from the May 2023 Convertible Notes were terminated upon this exchange

As discussed further in Note 10 below, on May 22, 2024, the Company issued Senior Notes with an aggregate principal amount of $2,942,170 due May 22, 2025 (the "May 2024 Notes") for net proceeds of $2,255,851. The holders of the May 2024 Notes also received fully vested warrants (the "May 2024 Note Warrants") to purchase 1,589 shares of the Company's common stock at an exercise price of $1,856 per share. The May 2024 Note Warrants were exercisable beginning November 23, 2024 and expire November 23, 2029.

On July 12, 2024, the Company sold 12,826 shares of the Company's common stock at a purchase price of $233.60 per share and pre-funded warrants to purchase 38,544 shares of common stock at $233.60 per pre-funded warrant. The Company received net proceeds of $10,789,261. Proceeds from this offering were used to repay the May 2024 Notes.

In October 2024, the Company established an At the Market program ("ATM"), as amended, whereby the Company can sell up to $1.1 billion of its common stock. Through December 31, 2025, the Company has raised net proceeds of $10,288,063 pursuant to the ATM.

On February 6, 2025, the Company sold 53,750 common stock units (each composing of one share of common stock and one common warrant to purchase one share of common stock) and 696,250 pre-funded warrant units (each comprising of one pre-funded warrant to purchase one share of common stock and one common warrant to purchase one share of common stock) at $16.00 per unit in an underwritten public offering (each as adjusted for the Company's 1-for-8 reverse stock split). The common warrants issued as part of the units had an exercise price of $16.00 per share. The Company received net proceeds of $10,703,882 from this offering.

On July 21, 2025, the Company completed private placements with certain institutional and accredited investors ("Private Placements") for the sale of 44,414,189 shares of its common stock at a price of $10.00 per share, and pre-funded warrants to purchase an aggregate of 5,728,662 shares of its common stock with an exercise price of $0.00001, for $9.99999 per share of common stock underlying such warrants. The Company received gross proceeds of over $501.0 million which included payment by certain purchasers using Bitcoin valued at approximately $28.0 million and net cash proceeds of approximately $452.0 million after fees and expenses associated with the Private Placements. The Company has used the net proceeds to purchase Bitcoin under its digital asset treasury strategy.

As of December 31, 2025, the Company has borrowed $100.0 million from two lenders and primarily used the proceeds to repurchase its common stock. The borrowings are collateralized by the Company's Bitcoin. Subsequent to December 31, 2025, the Company has sold Bitcoin to complete additional share repurchases (see Note 5 & 7).

Management anticipates that our cash on hand as of December 31, 2025, plus cash expected to be generated from operations and premium from derivative trading, cash available from borrowings available on our credit facility and the cash received from the sale of Bitcoin will be sufficient to fund planned operations and repay borrowings due beyond one year from the date of the issuance of the financial statements as of and for the year ended December 31, 2025.

Nasdaq Compliance

On July 5, 2023, the Company received a notice from Nasdaq that it was not in compliance with Nasdaq's Listing Rule 5550(b)(2), which requires that it maintain a market value of listed securities ("MVLS") of $35.0 million. MVLS is calculated by multiplying the Company's shares outstanding by the closing price of its common stock. On December 19, 2023, the Company received a notice from Nasdaq that it was not in compliance with Nasdaq's Listing Rule 5550(a)(2), as the minimum bid price of its common stock had been below $1.00 per share for 30 consecutive business days.

On December 26, 2023, the Company was notified by Nasdaq that it was not in compliance with Nasdaq's Listing Rule 5810(c)(3)(A)(iii) as the closing bid price of our common stock had been below $0.10 for ten consecutive trading days from December 11, 2023 through December 22, 2023 and was subject to delisting on January 2, 2024. On January 4, 2024, the Company received notice from Nasdaq that it did not meet the MVLS requirement and it was subject to delisting. The Company submitted a hearing request to Nasdaq's Hearings Department for both of these matters, which stayed the suspension of the Company's common stock. The Company participated in a hearing with Nasdaq's Hearings Department on March 26, 2024 and on April 2, 2024, they informed the Company that the Company has until June 24, 2024 to regain compliance with the above listing rules.

On June 11, 2024, the Company received a notice from Nasdaq that the Company no longer met the minimum 500,000 publicly held shares requirement for Nasdaq and, as such, it no longer complied with Listing Rule 5550(a)(4). Furthermore, the notice indicated that this matter would serve as an additional basis for delisting the Company's securities from Nasdaq, that the Panel would consider this matter in their decision regarding the Company's continued listing on Nasdaq, and that the Company should present its views with respect to this additional deficiency to the Panel in writing no later than June 18, 2024. On June 18, 2024, the Company submitted a letter to Nasdaq notifying them that the Company was in compliance with Listing Rule 5550(a)(4) due to the issuance of additional shares of common stock from the conversion of preferred stock to common stock by certain Preferred Stockholders.

On July 17, 2024, Nasdaq informed the Company that it had regained compliance with the above listing rules but will continue to be monitored for ongoing compliance.

On May 13, 2025, the Company received a notice from Nasdaq that it was not in compliance with Nasdaq's Listing Rule 5550(a)(2), as the minimum bid price of its common stock had been below $1 per share for 30 consecutive business days. The Company submitted a hearing request to Nasdaq's Hearings Department for this matter, which stayed the suspension of the Company's common stock. On June 11, 2025, the Company completed a 1-for-8 reverse stock split. The Company participated in a hearing with Nasdaq's Hearings Department on June 24, 2025.

On July 17, 2025, Nasdaq informed the Company that it had regained compliance with the above listing rules but will need to continue to remain in compliance with the minimum bid price rule through November 10, 2025 in order to avoid delisting. On November 14, 2025, Nasdaq informed the Company that it remained compliant with all Nasdaq listing rules.

Impact of Tariffs on Imported Goods from China and Vietnam

On April 2, 2025, the U.S. imposed reciprocal tariffs on imports from various countries including China and Vietnam starting with a 10% baseline tariff. On April 9, 2025, China-specific tariffs increased significantly, while Vietnam's tariffs were deferred for an initial 90-day period. That pause was later extended to August 1, 2025, and then to August 7, 2025, maintaining Vietnam's tariff at the baseline 10% during such extension.

Following ongoing negotiations, a tentative trade deal with Vietnam was reached on July 2, 2025. U.S. tariffs on Vietnamese goods would be set at 20%, while goods deemed to be Chinese in origin but routed through Vietnam (transshipments) would be subject to a 40% tariff. This replaces the originally stated 46% rate. The 20% rate became effective August 7, 2025.

On July 31, 2025, the U.S. administration issued a formal Executive Order modifying the reciprocal tariff regime under the International Emergency Powers Act ("IEEPA"). For example, after announcing proposed blanket tariff rates of 46% on imports from Vietnam in April 2025, the U.S. and Vietnam governments announced a trade deal between the countries that imposes 20% tariffs on all products imported to the U.S. from Vietnam. The 20% rate became effective August 7, 2025, under the aforementioned Executive Order and is currently in force.

China remains subject to an additional 30% tariff (down from the temporary increase, effective mid-May) under the continued reciprocal framework. That rate is in effect through August 12, 2025, pending further amendment. On August 11, 2025, the U.S. extended the existing tariff truce with China by 90 days to November 10, 2025, maintaining the 30% tariff rate during such extension.

On February 20, 2026, the U.S. Supreme Court ruled that the IEEPA does not authorize the U.S. administration to impose tariffs. The tariffs paid by importers under the Executive order are subject to refund, however the process to obtain such refunds is currently being evaluated. Effective February 24, 2026, the U.S. administration has imposed a 10% global tariff under Section 122 of the Trade Act of 1974 that could remain in place for up to 150 days.

Tariffs imposed by the current U.S. administration continue to impact the Company's cost for vehicles and parts manufactured in China, The Company remains actively evaluating strategic alternatives, including U.S. assembly or shifting production as well as potentially adjusting selling prices to offset elevated import costs.

NOTE 2 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Basis of Presentation

The basis of accounting applied is the United States Generally Accepted Accounting Principles ("U.S. GAAP"). The accompanying consolidated financial statements include the accounts of the Company and its wholly owned subsidiary. All intercompany accounts, transactions and balances have been eliminated in consolidation.

The Company completed a 1-for-8 reverse stock split on June 11, 2025. All share and per share amounts previously disclosed have been updated to reflect the impact of this reverse split. See Note 13 for further discussion.

Per the terms of the 1-for-8 reverse stock split completed on November 8, 2024, the Company agreed that no fractional shares would be issued in connection with the reverse stock split and that it would issue one full share of the post-reverse stock split common stock to any stockholder who would have been entitled to receive a fractional share as a result of the process. On November 19, 2024, the Company received notice from DTCC on behalf of the brokerage firms that hold the shares of Company common stock held in "street name" that in connection with the foregoing rounding of shares the Company would need to issue 23,617 shares of common stock. The Company did not believe the number of shares being requested was correct based on the historical number of stockholders of its common stock and is aware of similar occurrences in recent months for other companies completing a reverse stock split. As such, the Company made inquiries into the calculations set forth in the request. The Company concluded that the information requested was not going to be provided and therefore on May 5, 2025, these shares were issued (see Note 15 for further discussion of impact to basic and diluted net loss per share).

As discussed in further detail in Note 18, on October 15, 2025, the Company entered into the Venom APA with Venom to divest the Volcon brand other than the Brat in exchange for a non-dilutable 10% equity position in Venom's reorganized Delaware corporation on a fully-diluted basis. The Company has reclassified all revenue and costs associated with the HF1 and MN1 products to loss from discontinued operations.

Revisions to previously issued financial statements

In connection with the preparation of the Company's consolidated financial statements as of and for the year ended December 31, 2025, the Company identified an error in relation to the accounting for the tax effects of the difference in the basis of Bitcoin received in the July 2025 Private Placement as discussed in Note 13.

The Company has a history of losses and has recognized significant non-cash expenses for share-based compensation and unrealized loss on Bitcoin, and as such believes most investors rely on cash used by operations on the statement of cashflows, net asset value ("NAV") per share, (defined as net asset value of Bitcoin plus Cash minus Debt) divided by adjusted shares outstanding (defined as common stock outstanding plus pre-funded warrants), and mNAV (defined as market capitalization plus debt less cash divided by net asset value of Bitcoin) as metrics for evaluating the performance of the Company.

The Company assessed the materiality of the error on the interim financial statements as of and for the three and nine months ended September 30, 2025, on a qualitative and quantitative basis in accordance with SEC Staff Accounting Bulletin ("SAB") No. 99, Materiality and SAB No. 108 on Quantifying Financial Statement Errors, codified in Accounting Standards Codification Topic 250, Accounting Changes and Error Corrections. The Company concluded that the error and the related impacts did not result in a material misstatement of these previously issued unaudited consolidated interim financial statements.

A summary of the corrections to the impacted financial statement line items from our previously issued financial statements are presented below:

Three months ended September 30, 2025

Consolidated Statement of Operations	**As reported**	**As revised**
Income tax benefit	$ –	$ 5,383,973
Net loss	$ 34,555,301	$ 29,171,328
Net loss per share - basic and diluted	$ (0.96)	$ (0.81)

Nine months ended September 30, 2025

Consolidated Statement of Operations	**As reported**	**As revised**
Income tax benefit	$ –	$ 5,383,973
Net loss	$ 40,915,628	$ 35,531,655
Net loss per share - basic and diluted	$ (3.28)	$ (2.85)
Consolidated Statement of Cashflows		
Net loss	$ (40,915,628)	$ (35,531,655)
Adjustments to reconcile net loss to net cash used in operating activities:	$ –	$ –
Deferred tax benefit	$ –	$ (5,383,973)
Consolidated Statement of Stockholders' Equity		
Issuance of common stock and pre-funded warrants, net of issuance costs	$ 480,291,610	$ 474,907,637
Net loss	$ (40,915,628)	$ (35,531,655)
Additional paid-in capital	$ 684,278,820	$ 678,894,847
Accumulated deficit	$ (207,232,075)	$ (201,848,102)

As of September 30, 2025

Consolidated Balance Sheet	**As reported**	**As revised**
Additional paid-in capital	$ 684,278,820	$ 678,894,847
Accumulated deficit	$ (207,232,075)	$ (201,848,102)

There was no impact to NAV per share or mNav as a result of this error.

Use of Estimates

The preparation of the financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of any contingent assets and liabilities as of the dates of the financial statements and the reported amounts of expenses during the reporting periods.

Making estimates requires management to exercise judgment. It is at least reasonably possible that the estimate of the effect of a condition, situation or set of circumstances that existed at the date of the financial statements, which management considered in formulating its estimate, could change in the near term due to one or more future confirming events. Accordingly, actual results could differ significantly from those estimates.

Cash, Cash Equivalents and Restricted Cash

Cash and cash equivalents include short-term investments with original maturities of 90 days or less at the date of purchase. There were no cash equivalents as of December 31, 2025 or 2024. The recorded value of our cash approximates its fair value. Cash is primarily placed with a large sophisticated creditworthy financial institution thereby limiting the Company's credit exposure. Restricted cash includes cash restricted as collateral for the Company's corporate credit cards.

Revenue Recognition

For sales to dealers or distributors, revenue is recognized when transfer of control of the product is made as there is no acceptance period or right of return. Revenue is measured as the amount of consideration the Company expects to receive in exchange for transferring control of vehicles, parts, and accessories. Beginning in February 2023 the Company began selling the Brat E-Bike and Volcon Youth motorcycles directly to consumers in addition to dealers. Beginning in the third quarter of 2024, the Company began selling the Grunt EVO motorcycles directly to consumers in addition to dealers. Revenue for direct to consumer sales is recognized when transfer of control of the product is made to the consumer.

Consideration that is received in advance of the transfer of goods is recorded as customer deposits until delivery has occurred or the customer cancels their order, and the consideration is returned to the customer. Sales and other taxes the Company collects concurrent with revenue-producing activities are excluded from revenue. Other than the financing of inventory, the Company's sales do not presently have a financing component.

Finance revenue. The Company finances golf cart and accessory inventory purchases for Venom who sells this inventory to their dealers. The international manufacturer of this inventory requires an up front deposit when the inventory order is placed and full payment either before shipment or before the inventory reaches the designated U.S. port. The Company receives a fee of 5% of the inventory cost. Depending on the order, Venom's payment terms to the Company vary from 100 days from shipment from the manufacturer to 60 days upon receipt at Venom's warehouse. In the event that Venom sells the inventory before the end of the payment term has ended, then Venom must repay the Company upon sale. The Company recognizes revenue when it has the right to invoice Venom, which is based on the start of the payment terms noted above.

Sales promotions and incentives. The Company provides for estimated sales promotions and incentives, which are recognized as a component of sales in measuring the amount of consideration the Company expects to receive in exchange for transferring goods or providing services. Examples of sales promotion and incentive programs include rebates, distributor fees, dealer co-op advertising and volume incentives. Sales promotions and incentives are estimated based on contractual requirements. The Company records these amounts as a liability in the balance sheet until they are ultimately paid. Adjustments to sales promotions and incentives accruals are made as actual usage becomes known to properly estimate the amounts necessary to generate consumer demand based on market conditions as of the balance sheet date.

Shipping and handling charges and costs. The Company records shipping and handling amounts charged to the customer and related shipping costs as a component of cost of goods sold when control has transferred to the customer.

Product Warranties

The Company vehicles come with warranties that vary depending on the vehicle and vehicle components. The Company accrues warranty reserves at the time revenue is recognized. Warranty reserves include the Company's best estimate of the projected cost to repair or to replace any items under warranty, based on actual warranty experience as it becomes available and other known factors that may impact the evaluation of historical data. The Company reviews its reserves quarterly to ensure that the accruals are adequate to meet expected future warranty obligations and will adjust estimates as needed. Factors that could have an impact on the warranty reserve include the following: changes in manufacturing quality, shifts in product mix, changes in warranty coverage periods, product recalls and changes in sales volume. Warranty expense is recorded as a component of cost of goods sold in the statement of operations and is recognized as a current liability.

Inventory and Inventory Deposits

Inventories and prepaid inventory deposits are stated at the lower of cost (first-in, first-out method) or net realizable value.

Certain vendors require the Company to pay an upfront deposit before they manufacture and ship the Company's vehicles, parts or accessories. These payments are classified as prepaid inventory deposits on the balance sheet until title and risk of loss transfers to the Company, at which time they are classified as inventory.

Inventory costs include the cost of manufacturing and assembly of vehicles, duties, tariffs and shipping related to manufacturing and assembly of vehicles.

Digital Assets

The Company accounts for its digital assets, which are composed solely of Bitcoin ("BTC" or "Bitcoin"), including BTC restricted by lenders as collateral for borrowings, as non-current indefinite-lived intangible assets in accordance with ASC 350, *Intangibles—Goodwill and Other* ("ASC 350") and ASU 2023-08. The Company's digital assets are initially recorded at cost, using a last in first out method, and are measured at fair value as of each reporting period. The Company determines the fair value of its BTC in accordance with ASC 820, *Fair Value Measurement,* based on quoted (unadjusted) prices on the Gemini exchange, the active exchange that the Company has determined is its principal market for BTC (Level 1 inputs). Changes in fair value are recognized as incurred within "Unrealized loss on digital assets", within operating expenses in the Company's Consolidated Statement of Operations. BTC restricted by lenders as collateral for borrowing are separately classified from digital assets due to the restrictions imposed on this Bitcoin until the underlying borrowings are repaid.

The Company also generated income through buying and selling derivatives on BTC, including the use of short-term put and call contracts. Through December 31, 2025, the Company generated income of $1.5 million from trading these derivative contracts, which is recorded in Other income in the consolidated statement of operations. There were no outstanding derivative contracts at December 31, 2025.

Property and Equipment

Property and equipment are valued at cost. Additions are capitalized and maintenance and repairs are charged to expense as incurred. Gains and losses on dispositions of equipment are reflected in operations. Depreciation is recorded using the straight-line method over the estimated useful lives of the assets as follows:

Category	Estimated Useful Lives
Machinery, tooling and equipment	3-7 years
Vehicles	5 years
Internal use manufactured vehicles	1 year
Furniture & Fixtures	5 years
Computers	3 years

Leasehold improvements are depreciated over the shorter period of their estimated useful life or term of the lease.

Intangible Assets

In 2025, the Company paid $46,620 to develop its Empery Digital website to provide live updates to financial metrics related to its digital asset treasury strategy and is amortizing these costs over two years. Amortization expense was $9,712 for the year ended December 31, 2025.

In 2024, the Company purchased the domain name VLCN.com and was amortizing this asset over three years. Amortization expense was $3,330 and $1,427 for the years ended December 31, 2025 and 2024, respectively. In October 2025 the Company sold this domain name when it entered into the asset purchase agreement as discussed on Note 18.

Long-Lived Assets

The Company's long-lived assets are reviewed for impairment whenever events or changes in circumstances indicate that the historical carrying cost value of an asset may no longer be appropriate. The Company assesses recoverability of the asset by comparing the undiscounted future net cash flows expected to result from the asset to the carrying value. If the carrying value exceeds the undiscounted future net cash flows of the asset, an impairment loss is measured and recognized. An impairment loss is measured as the difference between the net book value and the fair value of the long-lived asset.

Leases

Right-of-use ("ROU") assets represent the Company's right to use an underlying asset for the lease term and lease liabilities represent the Company's obligation to make lease payments arising from the lease. ROU assets and lease liabilities are recognized at the lease commencement date based on the estimated present value of lease payments over the lease term. Leases with an initial term of 12 months or less are not recorded on the balance sheet; the Company recognizes lease expenses for these leases on a straight-line basis over the lease term. The Company does not separate non-lease components from the lease components to which they relate, and instead accounts for each separate lease and non-lease component associated with that lease component as a single lease component.

ASC 842 defines initial direct costs as only the incremental costs of signing a lease. Initial direct costs related to leasing that are not incremental are expensed as general and administrative expenses in our statements of operations.

The Company's operating lease agreements primarily consist of leased real estate and are included within ROU assets – operating leases and ROU lease liabilities – operating leases on the balance sheets. The Company's lease agreements may include options to extend the lease, which are not included in minimum lease payments unless they are reasonably certain to be exercised at lease commencement. The Company's leases do not provide implicit interest rates, therefore the Company uses its estimated incremental borrowing rate based on the information available at commencement date in determining the present value of lease payments.

Research and Development Expenses

The Company records research and development expenses in the period in which they are incurred as a component of product development expenses.

Income Taxes

Deferred taxes are determined utilizing the "asset and liability" method, whereby deferred tax asset and liability account balances are determined based on the differences between financial reporting and the tax bases of assets and liabilities and are measured using the enacted tax rates and laws that will be in effect when the differences are expected to reverse. The Company provides a valuation allowance, when it's more likely than not that deferred tax assets will not be realized in the foreseeable future. Deferred tax liabilities and assets are classified as current or non-current based on the underlying asset or liability or if not directly related to an asset or liability based on the expected reversal dates of the specific temporary differences.

Fair Value of Financial Instruments

ASC Topic 820 *Fair Value Measurements and Disclosures* ("ASC Topic 820") provides a framework for measuring fair value in accordance with generally accepted accounting principles.

ASC Topic 820 defines fair value as 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. ASC Topic 820 establishes a fair value hierarchy that distinguishes between (1) market participant assumptions developed based on market data obtained from independent sources (observable inputs) and (2) an entity's own assumptions about market participant assumptions developed based on the best information available in the circumstances (unobservable inputs).

The fair value hierarchy consists of three broad levels, which gives the highest priority to unadjusted quoted prices in active markets for identical assets or liabilities (Level 1) and the lowest priority to unobservable inputs (Level 3). The three levels of the fair value hierarchy under ASC Topic 820 are described as follows:

- Level 1 — Unadjusted quoted prices in active markets for identical assets or liabilities that are accessible at the measurement date.
- Level 2 — Inputs other than quoted prices included within Level 1 that are observable for the asset or liability, either directly or indirectly. Level 2 inputs include quoted prices for similar assets or liabilities in active markets; quoted prices for identical or similar assets or liabilities in markets that are not active; inputs other than quoted prices that are observable for the asset or liability; and inputs that are derived principally from or corroborated by observable market data by correlation or other means.
- Level 3 — Inputs that are unobservable for the asset or liability.

The following section describes the valuation methodologies that the Company used to measure different financial instruments at fair value.

Debt

The fair value of the Company's debt, which approximated the carrying value of the Company's debt as of December 31, 2025. Factors that the Company considered when estimating the fair value of its debt included market conditions, and term of the debt. The level of the debt would be considered as Level 2

The Company relies on the guidance provided by ASC Topic 480, *Distinguishing Liabilities from Equity*, to classify certain convertible instruments. The Company first determines whether a financial instrument should be classified as a liability. The Company will determine the liability classification if the financial instrument is mandatorily redeemable, or if the financial instrument, other than outstanding shares, embodies a conditional obligation that the Company must or may settle by issuing a variable number of its equity shares.

The Company accounts for derivative instruments in accordance with ASC Topic 815, *Derivatives and Hedging* ("ASC Topic 815"), and all derivative instruments are reflected as either assets or liabilities at fair value on the consolidated balance sheets. The Company uses estimates of fair value to value its derivative instruments. Fair value is defined as the price to sell an asset or transfer a liability in an orderly transaction between able and willing market participants. In general, the Company's policy in estimating fair values is to first look at observable market prices for identical assets and liabilities in active markets, where available. When these are not available, other inputs are used to model fair value such as prices of similar instruments, yield curves, volatilities, prepayment speeds, default rates and credit spreads, relying first on observable data from active markets. Depending on the availability of observable inputs and prices, different valuation models could produce materially different fair value estimates. The values presented may not represent future fair values and may not be realizable. The Company categorizes its fair value estimates in accordance with ASC Topic 820, based on the hierarchical framework associated with the three levels or price transparency utilized in measuring financial instruments at fair value as discussed above.

Once the Company determines that a financial instrument should not be classified as a liability, the Company determines whether the financial instrument should be presented between the liability section and the equity section of the balance sheet ("temporary equity"). The Company will determine temporary equity classification if the redemption of the financial instrument is outside the control of the Company (i.e. at the option of the holder). Otherwise, the Company accounts for the financial instrument as permanent equity.

Initial Measurement

The Company records its financial instruments classified as a liability, temporary equity or permanent equity at issuance at the fair value, or cash received.

Additional Disclosures Regarding Fair Value Measurements

The carrying value of cash, accounts receivable, inventory, other assets, and accounts payable and accrued expenses approximate their fair value due to the short-term maturity of those items.

Warrant Liabilities

The fair value of the derivative liabilities and warrant liabilities is classified as Level 3 within the Company's fair value hierarchy. Refer to Note 11, Derivative Instruments, for further discussion of the measurement of fair value of the derivatives and their underlying assumptions.

Stock-Based Compensation

The Company has a stock-based incentive award plan for employees, consultants and directors. The Company measures stock-based compensation at the estimated fair value on the grant date and recognizes the amortization of stock-based compensation expense on a straight-line basis over the requisite service period, or when it is probable criteria will be achieved for performance-based awards. Fair value is determined based on assumptions related to the fair value of the Company common stock, stock volatility and risk-free rate of return. The Company has elected to recognize forfeitures when realized.

Concentration Risk

As of December 31, 2025, the Company holds $356.9 million of Bitcoin. See Note 5 for further discussion.

The Company outsources certain portions of product design and development for its vehicles to third parties. In addition, the Company has outsourced the manufacturing of all of its vehicles to third-party manufacturers.

On January 8, 2024, the Company notified the manufacturer of the Volcon Youth motorcycles that it was terminating the co-branding and distribution agreement with them due to lower than anticipated sales of these units. In March 2024, the Company agreed to allow the manufacturer to keep all fully paid for units manufactured and held by the manufacturer, cease selling the Volcon Youth motorcycles as of June 30, 2024, and pay cash of $2,070,000 which included a payment of $370,000 in March 2024 and $100,000 monthly for seventeen months starting April 2024. All Volcon Youth inventory was written off as of June 30, 2024.

The settlement was recorded in the financial statements for the year ended December 31, 2023. On October 2, 2024, the Company and the manufacturer amended the settlement agreement and the Company agreed to pay the manufacturer $300,000 by October 31, 2024 to fully settle the remaining payments under the March 2024 agreement and to return any remaining spare parts and finished goods held by the Company in its Texas warehouse. The Company recognized a reduction of expense of $700,000 in cost of goods sold in the year ended December 31, 2024 related to this amendment.

In June 2024, the Company was notified by the manufacturer of a suspension component for the Stag that due to the Company's initial production forecast provided by the third-party manufacturer of the Stag, the vendor had acquired raw materials to fulfill several months' worth of this component needed for the forecast. Although the Company had provided updated forecasts to the third-party manufacturer of the Stag, the revised forecasts were not provided timely to this vendor. The Company entered into an agreement to pay for the excess raw materials by making weekly payments of $13,791 and to purchase remaining finished goods of $110,000. The Company recorded an expense of $1,091,308 in cost of goods sold for the year ended December 31, 2024. The remaining payments for this agreement of $109,163 are classified as a short-term liability as they are due to be paid by February 2026.

On December 6, 2024, the Company entered into a Settlement Agreement and Mutual Release ("Agreement") with GLV, the manufacturer of the Stag and Grunt EVO, pursuant to which the Company and the manufacturer agreed to terminate the Supplier Agreement dated March 11, 2022 for the development and engineering of the Volcon Stag vehicle prototypes; the Supplier Agreement dated May 29, 2022 for the manufacturing of the Volcon Grunt EVO motorcycle; and the Supplier Agreement dated August 11, 2022 for the manufacturing of the Volcon Stag vehicle (collectively, the "Supplier Agreements"). Pursuant to the Agreement, among other items, the Company and the manufacturer agreed to indemnify each other with respect to certain outstanding vendor payables and the Company agreed to pay GLV a termination fee of $125,000 per month for a period of twenty-two months. The remaining payments for this agreement of $1,080,021 are classified as a short-term liability as they are due to be paid by September 2026.

New Accounting Pronouncements

In November 2024, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update ("ASU") 2024-03, "Income Statement—Reporting Comprehensive Income—Expense Disaggregation Disclosures (Subtopic 220-40): Disaggregation of Income Statement Expenses," which requires companies to disclose disaggregated amounts relating to (a) inventory purchases; (b) employee compensation; (c) depreciation; (d) intangible asset amortization; and (e) depreciation, depletion, and amortization. Further, this guidance will require companies to include certain amounts that are already required to be disclosed under current U.S. GAAP in the same disclosure as the other disaggregation requirements, disclose a qualitative description of the amounts remaining in relevant expense captions that are not separately disaggregated quantitatively and disclose the total amount of selling expenses and, in annual reporting periods, an entity's definition of selling expenses. The standard is intended to benefit investors by providing more detailed expense disclosures that would be useful in making capital allocation decisions. This guidance is effective for public business entities for annual reporting periods beginning after December 15, 2026, and interim reporting periods beginning after December 15, 2027 but early adoption is permitted. ASU 2024-03 should be applied on a prospective basis, but retrospective application is permitted. The Company is currently evaluating the potential impact of adopting this new guidance on its consolidated financial statements and related disclosures**.**

NOTE 3 – SEGMENT REPORTING

In November 2023, the Financial Accounting Standards Board issued ASU 2023-07, Segment Reporting (Topic 280): Improvements to Reportable Segment Disclosures ("ASU 2023-7"), requiring public companies to disclose information about their reportable segments' significant expenses and other segment items on an interim and annual basis. Public companies with a single report segment were required to apply the disclosure requirements in ASU 2023-07, as well as all existing segment disclosures and reconciliation requirements of ASU 2023-07 during the year ended December 31, 2024.

Subsequent to the implementation of the Company's digital asset treasury strategy, the Company continues to operate as one operating segment and the Company's Co-CEOs are the Company's chief operating decision makers ("CODMs"). The "Corporate & Other" category presented in the following tables is not considered an operating segment. It consists primarily of costs and expenses related to executing the Company's Bitcoin strategy and includes the unrealized gain or loss on digital assets, other third-party costs associated with the Company's Bitcoin holdings, and net interest expense primarily related to debt obligations, the net proceeds of which were primarily used to repurchase the Company's common stock. Beginning in July 2025, the Company has dedicated certain corporate resources to its Bitcoin strategy. These costs, including related share-based compensation expense, are included within the "Corporate resources" and the "Share-based compensation expense" segment expense line items to better align with their activities and utilization.

The following tables present (for the operating segment and the Corporate & Other category, and on a consolidated basis) the Company's revenues and significant expenses regularly provided to the CODMs, excluding discontinued operations as discussed in Note 18 below, reconciled to loss from continuing operations for the year ended December 31, 2025.

	Operating Segment	Corporate & Other	Total
Revenue	$ 974,977	$ –	$ 974,977
Cost of goods sold	(1,337,595)	–	(1,337,595)
Gross margin	(362,618)	–	(362,618)
Operating expenses:			
Sales and marketing	1,483,138	–	1,483,138
Product development	398,605	–	398,605
General and administrative	9,286,470	–	9,286,470
Corporate	–	752,323	752,323
Digital asset custody fee	–	713,185	713,185
Share-based compensation expense	1,100,670	16,724,269	17,824,939
Unrealized loss on digital assets	–	122,659,151	122,659,151
Total operating expenses	12,268,883	140,848,928	153,117,811
Other income	–	1,565,515	1,565,515
Loss on repayment of credit facility	–	(125,377)	(125,377)
Gain on change in fair value of financial liabilities	–	46,672	46,672
Interest income	–	292,623	292,623
Interest expense	–	(2,253,819)	(2,253,819)
Loss from continuing operations before income taxes	(12,631,501)	(141,323,314)	(153,954,815)
Income tax benefit	–	5,383,973	5,383,973
Loss from continuing operations	$ (12,631,501)	$ (135,939,341)	$ (148,570,842)

Prior to the implementation of the Company's digital asset treasury strategy in July 2025, the Company operated as one operating segment, and the Company's chief operating decision maker was the CEO, who used the consolidated statement of operations to assess financial performance. For the year ended December 31, 2024, see the consolidated statement of operations above.

NOTE 4 – INVENTORY

Inventory consists of finished goods as follows:

	December 31, 2025	December 31, 2024
Total inventory	$ 330,619	$ 1,455,477

During 2024, the Company lowered the sales price of the Grunt EVO which was sold to dealers and distributors. Since the unit sales price was below the unit cost the Company paid to the manufacturer, the Company wrote down the Grunt EVO finished goods inventory and recorded an expense of $674,379. In 2025, the Grunt EVO was written down to $1,000 per unit and all Grunt EVOs were sold out as of March 2025.

In October 2024, the Company notified the manufacturer of the Stag UTV that the Company intended to terminate the manufacturing agreement between the parties due to, among other things, significant cost increases for finished units over the original contracted cost. The Company wrote down all of the Stag raw materials inventory as of September 30, 2024. The Company concluded it would not be able to recover the inventory since it was in the manufacturer's possession at the time, and even if it could the Company does not believe that it could find another manufacturer who could build the Stag without the Company incurring significant additional costs to have the manufacturer set up a production facility. In addition, the Company wrote off all prepaid deposits and advances paid to vendors and the manufacturer of the Stag. The total write-off related to Stag inventory, prepaid inventory and advances was $8,712,644. As noted above, the Company and the manufacturer entered into a settlement agreement and terminated the manufacturing agreement which included giving all raw materials inventory to the manufacturer.

As of December 31, 2025, the Company has purchase commitments for future payments due for inventory of $41,251.

NOTE 5 – DIGITAL ASSETS

As of December 31, 2025, the Company's investment in digital assets is solely comprised of 4,081 BTC, including 1,451 BTC with a carrying value of $126,926,895 and 2,630 BTC with a carrying value of $230,048,488 restricted by lenders as collateral for borrowing arrangements. BTC restricted by lenders as collateral for borrowing arrangements will remain restricted until the underlying borrowings are repaid (see Note 7 for further discussion of the borrowing arrangements, collateral requirements, and repayment provisions).

The following table summarizes the Company's digital assets held as of December 31, 2025, and related activities:

Bitcoin at December 31, 2025		4,081
Beginning Balance	$	–
Cost of BTC purchased		451,634,534
BTC received from sales of common stock or pre-funded warrants		28,000,000
Unrealized loss on BTC		(122,659,151)
Total BTC carrying value at December 31, 2025		356,975,383
Less fair value of BTC restricted by lenders as collateral for loans		(230,048,488)
Digital Assets	$	126,926,895

BTC is a digital asset, which is a novel asset class that is subject to significant legal, commercial, regulatory and technical uncertainty. Holding BTC does not generate any cash flows and involves custodial fees and other costs. Additionally, the price of BTC has historically experienced significant price volatility, and a significant decrease in the price of BTC would adversely affect the Company's financial condition and results of operations. The Company's strategy of acquiring and holding BTC also exposes it to counterparty risks with respect to the custody of its BTC, cybersecurity risks, and other risks inherent to holding a digital asset. In particular, the Company is subject to the risk that, if its private keys with respect to its digital assets are lost or destroyed or other similar circumstances or events occur, the Company may lose some or all of its digital assets, which could materially adversely affect the Company's financial condition and results of operations. To mitigate this risk, the Company utilizes multiple custodians in order to limit the concentration of holding its digital assets within one custodian.

In the period from January 1, 2026 to March 25, 2026, the Company sold 722 BTC and received proceeds of $50.0 million. As discussed in Note 7, during this period the Company also borrowed proceeds of $5.0 million and transferred 149 BTC as collateral for the additional borrowing and the Company also repaid $10.0 million and received 335 BTC from the lender. Additionally, the Company transferred 937 BTC to lenders due to required collateral increases due to the decrease in BTC below collateral thresholds as discussed further in Note 7. The Company also amended its delayed draw term loan agreement and reduced the required BTC collateral and received 490 BTC from the lender (see Note 7).

NOTE 6 – LONG – LIVED ASSETS

Property and Equipment

Property and equipment consist of the following:

	December 31, 2025	December 31, 2024
Machinery, tooling and equipment	$ 183,281	$ 145,192
Vehicles	135,077	185,482
Internal use manufactured vehicles	–	109,268
Fixtures & furniture	9,521	50,768
Leasehold improvements	2,230	44,663
Computers	–	217,341
	330,109	752,714
Less: Accumulated depreciation	(95,457)	(546,576)
Total property and equipment	$ 234,652	$ 206,138

Depreciation expense for the years ended December 31, 2025 and 2024 was $288,495 and $360,711, respectively

NOTE 7 – BORROWINGS FOR SHARE REPURCHASES

Credit Facility and Term Loan

On August 15, 2025, the Company entered into a Master Repurchase Agreement and related commitment letter (together the "MRA") with a third-party pursuant to which the Company could borrow up to $25.0 million Upon entry into the MRA the Company paid a commitment fee of $150,000 in connection with the MRA, which theCompany has recorded as loan issuances costs and will amortize this amount, plus legal fees associated with the MRA, over the 90 day term of the borrowings. Upon the initial borrowing date, the Company was required to place a minimum of $15,625,000 of BTC in a custody account with an affiliate of the third-party, which was required to be retained through the term of the agreement. The interest on all borrowings under the MRA was 11.0% per annum, which was payable monthly. The repayment date could have been extended at the option of the Company by three 30-day periods for a fee of 0.20%, 0.50% and 0.60% for the first, second and third 30-day periods, respectively.

The minimum initial borrowing under the MRA was $3.0 million and additional minimum borrowings were no less than $1.0 million. Under the MRA, the Company was required to provide the lender additional Bitcoin as collateral for each borrowing of 250% of the amount borrowed. If the value of BTC held by the lender as collateral decreased below 200% of the aggregate borrowings outstanding, the Company was required to provide additional Bitcoin to increase the value back to 250% of the loans outstanding. If the value of Bitcoin increased to over 300% of the total aggregate outstanding borrowings, the lender was required to return Bitcoin or cash to the Company until the collateral equaled 250% of the aggregate outstanding borrowings. If the value of BTC decreases below 125% and additional collateral is not provided within a specified time period, the lender may liquidate BTC and use the proceeds to repay the outstanding borrowings and return the remaining BTC to the Company. Upon repayment of the outstanding borrowings under the MRA, the third-party lender was required to return all Bitcoin held as collateral.

On September 18, 2025, the Company and the third-party lender amended the MRA and increased the available borrowings by an additional $10.0 million which also required the Company to increase the amount of Bitcoin in the custody account to a total of $21,875,000. All other provisions of the MRA remained the same. The Company borrowed the full $35.0 million available under the MRA, as amended, as of September 22, 2025, and used the proceeds to repurchase its common stock, including any brokerage commissions under the Company's share repurchase program.

On September 26, 2025, the Company and the third-party lender under the MRA entered into a new Master Repurchase Agreement and related transaction confirmation (together the "Repo Facility") with a maturity date of August 31, 2026 and providing for $50.0 million in cash advances to the Company in exchange for purchased securitiesin the form of Bitcoin. Upon entry into the Repo Facility, the Company paid a commitment fee of $125,000, which was recorded as loan issuance costs which, with legal fees incurred for the Repo Facility, will be amortized through August 31, 2026, the due date for any outstanding borrowings. The interest rate for borrowings under the Repo Facility is 8.5% per annum. The first $35.0 million borrowed under the Repo Facility was required to be, and was, used to repay all outstanding borrowings under the MRA and there was no early prepayment penalty. In addition, borrowings under the Repo Facility were used to pay accrued interest for borrowings outstanding under the MRA of $165,917, and the $125,000 commitment fee. The remaining proceeds of $14.7 million were deposited into one of the Company's bank accounts and the Company has used the proceeds to repurchase its common stock, including commissions due to the placement agent, under the Company's share repurchase program, as discussed further in Note 13 below. The Repo Facility has an early prepayment fee of 2% if repaid within six months of the agreement date and 1% if paid after six months but before August 31, 2026.

The Company recognized a loss on the repayment of the MRA totaling $125,377 for the unamortized issuance costs, which includes the commitment fee and legal fees, as of the repayment date. As of December 31, 2025, 1,434 BTC with a fair value of $125.4 million was held as collateral for the outstanding balance borrowed of $50 million. For the year ended December 31, 2025, the Company recognized $1,435,170 of interest expense for the above borrowing arrangements, including accrued interest of $365,972 as of December 31, 2025.

On February 4, 2026, the value of BTC held as collateral decreased below 200% of the aggregate borrowings and the Company provided 361 BTC to increase the collateral value back to 250% of the aggregate borrowings.

Delayed Draw Term Loans

On October 12, 2025, the Company entered into a Master Loan Agreement (the "MLA") with a lender to obtain additional capital in the form of delayed draw term loans. Under the MLA, the Company may borrow, an aggregate principal amount of up to $100.0 million, through October 9, 2026 (subject to the extension referenced below), at which date, all such loans, together with any accrued and unpaid interest and related obligations, shall become due and payable in their entirety. The Company has the option, in its sole discretion, to extend the due date of all such loans for one additional year, to October 9, 2027 and the Company exercised this option on October 29, 2025. Further, the MLA was not subject to any commitment fees and borrowings can be repaid early without any prepayment penalty or premium. Prior to the amendment discussed below, the interest rate applicable to all outstanding loans was 6.50% per annum payable monthly.

The MLA initially required the Company to provide the Lender collateral of BTC equal to 250% of any amount borrowed (the "Initial Collateral Rate"). If the value of BTC held by the lender as collateral decreased below 175% of the aggregate borrowings outstanding ("Collateral Call Level"), the Company is required to provide additional BTC to increase the value back to 250% of the aggregate borrowings outstanding. If the value of BTC increased to over 345% of the total aggregate outstanding borrowings (the "Collateral Refund Level"), the lender is required to return BTC to the Company until the collateral equals 250% of the aggregate outstanding borrowings. If the value of BTC decreased below 150% of the aggregate borrowings outstanding (the "Liquidation Level") the Company was required to provide additional BTC to increase the value back to 250% within 24 hours or the lender may liquidate collateral equal to the amount to repay the aggregate outstanding borrowings and return any remaining collateral to the Company.

As of December 31, 2025, the Company has utilized draw term loans totaling $50.0 million and provided 1,196 BTC with a fair value of $104.6 million to the lender as collateral. For the year ended December 31, 2025, the Company recognized $560,351 of interest expense. As discussed in Note 5 above, in the period from January 1, 2026, to March 25, 2026, the Company borrowed an additional $5.0 million and repaid $10.0 million under the MLA.

On February 4, 2026, the value of BTC decreased below the Collateral Call Level and the Company provided the lender 576 BTC to bring the value of the collateral back to the Initial Collateral Level.

On February 10, 2026, the MLA was amended and the Initial Collateral Rate was reduced to 174%, the Collateral Call Level was reduced to 153%, the Collateral Refund Level was reduced to 217% and the Liquidation Level was reduced to 143%. The lender returned 490 BTC to the Company as a result of this amendment. The amendment also increased the interest rate applicable to all outstanding loans to 7.5% and reduced the time period for the Company to provide collateral for the Liquidation Level to 12 hours.

NOTE 8 – NOTES PAYABLE

In March 2023, the Company entered into two financing arrangements to purchase two vehicles. The total principal of these arrangements is $96,024 with interest rates of 11.44% and 8.63% and monthly payments totaling $1,923 are due through February 2028 and $908 per month until February 2029. The vehicles are collateral for these arrangements. In February 2024, one of the vehicles was involved in an accident and was totaled. The note payable associated with this vehicle was paid off with the proceeds received from the insurance carrier.

The following table provides the maturities of notes payable as of December 31, 2025:

2026	10,898
2027	10,898
2028	10,898
2029	1,816
Total future payments	34,510
Less: Interest	(5,978)
Total notes payable	28,532
Less current portion	(8,047)
Long-term notes payable	$ 20,485

NOTE 9 - CONVERTIBLE NOTES

On May 24, 2023, the Company issued Senior Convertible Notes (the "New Notes") with an aggregate principal amount of $4,934,783 (debt issuance costs of $586,968) due February 24, 2024 to the same investors who were issued convertible notes in August 2022 (the "Convertible Notes"). The New Notes had an initial conversion price of $3,657,600 per share of common stock, which was adjusted to $1,080,000 upon stockholder approval received on August 3, 2023. The conversion price was also subject to further adjustment if the Company completed an equity or convertible note offering with a price below $1,080,000, or completed a stock split, reverse stock split or recapitalization where the lowest day's volume weighted average price ("VWAP") of the Company's stock price is below $1,080,000 in the five days following the stock split, with a floor price of $0.22 (subject to stockholder approval, which was obtained on August 3, 2023). The conversion price was also subject to further adjustment if the Company completed an equity or convertible note offering with a price below $1,080,000. The New Notes were issued with an original issue discount of 8.8% and did not bear interest unless an event of default had occurred, upon which interest accrued at 10% per annum.

The holders of the New Notes also received fully vested warrants (the "New Warrants") to purchase four shares of the Company's common stock at an initial exercise price of $1,569,600 per share. The New Warrants expire on August 24, 2027.

Concurrent with the issuance of the New Notes, the Company exchanged the Convertible Notes into two new notes, Series A Notes and Series B Notes both due February 24, 2024 (collectively the "Exchange Notes" and collectively with the New Notes the "May 2023 Notes"). The aggregate principal amount of Series A Notes was $3,690,422 and these were convertible into the Company's common stock at an initial conversion price of $1,080,000 per share. The aggregate principal amount of the Series B Notes was $23,483,491 and were convertible into the Company's common stock at an initial conversion price of $1,569,600 which was adjusted to $1,080,000 upon stockholder approval received on August 3, 2023.

Events of default for the May 2023 Notes were defined in the note agreements and the Company was in compliance with all covenants until the May 2023 Notes were exchanged for Series A Convertible Preferred Stock ("Preferred Stock") on March 4, 2024 as discussed below.

The Company recognized interest expense of $314,838 in the three months ended March 31, 2024 for the accretion of the discount and amortization offering costs on the May 2023 Notes.

The Company also exchanged the seven Note Warrants with an exercise price of $4,104,000 per share issued with the Convertible Notes in August 2022 for 12 warrants which had an initial exercise price of $1,569,600 per share (the "Exchange Warrants") and was adjusted to $1,080,000 per share upon stockholder approval received on August 3, 2023. The Exchange Warrants expire on August 24, 2027.

The conversion prices of the Exchange Notes, and the exercise prices of the New Warrants and Exchange Warrants (collectively the "May 2023 Warrants") were subject to further adjustment in the event that the Company issues additional common stock, stock options, warrants or convertible notes with prices below the exercise price in effect at the time of issuance, or completes a stock split, reverse stock split or recapitalization where the lowest day's VWAP of the Company's stock price is below the then exercise price in the five days following the stock split with a floor of $0.22 per share.

In September 2023, the Company and the holders of the Exchange Warrants entered into a warrant inducement agreement whereby the Exchange Warrant holders agreed to exercise two Exchange Warrants at a reduced exercise price of $504,000 per share. The Company issued the holders two warrants ("Reload Warrants") with an initial exercise price of $720,000 per share. The Reload Warrants were immediately exercisable for unregistered shares of the Company's common stock and have the same terms as the May 2023 Warrants and expire August 24, 2027. As discussed in Note 13 below, the holders of the Exchange and Reload Warrants notified the Company that they were forfeiting these warrants.

The May 2023 Warrants and Reload Warrants contained certain conversion limitations, providing that a holder thereof may not exercise such warrants to the extent that, if after giving effect to such conversion, the holder or any of its affiliates would beneficially own in excess of 4.99% of the outstanding shares of the Company's common stock immediately after giving effect to such exercise.

During the three months ended March 31, 2024, $7,414,025 of principal of the May 2023 Notes were converted into 622 shares of common stock. The Company recognized a loss of $333,544 on the conversion including the write off of $55,490 of unamortized debt issuance costs. On March 4, 2024, the remaining principal of the May 2023 Notes of $24,716,118 was exchanged for 24,698 shares of Series A Convertible Preferred Stock with a stated value of $1,000 and an initial conversion price of $8,512. The Company recognized a loss on the exchange of the Convertible Notes for Preferred Stock of $1,314,065.

As a result of the exchange for Preferred Stock in March 2024, the May 2023 Notes are no longer outstanding. The May 2023 Warrants exercise price was reduced to $8,512 as a result of this exchange. See further discussion in Note 13.

NOTE 10 - MAY 2024 SENIOR NOTES

On May 22, 2024, the Company issued Senior Notes with an aggregate principal amount of $2,942,170 due May 22, 2025 (the "May 2024 Notes") for proceeds before expenses of $2,501,001 (issuance costs were $245,150). The notes were issued with an original issue discount of 15% and did not bear interest unless an event of default occurs, upon which interest will accrue at 10% per annum. Pursuant to the terms of the May 2024 Notes, if the Company completed an equity or debt offering while any principal of the May 2024 Notes was outstanding, thirty percent of the proceeds from such offering are required to be used to repay the outstanding principal of the May 2024 Notes until they are fully repaid. The holders of the May 2024 Notes also received fully vested warrants (the "May 2024 Note Warrants") to purchase 1,589 shares of the Company's common stock at an exercise price of $1,856 per share. The May 2024 Note Warrants were exercisable beginning November 23, 2024 and expire November 23, 2029. The number of warrants and the exercise price are subject to adjustment if the Company declares a stock dividend, stock split or recapitalization.

The Company allocated the net proceeds received from the issuance of the May 2024 Notes and May 2024 Note Warrants based on the relative fair values of each resulting in net proceeds of $1,232,651 being allocated to the May 2024 Notes recorded as a current liability in the balance sheet and net proceeds of $1,023,200 being allocated to the May 2024 Note Warrants which was recorded in equity.

Principal amount	$	2,942,170
Unamortized discount and issuance costs		(1,525,700)
Net carrying amount	$	1,416,470

During the year ended December 31, 2024, the Company recorded non-cash interest expense of $238,965 to accrete the allocated value of the May 2024 Notes, which includes the amortization of debt issuance costs. As discussed further in Note 13, the May 2024 Notes were fully repaid on July 12, 2024 and a loss of $1,470,554 was recognized in the year ended December 31, 2024 for the early extinguishment of these notes.

NOTE 11 - WARRANT LIABILITIES

Series A and Series B Warrants

As discussed in Note 13 below, the Company issued Series A and Series B Warrants (the "November 2023 Warrants") in connection with the sale of common units and pre-funded warrant units. Under the terms of the November 2023 Warrants, the number and exercise price are subject to adjustment if the Company completes certain transactions specified in these warrant agreements. In addition, the Series A Warrants have a cashless exercise provision, if approved by stockholders, which would allow holders to cashless exercise one warrant for three shares of the Company's common stock. Such adjustments were subject to stockholder approval (which was received on January 12, 2024). The Company initially determined that these warrants should be classified as liabilities and used a Monte Carlo simulation to estimate the fair value until stockholder approval of the cashless exercise provision was completed.

Subsequent to the approval by stockholders of the cashless exercise provision of the Series A Warrant, the fair value of each Series A Warrant is the value of three shares of the Company's common stock. In the three months ended March 31, 2024, the Company recognized a loss of $12,733,180 for the change in fair value of the Series A Warrants and the Company reclassified the fair value of Series A Warrants exercised on a cashless basis to stockholders equity in the amount of $17,352,653. Based on the closing price of the Company's common stock on December 31, 2025 of $4.565, the fair value of each Series A Warrant is $13.695 and based on the total number of warrants outstanding of 4,740, the warrant liability for Series A Warrants is $64,985 at December 31, 2025.

In the year ended December 31, 2024, the Company recognized a loss of $2,174,673 on the change in fair value of the Series B Warrants and a gain of $165,355 from the exercise of the Series B Warrants. As discussed in Note 13 below, on May 17, 2024, certain terms of the Series B Warrants were amended, including a cashless exercise provision, which resulted in the Series B warrants no longer being liabilities. The fair value of each Series B Warrant is the value of the closing stock price of the Company times 0.81, the cashless exercise exchange ratio. Based on the closing price of the Company's common stock on May 17, 2024 of $1,849.60, the fair value of each Series B Warrant is $1,498.16. The fair value of the Series B Warrants of $ 3,405,662 as of May 17, 2024 was reclassified to equity. As of December 31, 2025, 24 Series B Warrants remain outstanding.

The following represents the activity associated with the Series A Warrants for the year ended December 31, 2025:

Fair value on January 1, 2025	$	111,658
Gain on change in fair value		(46,673)
Balance at December 31, 2025	$	64,985

NOTE 12 – RELATED PARTY TRANSACTIONS

Gemini

On July 13, 2025, the Company entered into a Strategic Digital Assets Services Agreement with Gemini NuStar, LLC ("Gemini") (the "Gemini Agreement"), pursuant to which Gemini will provide non-discretionary execution and digital asset-related informational services. These services may include market commentary, protocol updates, or other general insights as directed by the Company. Gemini does not act as an advisor, fiduciary, or investment manager to the Company, and all trading and investment decisions remain solely under the Company's control. In connection with the Gemini Agreement, upon the closing of the Private Placement, the Company issued a warrant to Gemini to purchase up to 901,542 shares of common stock, discussed further in Note 13.

Also on July 13, 2025, the Company entered into a Custodial Services Agreement (together with the Gemini Agreement, the "Gemini Agreements") with Gemini Trust Company, LLC ("Gemini Trust"), pursuant to which the Company has engaged Gemini Trust to provide custody services of the Company's digital asset holdings. The Company pays a monthly custodial fee as a percentage of the digital assets held in the Company's custodial accounts at Gemini at month end. For the year ended December 31, 2025, the Company has recognized custodial fee expense of $687,531.

Mr. Rohan Chauhan, a member of the Company's board of directors (the "Board"), was the Director of Strategy at Gemini until December 23, 2025.

Board of Directors

On July 17, 2025, in connection with the Private Placements, the Company's four existing independent members of the Board prior to the Private Placements received an aggregate payment from the Company of $600,000 in cash, with each individual amount based on their board tenure as payment for equity awards that could not be issued previously as part of their compensation for being on the Company's Board. Each existing independent director also received a grant of 10,000 stock options from the Company's 2025 Stock Plan to purchase the Company's common stock at $10.00 per share with a ten-year term, regardless of service being provided and only forfeitable in the event board service is terminated for cause as defined in the stock option agreements (the "Forfeiture Clause"). These stock options vest in 20% installments based upon the achievement of milestones tied to the daily VWAP of the Company's common stock trading price with the first 20% vesting at $10.00 and each installment increasing in $5.00 increments, and all stock options fully vesting if the daily VWAP reaches $30.00 (the "Applicable Vesting Schedule"). These stock options are not exercisable until the 2025 Stock Plan and shares to be issued under the 2025 Stock Plan are approved by the Company's stockholders (the "Approval Requirement"). These board members collectively purchased 60,000 shares of the Company's common stock for $600,000 in the Private Placements.

In connection with the Private Placements, the Board elected Ryan Lane, Ian Read, Rohan Chauhan and Matthew Homer to serve on the Board until director elections are held at the Company's next stockholder meeting. In connection with the appointment of each of Messrs. Read, Homer and Chauhan as directors, each: (a) signed an offer letter with the Company pursuant to which they each will be entitled to an annual fee of $40,000 plus a $10,000 fee for any committees on which they serve, both of which will be paid quarterly; and (b) was granted 298,802 stock options from the Company's 2025 Stock Plan to purchase the Company's common stock at $10.00 per share with a ten-year term, and subject to the Forfeiture Clause. These stock options vest in accordance with the Applicable Vesting Schedule and are subject to the Approval Requirement.

In connection with the Private Placements, Mr. Lane was also appointed to serve as both Chairman of the Board and Co-Chief Executive Officer ("Co-CEO") of the Company. Mr. Lane signed an employment agreement with the Company, dated July 17, 2025, and his annual salary is $225,000. Mr. Lane was also paid a signing bonus of $225,000 and was granted 1,792,812 stock options from the Company's 2025 Stock Plan to purchase the Company's common stock at $10.00 per share with a ten-year term, and subject to the Forfeiture Clause. These stock options vest in accordance with the Applicable Vesting Schedule and are subject to the Approval Requirement. Mr. Lane is a founder and principal of Empery Asset Management LP ("EAM"), an investor in the Company, and will continue to provide services to EAM while also being employed by the Company. Mr. Lane also purchased 100,000 shares of the Company's common stock for $1.0 million and funds controlled by EAM purchased 2,500,000 shares of the Company's common stock for $25.0 million in the Private Placements. As of December 31, 2025, funds controlled by EAM own 2,930,345 shares of the Company's common stock, and the following warrants to purchase the Company's common stock i) 4,323 pre-funded warrants with an exercise price of $0.00001, ii) 340,626 pre-funded warrants with an exercise price of $0.00008, iii) 493,751 warrants with an exercise price of $16.00, iv) 804 warrants with an exercise price of $1,856.00.

All Board members, other than Mr. Lane and Mr. John Kim, also Co-CEO and director, receive an annual fee of $40,000 payable quarterly plus an additional fee of $10,000 for each committee of the Board on which each director serves, if any.

In March 2025, the Company entered into a consulting agreement with ThankYou Studios, an entity owned by Orn Olason, a member of the Company's Board. ThankYou Studios completed a marketing and brand assessment for the Company and the total fees were $45,000.

Existing Officers

Chief Executive Officer

On January 30, 2024, John Kim, formerly an independent board member of the Company, signed an employment agreement with the Company to become the CEO effective February 3, 2024. Mr. Kim's salary was $800,000 and he had an annual bonus of $250,000. Mr. Kim would also receive 5% of the gross proceeds or other consideration if the Company completes a sale of substantially all of its assets or otherwise enters into a change of control transaction. Mr. Kim would also be entitled to an equity award equal to 10% of the Company's fully diluted equity, subject to stockholder approval. The Company's stockholders approved stock options to purchase 180,375 shares of the Company's common stock at $4.56 per share at the annual stockholders' meeting held on May 30, 2025. These stock options are fully vested and expire on May 30, 2035.

The above employment agreement was terminated upon execution of a new employment agreement in conjunction with the Private Placements, following which Mr. Kim became Co-CEO and remained on the Board. His annual salary under the new employment agreement is $225,000 and he received a bonus of $225,000 payable upon signing of the new employment agreement with no further bonuses due to Mr. Kim. Mr. Kim was granted 1,494,010 stock options from the Company's 2025 Stock Plan to purchase the Company's common stock at $10.00 per share with a ten-year term, and subject to the Forfeiture Clause. These stock options vest in accordance with the Applicable Vesting Schedule and are subject to the Approval Requirement. Mr. Kim also agreed to modify his previously granted stock options in May 2025 to increase the exercise price from $4.56 to $10.00 per share upon completion of the Private Placements. Mr. Kim also purchased 22,500 shares of the Company's common stock for $225,000 in the Private Placements.

Chief Financial Officer

On January 30, 2024, Greg Endo, the Company's Chief Financial Officer, signed a new employment agreement with the Company. Mr. Endo's salary was increased to $300,000 and he would have an annual bonus of up to 50% of his salary as determined by the compensation committee of the Board. The Board approved the full amount of Mr. Endo's 2024 bonus. Mr. Endo had agreed to a reduction of his salary to $238,500 through the end of 2024. On August 23, 2024, the compensation committee of the Board resolved that effective August 16, 2024, Mr. Endo's annual salary would be restored to $300,000. Mr. Endo would also receive 5% of the gross proceeds or other consideration if the Company completes a sale of substantially all of its assets or otherwise enters into a change of control transaction. Mr. Endo would also be entitled to an equity award equal to 4% of the Company's fully diluted equity, subject to stockholder approval. The Company's stockholders approved a grant to Mr. Endo of stock options to purchase 72,150 shares of the Company's common stock at $4.56 per share at the annual stockholders' meeting held on May 30, 2025. These stock options are fully vested and expire on May 30, 2035.

The above employment agreement was terminated upon execution of a new employment agreement in conjunction with the Private Placements. Mr. Endo remains as the Company's Chief Financial Officer and his annual salary under the new employment agreement is $300,000 and he received a bonus of $150,000 payable upon signing of the new employment agreement with no further bonuses due to Mr. Endo. Mr. Endo was granted 747,005 stock options from the Company's 2025 Stock Plan to purchase the Company's common stock at $10.00 per share with a ten-year term, and subject to the Forfeiture Clause. These stock options vest in accordance with the Applicable Vesting Schedule and are subject to the Approval Requirement. Mr. Endo also agreed to modify his previously granted stock options to increase the exercise price from $4.56 to $10.00 per share upon completion of the Private Placements. Mr. Endo also purchased 20,000 shares of the Company's common stock for $200,000 in the Private Placements.

The Company accrued the above-mentioned bonuses payable to Mr. Kim and Mr. Endo under their employment agreements prior to the Private Placements in accrued liabilities as of December 31, 2024, and these were paid in April 2025. The bonuses payable upon signing of the new employment agreements were paid in July 2025.

Other Executive Officer Appointments

In connection with the Private Placements, the Board appointed Timothy Silver and Brett Director to serve on the Company's management team. Mr. Silver serves as Chief Operating Officer and Mr. Director serves as Vice President of Legal. Mr. Silver and Mr. Director signed employment agreements, and their annual salaries are $150,000 and $200,000, respectively. Mr. Silver and Mr. Director were also granted 597,604 and 298,802 inducement stock options, respectively, to purchase the Company's common stock at $10.00 per share with a ten-year term, subject to the Forfeiture Clause. These stock options vest in accordance with the Applicable Vesting Schedule. Mr. Silver and Mr. Director are also employees of EAM and will continue to provide services to EAM while also being employees of the Company. Mr. Silver purchased 2,500 shares of the Company's common stock for $25,000 and Mr. Director purchased 10,000 shares of the Company's common stock for $100,000 in the Private Placements.

Former Employees

On January 13, 2024, the Company's former Chief Executive Officer ("CEO"), Jordan Davis, resigned his employment with the Company effective February 2, 2024. The Company entered into a 30-day consulting agreement with Mr. Davis and paid him $12,500.

On February 23, 2024, Katherine Hale resigned her position as Chief Marketing Officer. Ms. Hale was provided a severance amount of $112,500 which was paid out in three monthly installments beginning in March 2024.

In December 2022, the Company entered into an employment agreement with Christian Okonsky, one of the Company's founders and former Chairman of the Board, whereby Mr. Okonsky became an employee on January 2, 2023 as Chief Technology Officer with an annual salary of $170,000 and healthcare and other benefits that are also provided to all Company employees. Mr. Okonsky informed the Company on January 27, 2024 that he would resign his employment and forfeit his salary and benefits effective February 1, 2024.

In March 2024, the Company entered into a consulting agreement with Mr. Okonsky pursuant to which he was entitled to a monthly fee of $5,000 and payment of 1% of the gross proceeds from any merger, sale or change of control transaction ("Change of Control Payment") (as determined by the Board) entered into by the Company for a period of up to 6 months following the termination of the consulting agreement. The consulting agreement had a 24 month term and was cancellable by either party with 30 days notice. This consulting agreement terminates any remaining provisions of a prior consulting agreement entered into in March 2021 with Pink Possum, an entity controlled by Mr. Okonsky, with the exception of the four ten-year warrants with an exercise price of $1,416,960 which remain outstanding. On September 9, 2024, Mr. Okonsky resigned from the Board of the Company. The consulting agreement was amended and the monthly fee was amended to $8,333 per month for twelve months and the Change of Control Payment was eliminated. In March 2025, the Company and Mr. Okonsky entered into an agreement to terminate the consulting agreement and the Company paid Mr. Okonsky $38,000.

Highbridge Consultants, LLC

On August 28, 2020, the Company entered into a consulting agreement (the "Highbridge Consulting Agreement") with Highbridge Consultants, LLC ("Highbridge"), an entity controlled by Mr. Adrian James, a co-founder of the Company, pursuant to which Mr. James provided the Company with services in exchange for warrants. The Highbridge warrants were fully exercised on a cashless basis in 2021.

In addition, pursuant to the Highbridge Consulting Agreement, upon the occurrence of a Fundamental Transaction (as defined below) for an aggregate gross sales price of $100.0 million or more, the entity will receive a cash payment equal to 1% of such gross sales price. For the purposes of the Highbridge Consulting Agreement, "Fundamental Transaction" means any of the following: (i) a consolidation or merger involving the Company if the holders of the voting securities of the Company that are outstanding immediately prior to the consummation of such consolidation or merger do not, immediately after the consummation of such consolidation or merger, hold voting securities that collectively possess at least a majority of the voting power of all the outstanding securities of the surviving entity of such consolidation or merger or such surviving entity's parent entity; (ii) a transfer or issuance (in a single transaction or series of related transactions) by one or more of the Company and its stockholders to one person or to any group of persons acting in concert, of shares of the Company's capital stock then collectively possessing 50% or more of the voting power of all then outstanding shares of the Company's capital stock (computed on an as-converted to common stock basis); or (iii) any sale, license, lease, assignment or other disposition of all or substantially all of the assets of the Company. Furthermore, commencing upon the completion of the Company's initial public offering of the shares of our common stock, if the Company's market capitalization exceeds $300.0 million for a period of 21 consecutive trading days, the entity will receive an additional cash payment equal to $15.0 million; provided that the Company will have the right, in its sole discretion, to make the foregoing $15.0 million payment by the issuance of shares of the Company's common stock. The foregoing amounts will be payable to the entity if the above milestones occur any time prior to the ten year anniversary of the original Highbridge Consulting Agreement, or August 28, 2030.

On July 11, 2025, the Company entered into a release and termination agreement (the "Consultant Termination Agreement") with Highbridge pursuant to which the parties agreed to terminate and mutually release all of the parties' rights and obligations under the Highbridge Consulting Agreement, (as amended on or about March 25, 2021), including the release of the Company's obligation to make certain market capitalization milestone payments to Highbridge, in exchange for the payment by the Company of a termination fee in an aggregate amount of $2.0 million, which was paid and expensed in the year ended December 31, 2025.

New York Office Lease

On August 28, 2025, the Company entered into an assignment and assumption of a lease agreement with EAM whereby the Company agreed to assume half of the lease obligation of the New York City office lease of EAM since three of EAM's executives and one additional employee became Company employees in conjunction with the Private Placement as these individuals will continue to work in the New York City office. The Company, EAM and the landlord for the facility entered into a Consent to Assignment Agreement whereby the Company and EAM are jointly and severally liable for payment of the rent to the landlord. In the event that either EAM or the Company do not make their respective payments, then the other entity will be liable for the full rent payment to the landlord and the paying entity can seek recourse from the non-paying entity under the contribution agreement between them. The Company's portion of its lease obligation to the landlord is $9,617 per month, subject to increases per the terms of the EAM lease, through June 2029, subject to adjustment for changes in property taxes assessed to the landlord on the facility. EAM signed an extension with the landlord of the lease beyond June 2029 through September 2031. The Company will have the option to opt out of this lease extension by providing EAM notice on or prior to June 1, 2029.

NOTE 13 – STOCKHOLDERS' EQUITY

The Company is authorized to issue 250,000,000 shares of common stock and 5,000,000 shares of preferred stock both with a par value of $0.00001. The specific rights of the preferred stock, when so designated, shall be determined by the Board.

On June 11, 2025, the Company completed a 1-for-8 reverse stock split. Any stockholders with fractional shares as a result of the reverse stock split were paid cash (without interest) equal to such fractional shares multiplied by the average closing sales prices of the Company's common stock during regular trading hours for the five consecutive trading days immediately preceding the reverse stock split. A total of $941. was paid for the satisfaction of fractional shares.

Common Stock

On July 12, 2024, the Company consummated a registered direct offering pursuant to which it offered and sold 12,826 shares of the Company's common stock at a purchase price of $233.60 per share and pre-funded warrants to purchase 38,545 shares of common stock at $233.60 per pre-funded warrant. The Company received net proceeds of $10,789,261 and used $2,942,170 of the net proceeds to repay the May 2024 Notes. Through December 31, 2024, 28,282 pre-funded warrants were exercised and the remaining 10,263 were exercised by February 2025.

On October 15, 2024, the Company and a holder of the Company's common stock reached an agreement for the return by the holder of 12,103 shares of common stock to the Company. The holder had exceeded the percentage of shares that they were permitted to hold of the Company's common stock. In exchange for the return of the shares the Company issued a pre-funded warrant for 12,103 shares. These pre-funded warrants were exercised as of February 2025.

On February 6, 2025, the Company consummated an underwritten public offering pursuant to which it received net proceeds of $10,703,882 from the sale of 53,750 common stock units, which consisted of 53,750 shares of common stock and 53,750 fully exercisable five-year warrants to purchase the Company's common stock at $16.00 per share, and 696,250 pre-funded warrant units, which consisted of 696,250 pre-funded fully exercisable warrants with an exercise price of $0.00008 and 696,250 fully exercisable five-year warrants to purchase the Company's common stock at $16.00 per share (the "$16 Warrants"). Through December 31, 2025, 355,626 pre-funded warrants have been exercised and no pre-funded warrants were exercised from January 1, 2026 to March 25, 2026. Through December 31, 2025, 111,500 $16 Warrants were exercised, and no $16 Warrants were exercised from January 1, 2026 to March 25, 2026.

On June 24, 2025, the Company and certain EAM entities who hold the Company's common stock reached an agreement for the return by the holders of 4,323 shares of common stock to the Company. In exchange for the return of the shares, the Company issued these EAM entities pre-funded warrants for 4,323 shares of common stock.

Private Placements

On July 17, 2025, the Company entered into (i) a securities purchase agreement (the "Cash Purchase Agreement"), and (ii) a securities purchase agreement, (the "BTC Purchase Agreement" and, together with the Cash Purchase Agreement, the "Purchase Agreements") by and among the Company and each purchaser party thereto pursuant to which the Company issued an aggregate of 44,414,189 shares of common stock of the Company, par value $0.00001 per share and pre-funded warrants to purchase up to an aggregate of 5,728,662 shares of common stock. The Company received aggregate gross proceeds of $501.0 million, before deducting cash expenses including placement agent fees and other transaction related expenses of approximately $21.0 million, which excludes the value of the warrants issued to the placement agents as discussed below. Gross proceeds included payment of 235.8 BTC pursuant to the BTC Purchase Agreement with a value of $28.0 million. As discussed in Note 16, the Company recognized a deferred tax benefit of $5,383,973 due to the tax basis difference in the BTC received from these investors.

The unfunded exercise price of each pre-funded warrant is equal to $0.00001 per underlying pre-funded warrant share. The exercise price and the number of shares of common stock issuable upon exercise of each pre-funded warrant is subject to appropriate adjustment in the event of certain stock dividends, stock splits, stock combinations, or similar events affecting the common stock. The pre-funded warrants are exercisable in cash or by means of a cashless exercise and will not expire until the date the pre-funded warrants are fully exercised. The pre-funded warrants may not be exercised if the aggregate number of shares of common stock beneficially owned by the holder thereof (together with its affiliates) immediately following such exercise would exceed a specified beneficial ownership limitation; provided, however, that a holder may increase or decrease the beneficial ownership limitation by giving notice to the Company (61 days notice for increases), but not to any percentage in excess of 9.99%. As of December 31, 2025, 2,160,073 of the pre-funded warrants issued in the Private Placements were exercised. There were 3,296,940 of these pre-warrants exercised subsequent to December 31, 2025 through March 25, 2026.

Concurrent with the Purchase Agreements, the Company and the Purchasers entered into a Registration Rights Agreement, dated July 17, 2025 (the "Registration Rights Agreement"), providing for the registration for resale of the common stock and the pre-funded warrant shares sold in the Private Placements and the shares underlying the Gemini Warrants, the Placement Agent Warrants and the consultant warrant issued concurrent with the Private Placements that are not then registered on an effective registration statement, pursuant to a registration statement (the "Registration Statement") to be filed with the SEC no later than August 16, 2025. The Company filed the Registration Statement on August 15, 2025 and it became effective on August 18, 2025 and has remained effective through March 25, 2026.

The Company has agreed to use reasonable best efforts to cause the Registration Statement to be declared effective no later than 60 days after closing of the Private Placements, and to keep the Registration Statement continuously effective from the date on which the SEC declares the Registration Statement to be effective until (i) the date on which the Purchasers shall have resold all the Registrable Securities (as such term is defined in the Registration Rights Agreement) covered thereby, or (ii) the date on which the Registrable Securities may be resold by the Purchasers without registration and without regard to any volume or manner-of-sale limitations by reason of Rule 144 as promulgated by the SEC under the Securities Act ("Rule 144"), without the requirement for the Company to be in compliance with the current public information requirement under Rule 144 or any other rule of similar effect.

The Company granted the Purchasers customary indemnification rights in connection with the Registration Rights Agreement. The Purchasers also granted the Company customary indemnification rights in connection with the Registration Rights Agreement.

At the Market Program

As discussed above, on October 18, 2024, the Company established the ATM under which it can sell up to $100.0 million of its common stock and is subject to a fee payable to Aegis Capital Corp. ("Aegis") of 3%. On July 17, 2025, the Company entered into Amendment No.1 to the At-The-Market Issuance Sales Agreement (the "ATM Sales Agreement") with Aegis which, among other matters, (i) increases the maximum capacity of the program by $1.0 billion and (ii) adjusts the fee Aegis will be paid as sales agent to 1% of gross proceeds of sales under the ATM Sales Agreement for such additional amount. The Company filed a shelf registration statement to register the shares underlying such agreement on July 30, 2025.

During the years ended December 31, 2025 and 2024, the Company received net proceeds of $10,288,063 and $184,830 for the sale of 356,568 and 8,616 shares of common stock, respectively, through the ATM. No shares were sold under the ATM subsequent to December 31, 2025 through March 25, 2026.

Common Stock Repurchase Programs

On March 21, 2025, the Company's Board approved a common stock repurchase program whereby the Company could repurchase up to $2.0 million of common stock subject to a limitation that at least 500,000 shares of common stock must be outstanding to meet Nasdaq compliance rules. Through December 31, 2025, the Company has repurchased 65,348 shares of common stock at an average purchase price of $7.82 per share with cash of $510,907, including commissions paid of $17,045, under the March 2025 stock repurchase program.

On July 24, 2025, the Board approved a $100.0 million common stock repurchase program (increased by the Board to $150.0 million on October 10, 2025 and increased to $200.0 million on February 2, 2026) which terminated the March 2025 repurchase program. The authorization is effective through July 24, 2027, subject to extension or earlier termination by the Board at any time. The shares of common stock may be repurchased from time to time in open market transactions at prevailing market prices not to exceed $20.00 per share, in privately negotiated transactions, or by other means in accordance with federal securities laws. The actual timing, number and value of shares repurchased under the program will be determined by management at its discretion and will depend on a number of factors, including the market price of the common stock, general market and economic conditions and applicable legal requirements. The repurchase program does not obligate the Company to purchase any particular number of shares of common stock.

Through December 31, 2025, the Company has repurchased 13,705,746 shares of common stock under the new repurchase program at an average purchase price of $6.99 per share with cash of $95,771,175, including commissions paid of $928,860. For the period from January 1, 2026 to March 25, 2026, the Company has repurchased 9,408,645 shares of common stock at an average purchase price of $4.24 per share with cash of $39.9 million, including commissions paid of $394,821. These repurchases were funded from amounts borrowed under the borrowing agreements discussed in Note 7 above and from proceeds from the sale of Bitcoin.

The shares repurchased under both repurchase programs and cash paid are presented as treasury stock in the consolidated balance sheet as of December 31, 2025.

Series A Convertible Preferred Stock

On March 4, 2024, the Company designated 25,000 shares of Preferred Stock as Series A Convertible Preferred Stock with a par value of $0.00001 per share and exchanged the remaining May 2023 Notes (principal of $24,694,670) for Preferred Stock. For each $1,000.00 of May 2023 Note principal, one share of Preferred Stock was issued with a stated value of $1,000.00, and any principal held by an investor below $1,000.00 was granted one additional share of Preferred Stock. A total of 24,698 shares were issued in connection with the exchange. The Preferred Stock is initially convertible into shares of the Company's common stock at $8,512.00 per share. Conversion of Preferred Stock to common stock of the Company by the holders of the Preferred Stock is limited based on ownership restrictions of either 4.99% or 9.99%. The conversion price is subject to adjustment for anti-dilution provisions with an initial floor of $6,272.00 per share, subject to adjustment to $3,200.00 per share if stockholder approval was received. The stockholders approved this adjustment at the 2024 annual meeting held on May 28, 2024.

The Preferred Stock conversion price per share is subject to adjustment in the event of a stock split based on the lowest 5-day daily VWAP in the five days subsequent to the completion of a stock split. As a result of the reverse stock split completed on June 6, 2024, the conversion price of the Preferred Stock was adjusted to $51.59.

As of December 31, 2024, all of the Preferred Stock (24,698 preferred shares) have been converted for 34,881 shares of common stock.

In connection with the Stockholder Rights Agreement implemented on February 3, 2026, Company designated 100,000 shares of Preferred Stock as Series A with a par value of $0.00001 per share. See Note 19 for further discussion.

Warrants

November 2023 Common Units and Pre-Funded Warrant Units

On November 17, 2023, the Company sold (i) 12 common units ("Common Units"), each consisting of one share of the Company's common stock, a Series A warrant to purchase one share of common stock at an initial exercise price of $158,400.00 per share or pursuant to an alternative cashless exercise option (described below), which warrant will expire on the five-year anniversary of the original issuance date (the "Series A Warrants") and a Series B warrant to purchase one share of common stock at an initial exercise price of $241,920.00 per share, which warrant will expire on the five-year anniversary of the original issuance date (the "Series B Warrants" and together with the Series A Warrants, the "Warrants"); and (ii) 138 pre-funded units (the "Pre-funded Units" and together with the Common Units, the "Units"), each consisting of one pre-funded warrant to purchase one share of common stock (the "Pre-funded Warrants"), a Series A Warrant and a Series B Warrant. The purchase price of each Common Unit was $120,960.00, and the purchase price of each Pre-Funded Unit was $120,957.12. The Pre-Funded Warrants were immediately exercisable and may be exercised at any time until all of the Pre-Funded Warrants are exercised in full. All of the Pre-Funded Warrants were exercised by January 9, 2024.

In addition, the Company granted the underwriter a 45-day option to purchase additional 23 shares of common stock and/or Pre-Funded Warrants, representing up to 15% of the number of common stock and Pre-Funded Warrants sold in the Public Offering, and/or additional three Series A Warrants representing up to 15% of the Series A Warrants sold in the Public Offering, and/or additional three Series B Warrants representing up to 15% of the Series B Warrants sold in the Public Offering solely to cover over-allotments, if any. The underwriter partially exercised its over-allotment option with respect to three Series A Warrants and Series B Warrants. A total of 56 each of Series A and B Warrants were issued in the transaction.

Series A Warrants

Each Series A Warrant had an initial exercise price per share equal to $158,400.00, was immediately exercisable upon issuance, and expires on the five-year anniversary of the original issuance date, or November 17, 2028.

Share Combination Event Adjustments

Conditioned upon the receipt of the Warrant Stockholder Approval at a required special meeting of stockholders ("Special Meeting"), if at any time on or after the date of issuance there occurs any share split, share dividend, share combination, recapitalization or other similar transaction involving the Company's common stock (collectively a "Share Event") and the lowest daily VWAP during the five consecutive trading days prior to the date of such event and the five consecutive trading days after the date of such event is less than the exercise price then in effect, then the exercise price of the Series A Warrant shall be reduced to the lowest daily VWAP during such period and the number of warrant shares issuable shall be increased such that the aggregate exercise price payable thereunder, after taking into account the decrease in the exercise price, shall be equal to the aggregate exercise price on the date of issuance. Approval of this adjustment by the stockholders was made on January 12, 2024.

Cashless Exercise

If at the time a holder exercises its Series A Warrants, a registration statement registering the issuance of the shares of common stock underlying the Series A Warrants under the Securities Act is not then effective or available and an exemption from registration under the Securities Act is not available for the issuance of such shares, then in lieu of making the cash payment otherwise contemplated to be made to us upon such exercise in payment of the aggregate exercise price, the holder may elect instead to receive upon such exercise (either in whole or in part) the net number of shares of common stock determined according to a formula set forth in the Series A Warrants.

Conditioned upon the receipt of the Warrant Stockholder Approval at a required Special Meeting, a holder of Series A Warrants may also provide notice and elect an "alternative cashless exercise" pursuant to which they would receive an aggregate number of shares equal to the product of (x) the aggregate number of shares of common stock that would be issuable upon a cash exercise of the Series A Warrant and (y) 3.0. Approval of this adjustment by the stockholders was made on January 12, 2024.

The number of Series A Warrants were adjusted for the closing of the Private Placements on July 21, 2025, reverse stock split completed on June 11, 2025 and as a result of the February 6, 2025 common stock unit and pre-funded warrant unit offering in accordance with the Share Event provision discussed in Note 11. As of December 31, 2025, 4,740 Series A Warrants remain outstanding, see Note 11 for further discussion of the fair value of these warrants.

Series B Warrants

Each Series B Warrant offered had an initial exercise price per share equal to $241,920.00, was immediately exercisable upon issuance, and will expire on the five-year anniversary of the original issuance date, or November 17, 2028.

The number of Series B Warrants and exercise prices were adjusted for the reverse stock split completed on February 2, 2024 and when the Company exchanged the May 2023 Notes for Series A Convertible Preferred Stock in accordance with the Share Event provisions of the Series B Warrants.

On May 17, 2024, the Company entered into separate warrant amendment agreements (collectively, the "Warrant Amendment") with the holders of a majority-in-interest of the holders of the Company's Series B warrants issued November 2023. Pursuant to the Warrant Amendment, all outstanding Series B Warrants were amended to delete the following sections: (i) a provision providing for the adjustment of the exercise price and number of shares issuable pursuant to the Series B Warrants if the Company completed a future offering at a price per share less the exercise price of the Series B Warrants then in effect; and (ii) a provision providing for the adjustment of the exercise price and number of shares issuable pursuant to the Series B Warrants if price of the Company's common stock after the completion of a share split, share dividend, share combination, recapitalization or other similar transaction is less the exercise price of the Series B Warrants then in effect. In addition, the Warrant Amendment provides that the holders may also exercise the Series B Warrants on a cashless basis and receive an aggregate number of shares equal the product of the aggregate number of shares of common stock that would be issuable upon exercise of the Series B Warrants by means of a cashless exercise rather than a cash exercise, multiplied by 0.81.

On May 17, 2024, after giving effect to the Warrant Amendment, the Company and certain holders of Series B Warrants agreed to purchase an aggregate of 2,153 shares of common stock (the "Holders") entered into separate exchange agreements (the "Agreements") pursuant to which the Company agreed to exchange the Series B Warrants held by the Holders for shares of Company common stock (or, at the option of the Holder, pre-funded warrants) at a ratio of 0.81 shares of Company common stock (or, at the option of the Holder, pre-funded warrants) for each whole Series B Warrant. A total of 1,148 pre-funded warrants with an exercise price of $0.008 and 597 shares of common stock were issued to the Holders.

As of December 31, 2025, 24 Series B Warrants remain outstanding and all of the pre-funded warrants have been fully exercised.

Other Warrants

As discussed in Note 12 above, the Company issued warrants to purchase up to 901,542 shares of common stock to Gemini or its designees (the "Gemini Warrants") with an exercise price of $10.00 per share and a 10-year term. The Gemini Warrants began vesting and became exercisable on July 21, 2025 in accordance with the Applicable Vesting Schedule. Based on the highest VWAP of the Company's common stock from July 21, 2025, 360,618 warrants have vested as of December 31, 2025.

The Company issued 163,929 warrants to purchase shares of common stock to the placement agents of the Private Placements (the "Placement Agent Warrants") with an exercise price of $10.00 per share and a five-year term. The Placement Agents Warrants began vesting and became exercisable on July 21, 2025 based on the Applicable Vesting Schedule. Based on the highest VWAP of the Company's common stock since July 21, 2025, 65,573 warrants have vested as of December 31, 2025.

The Company has determined that the Gemini Warrants and the Placement Agent Warrants should be classified as equity. Since the first 20% of these warrants vest if the Company's daily VWAP is $10.00 and the Private Placements priced at $10.00, the Company concluded that the first tranche was certain to vest at the time of grant, which was the same day the Purchase Agreements were executed by investors for the Private Placements and used a Black-Scholes option pricing model. Since the daily VWAP beyond $10.00 was uncertain, the Company used Monte Carlo simulation to estimate the value of the remaining tranches of these warrants.

The following assumptions were used in the Black Scholes option pricing models and Monte Carlo simulations:

Company stock price on valuation date	$ 10.00
Volatility	143.85%
Risk free interest rate - 5 years	3.94%
Risk free interest rate - 10 years	4.43%
Dividend yield	0.00%

Based on the above inputs, the following fair values and derived service periods were calculated:

	Daily VWAP $10	Daily VWAP $15	Daily VWAP $20	Daily VWAP $25	Daily VWAP $30
Fair value - 5 year service period	$ 9.03	$ 9.02	$ 9.02	$ 9.02	$ 9.01
Derived service period - years	N/A	0.20	0.38	0.56	0.69
Fair value - 10 year service period	$ 9.82	$ 9.80	$ 9.80	$ 9.80	$ 9.80
Derived service period - years	N/A	0.20	0.40	0.58	0.73

The Company's highest VWAP in the period from July 21, 2025 to December 31, 2025 was $18.77. Therefore the first two tranches vested and the Company recognized all of the expense for these tranches as of December 31, 2025. The Company recognized expense on the remaining unvested tranches based on the derived service periods and number of days vesting in the period ended December 31, 2025. For the year ended December 31, 2025, the Company recognized total expense of $1,309,839 for the Placement Agent Warrants and recorded this as offering costs related to the Private Placements. The Company recognized total expense of $7,719,342 in general and administrative expense for the Gemini warrants. Remaining expense to be recognized for the Placement Agent Warrants and Gemini Warrants are $168,800 and $1,119,376, respectively, which will be recognized over the remaining derived service periods for each tranche unless the daily VWAP exceeds the vesting price for the tranche, in which case the expense will be recognized immediately.

In addition, concurrent with the closing of the Private Placements, the Company issued fully vested warrants to a consultant to purchase up to 25,000 shares of common stock with an exercise price of $10.00 per share of common stock and a ten-year term. The Company valued these warrants using a Black-Scholes option pricing model using the same ten-year inputs noted above. The Company recognized expense of $249,413 in general and administrative expenses for the year ended December 31, 2025.

The Company issued fully vested warrants (the "Note Warrants") to the Convertible Notes holders to purchase seven shares of the Company's common stock at an initial exercise price of $4,104,000.00. The Note Warrants expire August 24, 2027. Also, the Company issued to the placement agent of the Convertible Notes, fully vested warrants to purchase one share of the Company's common stock at an exercise price of $5,130,000.00. The warrants were not exercisable until February 24, 2023 and expire on February 24, 2028. The Company valued all of these warrants using the closing price of the Company's common stock on August 24, 2022 of $3,513,600.00, volatility of 79.81% based on peer companies, risk free interest rate of 3.03%, no dividends and an estimated life of 2.5 years.

In May 2023, all of the Note Warrants to purchase seven shares of the Company's common stock were exchanged for Exchange Warrants to purchase 12 shares of the Company's common stock with an initial exercise price of $1,569,600.00 per share (which was adjusted to $1,080,000.00 per share upon stockholder approval which was received on August 3, 2023). The Exchange Warrants expire August 24, 2027. In 2023 and 2024 certain holders of the Exchange Warrants exercised warrants to purchase four shares of the Company's common stock. On November 8, 2024, holders of the remaining warrants to purchase eight shares of the Company's common stock notified the Company that they were forfeiting these warrants.

As discussed in Note 9 above, in connection with the issuance of the New Notes, the Company also issued New Warrants (together with the Exchange Warrants the "May 2023 Warrants") to purchase four shares of common stock at an initial exercise price of $1,569,600.00 (which was adjusted to $1,080,000.00 per share upon stockholder approval which was received on August 3, 2023). Subsequent to the adjustment of the exercise price for the reverse splits and issuance of Preferred Stock discussed above, on November 8, 2024 the holder of these warrants notified the Company that it was forfeiting these warrants.

As noted below, two of the Exchange Warrants were exercised at a price of $504,000.00 per share and two Reload Warrants were issued with an exercise price of $720,000.00 per share. In October 2023, the Reload warrant exercise price was reduced to $394,272.00. The Reload warrants expire August 24, 2027. Subsequent to the adjustment of the exercise price for the reverse splits and issuance of Preferred Stock discussed above, on November 8, 2024 the holder of these warrants notified the Company that it was forfeiting these warrants.

On October 13, 2023, the Company entered into an amendment (the "Amendment") to its Stag UTV development and Stag supplier agreements with GLV Ventures ("GLV"). Pursuant to the Amendment, GLV agreed to provide the Company with extended payment terms and provide the Company with credit against new vehicles for the value of certain parts purchased by the Company. In consideration for entering into the Amendment No. 1, the Company agreed to issue GLV (or its designee) five-year warrants to purchase 2 shares of Company common stock with an exercise price of $604,800.00 per share, which was equal to the closing price of the Company's common stock on the date of the Amendment No. 1, 1 warrant was fully vested upon issuance and the remaining warrant vested 45 days from the issuance date.

Warrant Inducements

As discussed in Note 10, the Company issued the May 2024 Note Warrants on May 22, 2024, which are fully vested, to purchase 1,589 shares of the Company's common stock at an exercise price of $1,856.00. The May 2024 Note Warrants were initially exercisable on November 23, 2024 and expire on November 23, 2029. The Company valued these warrants using the closing price of the Company's common stock on May 22, 2024 of $1,408.00, volatility of 155% the Company's historical volatility, risk free interest rate of 4.47%, no dividends and a life of 5.5 years.

The following is the activity related to pre-funded common stock warrants during the year ended December 31, 2025:

	Pre- Funded Common Stock Warrants			
	Shares	Weighted Average Exercise Price	Weighted Average Remaining Life in years[(1)]	Intrinsic Value
Outstanding at January 1, 2025	10,263	$ 0.00064		
Purchased	6,429,237	$ 0.00002		
Exercised	(2,525,962)	$ 0.00002		
Outstanding at December 31, 2025	3,913,538	$ 0.00002	–	$ 17,865,238
Exercisable at December 31, 2025	3,913,538	$ 0.00002	–	$ 17,865,238

(1) Pre-funded warrants expire only upon exercise

The following is the activity related to all other common stock warrants, excluding pre-funded warrants, during the year ended December 31, 2025:

	Other Common Stock Warrants			
	Shares	Weighted Average Exercise Price	Weighted Average Remaining Life in years	Intrinsic Value
Outstanding at January 1, 2025	14,804	$ 4,158.33		
Granted/purchased	1,844,148	$ 12.42		
Exercised	(123,603)	$ 14.43		
Outstanding at December 31, 2025	1,735,349	$ 47.66	6.98	$ –
Exercisable at December 31, 2025	1,735,349	$ 47.66	6.98	$ –

NOTE 14 – STOCK-BASED COMPENSATION

2025 Stock Plan

As discussed in Note 13, in conjunction with the digital asset treasury strategy and Private Placements, on July 16, 2025, the Company's Board adopted the 2025 Stock Plan (the"2025 Plan") and granted stock options to certain employees, Board members and a consultant. A total of 5,681,381 stock options were granted to purchase the Company's common stock at $10.00 per share with a ten-year term, regardless of service being provided and only forfeitable in the event employment is terminated for cause as defined in the stock option agreement. These stock options vest based on the Applicable Vesting Schedule. The Company's highest VWAP in the period from July 17, 2025 to December 31, 2025 was $29.86, and accordingly the first four tranches vested. Since these stock options are not exercisable until the 2025 Stock Plan and shares to be issued under the 2025 Stock Plan are approved by the Company's stockholders, the Company has not recorded any share-based compensation expense for these stock options as there is no measurement date since stockholder approval is uncertain. Once stockholder approval is obtained, the Company will value these options and recognize share-based compensation for any vested awards and any unvested awards based on the derived service period.

Inducement Stock Options

Also in connection with the Private Placements, the Board approved 1,045,807 inducement stock option grants to purchase the Company's common stock with an exercise price of $10.00 to two executives (see Note 12 above) and one employee. These stock options have a ten-year term regardless of continued employment with the Company, provided that the employee is not terminated for cause. These stock options vest based on the Applicable Vesting Schedule. The Company used a Black Scholes option pricing model and Monte Carlo simulation to value these stock options consistent with the Placement Agent Warrants (see Note 13) since the Company determined the expected life of these options is approximately 5 years. Based on the highest VWAP of the Company's common stock since the Private Placements, 836,648 stock options have vested as of December 31, 2025. The Company recognized total expense of $8,755,514 in general and administrative expense for these inducement stock options and the remaining expense to be recognized is $677,665 which will be recognized over the remaining derived service period of approximately three months.

In August 2024, as part of the compensation package for the Company's Chief Sales Officer ("CSO"), the Company granted 782 stock options outside of the 2021 Plan with an exercise price of $104.32. In June 2025, the Company cancelled these stock options and paid $4,252 to the CSO. The Company recognized a net benefit of $30,932 for the share-based compensation expense previously recognized on the unvested stock options less the cash paid.

2021 Stock Plan

In January 2021, the Company's Board of Directors adopted the Volcon, Inc. 2021 Stock Plan, (the "2021 Plan"). The 2021 Plan is a stock-based compensation plan that provides for discretionary grants of stock options, stock awards, and restricted stock unit ("RSU") awards to employees, members of the Board of Directors and consultants (including restricted stock units issued prior to the adoption of the plan as further discussed below). The Company has reserved 39 shares of the Company's common stock for issuance under the 2021 Plan. To the extent that an award, if forfeitable, expires, terminates or lapses, or an award is otherwise settled in cash without the delivery of shares of common stock to the participant, then any unpaid shares subject to the award will be available for future grant or issuance under the 2021 Plan. There are no shares available for issuance under the 2021 Plan as of December 31, 2025. Awards vest according to each agreement and as long as the employee remains employed with the Company or the consultant continues to provide services in accordance with the terms of the agreement.

Other

As discussed in Note 12 above, fully vested stock options were granted to one of the Company's Co-CEOs and CFO to purchase a total of 252,525 shares of the Company's common stock at $4.56 per share. The Company recognized share-based compensation of $1,125,802 related to these stock options in the year ended December 31, 2025. On July 17, 2025, the Co-CEO and CFO amended these stock options to reset the exercise price to $10.00 per share. There was no impact to share-based compensation for this modification as the fair value immediately after the modification was less than the fair value immediately before the modification.

The following summarizes activity relating to common stock options to employees and consultants for services during the year ended December 31, 2025:

	Common Stock Options			
	Shares	Weighted Average Exercise Price	Weighted Average Remaining Life in years	Intrinsic Value
Outstanding at January 1, 2025	816	$ 14,203.20		$ –
Granted	1,298,332	10.00		
Forfeited	–	–		
Canceled	(782)	104.32		
Outstanding at December 31, 2025	1,298,366	76.25	9.52	–
Exercisable at December 31, 2025	1,089,207	$ 88.97	9.52	$ –

During the years ended December 31, 2025 and 2024, the Company recognized share-based compensation expense of $9,856,184 and $310,961, respectively, related to common stock options.

Total stock-based compensation recorded for the year ended December 31, 2025 and 2024 for all stock-based compensation awards, including warrants, has been recorded as follows:

	2025	2024
Cost of Goods Sold	$ –	$ (11,827)
Sales and Marketing	(25,132)	37,063
Product Development	–	126,337
General and Administrative	17,850,071	159,388
Total	$ 17,824,939	$ 310,961

NOTE 15 – LOSS PER COMMON SHARE

The basic net loss per common share is calculated by dividing the Company's net loss available to common stockholders by the weighted average number of Common Stock during the year. The diluted net loss per common share is calculated by dividing the Company's net loss available to common stockholders by the diluted weighted average number of Common Stock outstanding during the year. The diluted weighted average number of Common Stock outstanding is the basic weighted number of Common Stock adjusted for any potentially dilutive debt or equity. Diluted net loss per common share is equal to basic net loss per share due to the Company's net loss and any potentially issuable shares are anti-dilutive.

	2025	2024
Numerator:		
Loss from continuing operations	$ (148,570,842)	$ (44,154,059)
Loss from discontinued operations	$ (1,481,644)	$ (1,356,250)
Net loss	$ (150,052,486)	$ (45,510,309)
Denominator:		
Denominator for basic and diluted net loss per common share - weighted average of Common Stock	18,482,865	38,725
Basic and diluted loss from continuing operations per common share	$ (8.04)	$ (1,140.20)
Basic and diluted loss from discontinued operations per common share	$ (0.08)	$ (35.02)
Basic and diluted net loss per common share	$ (8.12)	$ (1,175.22)

As discussed in Note 2 above, the Company received notice from DTCC on behalf of the brokerage firms that hold the shares of Company common stock held in "street name" that in connection with the foregoing rounding of shares the Company would need to issue 23,617 shares of common stock which are not included in the amounts above. If these shares had been issued as of November 19, 2024 when notice from DTCC was received, the amounts for basic and diluted net loss per common share for 2025 and 2024 would be as follows:

	2025	2024
Denominator:		
Denominator for basic and diluted net loss per common share - weighted average of common stock	18,490,888	41,516
Basic and diluted loss from continuing operations per common share	$ (8.04)	$ (1,063,54)
Basic and diluted loss from discontinued operations per common share	$ (0.08)	$ (32.67)
Basic and diluted net loss per common share	$ (8.12)	$ (1,096.21)

Common stock consisting of shares potentially dilutive as of December 31, 2025 and 2024 are as follows:

	2025	2024
Warrants	5,648,887	25,042
Stock options	1,298,366	786
Total	6,947,253	25,828

NOTE 16 – INCOME TAXES

Deferred taxes are determined by applying the provisions of enacted tax laws and rates for the jurisdictions in which the Company operates to the estimated future tax effects of the differences between the tax basis of assets and liabilities and their reported amounts in the Company's financial statements. A valuation allowance is established to reduce deferred tax assets if it is more likely than not that the related tax benefits will not be realized.

Due to losses since inception through December 31, 2024, no income tax benefit or expense has been recognized as a full valuation allowance was established for any tax benefit that would have been recognized for the loss in the year ended December 31, 2024.

The provision for income taxes for the year ended December 31, 2025 consists of the following:

	2025
Current	
Federal taxes	$ –
State taxes	–
Total current	–
Deferred	
Federal tax benefit	(5,060,603)
State tax benefit, net of federal benefit	(323,370)
Total income tax benefit	$ (5,383,973)

The income tax benefit for the year ended December 31, 2025 is a result of the Company receiving BTC of $28.0 million for the purchase of common stock and pre-funded warrants in the Private Placement from two investors. The Company's basis in the BTC is carried over from the investors' basis which resulted in the Company having a tax basis of $3,578,522. The Company recorded a deferred tax liability for the tax effect of the difference in the tax basis and the $28.0 million as a reduction to additional paid in capital. As a result, the Company released the same amount of its previously recorded valuation allowance on its deferred tax assets as a tax benefit.

The components of income tax expense (benefit) for the years ended December 31, 2025 and 2024 are as follows:

	2025	%	2024	%
Expected federal income tax benefit at statutory rate	$ (32,641,656)	21.0	$ (9,557,165)	21.0
State income taxes, net of federal benefit	(1,618,882)	1.0		
Non-taxable or non-deductible items:				
Stock compensation	105,000	(0.1)	65,301	(0.1)
(Gain) loss on warrants classified as liabilities	–		3,101,361	(6.8)
Loss on extinguishment of Convertible Notes	–		345,998	(0.8)
Interest expense on Convertible Notes	–		66,116	(0.1)
Other	25,788	*	15,517	*
Other reconciling items:				
Tax rate change	(119,516)	0.1	–	
Return to provision and true ups	–		345,266	(0.8)
Write off of deferred tax asset for stock-based compensation	–		3,235,732	(7.1)
Change in valuation allowance	28,865,293	(18.6)	2,381,874	(5.2)
Income tax benefit	$ (5,383,973)	3.5	$ –	0.0

* less than 0.1%

Due to the impact of the reverse stock split in June 2024 on the adjusted number of outstanding options and exercise prices, the Company concluded that it was a remote possibility that any options prior to this reverse split will be exercised and therefore wrote off the deferred tax asset and related valuation allowance for stock-based compensation related to these options.

The components of the Company's deferred tax assets and liabilities at December 31, 2025 and December 31, 2024 are as follows:

	December 31, 2025	December 31, 2024
Deferred tax assets		
Net operating losses	$ 25,562,308	$ 20,932,619
Unrealized loss on digital assets	21,657,531	–
Stock-based compensation	3,819,466	–
Depreciation and amortization	776,599	1,562,438
Research & development credit	1,099,535	1,099,535
Lease liability	174,998	162,786
Accrued expenses	47,898	94,561
Capital loss carryover	187,549	178,442
Vendor settlements and reserves	262,168	689,253
Other	26,066	41,554
Total	53,614,118	24,761,188
Valuation allowance	(53,296,785)	(24,431,492)
Net deferred tax asset	317,333	329,696
Deferred tax liabilities		
Prepaid expenses	(145,763)	(174,457)
Right-of-use assets	(171,570)	(155,239)
Total net deferred taxes deferred tax liabilities	$ –	$ –

Management currently believes that since the Company has a history of losses it is more likely than not that the deferred tax regarding the loss carry forwards and other temporary differences will not be realized in the foreseeable future. The utilization of the Company's net operating losses and credit carryovers may be subject to limitation due to the "change in ownership provisions" under Section 382 of the Internal Revenue Code. The Company's cumulative net operating loss carry forward of $120.7 million as of December 31, 2025, may be limited in future years depending on future taxable income in any given fiscal year. The net operating losses can be carried forward indefinitely.

The Company has recorded no liability for income taxes associated with unrecognized tax benefits at the date of adoption and has not recorded any liability associated with unrecognized tax benefits. Accordingly, the Company has not recorded any interest or penalty in regard to any unrecognized benefit.

NOTE 17 – LEASES

The components of lease cost for operating leases for the year ended December 31, 2025 and 2024 is as follows:

	2025	2024
Lease Cost		
Operating lease cost	$ 471,230	$ 468,996
Short-term lease cost	111,473	169,051
Total lease cost	$ 582,703	$ 638,047

Supplemental cash flow information related to leases for the year ended December 31, 2025 and 2024, is as follows:

	2025	2024
Other Lease Information		
Cash paid for amounts included in the measurement of lease liabilities:		
Operating cash flows from operating leases	$ 466,036	$ 399,609
Amortization of right-of-use assets	$ 417,330	$ 396,979

The following table summarizes the lease-related assets and liabilities recorded on the balance sheet at December 31, 2025 and December 31, 2024:

	2025	2024
Lease Position		
Operating Leases:		
Operating lease right-of-use assets	$ 778,235	$ 739,234
Right-of-use liabilities operating leases short-term	322,103	443,950
Right-of-use liabilities operating leases long-term	471,683	331,222
Total operating lease liabilities	$ 793,786	$ 775,172

The Company utilizes the incremental borrowing rate in determining the present value of lease payments unless the implicit rate is readily determinable. The Company recognized an initial right-of-use asset and lease liability of $563,660 for leases entered into during the year ended December 31, 2025.

Lease Term and Discount Rate	**December 31, 2025**
Weighted-average remaining lease term (years):	
Operating leases	4.1
Weighted-average discount rate:	
Operating leases	7.51%

The following table provides the maturities of lease liabilities at December 31, 2025:

	Operating Leases
2026	369,599
2027	110,691
2028	110,691
2029	121,232
2030	131,772
2031	98,829
Total future undiscounted lease payments	942,814
Less: Interest	(149,028)
Present value of lease liabilities	$ 793,786

As discussed in Note 12, in August 2025 the Company entered into an assignment and assumption of a lease agreement with EAM whereby the Company agreed to assume half of the lease obligation of the New York City office lease of EAM. The Company recognized a right-of-use asset and liability of $563,660 for this lease, which includes the extension period discussed in Note 12.

In September 2025, the Company abandoned a leased facility in Round Rock, Texas. Upon abandonment of the facility the Company wrote off the remaining right of use asset of $107,329. On December 30, 2025, the Company and the landlord of this facility entered into a termination agreement and the Company is no longer obligated to make any lease payment on this facility and wrote off the remaining right of use liability of $79,010. As part of the termination agreement the Company agreed to forfeit $44,225 of its security deposit to the landlord and the remaining $55,390 of the security deposit will be returned to the Company in 2026. For the year ended December 31, 2025, the Company recognized a net loss of $72,544 associated with this terminated lease.

NOTE 18 - DISCONTINUED OPERATIONS

As discussed in Note 2 above, on October 15, 2025, the Company entered into the Venom APA with Venom, to divest the Volcon brand in exchange for a non-dilutable 10% equity position in Venom's reorganized Delaware corporation on a fully-diluted basis, which reorganization has not occurred as of March 25, 2026 and will be recognized by the Company once completed. The Company transferred all Volcon IP, including all intellectual property, brand assets, trademarks, sales and distribution networks and engineering documentation associated with the Volcon brand (the "IP") other than its E-Bike, the Brat. The Company will have the right to appoint one director to Venom's board and may continue to finance Venom's inventory purchases. In the event that Venom does not complete its corporate reorganization within six months, the Company will have the option to repurchase the Volcon IP for a nominal amount.

The Company concluded that it would shift its business operations in the fourth quarter after the implementation of the digital asset treasury strategy. The Company expects that by selling the four-wheel product business, which includes the HF1 UTV, MN1 Tradesman UTV and MN1 Adventurer products (collectively the "Divested Products"), it will reduce the Company's future product liability exposure. Although the Company may continue to finance Venom's inventory purchases and obtain a seat on Venom's board of directors, the Company has concluded that it does not have significant ongoing involvement in the products sold in the Venom APA. The revenue and expenses associated with the Divested Products are presented as discontinued operations. Expenses also include certain allocated costs such as salaries, benefits, travel, marketing and consulting costs which are allocated based on actual costs or estimated time that individuals worked on these products.

Following this divestiture, the Company will concentrate on its two-wheel business, including the launch of new products in the U.S. and Europe. The Company also plans to expand its inventory financing operations to generate positive cash flow by leveraging the spread between the Company's cost of capital and interest income. Revenues and expenses for the two-wheel business and inventory financing business will be presented in the loss from continuing operations. Although the Company transferred the tradenames, design patents and engineering drawings for the Grunt, Grunt EVO and Stag in the Venom APA, the Company had discontinued the sale of these products before the shift in operations therefore revenues and costs associated with these products are also presented in the loss from continuing operations.

The following table presents the carrying amount of the major classes of assets and liabilities included in the consolidated balance sheet that are related to discontinued operations:

	2025	2024
ASSETS		
Accounts receivable	$ 256,459	$ 19,642
Inventory	11,654	700,450
Inventory deposits	–	147,975
Prepaid expenses and other current assets	–	717
Intangible asset	–	15,698
Total assets	$ 268,113	$ 884,482
LIABILITIES		
Accounts payable	$ 76,290	$ 19,236
Accrued liabilities	16,732	32,618
Customer deposits	–	122,046
Total liabilities	$ 93,022	$ 173,900

The following table presents the major classes of line items representing the loss on discontinued operations:

	2025	2024
Revenue	$ 919,797	$ 53,725
Cost of goods sold	(927,910)	(180,337)
Sales and marketing	(890,493)	(320,926)
Product development	(504,645)	(810,939)
General and administrative expenses	(78,393)	(97,773)
Loss from discontinued operations	$ (1,481,644)	$ (1,356,250)

The impact to the statement of cash flows for discontinued operations was not material for any period presented.

NOTE 19 - SUBSEQUENT EVENT

Stockholder Rights Plan

On February 3, 2026, the Board of Directors of the Company declared a dividend of one preferred share purchase right (a "Right"), payable on February 13, 2026, for each share of common stock, par value $0.00001 per share, of the Company outstanding on February 13, 2026 (the "Record Date") to the stockholders of record on that date. In connection with the distribution of the Rights, the Company entered into a Rights Agreement (the "Rights Agreement"), dated as of February 3, 2026, between the Company and Computershare Trust Company, N.A., as rights agent. Each Right entitles the registered holder to purchase from the Company one one-thousandth of a share of Series A Preferred Stock, par value $0.00001 per share (the "Preferred Shares"), of the Company at a price of $15.00 per one one-thousandth of a Preferred Share represented by a Right, subject to adjustment. Unless the Rights are earlier redeemed or exchanged by the Company, the Rights Plan will expire at the close of business on February 2, 2027.

The Rights are not exercisable until the Distribution Date, which is the earlier of (i) the Close of Business on the 10th day following a public announcement, or the public disclosure of facts indicating, that a Person or group of affiliated or associated Persons has become an "Acquiring Person" (or, in the event the Board of Directors determines to effect an exchange in accordance with Section 24 of the Rights Agreement and the Board of Directors determines that a later date is advisable, then such later date) or (ii) the Close of Business on the 10th Business Day (or such later date as may be determined by action of the Board of Directors prior to such time as any Person becomes an "Acquiring Person") following the commencement of a tender offer or exchange offer the consummation of which would result in a Person or group becoming an "Acquiring Person." An "Acquiring Person" means any person who becomes the beneficial owner of 12.5% or more of the outstanding shares of common stock of the Company, subject to certain specified exceptions set forth in the Rights Plan. Initially, the Rights are attached to all common stock certificates and no separate certificates evidencing the Rights ("Right Certificates") were issued. As soon as practicable after the Distribution Date, unless the Rights are recorded in book-entry or other uncertificated form, the Company will prepare and cause the Right Certificates to be sent to each record holder of common stock as of the Distribution Date.

If the Rights become exercisable, all holders of Rights (other than the Acquiring Person and its affiliates and associates, whose Rights would become void) will be entitled to acquire common stock having a value equal to two times the exercise price of the Right. In the event of a merger, consolidation, or sale of 50% or more of the Company's assets following a person becoming an Acquiring Person, each Right would instead entitle the holder to purchase common stock of the acquiring company at the same two-times-value ratio. Alternatively, the Board may exchange each Right held by non-Acquiring Person holders for one share of common stock per Right. The Rights Plan also includes a "qualifying offer" provision under which the Rights will automatically expire if an all-shares, same-consideration tender or exchange offer is accepted for more than two-thirds of the outstanding common stock on a fully diluted basis, subject to a minimum 90 business-day period following commencement of the offer. The Board may redeem all of the Rights at a price of $0.00001 per Right at any time before a person becomes an Acquiring Person and may amend the terms of the Rights without holder consent, except that no amendment after a person becomes an Acquiring Person may adversely affect the interests of Rights holders.

Securities Purchase Agreement

On March 23, 2026 the Company entered into a Securities Purchase Agreement whereby it agreed to issue and sell, in a registered direct offering (the "Offering") 2,558,422 shares (the "Shares") of its common stock, par value $0.00001 per share ("Common Stock"), at a purchase price of $5.39 per share, pre-funded warrants to purchase up to 2,079,797 shares of Common Stock (the "Pre-Funded Warrants") with $5.38999 of the exercise price per Pre-Funded Warrant being pre-funded at closing, and accompanying common stock warrants to purchase up to 4,638,219 shares of Common Stock (the "Common Warrants" and, together with the Pre-Funded Warrants, the "Warrants") with an exercise price of $6.27 per Common Warrant. The Company completed this Offering on March 25, 2026, and received gross proceeds of $25.0 million before deducting estimated offering expenses payable by the Company.

The Offering was made pursuant to that certain Registration Statement on Form S-3ASR, as amended (File No. 333-290374), which was originally filed on September 19, 2025, including the prospectus contained therein. The Company filed a prospectus supplement with the U.S. Securities and Exchange Commission relating to the Offering.

The Company intends to use the net proceeds from the Offering, in addition to cash on hand, to reduce outstanding debt by approximately $40.0 million through the full repayment of the $50.0 million outstanding Repo Facility and an incremental draw down of approximately $10.0 million on the currently outstanding $100.0 million MLA. Per the provisions of the Repo Facility, repayment may only be made on the first business day of the month.

Under the Securities Purchase Agreement, the Company and each of its directors and executive officers has agreed, subject to certain exceptions, to lock-up restrictions as set forth in the lock-up agreements entered into in connection with the Offering. In addition, the Securities Purchase Agreement contains a prohibition on additional issuances of equity or equity-linked securities until 30 days following the closing of the Offering, subject to certain exceptions.

The exercise price and the number of shares of Common Stock issuable upon exercise of each Warrant is subject to appropriate adjustment in the event of certain stock dividends, stock splits, stock combinations, or similar events affecting the Common Stock. The Warrants are exercisable immediately upon issuance. The Warrants may not be exercised if the aggregate number of shares of Common Stock beneficially owned by the holder thereof (together with its affiliates) immediately following such exercise would exceed a specified beneficial ownership limitation; provided, however, that a holder may increase or decrease the beneficial ownership limitation by giving notice to the Company (61 days' notice for increases), but not to any percentage in excess of 9.99%.

The Pre-Funded Warrants are exercisable in cash or by means of a cashless exercise and will not expire until the date the Pre-Funded Warrants are fully exercised. The Common Warrants are exercisable in cash or by means of a cashless exercise and will expire on the date that is four years following the original issuance date.

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

None.

ITEM 9A. CONTROLS AND PROCEDURES

Evaluation of Disclosure Controls and Procedures

Our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e)) are designed to ensure that information required to be disclosed by us in reports we file or submit under the Securities Exchange Act of 1934, as amended, is recorded, processed, summarized and reported within the appropriate time periods, and that such information is accumulated and communicated to one of the Co-Chief Executive Officers, who is our principal executive officer, and Chief Financial Officer, who is our principal financial officer, as appropriate, to allow timely discussions regarding required disclosure. We, under the supervision of and with the participation of our management, including our Co-Chief Executive Officer and Chief Financial Officer, have evaluated the effectiveness of our disclosure controls and procedures as of the end of the period covered by this Annual Report on Form 10-K. . Based on that evaluation, our Co-Chief Executive Officer and Chief Financial Officer concluded that the design and operation of our disclosure controls and procedures were ineffective as of December 31, 2025.

Management's Report on Internal Control over Financial Reporting

Management is responsible for establishing and maintaining adequate internal control over financial reporting, as such term is defined in Rule 13a-15(f) under the Exchange Act. Internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with accounting principles generally accepted in the United States. 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 risk that controls may become inadequate because of changes in conditions or because the degree of compliance with policies or procedures may deteriorate.

Management has determined that internal controls over financial reporting are ineffective as the material weaknesses identified by our independent registered public accounting firm in our internal control over financial reporting in our 2020 audit have not been remediated as of December 31, 2025. These material weaknesses are as follows:

- Inadequate segregation of duties within account processes due to limited personnel
- Insufficient formal written policies and procedures for accounting, IT, financial reporting and record keeping

This Annual Report on Form 10-K does not include an attestation report of our registered public accounting firm due to a transition period established by rules of the SEC for an "emerging growth company," as defined in Section 2(a) of the Securities Act of 1933, as amended, or the Securities Act, as modified by the Jumpstart Our Business Startups Act of 2012

Changes in Internal Control Over Financial Reporting

There were no changes to our internal control over financial reporting during the three months ended December 31, 2025, that have materially affected, or are reasonably likely to materially affect, our internal controls over financial reporting.

ITEM 9B. OTHER INFORMATION

During the three months ended December 31, 2025, no director or officer of the Company adopted or terminated a "Rule 10b5-1 trading arrangement" or "non-Rule 10b5-1 trading arrangement," as each term is defined in Item 408(a) of Regulation S-K.

ITEM 9C. DISCLOSURE REGARDING FOREIGN JURISDICTIONS THAT PREVENT INSPECTIONS

Not applicable.

PART III

ITEM 10. DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE

Information as to Item 10 is incorporated by reference from the information in our definitive proxy statement for the 2026 Annual Meeting of Stockholders, which we will file pursuant to Regulation 14A with the SEC within 120 days after the close of the year ended December 31, 2025.

We have adopted a Code of Ethics, which is applicable to all directors, officers and employees, including our Chief Executive Officer and Chief Financial Officer. The Code of Ethics is available on our corporate web site at https://ir.emperydigital.com/governance/governance-documents and in print, without charge, to any stockholder who requests a copy at:

Empery Digital Inc.
Att: Chief Financial Officer
3121 Eagles Nest Street, Suite 120
Round Rock, TX 78665

To the extent required by SEC or Nasdaq rules, we intend to disclose any amendments to our Code of Ethics, and any waiver of a provision of the code with respect to our principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions, on our web site referred to above or in a Current Report on Form 8-K within four business days following any such amendment or waiver, or within any other period that may be required under SEC or Nasdaq rules from time to time.

Insider Trading Policies and Procedures

We have adopted an Insider Trading Policy that governs the purchase, sale, and other dispositions of our securities by our directors, officers and employees, and other covered persons. The Insider Trading Policy also applies to transactions by the Company in its securities. We believe that the Insider Trading Policy is reasonably designed to promote compliance with insider trading laws, rules and regulations and the listing standards of Nasdaq. A copy of our insider trading policy is filed as Exhibit 19.1 to this Annual Report on Form 10-K.

ITEM 11. EXECUTIVE COMPENSATION

Information as to Item 11 is incorporated by reference from the information in our definitive proxy statement for the 2026 Annual Meeting of Stockholders, which we will file with the SEC within 120 days after the close of the year ended December 31, 2025.

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

Information as to Item 12 is incorporated by reference from the information in our definitive proxy statement for the 2026 Annual Meeting of Stockholders, which we will file with the SEC within 120 days after the close of the year ended December 31, 2025.

ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS AND DIRECTOR INDEPENDENCE

Information as to Item 13 is incorporated by reference from the information in our definitive proxy statement for the 2026 Annual Meeting of Stockholders, which we will file with the SEC within 120 days after the close of the year ended December 31, 2025.

ITEM 14. PRINCIPAL ACCOUNTANT FEES AND SERVICES

Information as to Item 14 is incorporated by reference from the information in our definitive proxy statement for the 2026 Annual Meeting of Stockholders, which we will file with the SEC within 120 days after the close of the year ended December 31, 2025.

PART IV

ITEM 15. EXHIBIT AND FINANCIAL STATEMENT SCHEDULES

(1) Financial Statements

The consolidated financial statements of Empery Digital Inc. and the Report of Independent Registered Public Accounting Firm are included in Part II, "Item 8.— Financial Statements and Supplementary Data" of this Annual Report on Form 10-K. Reference is made to the accompanying Index to Financial Statements.

(2) Financial Statement Schedules

All financial statement schedules have been omitted, since the required information is not applicable or is not present in amounts sufficient to require submission of the schedule, or because the information required is included in the consolidated financial statements and notes thereto.

(3) Index to Exhibits

The information required by this Item 15(a)(3) is set forth on the exhibit index, which immediately precedes the signature page to this report and is incorporated herein by reference.

ITEM 16. FORM 10-K SUMMARY

None.

INDEX TO EXHIBITS

Exhibit Number	Description
3.1	Amended and Restated Certificate of Incorporation of Volcon, Inc. (incorporated by reference to exhibit 3.1 of the Form 8-K filed October 8, 2021)
3.2	Certificate of Amendment to the Amended and Restated Certificate of Incorporation of Volcon, Inc. (incorporated by reference to exhibit 3.1 of the Form 8-K filed June 15, 2023)
3.3	Certificate of Amendment to the Amended and Restated Certificate of Incorporation of Volcon, Inc. (incorporated by reference to exhibit 3.1 of the Form 8-K filed October 16, 2023)
3.4	Certificate of Amendment to the Amended and Restated Certificate of Incorporation of Volcon, Inc. (incorporated by reference to exhibit 3.1 of the Form 8-K filed February 5, 2024)
3.5	Form of Certificate of Designation of Preferences, Rights and Limitations of Series A Convertible Preferred Stock of Volcon, Inc. (incorporated by reference to exhibit 3.1 of the Form 8-K filed March 4, 2024)
3.6	Form of Certificate of Designation of Preferences, Rights and Limitations of Series A Convertible Preferred Stock of Volcon, Inc. (incorporated by reference to exhibit 3.1 of the Form 8-K filed March 25, 2024)
3.7	Certificate of Amendment to the Amended and Restated Certificate of Incorporation of Volcon, Inc. (incorporated by reference to exhibit 3.1 of the Form 8-K filed June 7, 2024)
3.8	Certificate of Amendment to the Amended and Restated Certificate of Incorporation of Volcon, Inc. (incorporated by reference to exhibit 3.1 of the Form 8-K filed November 8, 2024)
3.9	Certificate of Amendment to the Amended and Restated Certificate of Incorporation of the Registrant (incorporated by reference to exhibit 3.1 of the Form 8-K filed June 12, 2025)
3.10	Certificate of Amendment to the Amended and Restated Certificate of Incorporation of the Registrant (incorporated by reference to exhibit 3.1 of the Form 8-K filed July 29, 2025)
3.11	Third Amended and Restated Bylaws of the Registrant (incorporated by reference to exhibit 3.2 of the Form 8-K filed July 29, 2025)
3.12	Certificate of Designations designating Series A Preferred Stock of Empery Digital Inc., as filed with the Delaware Secretary of State on February 3, 2026 (incorporated by reference to Exhibit 3.1 to of the Form 8-K filed on February 3, 2026)
4.1	Form of common stock (incorporated by reference to exhibit 4.1 of the Form S-1 file number 333-259468)
4.2	Form of Warrant issued to Pink Possum, LLC and Highbridge Consulting, LLC (incorporated by reference to exhibit 4.2 of the Form S-1 file number 333-259468)
4.3	Form of Underwriter Warrant (incorporated by reference to exhibit 4.3 of the Form S-1 file number 333-262343)
4.4	Form of Underwriter Warrant issued in IPO (incorporated by reference to Exhibit 4.3 of the Form S-1 file number 333-259468)
4.5	Form of Common Stock Purchase Warrant (incorporated by reference to Exhibit 10.4 of the Form 8-K filed with the SEC on August 24, 2022)
4.6	Placement Agent Warrant (incorporated by reference to Exhibit 10.6 of the Form 8-K filed with the SEC on August 24, 2022)
4.7	Form of New Warrants issued in May 2023 (incorporated by reference to Exhibit 4.2 of the Form 8-K filed with the SEC on May 22, 2023)
4.8	Form of Exchange Warrants issued in May 2023 (incorporated by reference to Exhibit 4.4 of the Form 8-K filed with the SEC on May 22, 2023)
4.9	Form of Underwriter Warrant dated September 15, 2023, with Aegis Capital Corp. (incorporated by reference to Exhibit 4.1 of the Form 8-K filed with the SEC on September 18, 2023)
4.10	Form of New Warrants issued in September 2023 warrant inducement (incorporated by reference to Exhibit 4.1 of the Form 8-K filed with the SEC on October 2, 2023)
4.11	Form of Warrant issued to GLV Ventures (incorporated by reference to Exhibit 4.1 of the Form 8-K filed with the SEC on October 16, 2023)
4.12	Form of Pre-Funded Warrant issued in November 2023 (incorporated by reference to exhibit 4.1 of Form 8-K filed on November 20, 2023)
4.13	Form of Series A Warrant issued in November 2023 (incorporated by reference to exhibit 4.2 of Form 8-K filed on November 20, 2023)
4.14	Form of Series B Warrant issued in November 2023 (incorporated by reference to exhibit 4.3 of Form 8-K filed on November 20, 2023)
4.15	Form of Series B Warrant Amendment (incorporated by reference to exhibit 4.1 of Form 8-K filed on May 17, 2024)
4.16	Form of Amended and Restated Warrant issued in November 2023 (incorporated by reference to exhibit 4.5 of Form 8-K filed on November 20, 2023)

4.17	Form of Pre-Funded Warrant issued in May 2024 (incorporated by reference to exhibit 4.2 of Form 8-K filed on May 17, 2024)
4.18	Form of Notes issued in May 2024 (incorporated by reference to exhibit 4.1 of Form 8-K filed on May 20, 2024)
4.19	Form of Warrants issued in May 2024 (incorporated by reference to exhibit 4.2 of Form 8-K filed on May 20, 2024)
4.20	Form of Pre-Funded Warrants issued in July 2024 (incorporated by reference to exhibit 4.1 of Form 8-K filed on July 12, 2024)
4.21	Form of Pre-Funded Warrants issued in October 2024 (incorporated by reference to exhibit 4.1 of Form 8-K filed on October 16, 2024)
4.22	Form of Warrants issued in February 2025 (incorporated by reference to exhibit 4.1 of Form 8-K filed on February 6, 2025)
4.23	Form of Pre-Funded Warrants issued in February 2025 (incorporated by reference to exhibit 4.2 of Form 8-K filed on February 6, 2025)
4.24*	Description of Registrant's Securities
4.25	Form of Pre-Funded Warrant (incorporated by reference to exhibit 4.1 of the Form 8-K filed on July 17, 2025)
4.26	Form of Placement Agent Warrant (incorporated by reference to exhibit 4.2 of the Form 8-K filed on July 17, 2025)
4.27	Form of Gemini Warrant (incorporated by reference to exhibit 4.3 of the Form 8-K filed on July 17, 2025)
4.28	Form of Consultant Warrant (incorporated by reference to exhibit 4.4 of the Form 8-K filed on July 17, 2025)
4.29	Rights Agreement, dated as of February 3, 2026, between Empery Digital Inc. and Computershare Trust Company, N.A., as rights agent (incorporated by reference to Exhibit 3.1 to of the Form 8-K filed on February 3, 2026).
10.1	2021 Stock Plan of Volcon, Inc., as amended (incorporated by reference to exhibit 10.1 of the Form S-1 file number 333-259468)
10.2†	Amendment to the Volcon, Inc. 2021 Stock Plan (as amended and restated) (incorporated by reference to exhibit 10.1 of the Form 8-K filed July 27, 2022)
10.3†	Amendment No. 2 to the Volcon, Inc. 2021 Stock Plan (as amended and restated) (incorporated by reference to exhibit 10.1 of the Form 8-K filed July 14, 2023)
10.4*	Form of Indemnification Agreement with the Company's directors and executive officers
10.5	Super Sonic Distribution Agreement, dated January 31, 2025, by and between Volcon, Inc. and Super Sonic Company Limited (incorporated by reference to exhibit 10.1 of Form 8-K filed on February 4, 2025)
10.6	Underwriting Agreement, dated February 5, 2025, with Aegis Capital (incorporated by reference to exhibit 1.1 of Form 8-K filed on February 6, 2025)
10.7	Venom Supply Agreement, dated February 25, 2025, by and between Volcon, Inc. and Venom-EV (incorporated by reference to exhibit 10.1 of Form 8-K filed on February 27, 2025)
10.8	Amended and Restated Venom Supply Agreement, dated April 24, 2025, by and between the Registrant and Venom-EV (incorporated by reference to exhibit 10.1 of the Form 8-K filed April 30, 2025)
10.9	Termination and Release Agreement, dated July 11, 2025, by and between the Registrant and Highbridge Consultants, LLC (incorporated by reference to exhibit 10.6 of the Form 8-K filed July 17, 2025
10.10	Strategic Digital Assets Services Agreement, dated July 13, 2025, by and between the Registrant and Gemini NuStar, LLC (incorporated by reference to exhibit 10.4 of the Form 8-K filed July 17, 2025)
10.11	Custodial Services Agreement, dated July 13, 2025, by and between the Registrant and Gemini Trust Company, LLC (incorporated by reference to exhibit 10.5 of the Form 8-K filed July 17, 2025)
10.12	Cash Purchase Agreement, dated July 17, 2025, by and between the Registrant and certain investors thereto (incorporated by reference to exhibit 10.1 of the Form 8-K filed July 17, 2025)
10.13	BTC Purchase Agreement, dated July 17, 2025, by and between the Registrant and certain investors thereto (incorporated by reference to exhibit 10.2 of the Form 8-K filed July 17, 2025)
10.14	Form of Registration Rights Agreement (incorporated by reference to exhibit 10.3 of the Form 8-K filed July 17, 2025)
10.15	At-The-Market Issuance Sales Agreement, dated October 18, 2024, between the Registrant and Aegis Capital Corp. (incorporated by reference to exhibit 1.1 of Form 8-K filed on October 18, 2024)
10.16	Amendment No. 1 to the At-The-Market Issuance Sales Agreement, dated July 2025, by and between the Registrant and Aegis Capital Corp. (incorporated by reference to exhibit 10.7 of the Form 8-K filed July 17, 2025)
10.17†	Employment Agreement, dated July 17, 2025, by and between the Registrant and Ryan Lane (incorporated by reference to exhibit 10.8 of the Form 8-K filed on July 17, 2025)
10.18†	Employment Agreement, dated July 17, 2025, by and between the Registrant and Timothy Silver (incorporated by reference to exhibit 10.9 of the Form 8-K filed on July 17, 2025)

10.19†	Employment Agreement, dated July 17, 2025, by and between the Registrant and Brett Director (incorporated by reference to exhibit 10.10 of the Form 8-K filed on July 17, 2025)
10.20†	Employment Agreement, dated July 17, 2025, by and between the Registrant and John Kim (incorporated by reference to exhibit 10.11 of the Form 8-K filed on July 17, 2025)
10.21†	Employment Agreement, dated July 17, 2025, by and between the Registrant and Greg Endo (incorporated by reference to exhibit 10.12 of the Form 8-K filed on July 17, 2025)
10.22+	Uncommitted Revolving Credit Agreement, dated September 7, 2025, by and between the Registrant and Galaxy Digital LLC (incorporated by reference to exhibit 10.1 of the Form 8-K filed September 8, 2025)
10.23+	Master Loan Agreement, dated October 12, 2025, by and between the Registrant and Two Prime Lending Limited (incorporated by reference to exhibit 10.1 of the Form 8-K filed October 14, 2025)
10.24	Amendment No. 1 to Master Loan Agreement, dated February 10, 2026, between the Company and Two Prime Lending Limited (incorporated by reference to exhibit 10.1 of the Form 8-K filed February 11, 2026)
10.25	Asset Purchase Agreement, dated October 15, 2025, by and between the Registrant and Venom EV, LLC (incorporated by reference to exhibit 10.1 of the Form 8-K filed October 16, 2025)
19.1*	Empery Digital Inc. Insider Trading Policy
21.1	List of subsidiaries (incorporated by reference to exhibit 21.1 of the Form S-1 file number 333-259468)
23.1*	Consent of MaloneBailey LLP
31.1*	Certification of the Co-Chief Executive Officer pursuant to Rule 13a-14(a) or 15d-14(a) of the Securities Exchange Act of 1934
31.2*	Certification of the Co-Chief Executive Officer pursuant to Rule 13a-14(a) or 15d-14(a) of the Securities Exchange Act of 1934
31.3*	Certification of the Chief Financial Officer pursuant to Rule 13a-14(a) or 15d-14(a) of the Securities Exchange Act of 1934
32.1*(1)	Certification of the Co-Chief Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
32.2*(1)	Certification of the Co-Chief Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
32.3*(1)	Certification of the Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
97.1	Dodd-Frank Restatement Recoupment Policy (incorporated by reference to exhibit 97 of Form 10-K filed on March 28, 2024)
101.INS	Inline XBRL Instance Document (the instance document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document)
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 in IXBRL, and included in exhibit 101).

* Filed herewith.

\+ Pursuant to Item 601(b)(10)(iv) of Regulation S-K promulgated by the SEC, certain portions of this exhibit have been redacted. The Company hereby agrees to furnish supplementally to the SEC, upon its request, an unredacted copy of this exhibit.

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

(1) The certifications on Exhibit 32 hereto are deemed not "filed" for purposes of Section 18 of the Exchange Act or otherwise subject to the liability of that Section. Such certifications will not be deemed incorporated by reference into any filing under the Securities Act or the Exchange Act.

SIGNATURES

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

EMPERY DIGITAL INC.

SIGNATURE	TITLE	DATE
/s/ Ryan Lane Ryan Lane	Co-Chief Executive Officer and Director (principal executive officer)	March 27, 2026
/s/ John Kim John Kim	Co-Chief Executive Officer and Director	March 27, 2026
/s/ Greg Endo Greg Endo	Chief Financial Officer (principal financial and accounting officer)	March 27, 2026

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on March 27, 2026.

Signature	Title
/s/ Ryan Lane Ryan Lane	Co-Chief Executive Officer (Principal Executive Officer) Chairman
/s/ John Kim John Kim	Co-Chief Executive Officer Director
/s/ Greg Endo Greg Endo	Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer)
/s/ Jonathan P. Foster Jonathan P. Foster	Director
/s/ Adrian Solgaard Adrian Solgaard	Director
/s/ Om Olason Orn Olason	Director
/s/ Rohan Chauhan Rohan Chauhan	Director
/s/ Matthew Homer Matthew Homer	Director
/s/ Ian Read Ian Read	Director

Exhibit 4.24

DESCRIPTION OF THE REGISTRANT'S SECURITIES

The following summary is a description of the material terms of the capital stock of *Empery Digital Inc. (the "Company," "we," "our" or "us"). This summary is not complete, and is qualified by reference to our amended and restated certificate of incorporation (as amended), our third amended and restated bylaws, the certificate of designations designating Series A Preferred Stock (the "certificate of designations"), and the Rights Agreement (as defined herein), each of which are filed as exhibits to this Annual Report on Form 10-K and are incorporated by reference herein. We encourage you to read our amended and restated certificate of incorporation (together with all amendments thereto, our "certificate of incorporation"), our third amended and restated bylaws, the Rights Agreement and the applicable provisions of the Delaware General Corporations Law for additional information.*

General

As of March 25, 2026, the Company had two classes of securities registered under Section 12 of the Securities Exchange Act of 1934, as amended, our common stock, par value $0.00001 per share, and rights to purchase shares of Series A Preferred Stock, par value $0.00001 per share.

As of March 25, 2026, there were 30,247,668 shares of common stock issued and outstanding.

As of March 25, 2026, there were 30,247,668 Rights issued and outstanding.

Authorized Capital Stock

Our certificate of incorporation authorizes us to issue 255,000,000 shares of capital stock consisting of 250,000,000 shares of common stock, par value $0.00001 per share and 5,000,000 shares of preferred stock, par value $0.00001 per share.

Common Stock

Shares of our common stock have the following rights, preferences and privileges:

Voting

Each holder of common stock is entitled to one vote for each share of common stock held on all matters submitted to a vote of stockholders. Any action at a meeting at which a quorum is present will be decided by the affirmative vote by the holders of a majority in voting power of the votes cast (excluding abstentions and broker non-votes) on such matter, except in the case of any election of directors, which will be decided by a plurality of votes cast. There is no cumulative voting.

Dividends

Holders of our common stock are entitled to receive dividends when, as and if declared by our board of directors out of funds legally available for payment, subject to the rights of holders, if any, of any class of stock having preference over the common stock. Any decision to pay dividends on our common stock will be at the discretion of our board of directors. Our board of directors may or may not determine to declare dividends in the future. The board's determination to issue dividends will depend upon our profitability and financial condition, any contractual restrictions, restrictions imposed by applicable law and the SEC, and other factors that our board of directors deems relevant.

Liquidation Rights

In the event of a voluntary or involuntary liquidation, dissolution or winding up of the Company, the holders of our common stock will be entitled to share ratably on the basis of the number of shares held in any of the assets available for distribution after we have paid in full, or provided for payment of, all of our debts and after the holders of all outstanding series of any class of stock have preference over the common stock, if any, have received their liquidation preferences in full.

Other

Our issued and outstanding shares of common stock are fully paid and nonassessable. Holders of shares of our common stock are not entitled to preemptive rights. Shares of our common stock are not convertible into shares of any other class of capital stock, nor are they subject to any redemption or sinking fund provisions.

Preferred Stock

We are authorized to issue up to 5,000,000 shares of preferred stock. Our certificate of incorporation authorizes our board of directors to issue these shares in one or more series, to determine the designations and the powers, preferences and relative, participating, optional or other special rights and the qualifications, limitations and restrictions thereof, including the dividend rights, conversion or exchange rights, voting rights (including the number of votes per share), redemption rights and terms, liquidation preferences, sinking fund provisions and the number of shares constituting the series. Our board of directors could, without stockholder approval, issue preferred stock with voting and other rights that could adversely affect the voting power and other rights of the holders of common stock which could have the effect of making it more difficult for a third party to acquire, or of discouraging a third party from attempting to acquire, a majority of our outstanding voting stock.

On February 3, 2026, our board of directors designated 100,000 shares of preferred stock as Series A Preferred Stock, par value $0.00001 per share. The Series A Preferred Stock has certain rights and preferences, as set forth in the certificate of designation, that are greater than, and may materially limit or qualify, the rights of our common stock.

The Series A Preferred Stock is reserved for issuance in connection with the Rights (as defined below) pursuant to the Rights Agreement. Upon issuance, each holder of the Series A Preferred Stock will be entitled to 1,000 votes, subject to adjustment as described in the certificate of designation, for each share of Series A Preferred Stock held on all matters submitted to a vote of stockholders. The Series A Preferred Stock ranks junior to any other series of our preferred stock. Subject to any preference rights of holders of any superior stock that we may issue in the future, and upon issuance of any Series A Preferred Stock, holders of our Series A Preferred Stock will be entitled to receive quarterly dividends, if any are declared by our board of directors out of legally available funds, in an amount per share (rounded to the nearest cent), subject to adjustment as described in the certificate of designation, equal to 1,000 multiplied by the aggregate per share amount of all cash dividends, and 1,000 multiplied by the aggregate per share amount (payable in kind) of all non-cash dividends or other distributions, other than a dividend payable in shares of common stock or a subdivision of the outstanding shares of common stock (by reclassification or otherwise) declared on the common stock since the immediately preceding quarterly dividend payment date or, with respect to the first quarterly dividend payment date, since the first issuance of any share or fraction of a share of Series A Preferred Stock.

In the event of our liquidation, dissolution or winding up, the holders of our outstanding Series A Preferred Stock are entitled to receive an amount per share equal to 1,000 multiplied by the aggregate amount to be distributed in respect of the common stock upon such liquidation, dissolution or winding up.

Certificate of Incorporation and Bylaw Provisions

Our certificate of incorporation and third amended and restated bylaws include a number of anti-takeover provisions that may have the effect of encouraging persons considering unsolicited tender offers or other unilateral takeover proposals to negotiate with our board of directors rather than pursue non-negotiated takeover attempts. These provisions include:

Advance Notice Requirements. Our third amended and restated bylaws establish advance notice procedures with regard to stockholder proposals relating to the nomination of candidates for election as directors or new business to be brought before meetings of stockholders. These procedures provide that notice of stockholder proposals must be timely and given in writing to our corporate Secretary. Generally, to be timely, notice must be received at our principal executive offices not less than 90 calendar days nor more than 120 calendar days prior to the one-year anniversary of the preceding year's annual meeting of stockholders. The notice must contain the information required by the third amended and restated bylaws, including information regarding the proposal and the proponent.

Special Meetings of Stockholders. Our certificate of incorporation provides that, subject to the special rights of the holders of one or more series of Preferred Stock, special meetings of stockholders may be called , for any purpose or purposes, at any time only by or at the direction of our board of directors, the chairperson of the board of directors, the Chief Executive Officer or President , and shall not be called by any other person or persons.

No Written Consent of Stockholders. Our certificate of incorporation provides that any action required or permitted to be taken by stockholders must be effected at a duly called annual or special meeting of stockholders at which a quorum is present, and may not be effected by any consent in writing by such stockholders. Notwithstanding the foregoing, any action required or permitted to be taken by the holders of any series of preferred stock, voting separately as a series or separately as a class with one or more other such series, may be taken without a meeting, without prior notice and without a vote, to the extent expressly so provided by the applicable certificate of designations relating to such series of preferred stock, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holders of outstanding shares of the relevant series of preferred stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted and shall be delivered to us in accordance with the applicable provisions of the General Corporation Law of the State of Delaware (the "DGCL").

Board of Directors. Our third amended and restated bylaws provide that each director, including a director elected to fill a vacancy or newly created directorship, shall hold office until the expiration of the term of the class, if any, for which elected and until such director's successor is elected and qualified or until such director's earlier death, resignation, disqualification or removal. Our board of directors is not classified, and all directors are elected annually at the annual meeting of stockholders.

Amendment of Bylaws. Our board of directors is expressly empowered to adopt, amend or repeal our third amended and restated bylaws. Our stockholders may also adopt, amend or repeal any provisions of our third amended and restated bylaws by obtaining , in addition to any other vote required by our certificate of incorporation or applicable law, the affirmative vote of the holders of at least a majority of the voting power of all the then-outstanding shares of voting stock of the Company with the power to vote generally in an election of directors, voting together as a single class.

Preferred Stock. Our certificate of incorporation authorizes our board of directors to create and issue rights entitling our stockholders to purchase shares of our stock or other securities. The ability of our board to establish the rights and issue substantial amounts of preferred stock without the need for stockholder approval may delay or deter a change in control of us. See the section titled "*Preferred Stock*" above.

Delaware Takeover Statute

We are subject to Section 203 of the DGCL ("Section 203") which, subject to certain exceptions, prohibits a Delaware corporation from engaging in any "business combination" (as defined below) with any interested stockholder for a period of three years following the date that such stockholder became an interested stockholder, unless: (1) prior to such date, the board of directors of the corporation approved either the business combination or the transaction that resulted in the stockholder becoming an interested stockholder; (2) on consummation of the transaction that resulted in the stockholder becoming an interested stockholder, the interested stockholder owned at least 85% of the voting stock of the corporation outstanding at the time the transaction commenced, excluding for purposes of determining the voting stock outstanding those shares owned (x) by persons who are directors and also officers and (y) by employee stock plans in which employee participants do not have the right to determine confidentially whether shares held subject to this plan will be tendered in a tender or exchange offer; or (3) on or subsequent to such date, the business combination is approved by the board of directors and authorized at an annual or special meeting of stockholders, and not by written consent, by the affirmative vote of at least 66 $^{2}/_{3}$% of the outstanding voting stock that is not owned by the interested stockholder.

Section 203 defines generally "business combination" to include: (1) any merger or consolidation involving the corporation and the interested stockholder; (2) any sale, transfer, pledge or other disposition of 10% or more of the assets of the corporation involving the interested stockholder; (3) subject to certain exceptions, any transaction that results in the issuance or transfer by the corporation of any stock of the corporation to the interested stockholder; (4) any transaction involving the corporation that has the effect of increasing the proportionate share of the stock of any class or series of the corporation beneficially owned by the interested stockholder; or (5) the receipt by the interested stockholder of the benefit of any loans, advances, guarantees, pledges or other financial benefits provided by or through the corporation. In general, Section 203 defines an "interested stockholder" as any entity or person beneficially owning 15% or more of the outstanding voting stock of the corporation and any entity or person affiliated with or controlling or controlled by such entity or person.

Description of Rights to Purchase Series A Preferred Stock

On February 3, 2026, our board of directors declared a dividend of one preferred stock purchase right (a "Right") for each share of common stock outstanding as of February 13, 2026, pursuant to a Rights Agreement with Computershare Trust Company, N.A., as Rights Agent (the "Rights Agreement"). The following is a summary description of the Rights as of March 25, 2026 and is qualified in its entirety by the detailed terms and conditions of the Rights Agreement and the certificate of designations, each of which are filed as exhibits to this Annual Report on Form 10-K and are incorporated by reference herein.

Each Right entitles the holder to purchase one one-thousandth of a share of Series A Preferred Stock at a purchase price of $15.00, subject to adjustment. The Rights are initially attached to all common stock and will separate and become exercisable upon a person or group acquiring beneficial ownership of 12.5% or more of the outstanding common stock (an "Acquiring Person"), subject to certain exceptions for the Company, its employee benefit plans, grandfathered stockholders, and passive institutional investors filing on Schedule 13G. The Rights will expire on February 2, 2027, and may be redeemed by our board of directors at $0.00001 per Right prior to any person becoming an Acquiring Person.

Distribution Date; Exercisability; Expiration

Initially, the Rights will be attached to all certificates of common stock, and no separate certificates evidencing the Rights ("Right Certificates") will be issued. Until the Distribution Date (as defined below), the Rights will be transferred with and only with the common stock. As long as the Rights are attached to the common stock, the Company will issue one Right with each new common stock so that all such common stock will have Rights attached.

The Rights will separate and begin trading separately from the common stock, and Right Certificates will be caused to evidence the Rights, on the earlier to occur of (i) the Close of Business (as such term is defined in the Rights Agreement) on the 10th day following a public announcement, or the public disclosure of facts indicating (or our board of directors becoming aware), that a Person (as such term is defined in the Rights Agreement) or group of affiliated or associated Persons has acquired Beneficial Ownership (as defined below) of 12.5% or more of the outstanding common stock (an "Acquiring Person") (or, in the event our board of directors determines to effect an exchange in accordance with Section 24 of the Rights Agreement and our board of directors determines that a later date is advisable, then such later date) or (ii) the Close of Business on the 10th Business Day (as such term is defined in the Rights Agreement) (or such later date as may be determined by action of our board of directors prior to such time as any Person becomes an Acquiring Person) following the commencement of a tender offer or exchange offer the consummation of which would result in the Beneficial Ownership by a Person or group of 12.5% or more of the outstanding common stock (the earlier of such dates, the "Distribution Date"). As soon as practicable after the Distribution Date, unless the Rights are recorded in book-entry or other uncertificated form, the Company will prepare and cause the Right Certificates to be sent to each record holder of common stock as of the Distribution Date.

As of the close of business on February 3, 2026, there were approximately 36.1 million common stock outstanding.

An "Acquiring Person" will not include (i) the Company, (ii) any Subsidiary (as such term is defined in the Rights Agreement) of the Company, (iii) any employee benefit plan of the Company or of any Subsidiary of the Company, (iv) any entity holding common stock for or pursuant to the terms of any such employee benefit plan or (v) any Person who or which, together with all Affiliates and Associates (as such terms are defined in the Rights Agreement) of such Person, at the time of the first public announcement of the Rights Agreement, is a Beneficial Owner (as such term is defined in the Rights Agreement) of 12.5% or more of the common stock then outstanding (a "Grandfathered Stockholder"). However, if a Grandfathered Stockholder becomes, after such time, the Beneficial Owner of any additional common stock (regardless of whether, thereafter or as a result thereof, there is an increase, decrease or no change in the percentage of common stock then outstanding Beneficially Owned (as such term is defined in the Rights Agreement) by such Grandfathered Stockholder) then such Grandfathered Stockholder shall be deemed to be an Acquiring Person unless, upon such acquisition of Beneficial Ownership of additional common stock, such person is not the Beneficial Owner of 12.5% or more of the common stock then outstanding. In addition, upon the first decrease of a Grandfathered Stockholder's Beneficial Ownership below 12.5% of the common stock then outstanding, such Grandfathered Stockholder will no longer be deemed to be a Grandfathered Stockholder. In the event that after the time of the first public announcement of the Rights Agreement, any agreement, arrangement or understanding pursuant to which any Grandfathered Stockholder is deemed to be the Beneficial Owner of common stock expires, is settled in whole or in part, terminates or no longer confers any benefit to or imposes any obligation on the Grandfathered Stockholder, any direct or indirect replacement, extension or substitution of such agreement, arrangement or understanding with respect to the same or different common stock that confers Beneficial Ownership of common stock shall be considered the acquisition of Beneficial Ownership of additional common stock by the Grandfathered Stockholder and render such Grandfathered Stockholder an Acquiring Person for purposes of the Rights Agreement unless, upon such acquisition of Beneficial Ownership of additional common stock, such person is not the Beneficial Owner of 12.5% or more of the common stock then outstanding.

An "Acquiring Person" shall not include any Person which, together with all Affiliates and Associates of such Person, is the Beneficial Owner of common stock representing less than 20% of the common stock then outstanding, and which is entitled to file, and files, a statement on Schedule 13G pursuant to Rule 13d-1(b) or 13d-1(c) of the General Rules and Regulations under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), with respect to the common stock Beneficially Owned by such Person (a "13G Investor"); provided, that a Person shall not qualify as a 13G Investor if it has filed a statement on Schedule 13D ("Schedule 13D") in the past five years with respect to common stock Beneficially Owned by such Person pursuant to Rule 13d-1(a), 13d-1(e), 13d-1(f) or 13d-1(g) of the General Rules and Regulations under the Exchange Act; provided, further, that a Person who was a 13G Investor shall no longer be a 13G Investor if it either (i) files a statement on Schedule 13D or (ii) becomes no longer entitled to file a statement on Schedule 13G (the earlier to occur of (i) and (ii), the "13D Event"), and such Person shall be an Acquiring Person if it is the Beneficial Owner (together with all Affiliates and Associates) of 12.5% or more of the common stock then outstanding at any point from and after the time of the 13D Event; provided, however, such Person shall not be an Acquiring Person if (i) on the first Business Day after the 13D Event such Person notifies the Company of its intent to reduce its Beneficial Ownership to below 12.5% as promptly as practicable and (ii) such Person reduces its Beneficial Ownership (together with all Affiliates and Associates of such Person) to below 12.5% of the common stock as promptly as practicable (but in any event not later than 10 days from such time); provided, further, that such Person shall become an "Acquiring Person" if, after reducing its Beneficial Ownership to below 12.5%, it subsequently becomes the Beneficial Owner of 12.5% or more of the common stock then outstanding or if, prior to reducing its Beneficial Ownership to below 12.5%, it increases (or makes any offer or takes any other action that would increase) its Beneficial Ownership of the then-outstanding common stock above the lowest Beneficial Ownership of such Person at any time during such 10-day period.

"Beneficial Ownership" is defined in the Rights Agreement to include any securities (i) which a Person or any of such Person's Affiliates or Associates beneficially owns, directly or indirectly, within the meaning of Rule 13d-3 or 13d-5 of the General Rules and Regulations under the Exchange Act or has the right or ability to vote, or the right to acquire, pursuant to any agreement, arrangement or understanding (except under limited circumstances), (ii) which are directly or indirectly Beneficially Owned by any other Person with which a Person has any agreement, arrangement or understanding for the purpose of acquiring, holding, voting or disposing of such securities, or obtaining, changing or influencing control of the Company, or (iii) which are the subject of, or the reference securities for, or that underlie, certain Derivative Positions (as such term is defined in the Rights Agreement) of any Person or any of such Person's Affiliates or Associates.

The Rights are not exercisable until the Distribution Date. The Rights will expire on the Close of Business on February 2, 2027 (the "Final Expiration Date").

Exempt Persons and Transactions

The board of directors may, in its sole and absolute discretion, determine that a Person is exempt from the Rights Agreement (an "Exempt Person"), so long as such determination is made prior to such time as such Person becomes an Acquiring Person. Any Person will cease to be an Exempt Person if our board of directors makes a contrary determination with respect to such Person regardless of the reason therefor. In addition, our board of directors may, in its sole and absolute discretion, exempt any transaction from triggering the Rights Agreement so long as the determination in respect of such exemption is made prior to such time as any Person becomes an Acquiring Person.

Qualifying Offer Exemption

The Rights Agreement includes a "qualifying offer" provision, whereby the Rights will automatically expire concurrently with (but no earlier than 90 Business Days after the commencement of a Qualifying Offer (as defined in the Rights Agreement)) the acceptance, for purchase or exchange, of more than two-thirds of the common stock then outstanding on a fully diluted basis (excluding from the calculation of the number of common stock purchased or exchanged any common stock Beneficially Owned by the offeror or its Affiliates and Associates) pursuant to a tender or exchange offer for all of the common stock then outstanding for the same consideration, provided that the offeror irrevocably commits to purchase all remaining untendered common stock for the same per share consideration actually paid pursuant to the offer.

Flip-in Event

If a Person or group becomes an Acquiring Person at any time after the date of the Rights Agreement (with certain limited exceptions), the Rights will become exercisable for common stock having a value equal to two times the exercise price of the Right. From and after the announcement that any Person has become an Acquiring Person, if the Rights evidenced by a Right Certificate are or were acquired or Beneficially Owned by an Acquiring Person or any Associate or Affiliate of an Acquiring Person, such Rights shall become void, and any holder of such Rights shall thereafter have no right to exercise such Rights. If our board of directors so elects, the Company may deliver upon payment of the exercise price of a Right, an amount of cash, securities, or other property equivalent in value to the common stock issuable upon exercise of a Right.

Exchange

At any time after any Person becomes an Acquiring Person, our board of directors may exchange the Rights (other than Rights owned by any Person which have become void), in whole or in part, at an exchange ratio of one common stock per Right (subject to adjustment). The Company may issue, transfer or deposit such common stock (or other property as permitted under the Rights Agreement) to or into a trust or other entity created upon such terms as our board of directors may determine and may direct that all holders of Rights receive such common stock or other property only from the trust. In the event our board of directors determines, before the Distribution Date, to effect an exchange, our board of directors may delay the occurrence of the Distribution Date to such time as it deems advisable.

Flip-over Event

If, at any time after a Person becomes an Acquiring Person, (i) the Company consolidates with, or merges with, any other Person (or any Person consolidates with, or merges with, the Company) and, in connection with such consolidation or merger, all or part of the common stock are or will be changed into or exchanged for stock or other securities of any other Person or cash or any other property; or (ii) 50% or more of the Company's consolidated assets or Earning Power (as defined in the Rights Agreement) are sold, then proper provision will be made so that each holder of a Right will thereafter have the right to receive, upon the exercise thereof at the then current exercise price of the Right, that number of shares of common stock of the acquiring company which at the time of such transaction will have a market value of two times the exercise price of the Right.

Redemption

At any time prior to the time any Person becomes an Acquiring Person, our board of directors may redeem the Rights in whole, but not in part, at a price of $0.00001 per Right (the "Redemption Price"). The redemption of the Rights may be made effective at such time, on such basis and with such conditions as our board of directors in its sole discretion may establish. Immediately upon any redemption of the Rights, the right to exercise the Rights will terminate and the only right of the holders of Rights will be to receive the Redemption Price.

Amendment

The terms of the Rights may be amended by our board of directors without the consent of the holders of the Rights, except that from and after such time as any Person becomes an Acquiring Person no such amendment may adversely affect the interests of the holders of the Rights (other than the Acquiring Person and its Affiliates and Associates).

Preferred Stock Rights

Each one-thousandth of a Preferred Stock will entitle the holder thereof to the same dividends and liquidation rights as if the holder held one common stock and will be treated the same as a common stock in the event of a merger, consolidation or other share exchange.

Rights of Holders

Until a Right is exercised, the holder thereof, as such, will have no rights as a stockholder of the Company, including, without limitation, the right to vote or to receive dividends.

Limitations on Liability and Indemnification of Officers and Directors

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

Listing

Our common stock is listed on the Nasdaq Global Select Market under the symbol "EMPD".

Transfer Agent

The transfer agent and registrar for our common stock is Computershare Trust Company, N.A. The transfer agent's address is 150 Royall Street, Canton, Massachusetts 02021.

Exhibit 10.4

INDEMNIFICATION AND ADVANCEMENT AGREEMENT

This Indemnification Agreement (this "Agreement") is made as of February 4, 2026, by and between Empery Digital Inc., a Delaware corporation (the "Company"), and _____ ("Indemnitee"). Capitalized terms used but not otherwise defined herein have the meanings set forth in Section 12.

RECITALS

WHEREAS, in the current market and legal environment, qualified persons have become more reluctant to serve publicly-held corporations as directors or officers or in other capacities unless they are provided with adequate protection through insurance or adequate indemnification against significant risks of claims and actions against them arising out of their service to and activities on behalf of the corporation;

WHEREAS, directors and other persons in service to business enterprises are being increasingly subjected to expensive and time consuming litigation;

WHEREAS, the uncertainties relating to liability insurance and to indemnification have increased the difficulty of retaining existing and attracting future qualified persons to serve on the board and to serve the company in other capacities;

WHEREAS, the Board of Directors of the Company (the "Board") has determined that, in order to retain current and attract future qualified individuals to serve on the Board or to act as executive officers of the Company, the Company will attempt to maintain on an ongoing basis, at its sole expense, liability insurance to protect persons serving the Company and its subsidiaries from certain liabilities, even if, given current market conditions and trends, such insurance may be available to it in the future only at higher premiums and with more exclusions;

WHEREAS, the Board has determined that the increased difficulty in attracting and retaining such persons is detrimental to the best interests of the Company's stockholders and that the Company should act to assure such persons that there will be increased certainty of such protection in the future;

WHEREAS, the Company desires and intends hereby to provide certain rights to indemnification and advancement of expenses against certain liabilities asserted against or incurred by Indemnitee as allowed by the General Corporation Law of the State of Delaware (the "DGCL") (including section 145 of the DGCL), and further desires and intends that the terms of indemnification and advancement of costs be reduced to written agreement; and

WHEREAS, it is reasonable, prudent and necessary for the Company contractually to obligate itself to indemnify, and to advance expenses on behalf of, such persons to the fullest extent permitted by applicable law so that they will serve or continue to serve the Company free from undue concern that they will not be so indemnified;

WHEREAS, this Agreement is a supplement to and in furtherance of the indemnification provisions of the Company's Certificate of Incorporation, as amended to date, and any resolutions adopted pursuant thereto, and except as specifically provided herein shall not be a substitute therefor, nor to diminish or abrogate any rights of Indemnitee thereunder or otherwise.

NOW THEREFORE, in consideration of the premises and the covenants contained herein and Indemnitee's agreement to provide services to the Company, the receipt and sufficiency of which are hereby acknowledged, the Company and Indemnitee do hereby covenant and agree as follows:

1. **Indemnification.**

(a) **Third-Party Proceedings.** To the fullest extent permitted by applicable law, the Company shall indemnify Indemnitee, if Indemnitee, by reason of his or her Corporate Status, was, is or is threatened to be made, a party to or a participant (as a witness or otherwise) in any Proceeding (other than a Proceeding by or in the right of the Company to procure a judgment in the Company's favor, for which Indemnitee will be indemnified pursuant to Section 1(b)), against all reasonable Expenses, judgments, penalties, fines and amounts paid in settlement actually and reasonably incurred by Indemnitee in connection with such Proceeding or any claim, issue or matter therein, if Indemnitee acted in good faith and in a manner Indemnitee reasonably believed to be in or not opposed to the best interests of the Company and, in the case of a criminal Proceeding, had no reasonable cause to believe Indemnitee's conduct was unlawful.

(b) **Proceedings By or in the Right of the Company.** To the fullest extent permitted by applicable law, the Company shall indemnify Indemnitee, if Indemnitee, by reason of his or her Corporate Status, was, is or is threatened to be made a party to or a participant (as a witness or otherwise) in any Proceeding by or in the right of the Company to procure a judgment in the Company's favor, against all Expenses, judgments, fines and amounts paid in settlement actually and reasonably incurred by Indemnitee in connection with such Proceeding if Indemnitee acted in good faith and in a manner Indemnitee reasonably believed to be in or not opposed to the best interests of the Company, except that , if applicable law so provides, no indemnification shall be made in respect of any claim, issue or matter as to which Indemnitee shall have been finally adjudicated by court order or judgment to be liable to the Company unless and only to the extent that the Court of Chancery or the court in which such Proceeding is or was pending shall determine upon application that, in view of all the circumstances of the case, Indemnitee is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper.

(c) **Success on the Merits.** To the fullest extent permitted by applicable law and to the extent that Indemnitee has been successful on the merits or otherwise in defense of any Proceeding referred to in Section 1(a) or Section 1(b) or the defense of any claim, issue or matter therein, in whole or in part, the Company shall indemnify Indemnitee against all Expenses, judgments, fines and amounts paid in settlement actually and reasonably incurred by Indemnitee, or on Indemnitee's behalf, in connection therewith. No standard of conduct determination shall be required. Without limiting the generality of the foregoing, if Indemnitee is successful on the merits or otherwise as to one or more but less than all claims, issues or matters in a Proceeding, the Company shall indemnify Indemnitee against all Expenses, judgments, fines and amounts paid in settlement actually and reasonably incurred by Indemnitee in connection with such successfully resolved claims, issues or matters to the fullest extent permitted by applicable law. Without limiting the generality of the foregoing, Indemnitee shall be considered for the purposes hereof to have been wholly successful with respect to a Proceeding if such Proceeding is disposed of on the merits or otherwise (including a disposition without prejudice) without (i) the disposition being adverse to Indemnitee, (ii) an adjudication that Indemnitee was liable to the Company, (iii) a plea of guilty by Indemnitee, (iv) an adjudication that Indemnitee did not act in good faith and in a manner Indemnitee reasonably believed to be in or not opposed to the best interests of the Company, and (v) with respect to any criminal Proceeding, an adjudication that Indemnitee had reasonable cause to believe Indemnitee's conduct was unlawful. For the avoidance of doubt, any resolution of a Proceeding in a manner other than by adverse judgment against Indemnitee, including any dismissal with or without prejudice or settlement with or without payment of money or other consideration, shall be presumed to constitute success on the merits or otherwise.

(d) **Witness Expenses.** To the fullest extent permitted by applicable law and to the extent that Indemnitee is a witness or otherwise asked to participate or to respond to discovery requests in any Proceeding, by reason of his or her Corporate Status, to which Indemnitee is not a party, the Company shall indemnify Indemnitee against all Expenses actually and reasonably incurred by Indemnitee in connection with such Proceeding.

(e) **Payment of Indemnification.** To the extent payments are required to be made hereunder, the Company shall pay to Indemnitee such amounts within ten (10) days after the receipt by the Company of Indemnitee's request.

2. **Additional Indemnity.** In addition to, and without regard to any limitations on, the indemnification provided for in Section 1, the Company shall and hereby does indemnify and hold harmless Indemnitee against all Expenses, judgments, penalties, fines and amounts paid in settlement actually and reasonably incurred by Indemnitee or on Indemnitee's behalf if Indemnitee, by reason of his or her Corporate Status, is, or is threatened to be made, a party to or participant in any Proceeding (including a Proceeding by or in the right of the Company), including all liability arising out of the negligence or active or passive wrongdoing of Indemnitee. The only limitation that shall exist upon the Company's obligations pursuant to this Agreement shall be that the Company shall not be obligated to make any payment to Indemnitee that is finally determined (under the procedures, and subject to the presumptions, set forth in Sections 3 and 4) to be unlawful.

3. **Advancement of Expenses and Indemnification Procedure.**

(a) **Advancement of Expenses.** The Company shall advance all Expenses actually and reasonably paid or incurred by Indemnitee in connection with a Proceeding within ten (10) days after receipt by the Company of a statement requesting such advances from time to time, whether prior to or after final disposition of any Proceeding. Indemnitee's right to such advancement is not subject to the satisfaction of any standard of conduct. Such advances shall be unsecured and interest free and shall be made without regard to Indemnitee's ability to repay the Expenses and without regard to Indemnitee's ultimate entitlement to indemnification under the other provisions of this Agreement. In connection with any request for Expense advances, Indemnitee shall not be required to provide any documentation or information to the extent that the provision thereof would undermine or otherwise jeopardize attorney-client privilege. Indemnitee shall be entitled to continue to receive advancement of Expenses pursuant to this Section 3(a) unless and until the matter of Indemnitee's entitlement to indemnification hereunder has been finally adjudicated by court order or judgment from which no further right of appeal exists. Indemnitee hereby undertakes to repay such amounts advanced only if, and to the extent that, it ultimately is determined that Indemnitee is not entitled to be indemnified by the Company under the other provisions of this Agreement. Indemnitee shall qualify for advances upon the execution and delivery of this Agreement, which shall constitute the requisite undertaking with respect to repayment of advances made hereunder and no other form of undertaking shall be required to qualify for advances made hereunder other than the execution of this Agreement. Notwithstanding any of the foregoing or anything else in this Agreement or any other document to the contrary, except to the extent required by legal service or court order, any action by an Indemnitee, as determined by a non-appealable decision of a court of competent jurisdiction, that assists a third party plaintiff or proposed third party plaintiff in formulating or prosecuting a claim against the Company, or any director or officer or former director and officer of the Company for actions or inactions taken with respect to the Company, will vitiate the advancement of expenses obligation contemplated hereunder ab initio; provided, however, that such vitiation shall not be applicable if Indemnitee's action is in connection with a whistleblower or similar claim or a claim for indemnification or advancement of expenses.

(b) **Notice and Cooperation by Indemnitee.** Indemnitee shall promptly notify the Company in writing upon being served with any summons, citation, subpoena, complaint, indictment, information or other document relating to any Proceeding or matter for which indemnification will or could be sought under this Agreement. Such notice to the Company shall include a description of the nature of, and facts underlying, the Proceeding, shall be directed to the Chief Executive Officer of the Company and shall be given in accordance with the provisions of Section 13(d). In addition, Indemnitee shall give the Company such additional information and cooperation as the Company or its counsel may reasonably request, provided that such documentation and information may exclude any privileged or similarly protected information. Indemnitee's failure to so notify, provide information and otherwise cooperate with the Company shall not relieve the Company of any obligation which it may have to Indemnitee under this Agreement, except to the extent that the Company is adversely affected by such failure.

(c) **Determination of Entitlement.** Notwithstanding any other provision in this Agreement to the contrary, no determination as to entitlement to indemnification under this Agreement shall be required to be made prior to the final disposition of a Proceeding. Subject to the foregoing, promptly after receipt of a statement requesting payment with respect to the indemnification rights set forth in Section 1, to the extent required by applicable law, the Company shall take the steps necessary to authorize such payment in the manner set forth in Section 145 of the DGCL. If the determination of entitlement to indemnification is to be made by Independent Counsel (as defined below) pursuant to Section 145(d)(3) of the DGCL, the Independent Counsel shall be selected by the Board and written notice of such selection shall be given to Indemnitee. Indemnitee may, within ten (10) days after such written notice of selection shall have been given, deliver to the Company a written objection to such selection; provided, however, that such objection may be asserted only on the ground that the Independent Counsel so selected does not meet the requirements of "Independent Counsel" as defined in Section 12, and the objection shall set forth with particularity the factual basis of such assertion. Absent a proper and timely objection, the person so selected shall act as Independent Counsel. If a written objection is made and substantiated, the Independent Counsel selected may not serve as Independent Counsel unless and until such objection is withdrawn or a court has determined that such objection is without merit. If, within twenty (20) days after submission by Indemnitee of a written request for indemnification pursuant to Section 3, no Independent Counsel shall have been selected and not objected to, either the Company or Indemnitee may petition the Delaware Court or other court of competent jurisdiction for resolution of any objection which shall have been made by Indemnitee to the Company's selection of Independent Counsel and/or for the appointment as Independent Counsel of a person selected by the court or by such other person as the court shall designate, and the person with respect to whom all objections are so resolved or the person so appointed shall act as Independent Counsel. The Company shall pay any and all reasonable fees and expenses of Independent Counsel incurred by such Independent Counsel in connection with acting pursuant to this Agreement, and the Company shall pay all reasonable fees and expenses incident to the procedures of this Agreement, regardless of the manner in which such Independent Counsel was selected or appointed. The Company shall pay any claims made under this Agreement, under any statute, or under any provision of the Company's Certificate of Incorporation or Bylaws providing for indemnification or advancement of Expenses, within ten (10) days after a written request for payment thereof has first been received by the Company, and if such claim is not paid in full within such ten (10) day-period, Indemnitee may, but need not, at any time thereafter bring an action against the Company in the Delaware Court of Chancery to recover the unpaid amount of the claim and Indemnitee shall also be entitled to be paid for all Expenses actually and reasonably incurred by Indemnitee in connection with bringing such action. It shall be a defense to any such action (other than an action brought to enforce a claim for advancement of Expenses under Section 3(a)) that Indemnitee has not met the standards of conduct which make it permissible under applicable law for the Company to advance expenses to Indemnitee or to indemnify Indemnitee for the amount claimed. In making a determination with respect to entitlement to indemnification (but not advancement) hereunder, the person or persons or entity making such determination shall presume that Indemnitee is entitled to indemnification under this Agreement and the Company shall have the burden of proof to overcome that presumption with clear and convincing evidence to the contrary. The termination of any Proceeding by judgment, order, settlement, conviction, or upon a plea of *nolo contendere* or its equivalent, shall not, of itself, create a presumption that Indemnitee did not act in good faith and in a manner which Indemnitee reasonably believed to be in or not opposed to the best interests of the Company, or, in the case of a criminal Proceeding, that Indemnitee had reasonable cause to believe that Indemnitee's conduct was unlawful. In addition, it is the parties' intention that if the Company contests Indemnitee's right to indemnification, the question of Indemnitee's right to indemnification shall be for the court to decide, and neither the failure of the Company (including its Board, any committee or subgroup of the Board, Independent Counsel or its stockholders) to have made a determination that indemnification of Indemnitee is proper in the circumstances because Indemnitee has met the applicable standard of conduct required by applicable law, nor an actual determination by the Company (including its Board, any committee or subgroup of the Board, Independent Counsel or its stockholders) that Indemnitee has not met such applicable standard of conduct, shall create a presumption that Indemnitee has or has not met the applicable standard of conduct.

(d) **Payment Directions.** To the extent payments are required to be made hereunder, the Company shall, in accordance with Indemnitee's request (but without duplication), (i) pay such Expenses on behalf of Indemnitee, (ii) advance to Indemnitee funds in an amount sufficient to pay such Expenses, or (iii) reimburse Indemnitee for such Expenses.

(e) **Notice to Insurers.** If, at the time of the receipt of a notice of a claim pursuant to Section 3(b), the Company has director and officer liability insurance in effect, the Company shall give prompt notice of the commencement of such Proceeding to the insurers in accordance with the procedures set forth in the respective policies. The Company shall thereafter take all reasonably necessary action to cause such insurers to pay, on behalf of Indemnitee, all amounts payable as a result of such Proceeding in accordance with the terms of such policies.

(f) **Defense of Claim and Selection of Counsel.** In the event the Company shall be obligated under Section 3(a) to advance Expenses with respect to any Proceeding, the Company, if appropriate, shall be entitled to assume the defense of such Proceeding, with counsel reasonably acceptable to Indemnitee, upon the delivery to Indemnitee of written notice of its election so to do. After delivery of such notice, approval of such counsel by Indemnitee and the retention of such counsel by the Company, the Company will not be liable to Indemnitee under this Agreement for any fees of counsel subsequently incurred by Indemnitee with respect to the same Proceeding, provided that (i) Indemnitee shall have the right to employ counsel in any such Proceeding at Indemnitee's expense; and (ii) if (A) the employment of counsel by Indemnitee has been previously authorized by the Company, (B) appointed counsel shall have concluded that there may be a conflict of interest between the Company and Indemnitee in the conduct of any such defense that precludes such counsel's representation of Indemnitee, and the Company shall have failed to appoint alternative counsel within thirty days' of being notified in writing that appointed counsel shall have concluded that there may be a conflict of interest between the Company and Indemnitee in the conduct of any such defense that precludes such counsel's representation of Indemnitee or (C) the Company shall not, in fact, have employed counsel to assume the defense of such Proceeding, then the fees and expenses of Indemnitee's counsel shall be at the expense of the Company. In addition, if there exists a potential, but not an actual conflict of interest between the Company and Indemnitee, the actual and reasonable legal fees and expenses incurred by Indemnitee for separate counsel (approved in advance by the Company) retained by Indemnitee to monitor the Proceeding (so that such counsel may assume Indemnitee's defense if the conflict of interest between the Company and Indemnitee becomes an actual conflict of interest) shall be deemed to be Expenses that are subject to indemnification hereunder. The existence of an actual or potential conflict of interest, and whether such conflict may be waived, shall be determined pursuant to the rules of attorney professional conduct and applicable law. The Company shall not be required to obtain the consent of Indemnitee for the settlement of any Proceeding the Company has undertaken to defend if the Company assumes full and sole responsibility for each such settlement; provided, however, that the Company shall be required to obtain Indemnitee's prior written approval, which shall not be unreasonably withheld, before entering into any settlement which (1) does not grant Indemnitee a complete release of liability, (2) would impose any penalty or limitation on Indemnitee, or (3) would admit any liability or misconduct by Indemnitee.

(g) **Further Instruction.** If the person, persons or entity empowered or selected to determine whether Indemnitee is entitled to indemnification shall not have made a determination within sixty (60) days after receipt by the Company of the request therefor, the requisite determination of entitlement to indemnification shall be deemed to have been made and Indemnitee shall be entitled to such indemnification absent (i) a misstatement by Indemnitee of a material fact, or an omission of a material fact necessary to make Indemnitee's statement not materially misleading, in connection with the request for indemnification, or (ii) a prohibition of such indemnification under applicable law; provided, however, that such 60-day period may be extended for a reasonable time, not to exceed an additional thirty (30) days, if the person, persons or entity making such determination with respect to entitlement to indemnification in good faith requires such additional time to obtain or evaluate documentation and/or information relating thereto; and provided, further, that the foregoing provisions of this Section 3(g) shall not apply if the determination of entitlement to indemnification is to be made by the stockholders pursuant to Section 145(d)(4) of the DGCL and if (A) within fifteen (15) days after receipt by the Company of the request for such determination, the Board or the disinterested directors, if appropriate, resolve to submit such determination to the stockholders for their consideration at an annual meeting thereof to be held within seventy-five (75) days after such receipt and such determination is made thereat, or (B) a special meeting of stockholders is called within fifteen (15) days after such receipt for the purpose of making such determination, such meeting is held for such purpose within sixty (60) days after having been so called and such determination is made thereat. Indemnitee shall reasonably cooperate with the person, persons or entity making such determination with respect to Indemnitee's entitlement to indemnification, including providing to such person, persons or entity upon reasonable advance request any documentation or information which is not privileged or otherwise protected from disclosure and which is reasonably available to Indemnitee and reasonably necessary to such determination. Any Independent Counsel, member of the Board or stockholder of the Company shall act reasonably and in good faith in making a determination regarding Indemnitee's entitlement to indemnification under this Agreement. Any costs or expenses (including attorneys' fees and disbursements) incurred by Indemnitee in so cooperating with the person, persons or entity making such determination shall be borne by the Company (irrespective of the determination as to Indemnitee's entitlement to indemnification) and the Company hereby indemnifies and agrees to hold Indemnitee harmless therefrom.

4. **Remedies of Indemnitee**.

(a) In the event that (i) a determination is made pursuant to Section 3 that Indemnitee is not entitled to indemnification under this Agreement, (ii) advancement of Expenses is not timely made pursuant to Section 3, (iii) no determination of entitlement to indemnification is made pursuant to Section 3 within the applicable period of time set forth therein after receipt by the Company of the request for indemnification, (iv) payment of indemnification is not made pursuant to this Agreement within ten (10) days after receipt by the Company of a written request therefor, (v) payment of indemnification is not made within ten (10) days after a determination has been made that Indemnitee is entitled to indemnification or such determination is deemed to have been made pursuant to Section 3 or (vi) the Company or any other person takes any action to declare this Agreement void or unenforceable, or institutes any litigation or other action or Proceeding designed to deny, or to recover from, Indemnitee the benefits provided or intended to be provided hereunder, then, in each case, Indemnitee shall be entitled to an adjudication in an appropriate court of the State of Delaware, or in any other court of competent jurisdiction, of Indemnitee's entitlement to such indemnification. The Company shall not oppose Indemnitee's right to seek any such adjudication.

(b) In the event that a determination shall have been made pursuant to Section 3 that Indemnitee is not entitled to indemnification, any judicial proceeding commenced pursuant to this Section 4 shall be conducted in all respects as a de novo trial on the merits, and Indemnitee shall not be prejudiced by reason of the adverse determination under Section 3.

(c) If a determination shall have been made pursuant to Section 3 that Indemnitee is entitled to indemnification, the Company shall be bound by such determination in any judicial proceeding commenced pursuant to this Section 4, absent (i) a misstatement by Indemnitee of a material fact, or an omission of a material fact necessary to make Indemnitee's misstatement not materially misleading in connection with the application for indemnification, or (ii) a prohibition of such indemnification under applicable law.

(d) In the event that Indemnitee, pursuant to this Section 4, seeks a judicial adjudication of Indemnitee's rights under, or to recover damages for breach of, this Agreement, or to recover under any directors' and officers' liability insurance policies maintained by the Company, the Company shall pay on Indemnitee's behalf, in advance, any and all expenses (of the types described in the definition of Expenses in Section 12) actually and reasonably incurred by Indemnitee in such judicial adjudication, regardless of whether Indemnitee ultimately is determined to be entitled to such indemnification, advancement of expenses or insurance recovery. The Company irrevocably authorizes Indemnitee from time to time to retain counsel of Indemnitee's choice, at the expense of the Company to the extent provided hereunder or under applicable law, to advise and represent Indemnitee in connection with any such judicial adjudication or recovery, including the initiation or defense of any litigation or other legal action, whether by or against the Company or any director, officer, stockholder or other person affiliated with the Company. Notwithstanding any existing or prior attorney-client relationship between the Company and such counsel, the Company irrevocably consents to Indemnitee's entering into an attorney-client relationship with such counsel, and in that connection the Company and Indemnitee agree that a confidential relationship shall exist between Indemnitee and such counsel.

(e) The Company shall be precluded from asserting in any judicial proceeding commenced pursuant to this Section 4 that the procedures and presumptions of this Agreement are not valid, binding and enforceable and shall stipulate in any such court that the Company is bound by all the provisions of this Agreement. The Company shall indemnify Indemnitee against any and all Expenses and, if requested by Indemnitee, shall (within ten (10) days after receipt by the Company of a written request therefor) advance, to the extent not prohibited by law, such expenses to Indemnitee, which are incurred by Indemnitee in connection with any action brought by Indemnitee for indemnification or advancement of Expenses from the Company under this Agreement or under any directors' and officers' liability insurance policies maintained by the Company, regardless of whether Indemnitee ultimately is determined to be entitled to such indemnification, advancement of Expenses or insurance recovery, as the case may be.

(f) Notwithstanding anything in this Agreement to the contrary, no determination as to entitlement to indemnification under this Agreement shall be required to be made prior to the final disposition of the Proceeding.

5. **Additional Indemnification Rights.**

(a) **Scope.** Notwithstanding any other provision of this Agreement, the Company shall indemnify Indemnitee to the fullest extent permitted by law, notwithstanding that such indemnification is not specifically authorized by the other provisions of this Agreement, the Company's Certificate of Incorporation, the Company's Bylaws, in each case, as may be then in effect, or by statute. In the event of any change, after the date of this Agreement, in any applicable law, statute, or rule which expands the right of a Delaware corporation to indemnify a member of its board of directors or an officer, such changes shall be deemed to be within the purview of Indemnitee's rights and the Company's obligations under this Agreement. In the event of any change in any applicable law, statute or rule which narrows the right of a Delaware corporation to indemnify a member of its board of directors or an officer, such changes, to the extent not otherwise required by such law, statute or rule to be applied to this Agreement shall have no effect on this Agreement or the parties' rights and obligations hereunder. The Company shall not adopt any amendment to, or otherwise repeal or alter, any of the Certificate of Incorporation, the Bylaws or other constituent documents containing indemnification rights to the extent such action would have the effect of denying, diminishing or encumbering Indemnitee's right to indemnification under this Agreement or any other indemnity rights. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other right or remedy.

(b) **Nonexclusivity.** The indemnification provided by this Agreement shall not be deemed exclusive of any rights to which Indemnitee may be entitled under the Company's Certificate of Incorporation, its Bylaws, any agreement, any vote of stockholders or disinterested members of the Board, the DGCL, or otherwise, both as to action in Indemnitee's official capacity and as to action in another capacity while holding such office.

(c) **Interest on Unpaid Amounts.** If any payment to be made by the Company to Indemnitee hereunder is delayed by more than thirty (30) days from the date the duly prepared request for such payment is received by the Company, interest shall be paid by the Company to Indemnitee at the legal rate under Delaware law for amounts which the Company indemnifies or is obligated to indemnify for the period commencing with the date on which Indemnitee actually incurs such Expense or pays such judgment, fine or amount in settlement and ending with the date on which such payment is made to Indemnitee by the Company.

(d) **Insurance.** For the duration of Indemnitee's service as a director or officer of the Company, and thereafter for so long as Indemnitee shall be subject to any pending claim relating to an indemnifiable event hereunder, the Company shall use commercially reasonable efforts (taking into account the scope and amount of coverage available relative to the cost thereof) to continue to maintain in effect policies of directors' and officers' liability insurance providing coverage that is at least substantially comparable in scope and amount to that provided by the Company's current policies of directors' and officers' liability insurance. In all policies of directors' and officers' liability insurance maintained by the Company, Indemnitee shall be named as an insured in such a manner as to provide Indemnitee the same rights and benefits as are provided to the most favorably insured of the Company's directors by such policy. Upon request, the Company shall provide to Indemnitee copies of all directors' and officers' liability insurance applications, binders, policies, declarations, endorsements and other related materials.

(e) **Primary Indemnitor; Third-Party Beneficiaries**. The Company acknowledges that Indemnitee may have rights to indemnification, advancement of expenses and/or insurance provided by other entities and/or organizations. The Company's obligations under this Agreement shall be primary and any obligations of any such other indemnitors to advance expenses or to provide indemnification for the same expenses or liabilities shall be secondary. The Company shall be required to advance the full amount of expenses and shall be liable for the full amount of all Expenses, judgments, penalties, fines and amounts paid in settlement to the extent legally permitted and as required by the terms of this Agreement, without regard to any rights Indemnitee may have against any such other indemnitors. The Company irrevocably waives, relinquishes and releases any claims for contribution, subrogation or other recovery of any kind against such other indemnitors with respect to matters subject to this Agreement; provided that any such other indemnitor making advancement or payment on behalf of Indemnitee shall be subrogated to the extent of such advancement or payment to Indemnitee's rights of recovery against the Company. The parties agree that any such other indemnitors are express third-party beneficiaries of this Section 5(e).Except as provided in this paragraph (e), the Company will not be liable under this Agreement to make any payment of amounts otherwise indemnifiable hereunder if and to the extent that Indemnitee has otherwise actually received such payment under any insurance policy, contract, agreement or otherwise and the Company's obligation to indemnify or advance Expenses hereunder to Indemnitee who is or was serving at the request of the Company as a director, officer, employee or agent of any other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise will be reduced by any amount Indemnitee has actually received as indemnification or advancement of expenses from such other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise.

6. **Partial Indemnification.** If Indemnitee is entitled under any provision of this Agreement to indemnification by the Company for some or a portion of the Expenses, judgments, fines or amounts paid in settlement, actually and reasonably incurred in connection with a Proceeding, but not, however, for the total amount thereof, the Company shall nevertheless indemnify Indemnitee for the portion of such Expenses, judgments, fines and amounts paid in settlement to which Indemnitee is entitled.

7. **Severability.** Nothing in this Agreement is intended to require or shall be construed as requiring the Company to do or fail to do any act in violation of applicable law. The Company's inability, pursuant to court order, to perform its obligations under this Agreement shall not constitute a breach of this Agreement. If this Agreement or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the Company shall nevertheless indemnify Indemnitee to the full extent permitted by any applicable portion of this Agreement that shall not have been invalidated, and the balance of this Agreement not so invalidated shall be enforceable in accordance with its terms.

8. **Exclusions.** Any other provision herein to the contrary notwithstanding, the Company shall not be obligated pursuant to the terms of this Agreement:

(a) **Claims Initiated or Assisted by Indemnitee.** To indemnify or advance Expenses to Indemnitee with respect to Proceedings initiated or brought voluntarily by Indemnitee, except with respect to Proceedings (i) the initiation of which was consented to by the Board or (ii) brought to establish, enforce or interpret a right to indemnification under this Agreement or any other statute or law or otherwise as required under Section 145 of the DGCL, provided, that, in each case, such indemnification or advancement of Expenses may be provided by the Company in specific cases if the Board finds it to be appropriate and in the Company's interest; provided, further, however, that, notwithstanding the foregoing, the Company shall be obligated to indemnify Indemnitee and advance Expenses in the event of any investigation initiated or brought by Indemnitee to the extent reasonably necessary or advisable in support of Indemnitee's defense of a Proceeding to which Indemnitee was, is or is threatened to be made, a party. No amendment, alteration or repeal of this Agreement or of any provision hereof shall limit or restrict any right of Indemnitee under this Agreement in respect of any action taken or omitted to be taken by Indemnitee in his or her Corporate Status prior to such amendment, alteration or repeal;

(b) **Lack of Good Faith.** To indemnify Indemnitee for any Expenses incurred by Indemnitee with respect to any Proceeding instituted by Indemnitee to establish, enforce or interpret a right to indemnification under this Agreement or any other statute or law or otherwise as required under Section 145 of the DGCL, if a court of competent jurisdiction determines that each of the material assertions made by Indemnitee in such proceeding was not made in good faith;

(c) **Insured Claims.** To indemnify Indemnitee for Expenses to the extent such Expenses have been paid directly to Indemnitee under any insurance policy or other indemnity provision, except with respect to any excess beyond the amount paid under any insurance policy or other indemnity provision; or

(d) **Certain Securities Exchange Act of 1934 Claims.** To indemnify Indemnitee in connection with any claim made against Indemnitee for (i) an accounting of profits made from the purchase and sale (or sale and purchase) by Indemnitee of securities of the Company within the meaning of Section 16(b) of the Exchange Act or any similar successor statute or any similar provisions of state statutory law or common law, (ii) any reimbursement of the Company by Indemnitee of any bonus or other incentive-based or equity-based compensation or of any profits realized by Indemnitee from the sale of securities of the Company, as required in each case by the rules and regulations of any national securities exchange, under the Exchange Act (including any such reimbursements that arise from an accounting restatement of the Company pursuant to Section 304 of the Sarbanes-Oxley Act of 2002 (the "Sarbanes-Oxley Act"), or the payment to the Company of profits arising from the purchase and sale by Indemnitee of securities in violation of Section 306 of the Sarbanes-Oxley Act), or (iii) any fines payable under state or federal securities laws; provided, however, that to the fullest extent permitted by applicable law and to the extent Indemnitee is successful on the merits or otherwise with respect to any such Proceeding, the Expenses actually and reasonably incurred by Indemnitee in connection with any such Proceeding shall be deemed to be Expenses that are subject to indemnification hereunder.

9. **Contribution**.

(a) Whether or not the indemnification provided in this Agreement is available, in respect of any threatened, pending or completed action, suit or proceeding in which the Company is jointly liable with Indemnitee (or would be if joined in such action, suit or proceeding), the Company shall pay, in the first instance, the entire amount of any judgment or settlement of such action, suit or proceeding without requiring Indemnitee to contribute to such payment, and the Company hereby waives and relinquishes any right of contribution it may have at any time against Indemnitee. The Company shall not enter into any settlement of any action, suit or proceeding in which the Company is jointly liable with Indemnitee (or would be if joined in such action, suit or proceeding) unless such settlement provides for a full and final release of all claims asserted against Indemnitee.

(b) Without diminishing or impairing the obligations of the Company set forth in the preceding subparagraph, if, for any reason, Indemnitee shall elect or be required to pay all or any portion of any judgment or settlement in any threatened, pending or completed action, suit or proceeding in which the Company is jointly liable with Indemnitee (or would be if joined in such action, suit or proceeding), the Company shall contribute to the amount of Expenses, judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Indemnitee in proportion to the relative benefits received by the Company and all officers, directors or employees of the Company, other than Indemnitee, who are jointly liable with Indemnitee (or would be if joined in such action, suit or proceeding), on the one hand, and Indemnitee, on the other hand, from the transaction or events from which such action, suit or proceeding arose; provided, however, that the proportion determined on the basis of relative benefit may, to the extent necessary to conform to law, be further adjusted by reference to the relative fault of the Company and all officers, directors or employees of the Company other than Indemnitee who are jointly liable with Indemnitee (or would be if joined in such action, suit or proceeding), on the one hand, and Indemnitee, on the other hand, in connection with the transactions or events that resulted in such Expenses, judgments, fines or settlement amounts, as well as any other equitable considerations which applicable law may require to be considered. The relative fault of the Company and all officers, directors or employees of the Company, other than Indemnitee, who are jointly liable with Indemnitee (or would be if joined in such action, suit or proceeding), on the one hand, and Indemnitee, on the other hand, shall be determined by reference to, among other things, the degree to which their actions were motivated by intent to gain personal profit or advantage, the degree to which their liability is primary or secondary and the degree to which their conduct is active or passive.

(c) The Company shall fully indemnify and hold Indemnitee harmless from any claims of contribution which may be brought by officers, directors or employees of the Company, other than Indemnitee, who may be jointly liable with Indemnitee.

(d) To the fullest extent permissible under applicable law and without diminishing or impairing the obligations of the Company set forth in the preceding subparagraphs of this Section 9, if the indemnification provided for in this Agreement is unavailable to Indemnitee for any reason whatsoever, the Company, in lieu of indemnifying Indemnitee, shall contribute to the amount incurred by Indemnitee, whether for judgments, fines, penalties, excise taxes, amounts paid or to be paid in settlement and/or for Expenses, in connection with any claim relating to an indemnifiable event under this Agreement, in such proportion as is deemed fair and reasonable in light of all of the circumstances of such Proceeding in order to reflect (i) the relative benefits received by the Company and Indemnitee as a result of the event(s) and/or transaction(s) giving cause to such Proceeding; and/or (ii) the relative fault of the Company (and its directors, officers, employees and agents) and Indemnitee in connection with such event(s) and/or transaction(s).

10. **No Imputation.** The knowledge and/or actions, or failure to act, of any director, officer, agent or employee of the Company or the Company itself shall not be imputed to Indemnitee for purposes of determining any rights under this Agreement.

11. **Determination of Good Faith.** For purposes of any determination of good faith, Indemnitee shall be deemed to have acted in good faith if Indemnitee's action is based on the records or books of account of the Enterprise, including financial statements, or on information, opinion, reports or statements supplied to Indemnitee by the officers or employees of the Enterprise in the course of their duties, or on the advice of legal counsel for the Enterprise or the Board of Directors of the Enterprise or any counsel selected by any committee of the Board of Directors of the Enterprise or on information or records given or reports made to the Enterprise by an independent certified public accountant or by an appraiser, investment banker, compensation consultant, or other expert selected with reasonable care by the Enterprise or the Board of Directors of the Enterprise or any committee thereof. The provisions of this Section 11 shall not be deemed to be exclusive or to limit in any way the other circumstances in which Indemnitee may be deemed to have met the applicable standard of conduct. Whether or not the foregoing provisions of this Section are satisfied, it shall in any event be presumed that Indemnitee has at all times acted in good faith and in a manner Indemnitee reasonably believed to be in or not opposed to the best interests of the Company. Anyone seeking to overcome this presumption shall have the burden of proof and the burden of persuasion by clear and convincing evidence. In addition, the knowledge and/or actions, or failure to act, of any director, officer, agent or employee of the Enterprise shall not be imputed to Indemnitee for purposes of determining Indemnitee's rights under this Agreement.

12. **Defined Terms and Phrases.** For purposes of this Agreement, the following terms shall have the following meanings:

(a) "Company" shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, and employees or agents, so that if Indemnitee is or was a director, officer, employee or agent of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, trustee, general partner, managing member, fiduciary, employee or agent of any other enterprise, Indemnitee shall stand in the same position under the provisions of this Agreement with respect to the resulting or surviving corporation as Indemnitee would have with respect to such constituent corporation if its separate existence had continued.

(b) "Corporate Status" describes the status of a person who is or was a director, officer, employee, agent or fiduciary of the Company or of any other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise that such person is or was serving at the express written request of the Company.

(c) "Enterprise" means the Company and any other enterprise that Indemnitee was or is serving at the request of the Company as a director, officer, partner (general, limited or otherwise), member (managing or otherwise), trustee, fiduciary, employee or agent.

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

(e) "Expenses" shall include all direct and indirect costs, fees and expenses of any type or nature whatsoever, including all attorneys' fees and costs, retainers, court costs, transcript costs, fees of experts, witness fees, travel expenses, fees of private investigators and professional advisors, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees, any federal, state, local or foreign taxes imposed on Indemnitee as a result of the actual or deemed receipt of any payment under this Agreement (including taxes that may be imposed upon the actual or deemed receipt of payments under this Agreement with respect to the imposition of federal, state, local or foreign taxes), fax transmission charges, secretarial services and all other disbursements, obligations or expenses in connection with prosecuting, defending, preparing to prosecute or defend, investigating, being or preparing to be a witness in, settlement or appeal of, or otherwise participating in a Proceeding. Expenses also shall include any of the forgoing expenses incurred in connection with any appeal resulting from any Proceeding, including the principal, premium, security for, and other costs relating to any costs bond, supersedes bond, or other appeal bond or its equivalent. Expenses also shall include any interest, assessment or other charges imposed thereon and costs incurred in preparing statements in support of payment requests hereunder. Expenses, however, shall not include amounts paid in settlement by Indemnitee or the amount of judgments or fines against Indemnitee. For the purposes of any advancement of Expenses for which Indemnitee has made written demand to the Company in accordance with this Agreement, all Expenses included in such demand that are certified by affidavit of Indemnitee's counsel as being reasonable shall be presumed conclusively to be reasonable.

(f) "Independent Counsel" means a law firm, or a member of a law firm, that is of regional or national recognition and experienced in matters of corporation law, and neither presently is, nor in the past five years has been, retained to represent: (i) the Company or Indemnitee in any matter material to either such party (other than with respect to matters concerning Indemnitee under this Agreement, or of other indemnitees under similar indemnification agreements), or (ii) any other party to the Proceeding giving rise to a claim for indemnification hereunder. Notwithstanding the foregoing, the term "Independent Counsel" shall not include any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Company or Indemnitee in an action to determine Indemnitee's rights under this Agreement. The Company shall pay the reasonable fees of the Independent Counsel referred to above and to fully indemnify such counsel against any and all Expenses, claims, liabilities and damages arising out of or relating to this Agreement or its engagement pursuant hereto.

(g) "Proceeding" shall include any actual, threatened, pending or completed action, suit, arbitration, mediation, alternate dispute resolution mechanism, investigation, inquiry, administrative hearing or any other actual, threatened or completed proceeding, whether brought by a third party, a government agency, the Company or its Board or a committee thereof, whether in the right of the Company or otherwise and whether of a civil (including intentional or unintentional tort claims), criminal, administrative, legislative or investigative (formal or informal) nature, including any appeal therefrom, in which Indemnitee was, is, will or might be involved as a party, potential party, non-party witness or otherwise by reason of the fact that Indemnitee is or was a director, officer, employee or agent of the Company, by reason of any action (or failure to act) taken by Indemnitee or of any action (or failure to act) on Indemnitee's part while acting as a director, officer, employee or agent of the Company, or by reason of the fact that Indemnitee is or was serving at the request of the Company as a director, officer, partner (general, limited or otherwise), member (managing or otherwise), trustee, fiduciary, employee or agent of any other enterprise, in each case whether or not serving in such capacity at the time any liability or expense is incurred for which indemnification, reimbursement or advancement of expenses can be provided under this Agreement, including one pending on or before the date of this Agreement, but excluding one initiated by Indemnitee pursuant to Section 4 to enforce Indemnitee's rights under this Agreement.

(h) In addition, references to "other enterprise" shall include another corporation, partnership, limited liability company, joint venture, trust, employee benefit plan or any other enterprise; references to "fines" shall include any excise taxes assessed on Indemnitee with respect to an employee benefit plan; references to "serving at the request of the Company" shall include any service as a director, officer, employee or agent of the Company which imposes duties on, or involves services by Indemnitee with respect to an employee benefit plan, its participants, or beneficiaries; and if Indemnitee acted in good faith and in a manner Indemnitee reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan, Indemnitee shall be deemed to have acted in a manner "not opposed to the best interests of the Company" as referred to in this Agreement; references to "applicable law" in Section 1 refer to applicable law (including the laws of the State of Delaware) in effect on the date hereof, or as such laws may hereafter be amended from time to time to increase the scope of permitted indemnification; references to "include" or "including" shall mean include or including, without limitation; references to Sections, paragraphs or clauses are to Sections, paragraphs or clauses in this Agreement unless otherwise specified; and the Company and Indemnitee are individually referred to herein as a "party" and collectively as the "parties."

13. **Miscellaneous.**

(a) **Governing Law.** This Agreement and all acts and transactions pursuant hereto and the rights and obligations of the parties hereto shall be governed, construed and interpreted in accordance with the laws of the State of Delaware, without giving effect to principles of conflicts of law. Each of the Company and Indemnitee hereby irrevocably and unconditionally submits to the exclusive jurisdiction of the Court of Chancery of the State of Delaware (or, if such court declines jurisdiction, any other state or federal court in the State of Delaware) for any action or proceeding arising out of or in connection with this Agreement, waives any objection to venue therein, and waives any claim that such forum is an inconvenient forum.

(b) **Entire Agreement; Binding Effect.** Without limiting any of the rights of Indemnitee described in Section 5(b), this Agreement sets forth the entire agreement and understanding of the parties relating to the subject matter herein and merges all prior discussions and supersedes any and all previous agreements between them covering the subject matter herein. The indemnification provided under this Agreement applies with respect to events occurring before or after the effective date of this Agreement, and shall continue to apply even after Indemnitee has ceased to serve the Company in any and all indemnified capacities.

(c) **Amendments and Waivers.** No modification of or amendment to this Agreement, nor any waiver of any rights under this Agreement, shall be effective unless in writing signed by the parties to this Agreement. The failure by either party to enforce any rights under this Agreement shall not be construed as a waiver of any rights of such party.

(d) **Notices.** Any notice, demand or request required or permitted to be given under this Agreement shall be in writing and shall be deemed sufficient (i) when delivered personally, (ii) 48 hours after being sent by nationally-recognized courier or deposited in the U.S. mail, as certified or registered mail, with postage prepaid, and addressed to the party to be notified at such party's address as set forth below or as subsequently modified by written notice, or (iii) upon confirmation of receipt by the recipient when sent by electronic mail or facsimile. All communications shall be sent:

To Indemnitee at:

_____

_____

_____

To the Company at:

Empery Digital Inc.
3121 Eagles Nest, Suite 120
Round Rock, TX 78665
Attention: Greg Endo, CFO

or to such other address as may have been furnished to Indemnitee by the Company or to the Company by Indemnitee, as the case may be.

(e) **Successors and Assigns.** This Agreement shall be binding upon the Company and its successors (including any direct or indirect successor by purchase, merger, consolidation or otherwise to all or substantially all of the business and/or assets of the Company) and assigns, and inure to the benefit of Indemnitee and Indemnitee's heirs, executors, administrators, legal representatives and assigns. The Company shall require and cause any successor (whether direct or indirect by purchase, merger, consolidation or otherwise) to all or substantially all of the business and/or assets of the Company, by written agreement in form and substance satisfactory to Indemnitee, expressly to assume and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform if no such succession had taken place.

(f) **No Employment Rights.** Nothing contained in this Agreement is intended to create in Indemnitee any right to continued employment.

(g) **Company Position.** The Company shall be precluded from asserting, in any Proceeding brought for purposes of establishing, enforcing or interpreting any right to indemnification under this Agreement, that the procedures and presumptions of this Agreement are not valid, binding and enforceable and shall stipulate in any such court that the Company is bound by all the provisions of this Agreement and is precluded from making any assertion to the contrary.

(h) **Subrogation.** In the event of payment under this Agreement, the Company shall be subrogated to the extent of such payment to all of the rights of recovery of Indemnitee, who shall execute all documents required and shall do all acts that may be necessary to secure such rights and to enable the Company to effectively bring suit to enforce such rights.

(i) **Third Party Beneficiaries.** There are no intended third party beneficiaries of this Agreement.

(j) **Reliance and Enforcement.** The Company expressly confirms and agrees that it has entered into this Agreement and assumes the obligations imposed on it hereby in order to induce Indemnitee to serve as an officer or director of the Company, and the Company acknowledges that Indemnitee is relying upon this Agreement in serving as an officer or director of the Company. The Company shall not seek from a court, or agree to, a "bar order" which would have the effect of prohibiting or limiting Indemnitee's rights to receive advancement of expenses under this Agreement.

(k) **Headings; Recitals.** The headings in this Agreement are inserted for convenience only and shall not be deemed to constitute part of this Agreement or to affect the construction thereof. The recitals hereto are incorporated herein and made a part hereof.

(l) **Security.** To the extent requested by Indemnitee and approved by the Board (not to be unreasonably withheld, conditioned or delayed), the Company may at any time and from time to time provide security to Indemnitee for the Company's obligations hereunder through an irrevocable bank line of credit, funded trust or other collateral. Any such security, once provided to Indemnitee, may not be revoked or released without the prior written consent of Indemnitee.

(m) **Duration.** All agreements and obligations of the Company contained herein shall continue during the period that Indemnitee is a director or officer of the Company (or is serving at the request of the Company as a director, officer, employee, member, trustee or agent of another Enterprise) and shall continue thereafter (i) so long as Indemnitee may be subject to any possible Proceeding and (ii) throughout the pendency of any Proceeding commenced by Indemnitee to enforce or interpret Indemnitee's rights under this Agreement, even if, in either case, Indemnitee may have ceased to serve in such capacity at the time of any such Proceeding**.**

(e) **Counterparts.** This Agreement may be executed by original, facsimile signature, electronic mail or other transmission method in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

[Signature Page Follows]

The parties have executed this Agreement as of the date first set forth above.

THE COMPANY:

EMPERY DIGITAL INC.

By: _____
(Signature)

Name: Greg Endo
Title: Chief Financial Officer

AGREED TO AND ACCEPTED:

INDEMNITEE:

_____

(Signature)

Exhibit 19.1

Empery Digital Inc.
Insider Trading Policy and Procedures

February 4, 2026

TO: All Officers, Employees and Directors
RE: Empery Digital Inc.'s (the "Company") Insider Trading Policy and Procedures

We have formalized our insider trading policy. A key to preventing inadvertent insider trading violations and the appearance of improper trading is to educate all officers, directors and employees about the insider trading laws and to have appropriate additional procedures in place for officers, directors, and employees.

Please note that:

- Our Insider Trading Policy applies to all employees, from top to bottom, as well as all of our officers and directors.
- Our pre-clearance procedures for transactions in Company securities applies to all officers, directors, employees, their family members and other related entities (i.e., any company, partnership, trust or estate that such persons have the power to control or influence).
- Event-specific blackout restrictions may also be imposed from time to time. The blackout periods serve as general guidelines for planning transactions. Any information concerning the imposition of blackout restrictions should be considered material nonpublic information and should not be communicated to anyone else.
- Everyone subject to the Insider Trading Policy has ethical and legal obligations to maintain the confidentiality of information about the Company and to not engage in transactions in the Company's securities while aware of material nonpublic information. Everyone subject to this policy must not engage in illegal trading (as described further in this Policy) and must avoid the appearance of improper trading. Each individual is responsible for making sure that he or she complies with this Insider Trading Policy, and that any family member, household member or entity whose transactions are subject to the Insider Trading Policy also comply with this Policy. In all cases, the responsibility for determining whether an individual is in possession of material nonpublic information rests with that individual. Under all circumstances, the appearance of an improper transaction must be avoided to preserve the Company's reputation for adhering to the highest standards of conduct.

Empery Digital Inc.

INSIDER TRADING POLICY
(adopted February 4, 2026)

Purpose

This Insider Trading Policy (the "Policy") governs transactions in the securities of Empery Digital Inc. (together with its subsidiaries, the "Company") and the companies with which the Company engages in transactions or does business and the misuse of related confidential information. The Company's board of directors (the "Board") has adopted this Policy to protect our reputation for integrity and ethical conduct and to ensure compliance with federal and state securities laws that prohibit certain persons who are aware of material nonpublic information about a company from: (i) trading in securities of that company; or (ii) providing material nonpublic information to other persons who may trade on the basis of that information.

Persons Subject to the Policy

This Policy applies to all officers and employees of the Company (and any future subsidiaries), and all members of the Board. The Company may also determine that other persons should be subject to this Policy, such as contractors or consultants who have access to material nonpublic information relating to the Company or Other Relevant Issuers (as defined below). This Policy also applies to family members, other members of a person's household and entities controlled by a person covered by this Policy, as described below.

Transactions Subject to the Policy

This Policy applies to transactions in the Company's securities (collectively referred to in this Policy as "Company Securities"), including the Company's common stock, options to purchase common stock, or any other type of securities that the Company may issue, including (but not limited to) preferred stock, convertible debentures and warrants, as well as derivative securities that are not issued by the Company, such as exchange-traded put or call options or swaps relating to the Company's Securities.

Administration of the Policy

Brett Director, Vice President - Legal, shall serve as the compliance officer (the "Compliance Officer") for the purposes of this Policy, and in his absence, Ryan Lane, Co-Chief Executive Officer, shall be responsible for administration of this Policy. In any matters regarding Empery Asset Management, shareholder and employer of Mr. Director and Mr. Lane, Matthew Homer, Finance Committee Chairman and Board Member, will serve as Compliance Officer. All determinations and interpretations by the Compliance Officer or either of the aforementioned individuals acting in his absence shall be final and not subject to further review.

Individual Responsibility

Persons subject to this Policy have ethical and legal obligations to maintain the confidentiality of information about the Company and to not engage in transactions in Company Securities while in possession of material nonpublic information. Persons subject to this policy must not engage in illegal trading and must avoid the appearance of improper trading. Each individual is responsible for making sure that he or she complies with this Policy, and that any family member, household member or entity whose transactions are subject to this Policy, as discussed below, also comply with this Policy. In all cases, the responsibility for determining whether an individual is in possession of material nonpublic information rests with that individual, and any action on the part of the Company, the Compliance Officer, or any other officer, employee or director pursuant to this Policy (or otherwise) does not in any way constitute legal advice or insulate an individual from liability under applicable securities laws. You could be subject to severe legal penalties and disciplinary action by the Company for any conduct prohibited by this Policy or applicable securities laws, as described below in more detail under the heading "Consequences of Violations."

Statement of Policy

It is the policy of the Company that no director, officer or other employee of the Company (or any other person designated by this Policy or by the Compliance Officer as subject to this Policy) who is aware of material nonpublic information relating to the Company may, directly, or indirectly through family members or other persons or entities:

1. Engage in transactions in Company Securities, except as otherwise specified in this Policy under the headings "Transactions Under Company Plans," "Transactions Not Involving a Purchase or Sale" and "Rule 10b5-1 Plans;"

2. Recommend the purchase or sale of any Company Securities;

3. Disclose material nonpublic information to persons within the Company whose jobs do not require them to have that information, or outside of the Company to other persons, including, but not limited to, family, friends, business associates, investors and consulting firms, unless any such disclosure is made in accordance with the Company's policies regarding the protection or authorized external disclosure of information regarding the Company; or

4. Assist anyone engaged in the above activities.

In addition, it is the policy of the Company that no director, officer or other employee of the Company (or any other person designated as subject to this Policy) who, in the course of working for the Company, learns of material nonpublic information about another publicly traded entity with which the Company does business (or may in the future conduct business or enter into a transaction), including a customer, supplier, or business partner of the Company, or publicly traded entities with which the Company may be negotiating major transactions, such as an acquisition, investment, or sale of assets (each such publicly traded company referred to in this sentence, an "Other Relevant Issuer," and, collectively, "Other Relevant Issuers"), may trade in that company's securities until the information becomes public or is no longer material.

In addition, it is the policy of the Company to comply with all applicable securities laws when transacting in its own securities. The Company will not engage in transactions in respect of its securities when it is in possession of material, nonpublic information relating to the Company, other than in compliance with applicable law.

There are no exceptions to this Policy, except as specifically noted herein. Transactions that may be necessary or justifiable for independent reasons (such as the need to raise money for an emergency expenditure), or small transactions, are not excepted from this Policy. The securities laws do not recognize any mitigating circumstances, and, in any event, even the appearance of an improper transaction must be avoided to preserve the Company's reputation for adhering to the highest standards of conduct.

Definition of Material Nonpublic Information

Material Information. Information is considered "material" if a reasonable investor would consider that information important in making a decision to buy, hold or sell securities. Any information that could be expected to affect a company's stock price, whether it is positive or negative, should be considered material. There is no bright-line standard for assessing materiality; rather, materiality is based on an assessment of all of the facts and circumstances, and is often evaluated by enforcement authorities with the benefit of hindsight. Information not material to the Company may nevertheless be material to an Other Relevant Issuer (and vice versa). In addition, the same information may be material to the Company and one or more Other Relevant Issuers.

While it is not possible to define all categories of material information, some examples of information that ordinarily would be regarded as material are:

- Information concerning significant acquisitions or dispositions of assets, such as Bitcoin, or significant changes in asset acquisition or disposition strategies, such as a change to our strategy relating to Bitcoin or other digital assets;
- Changes in dividend policy
- Projections of future earnings or losses, or other earnings guidance (including earnings that are inconsistent with consensus expectations of the investment community, including changes to previously announced earnings guidance, or the decision to suspend earnings guidance);
- Financial results of a completed period;
- Financial implications of the Company's Bitcoin holdings, including impairment charges, gains or losses required to be recorded in the Company's financial statements ;
- A pending or proposed merger, acquisition or tender offer;
- A pending or proposed acquisition or disposition of a significant asset;
- A pending or proposed joint venture;
- New significant equity or debt offerings (including sales pursuant to an at-the-market offering), the establishment or cessation of repurchase programs for Company Securities repurchases of Company Securities by the Company or financing arrangements related thereto;
- Pending or proposed repurchases of Company Securities by the Company or financing arrangements related thereto;
- Bank borrowings or other financing transactions out of the ordinary course;
- Significant related party transactions;
- A change in senior management;
- A change in auditors or notification that the auditor's reports may no longer be relied upon;
- Development of a significant new product or service;
- Pending or threatened significant litigation, or the resolution of such litigation;
- Significant new product or technology plans;
- Impending bankruptcy or the existence of severe liquidity problems;
- The gain or loss of a significant customer or supplier;

- A significant cybersecurity incident, such as a data breach, or any other significant disruption in the Company's operations or loss, potential loss, breach or unauthorized access of its property or assets, whether at its facilities or through its information technology infrastructure;

- The imposition of an event-specific restriction on trading in Company Securities or the securities of another Company or the extension or termination of such restriction;

- The status of new vehicles;

- The status of any regulatory approvals for our products;

When Information is Considered Public. Information that has not been disclosed to the public is generally considered to be nonpublic information. In order to establish that the information has been disclosed to the public, it may be necessary to demonstrate that the information has been widely disseminated. Information generally would be considered widely disseminated if it has been disclosed through newswire services, publication in a widely-available newspaper, magazine or news website, public disclosure documents filed with the SEC that are available on the SEC's website or information publicly disclosed on the Company's website to the extent a reasonable investor would likely expect such information to be publicly available on such website. By contrast, information would likely not be considered widely disseminated if it is available only to the Company's employees, or if it is only available to a select group of analysts, brokers and institutional investors.

Once information is widely disseminated, it is still necessary to provide the investing public with sufficient time to absorb the information. Depending on the particular circumstances, the Company may determine what period should apply to the release of specific material nonpublic information or information publicly disclosed on the Company's website to the extent a reasonable investor would likely expect such information to be publicly available on such website.

Courts judge whether a particular item is "material" or "nonpublic" with the benefit of hindsight. You should direct questions whether information is "material" or "nonpublic" to the following address: compliance@emperydigital.com.

Transactions by Family Members and Others This Policy applies to your family members who reside with you (including a spouse, a child, a child away at college, stepchildren, grandchildren, parents, stepparents, grandparents, siblings and in-laws), anyone else who lives in your household, any person to whom you have disclosed material, nonpublic information, and any family members who do not live in your household but whose transactions in Company Securities are directed by you or are subject to your influence or control, such as parents or children who consult with you before they trade in Company Securities (collectively referred to as "Family Members"). You are responsible for the transactions of these other persons and therefore should make them aware of the need to confer with you before they trade in Company Securities, and you should treat all such transactions for the purposes of this Policy and applicable securities laws as if the transactions were for your own account.

Transactions by Entities that You Influence or Control

This Policy applies to any entities that you influence or control, including any corporations, partnerships or trusts (collectively referred to as "Controlled Entities"), and transactions by these Controlled Entities should be treated for the purposes of this Policy and applicable securities laws as if they were for your own account.

Transactions Under Company Plans

This Policy does not apply in the case of the following transactions, except as specifically noted:

Stock Option Exercises. This Policy does not apply to the exercise of an employee or director stock option acquired pursuant to the Company's plans, or to the exercise of a tax withholding right pursuant to which a person has elected to have the Company withhold shares subject to an option to satisfy tax withholding requirements. This Policy does apply, however, to any sale of stock as part of a broker-assisted cashless exercise of an option, or any other market sale for the purpose of generating the cash needed to pay the exercise price of an option.

Restricted Stock Awards. This Policy does not apply to the vesting of restricted stock, or the exercise of a tax withholding right pursuant to which you elect to have the Company withhold shares of stock to satisfy tax withholding requirements upon the vesting of any restricted stock. The Policy does apply, however, to any market sale of restricted stock.

Employee Stock Purchase Plan. This Policy's trading restrictions do not apply to periodic purchases of Company stock under a Company employee stock purchase plan, if such plan exists, so long as the employee's last non-automatic election before the purchase was a valid election, not made while in position of material non-public information. This Policy does apply, however, to an employee's non-automatic elections under the plan (whether an election to participate in the plan or to change the level of the employee's contribution under the plan) and to any sales of Company stock purchased under the plan.

Transactions Not Involving a Purchase or Sale

A person subject to this Policy may make a *bona fide* gift of securities while aware of material, nonpublic information or (if such person is subject to trading restrictions during a "blackout period" as specified under the heading "Black-Out Periods" of this Policy) during a blackout period applicable to such person, so long as the person making the gift has no reason to believe that the recipient intends to sell the Company Securities (i) before the material nonpublic information becomes public; or (ii) during the blackout period. For the avoidance of doubt, the pre-clearance procedures set forth in the Addendum apply to any gifts of securities, transfers, or contributions of securities to a family trust or other entity, as well as transfers of securities among family members. Further, transactions in mutual funds, exchange-traded funds, index funds, or other "broad basket" funds that own or hold the Company's securities as one of many investments are not transactions subject to this Policy.

Special and Prohibited Transactions

The Company has determined that there is a heightened legal risk and/or the appearance of improper or inappropriate conduct if the persons subject to this Policy engage in certain types of transactions. It therefore is the Company's policy that any persons covered by this Policy may not engage in any of the following transactions, or should otherwise consider the Company's preferences as described below:

Short Sales. Short sales of Company Securities *(i.e.,* the sale of a security that the seller does not own) may evidence an expectation on the part of the seller that the securities will decline in value, and therefore have the potential to signal to the market that the seller lacks confidence in the Company's prospects. In addition, short sales may reduce a seller's incentive to seek to improve the Company's performance. For these reasons, short sales of Company Securities are prohibited. In addition, Section 16(c) of the Exchange Act prohibits officers and directors from engaging in short sales.

Publicly-Traded Options. Given the relatively short term of publicly-traded options, transactions in options may create the appearance that a director, officer or employee is trading based on material nonpublic information and focus a director's, officer's or other employee's attention on short-term performance at the expense of the Company's long-term objectives. Accordingly, transactions in put options, call options or other derivative securities, on an exchange or in any other organized market, are prohibited by this Policy.

Hedging Transactions. Hedging or monetization transactions can be accomplished through a number of possible mechanisms, including through the use of financial instruments such as prepaid variable forwards, equity swaps, collars and exchange funds. Such transactions may permit a director, officer or employee to continue to own Company Securities obtained through employee benefit plans or otherwise, but without the full risks and rewards of ownership. When that occurs, the director, officer or employee may no longer have the same objectives as the Company's other shareholders. Therefore, directors, officers and employees are prohibited from engaging in any such transactions, without receiving for approval by the Compliance Officer. Any request for clearance of a hedging or similar arrangement must be submitted to the Compliance Officer at least two weeks prior to the proposed execution of documents evidencing the proposed transaction and must set forth a justification for the proposed transaction.

Margin Accounts and Pledged Securities. Securities held in a margin account as collateral for a margin loan may be sold by the broker without the customer's consent if the customer fails to meet a margin call. Similarly, securities pledged (or hypothecated) as collateral for a loan may be sold in foreclosure if the borrower defaults on the loan. Because a margin sale or foreclosure sale may occur at a time when the pledgor is aware of material nonpublic information or otherwise is not permitted to trade in Company Securities, directors, officers and other employees are prohibited from holding Company Securities in a margin account or otherwise pledging Company Securities as collateral for a loan.

Standing and Limit Orders. Standing and limit orders (except standing and limit orders under approved Rule 10b5-1 Plans, as described below) create heightened risks for insider trading violations similar to the use of margin accounts. There is no control over the timing of purchases or sales that result from standing instructions to a broker, and as a result the broker could execute a transaction when a director, officer or other employee is in possession of material nonpublic information. The Company therefore prohibits placing standing or limit orders on Company Securities, unless such order are structured to comply with the preclearance requirements set forth in this Policy. If a person subject to this Policy determines that they must use a standing order or limit order, the order should be limited to a short duration and must otherwise comply with the restrictions and procedures outlined below under the heading "Additional Procedures."

Additional Procedures

The Company has established additional procedures in order to assist the Company in the administration of this Policy, to facilitate compliance with laws prohibiting insider trading while in possession of material nonpublic information, and to avoid the appearance of any impropriety.

Pre-Clearance Procedures. ***All Company officers, directors, employees, as well as the Family Members and Controlled Entities of such persons, may not engage in any transaction in Company Securities without first obtaining pre-clearance of the transaction from the Compliance Officer***. Such preclearance must be in the form of an email from the Compliance Officer: (i) to the officers' or employee's Company-provided email account; or (ii) if to a director or to an individual that does not have a Company-provided email account, to such email account with which the individual conducts business with the Company (or if no such email account exists, in a written notification from the Compliance Officer). A request for pre-clearance should be submitted to the Compliance Officer at least two trading days in advance of the proposed transaction. Any pre-cleared trades must be effected within three trading days of receipt of pre-clearance unless an exception is granted. Transactions not effected within such time limit would be subject to pre-clearance again. The Compliance Officer is under no obligation to approve a transaction submitted for preclearance, and may determine not to permit the transaction. If a person seeks pre-clearance and permission to engage in the transaction is denied, then he or she should refrain from initiating any transaction in Company Securities, and should not inform any other person of the restriction.

When a request for pre-clearance is made, the requestor should carefully consider whether he or she may be aware of any material nonpublic information about the Company, and should describe fully those circumstances to the Compliance Officer. The requestor that is a director or executive officer should also indicate whether he or she has effected any non-exempt "opposite-way" transactions within the past six months, and should be prepared to report the proposed transaction on an appropriate Form 4 or Form 5. The requestor should also be prepared to comply with SEC Rule 144 and file Form 144, if necessary, at the time of any sale.

Black-Out Periods. No officer, director or employee, as may be amended from time to time by the Board, the Co-Chief Executive Officer, the Chief Financial Officer or the Compliance Officer as being subject to quarterly blackout periods shall purchase or sell any security of the Company during the period beginning at 11:59 p.m., Eastern time, on the 14th calendar day before the end of any fiscal quarter of the Company and ending upon the completion of the second full trading day after the public release of earnings data for such fiscal quarter or during any other trading suspension period declared by the Company, except for purchases and sales made pursuant to the permitted transactions described herein. For example, if the Company's fourth fiscal quarter ends at 11:59 p.m., Eastern time, on December 31, the corresponding blackout period would begin at 11:59 p.m., Eastern time, on December 17. For the avoidance of doubt, any designation by the Board of whether all employees, and which employees, are subject to quarterly blackout periods may be updated from time to time by the Co-Chief Executive Officer, Chief Financial Officer or Compliance Officer.

Exceptions to the black-out period policy may be approved only by the Compliance Officer (or, in the case of an exception for the Compliance Officer or persons or entities subject to this policy as a result of their relationship with the Compliance Officer, the Chief Executive Officer or, in the case of exceptions for directors or persons or entities subject to this policy as a result of their relationship with a director, the Board).

Event-Specific Trading Restriction Periods. From time to time, an event may occur that is material to the Company and is known by only a few directors, officers and/or employees. So long as the event remains material and nonpublic, the persons designated by the Compliance Officer may not trade Company Securities, including making any pre-clearance requests. In addition, the Company's financial results may be sufficiently material in a particular fiscal quarter that, in the judgment of the Compliance Officer, designated persons should refrain from trading in Company Securities. In that situation, the Compliance Officer may notify these persons that they should not trade in the Company's Securities, without disclosing the reason for the restriction. The existence of an event-specific trading restriction period will not be announced to the Company as a whole, and should not be communicated to any other person. Even if the Compliance Officer has not designated you as a person who should not trade due to an event-specific restriction, you should not trade while aware of material nonpublic information. Exceptions will not be granted during an event-specific trading restriction period.

Exceptions. The event-specific trading restrictions do not apply to those transactions to which this Policy does not apply, as described above under the headings "Transactions Under Company Plans" and "Transactions Not Involving a Purchase or Sale." Further, the requirement for preclearance and event-specific trading restrictions do not apply to transactions conducted pursuant to approved Rule 10b5-1 plans, described under the heading "Rule 10b5-1 Plans" below.

Rule 10b5-1 Plans

Rule 10b5-1 under the Exchange Act provides a defense from insider trading liability under Rule 10b-5. In order to be eligible to rely on this defense, a person subject to this Policy must (i) enter into a Rule 10b5- 1 plan for transactions in Company Securities that meets certain conditions specified in the Rule (a "Rule 10b5-1 Plan"); (ii) must have entered into the Rule 10b5-1 Trading Plan in good faith; (iii) must act in good faith with respect to the Rule 10b5-1 Trading Plan; and (iv) must satisfy the other conditions of Rule 10b5-1.

To qualify as a Rule 10b5-1 Trading Plan, a trading plan for an individual covered by this Policy (a "Trading Plan") must satisfy the following conditions:

- The Trading Plan must specify the amounts and prices of securities to be purchased or sold as well as the dates on which the purchases or sales are to be made (or include a written formula or algorithm, or computer program, for determining such information) or must not permit the person for whose account purchases or sales of securities will be made under the Trading Plan (such person, the "Plan Owner") to subsequently exercise any influence over how, when, or whether to purchase or sell any securities covered by the Trading Plan (i.e. discretion on these matters is delegated to an independent third party);

- The Trading Plan must provide for a period (a "cooling-off period") after the adoption of the Trading Plan during which no trades may occur under the Trading Plan. For this purpose, the "adoption of a Trading Plan" includes any modification or change to the amount, price, or timing of trades under the Trading Plan. If the Plan Owner is a director or officer, the cooling-off period must expire no earlier than the later of (i) ninety (90) days following adoption of the Trading Plan or (ii) two (2) trading days after the filing of the Company's Form 10-K or Form 10-Q that includes financial results for the quarter during which the plan was adopted, subject to a maximum cooling-off period of one hundred twenty (120) days after adoption of the Trading Plan. If the Plan Owner is not a director or officer, the cooling-off period must be at least thirty (30) days after adoption of the Trading Plan; and

- If the Trading Plan is a written plan and the Plan Owner is a director or officer of the issuer of the securities, the Trading Plan must include specified representations.

If the plan meets the requirements of Rule 10b5-1, Company Securities may be purchased or sold without regard to certain insider trading restrictions. To comply with the Policy, a Rule 10b5-1 Plan must be approved by the Compliance Officer, and meet the requirements of Rule 10b5-1. In general, a Rule 10b5-1 Plan must be entered into at a time when the person entering into the plan is not aware of material nonpublic information. Once the plan is adopted, the person must not exercise any influence over the amount of securities to be traded, the price at which they are to be traded or the date of the trade. The plan must either specify the amount, pricing and timing of transactions in advance or delegate discretion on these matters to an independent third party.

Any Rule 10b5-1 Plan must be submitted for approval 20 days prior to the entry into the Rule 10b5-1 Plan. No further pre-approval of transactions conducted pursuant to the Rule 10b5-1 Plan will be required.

Post-Termination Transactions

This Policy continues to apply to transactions in Company Securities even after termination of service to the Company. If an individual is in possession of material nonpublic information when his or her service terminates, that individual may not trade in Company Securities until that information has become public or is no longer material.

Consequences of Violations

The purchase or sale of securities while aware of material nonpublic information, or the disclosure of material nonpublic information to others who then trade in the Company's Securities, is prohibited by federal and state laws. Insider trading violations are pursued vigorously by the SEC, U.S. Attorneys and state enforcement authorities as well as the laws of foreign jurisdictions. Punishment for insider trading violations is severe, and could include significant fines and imprisonment. While the regulatory authorities concentrate their efforts on the individuals who trade, or who tip inside information to others who trade, the federal securities laws also impose potential liability on companies and other "controlling persons" if they fail to take reasonable steps to prevent insider trading by Company personnel.

In addition, an individual's failure to comply with this Policy may subject the individual to Company-imposed sanctions, including dismissal for cause, whether or not the employee's failure to comply results in a violation of law. Needless to say, a violation of law, or even an SEC investigation that does not result in prosecution, can tarnish a person's reputation and irreparably damage a career.

Company Assistance

Any person who has a question about this Policy or its application to any proposed transaction may obtain additional guidance from the Compliance Officer, who can be reached by e-mail at compliance@emperydigital.com.

Certification

All persons subject to this Policy must certify their understanding of, and intent to comply with, this Policy.

CERTIFICATION

I certify that:

1. I have read and understand the Company's Insider Trading Policy (the "Policy").

   I understand that the Compliance Officer is available to answer any questions I have regarding the Policy.

2. Since February 4, 2026 (the date the Policy became effective), or such shorter period of time that I have been an officer, director and/or employee of the Company, I have complied with the Policy.

3. I will continue to comply with the Policy for as long as I am subject to the Policy.

Print name: _____

Signature: _____

Date: _____

Exhibit 23.1

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in the Registration Statements on Form S-1 (Nos. 333-274800, 333-272564 and 333-267404), on Form S-3 (Nos. 333-290374, 333-289676, 333-289071 and 333-269644) and on Form S-8 (Nos. 333-261312 and 333-266788) of our report dated March 27, 2026 with respect to the audited consolidated financial statements of Empery Digital Inc. appearing in this Annual Report on Form 10-K.

/s/ MaloneBailey, LLP
www.malonebailey.com
Houston, Texas
March 27, 2026

Exhibit 31.1

CERTIFICATION BY CHIEF EXECUTIVE OFFICER

I, John Kim, certify that:

1. I have reviewed this annual report on Form 10-K of Empery Digital Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and we have:

a. designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

b. designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

c. evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

d. disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

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

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

March 27, 2026

By: /s/ John Kim
John Kim
Co-Chief Executive Officer

Exhibit 31.2

CERTIFICATION BY CHIEF EXECUTIVE OFFICER

I, Ryan Lane, certify that:

1. I have reviewed this annual report on Form 10-K of Empery Digital Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and we have:

a. designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

b. designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

c. evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

d. disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

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

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

March 27, 2026

By: /s/ Ryan Lane
Ryan Lane
Co-Chief Executive Officer
(Principal executive officer)

Exhibit 31.3

CERTIFICATION BY CHIEF FINANCIAL OFFICER

I, Greg Endo, certify that:

1. I have reviewed this annual report on Form 10-K of Empery Digital Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and we have:

a. designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

b. designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

c. evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

d. disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

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

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

March 27, 2026

By: /s/ Greg Endo
Greg Endo
Chief Financial Officer
(Principal financial and accounting officer)

Exhibit 32.1

CERTIFICATION OF CHIEF EXECUTIVE OFFICER

Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002

(Subsections (a) and (b) of Section 1350, Chapter 63 of Title 18, United States Code)

Pursuant to section 906 of the Sarbanes-Oxley Act of 2002 (subsections (a) and (b) of section 1350, chapter 63 of title 18, United States Code), the undersigned officer of Empery Digital Inc., a Delaware corporation (the "Company"), does hereby certify, to such officer's knowledge, that:

The annual report on Form 10-K for the year ended December 31, 2025 (the "Form 10-K") of the Company fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended and information contained in the Form 10-K fairly presents, in all material respects, the financial condition and results of operations of the Company.

March 27, 2026

By: /s/ John Kim
John Kim
Co-Chief Executive Officer

Exhibit 32.2

CERTIFICATION OF CHIEF EXECUTIVE OFFICER

Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002

(Subsections (a) and (b) of Section 1350, Chapter 63 of Title 18, United States Code)

Pursuant to section 906 of the Sarbanes-Oxley Act of 2002 (subsections (a) and (b) of section 1350, chapter 63 of title 18, United States Code), the undersigned officer of Empery Digital Inc., a Delaware corporation (the "Company"), does hereby certify, to such officer's knowledge, that:

The annual report on Form 10-K for the year ended December 31, 2025 (the "Form 10-K") of the Company fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended and information contained in the Form 10-K fairly presents, in all material respects, the financial condition and results of operations of the Company.

March 27, 2026

By: /s/ Ryan Lane
Ryan Lane
Co-Chief Executive Officer and Director
(Principal Executive Officer)

Exhibit 32.3

CERTIFICATION OF CHIEF FINANCIAL OFFICER

Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002

(Subsections (a) and (b) of Section 1350, Chapter 63 of Title 18, United States Code)

Pursuant to section 906 of the Sarbanes-Oxley Act of 2002 (subsections (a) and (b) of section 1350, chapter 63 of title 18, United States Code), the undersigned officer of Empery Digital Inc., a Delaware corporation (the "Company"), does hereby certify, to such officer's knowledge, that:

The annual report on Form 10-K for the year ended December 31, 2025 (the "Form 10-K") of the Company fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended and information contained in the Form 10-K fairly presents, in all material respects, the financial condition and results of operations of the Company.

March 27, 2026

By: /s/ Greg Endo
Greg Endo
Chief Financial Officer
(Principal financial and accounting officer)