

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

FORM 10-Q

(Mark One)

QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934  
FOR THE QUARTERLY PERIOD ENDED JUNE 30, 2018

OR

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

COMMISSION FILE NUMBER 001-36379

**ENERGOUS CORPORATION**

(Exact name of registrant as specified in its charter)

Delaware  
(State of incorporation)

46-1318953  
(I.R.S. Employer Identification No.)

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

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

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 and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted 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 and post such files). Yes  No

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

Large accelerated filer	<input type="checkbox"/>	Accelerated filer	<input checked="" type="checkbox"/>
Non-accelerated filer	<input type="checkbox"/> (Do not check if smaller reporting company)	Smaller reporting company	<input type="checkbox"/>
Emerging growth company	<input checked="" type="checkbox"/>		

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

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

As of August 3, 2018, there were 25,619,735 shares of our Common Stock, par value \$0.00001 per share, outstanding.

ENERGOUS CORPORATION  
FORM 10-Q  
FOR THE THREE MONTHS ENDED JUNE 30, 2018

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## Item 1. Financial Statements

Energen Corporation  
BALANCE SHEETS

	As of	
	June 30, 2018 (unaudited)	December 31, 2017
<b>ASSETS</b>		
Current assets:		
Cash and cash equivalents	\$ 37,076,181	\$ 12,795,254
Accounts receivable	205,773	-
Prepaid expenses and other current assets	589,950	1,026,310
Prepaid rent, current	80,784	80,784
Total current assets	37,952,688	13,902,348
Property and equipment, net	1,387,902	1,413,917
Prepaid rent, non-current	16,276	56,668
Other assets	32,512	32,512
Total assets	\$ 39,389,378	\$ 15,405,445
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		
Current liabilities:		
Accounts payable	\$ 2,385,992	\$ 2,024,690
Accrued expenses	1,833,543	1,622,025
Total current liabilities	4,219,535	3,646,715
Commitments and contingencies		
Stockholders' equity:		
Preferred Stock, \$0.00001 par value, 10,000,000 shares authorized at June 30, 2018 and December 31, 2017; no shares issued or outstanding	-	-
Common Stock, \$0.00001 par value, 50,000,000 shares authorized at June 30, 2018 and December 31, 2017; 25,561,610 and 22,584,588 shares issued and outstanding at June 30, 2018 and December 31, 2017, respectively.	254	225
Additional paid-in capital	234,812,866	185,659,954
Accumulated deficit	(199,643,277)	(173,901,449)
Total stockholders' equity	35,169,843	11,758,730
Total liabilities and stockholders' equity	\$ 39,389,378	\$ 15,405,445

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

**Energous Corporation**  
**CONDENSED STATEMENTS OF OPERATIONS**  
(Unaudited)

	For the Three Months Ended June 30,		For the Six Months Ended June 30,	
	2018	2017	2018	2017
Revenue	\$ 205,773	\$ 299,506	\$ 230,773	\$ 874,874
Operating expenses:				
Research and development	7,639,974	8,692,003	16,361,526	17,045,187
Sales and marketing	1,602,137	1,187,313	3,074,533	2,782,765
General and administrative	3,268,028	3,341,563	6,548,243	6,444,314
Total operating expenses	12,510,139	13,220,879	25,984,302	26,272,266
Loss from operations	(12,304,366)	(12,921,373)	(25,753,529)	(25,397,392)
Other income (expense):				
Loss on sales of property and equipment, net	-	-	-	(726)
Interest income	5,995	2,363	11,701	5,968
Total	5,995	2,363	11,701	5,242
Net loss	\$ (12,298,371)	\$ (12,919,010)	\$ (25,741,828)	\$ (25,392,150)
Basic and diluted loss per common share	\$ (0.48)	\$ (0.63)	\$ (1.03)	\$ (1.23)
Weighted average shares outstanding, basic and diluted	25,479,861	20,643,261	25,042,529	20,564,561

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

**Energous Corporation**  
**CONDENSED STATEMENT OF CHANGES IN STOCKHOLDERS' EQUITY**

	Common Stock		Additional Paid-in Capital	Accumulated Deficit	Total Stockholders' Equity
	Shares	Amount			
Balance at January 1, 2018	22,584,588	\$ 225	\$ 185,659,954	\$ (173,901,449)	\$ 11,758,730
Stock-based compensation - restricted stock units ("RSUs")	-	-	8,136,686	-	8,136,686
Stock-based compensation - employee stock purchase plan ("ESPP")	-	-	407,746	-	407,746
Stock-based compensation - performance share units ("PSUs")	-	-	407,656	-	407,656
Issuance of shares for RSUs	446,048	4	(4)	-	-
Issuance of shares for PSUs	80,098	1	(1)	-	-
Exercise of stock options	180,604	2	983,222	-	983,224
Cashless exercise of warrants	19,359	-	-	-	-
Proceeds from contributions to the ESPP	29,458	-	370,814	-	370,814
Issuance of shares in an at-the-market ("ATM") offering, net of \$1,153,715 in issuance costs	2,221,455	22	38,846,793	-	38,846,815
Net loss	-	-	-	(25,741,828)	(25,741,828)
Balance, June 30, 2018 (unaudited)	<u>25,561,610</u>	<u>\$ 254</u>	<u>\$ 234,812,866</u>	<u>\$ (199,643,277)</u>	<u>\$ 35,169,843</u>

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

**Energous Corporation**  
**CONDENSED STATEMENTS OF CASH FLOWS**  
(Unaudited)

	For the Six Months Ended June 30,	
	2018	2017
Cash flows from operating activities:		
Net loss	\$ (25,741,828)	\$ (25,392,150)
Adjustments to reconcile net loss to:		
Net cash used in operating activities:		
Depreciation and amortization	574,815	681,985
Stock based compensation	8,952,088	7,904,154
Amortization of prepaid rent from stock issuance to landlord	40,392	40,392
Loss on sales of property and equipment, net	-	726
Changes in operating assets and liabilities:		
Accounts receivable	(205,773)	(101,000)
Prepaid expenses and other current assets	436,360	555,285
Other assets		9,619
Accounts payable	361,302	(2,329,892)
Accrued expenses	211,518	(222,299)
Deferred revenue	-	(102,823)
Net cash used in operating activities	(15,371,126)	(18,956,003)
Cash flows from investing activities:		
Purchases of property and equipment	(548,800)	(420,193)
Proceeds from sales of property and equipment	-	2,800
Net cash used in investing activities	(548,800)	(417,393)
Cash flows from financing activities:		
Net proceeds from the sales of common stock	38,846,815	-
Proceeds from the exercise of stock options	983,224	727,653
Proceeds from contributions to employee stock purchase plan	370,814	471,466
Net cash provided by financing activities	40,200,853	1,199,119
Net increase (decrease) in cash and cash equivalents	24,280,927	(18,174,277)
Cash and cash equivalents - beginning	12,795,254	31,258,637
Cash and cash equivalents - ending	\$ 37,076,181	\$ 13,084,360
Supplemental disclosure of non-cash financing activities:		
Common stock issued for RSUs	\$ 4	\$ 3
Common stock issued for PSUs	\$ 1	\$ -

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

**Note 1 - Business Organization, Nature of Operations**

Energous Corporation (the "Company") was incorporated in Delaware on October 30, 2012. The Company has developed its WattUp® technology, consisting of proprietary semiconductor chipsets, software, hardware designs and antennas, that enables radio frequency ("RF") based charging for electronic devices, providing wire-free contact and non-contact charging solutions, with the potential to enable charging with mobility. Dialog Semiconductor plc ("Dialog") manufactures and distributes integrated circuit ("IC") products incorporating the Company's charging technology, pursuant to a Strategic Alliance Agreement with the Company. Dialog is the exclusive supplier of these IC products for the general market. The Company believes its proprietary WattUp technology can be utilized in consumer electronics such as wearables, hearing aids, earbuds, Bluetooth headsets, Internet of Things ("IoT") devices, smartphones, tablets, e-book readers, keyboards, mice, remote controls, rechargeable lights, cylindrical batteries, medical devices and other devices with charging requirements that would otherwise require a battery or external power connection.

**Note 2 – Liquidity and Management Plans**

During the three and six months ended June 30, 2018, the Company recorded revenue of \$205,773 and \$230,773, respectively, and during the three and six months ended June 30, 2017, the Company recorded revenue of \$299,506 and \$874,874, respectively. During the three and six months ended June 30, 2018, the Company recorded a net loss of \$12,298,371 and \$25,741,828, respectively. During the three and six months ended June 30, 2017, the Company recorded a net loss of \$12,919,010 and \$25,392,150, respectively. Net cash used in operating activities was \$15,371,126 and \$18,956,003 for the six months ended June 30, 2018 and 2017, respectively. The Company is currently meeting its liquidity requirements through an at-the-market ("ATM") sale of common stock in January 2018, which raised net proceeds of \$38,846,815, the sales of shares to a private investor during July 2017, which raised net proceeds of \$14,932,547, and payments received under product development projects.

As of June 30, 2018, the Company had cash on hand of \$37,076,181. The Company expects that cash on hand as of June 30, 2018, together with anticipated revenues, will be sufficient to fund the Company's operations into the third quarter of 2019.

Research and development of new technologies is by its nature unpredictable. Although the Company will undertake development efforts with commercially reasonable diligence, there can be no assurance that its available resources, including the net proceeds from the Company's financings to date, will be sufficient to enable it to develop and obtain regulatory approval of its technology to the extent needed to create future revenues sufficient to sustain its operations. The Company may pursue additional financing, which could include follow-on equity offerings, debt financing, co-development agreements or other alternatives, depending upon market conditions. Should the Company choose to pursue additional financing, there is no assurance that such financing would be available on terms that it would find acceptable, or at all.

The market for products using the Company's technology is nascent and unproven, so the Company's success is sensitive to many factors, including technological feasibility, regulatory approval, customer acceptance, competition and global market fluctuations.

**Note 3 – Summary of Significant Accounting Policies****Basis of Presentation**

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

These unaudited condensed interim financial statements should be read in conjunction with the audited financial statements and notes thereto for the fiscal year ended December 31, 2017 included in the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2017, filed with the SEC on March 16, 2018. The accounting policies used in preparing these unaudited condensed interim financial statements are consistent with those described in the Company's December 31, 2017 audited financial statements.

***Use of Estimates***

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

The Company's significant estimates and assumptions include the valuation of stock-based compensation instruments, recognition of revenue, the useful lives of long-lived assets, and income tax expense. Some of these judgments can be subjective and complex, and, consequently, actual results may differ from these estimates. Although the Company believes that its estimates and assumptions are reasonable, they are based upon information available at the time the estimates and assumptions were made. Actual results could differ from those estimates.

***Cash and Cash Equivalents***

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

***Revenue Recognition***

On January 1, 2018, the Company adopted Accounting Standards Update No. 2014-09, "Revenue from Contracts with Customers" (Topic 606), which is described below in Recent Accounting Pronouncements.

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

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

The Company records revenue associated with product development projects that it enters into with certain customers. In general, these projects are associated with complex technology development, and as such the Company does not have certainty about its ability to achieve the program milestones. Achievement of the milestone is dependent on the Company's performance typically requires acceptance by the customer. The payment associated with achieving the milestone is generally commensurate with the Company's effort or the value of the deliverable and is nonrefundable. The Company records the expenses related to these projects, generally included in research and development expense, in the periods incurred.

The Company records royalty revenue from its manufacturing partner, Dialog, based on the number of shipments from Dialog to its customers.

***Research and Development***

Research and development expenses are charged to operations as incurred. For internally developed patents, all patent application costs are expensed as incurred as research and development expense. Patent application costs, generally legal costs, are expensed as research and development costs until such time as the future economic benefits of such patents become more certain. The Company incurred research and development costs of \$7,639,974 and \$8,692,003 for the three months ended June 30, 2018 and 2017, respectively, and the Company incurred research and development cost of \$16,361,526 and \$17,045,187 for the six months ended June 30, 2018 and 2017, respectively.

***Stock-Based Compensation***

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



**Note 3 – Summary of Significant Accounting Policies, continued**

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

**Income Taxes**

Tax benefits are recognized only for tax positions that are more likely than not to be sustained upon examination by tax authorities. The amount recognized is measured as the largest amount of benefit that is greater than 50 percent likely to be realized upon settlement. A liability for “unrecognized tax benefits” is recorded for any tax benefits claimed in the Company’s tax returns that do not meet these recognition and measurement standards. As of June 30, 2018, no liability for unrecognized tax benefits was required to be reported. The guidance also discusses the classification of related interest and penalties on income taxes. The Company’s policy is to record interest and penalties on uncertain tax positions as a component of income tax expense. No interest or penalties were recorded during the three months ended June 30, 2018 and 2017.

**Net Loss Per Common Share**

Basic net loss per share is computed by dividing net loss available to common stockholders by the weighted average number of shares of common stock outstanding during the period. Diluted earnings per share is computed using the weighted average number of common shares and, if dilutive, potential common shares outstanding during the period. Potential common shares consist of the incremental common shares issuable upon the exercise of stock options and warrants (using the treasury stock method), the vesting of restricted stock units (“RSUs”), performance stock units (“PSUs”) and the enrollment of employees in the ESPP. The computation of diluted loss per share excludes potentially dilutive securities of 7,403,916 and 7,532,800 for the three months ended June 30, 2018 and 2017, respectively, and 7,403,916 and 7,532,800 for the six months ended June 30, 2018 and 2017, respectively, because their inclusion would be anti-dilutive.

Potentially dilutive securities outlined in the table below have been excluded from the computation of diluted net loss per share because the effect of their inclusion would have been anti-dilutive.

	For the Three Months Ended June 30,		For the Six Months Ended June 30,	
	2018	2017	2018	2017
Financing Warrant to purchase common stock	-	13,889	-	13,889
IPO Warrants to purchase common stock	-	11,600	-	11,600
Investor Relations Consulting Warrant	-	7,950	-	7,950
Investor Relations Incentive Warrant	-	15,000	-	15,000
Warrant issued to private investors	3,035,688	2,381,675	3,035,688	2,381,675
Options to purchase common stock	856,635	1,153,966	856,635	1,153,966
RSUs	2,640,034	2,795,103	2,640,034	2,795,103
PSUs	871,559	1,153,617	871,559	1,153,617
Total potentially dilutive securities	7,403,916	7,532,800	7,403,916	7,532,800

**Recent Accounting Pronouncements**

In May 2014, the Financial Accounting Standards Board (“FASB”) issued Accounting Standards Update No. 2014-09, “Revenue from Contracts with Customers” (Topic 606) (“ASU 2014-09”), which supersedes the revenue recognition requirements in ASU Topic 605, “Revenue Recognition,” and most industry-specific guidance. ASU 2014-09 is based on the principle that revenue is recognized to depict the transfer of goods or services to customers in an amount that reflects the consideration to which the entity expects to be entitled in exchange for those goods or services. ASU 2014-09 also requires additional disclosure about the nature, amount, timing and uncertainty of revenue and cash flows arising from customer contracts, including significant judgments and changes in judgments, and assets recognized from costs incurred to obtain or fulfill a contract. Originally, ASU 2014-09 would be effective

**Note 3 – Summary of Significant Accounting Policies, continued**

for the Company starting January 1, 2017 using either of two methods: (i) retrospective to each prior reporting period presented with the option to elect certain practical expedients as defined within ASU 2014-09; or (ii) retrospective with the cumulative effect of initially applying ASU 2014-09 recognized at the date of initial application and providing certain additional disclosures as defined per ASU 2014-09. In July 2015, FASB voted to amend ASU 2014-09 by approving a one-year deferral of the effective date as well as providing the option to early adopt the standard on the original effective date. The Company used the modified retrospective implementation method for all contracts and did not need to record a cumulative effect adjustment to retained earnings as of the date of initial application.

In January 2016, the FASB issued ASU No. 2016-01, “Financial Instruments – Overall (Subtopic 825-10): Recognition and Measurement of Financial Assets and Financial Liabilities”. The standard addresses certain aspects of recognition, measurement, presentation, and disclosure of financial instruments. ASU 2016-01 is effective for fiscal years, and interim periods within those years, beginning after December 15, 2017. The Company has adopted ASU 2016-01 and its adoption had no material impact on its financial statements.

In January 2016, the FASB issued ASU No. 2016-02, “Leases (Topic 842)”. This standard requires that a lessee recognize the assets and liabilities that arise from operating leases. A lessee should recognize in the statement of financial position a liability to make lease payments (the lease liability) and a right-of-use asset representing its right to use the underlying asset for the lease term. For leases with a term of 12 months or less, a lessee is permitted to make an accounting policy election by class of underlying asset not to recognize lease assets and lease liabilities. In transition, lessees and lessors are required to recognize and measure leases at the beginning of the earliest period presented using a modified approach. ASU 2016-02 is effective for fiscal years, and interim periods within those years, beginning after December 15, 2018. The Company is currently evaluating the impact the adoption of this new standard will have on its financial statements.

In August 2016, the FASB issued ASU No. 2016-15, “Statement of Cash Flows (Topic 230) – Classification of Certain Cash Receipts and Cash Payments.” ASU No. 2016-15 addresses eight specific cash flow issues with the objective of reducing the existing diversity in practice. It is effective for annual reporting periods beginning after December 15, 2017. The adoption of the new standard did not have a material impact on our financial statements.

In November 2016, the FASB issued ASU No. 2016-18, “Statement of Cash Flows (230) – Restricted Cash.” ASU No. 2016-18 requires an entity to include amounts described as restricted cash and restricted cash equivalents with cash and cash equivalents when reconciling the beginning-of-period and end-of-period total amounts shown on the statement of cash flows. It is effective for annual reporting periods beginning after December 15, 2018. The adoption of this standard is not expected to have a material impact on the Company’s financial position and results of operations.

In December 2016, the FASB issued ASU No. 2016-20, “Technical Corrections and Improvements to Topic 606, Revenue from Contracts with Customers.” ASU No. 2016-20 amends certain aspects of ASU No. 2014-09 and clarifies, rather than changes, the core revenue recognition principles in ASU No. 2014-09. It is effective for annual reporting periods beginning after December 15, 2018. The adoption of this standard is not expected to have a material impact on the Company’s financial position and results of operations.

In May 2017, the FASB issued ASU No. 2017-09, “Compensation – Stock Compensation (Topic 718) – Scope of Modification Accounting.” ASU No. 2017-09 provides clarity and reduces complexity when applying the guidance in Topic 718 for changes in terms or conditions of share-based payment awards. It is effective for annual reporting periods beginning after December 15, 2017. The adoption of the new standard did not have a material impact on our financial statements.

In July 2017, the FASB issued a two-part ASU No. 2017-11, I. Accounting for Certain Financial Instruments with Down Round Features and II. Replacement of the Indefinite Deferral for Mandatorily Redeemable Financial Instruments of Certain Nonpublic Entities and Certain Mandatorily Redeemable Noncontrolling Interests with a Scope Exception. ASU 2017-11 amends guidance in FASB ASC 260, Earnings Per Share, FASB ASC 480, Distinguishing Liabilities from Equity, and FASB ASC 815, Derivatives and Hedging. The amendments in Part I of ASU 2017-11 change the classification analysis of certain equity-linked financial instruments (or embedded features) with down round features. The amendments in Part II of ASU 2017-11 re-characterize the indefinite

**Note 3 – Summary of Significant Accounting Policies, continued**

deferral of certain provisions of Topic 480 that now are presented as pending content in the Codification, to a scope exception. Those amendments do not have an accounting effect. ASU 2017-11 is effective for public business entities for fiscal years, and interim periods within those fiscal years, beginning after December 15, 2018. Early adoption is permitted. The Company is currently evaluating the impact the adoption of this new standard will have on its financial statements.

**Management's Evaluation of Subsequent Events**

The Company evaluates events that have occurred after the balance sheet date of June 30, 2018, through the date which the financial statements are issued. Based upon the review, the Company did not identify any subsequent events that would have required adjustment or disclosure in the financial statements.

**Note 4 – Commitments and Contingencies**

**Operating Leases**

On September 10, 2014, the Company entered into a Lease Agreement with Balzer Family Investments, L.P. (the "Landlord") related to space located at Northpointe Business Center, 3590 North First Street, San Jose, California. The initial term of the lease is 60 months, with initial monthly base rent of \$36,720 and the lease is subject to certain annual escalations as defined in the agreement. On October 1, 2014, the Company relocated its headquarters to this new location. The Company issued to the Landlord 41,563 shares of the Company's common stock valued at \$500,000, of which \$400,000 will be applied to reduce the Company's monthly base rent obligation by \$6,732 per month and of which \$100,000 was for certain tenant improvements. The Company recorded \$400,000 as prepaid rent on its balance sheet, which is being amortized over the term of the lease and recorded \$100,000 as leasehold improvements.

On February 26, 2015, the Company entered into a sub-lease agreement for additional space in the San Jose area. The agreement has a term which expires on June 30, 2019 and a current monthly rent of \$6,668 per month. On August 25, 2015, the Company entered into an additional amended sub-lease agreement for additional space in San Jose, California. The agreement has a term which expires on June 30, 2019 and a current monthly rent of \$4,578 per month. These leases are subject to certain annual escalations as defined in the agreements.

On May 31, 2017, the Company renewed a lease agreement for the Company's space in Costa Mesa, California. The agreement has a term that expires on September 30, 2019 with initial monthly rent of \$9,040, and is subject to certain annual escalations as defined in the agreement.

The future minimum lease payments for leased locations are as follows:

<b>For the Years Ended December 31,</b>	<b>Amount</b>
2018 (Six Months)	\$ 322,465
2019	457,585
<b>Total</b>	<b>\$ 780,050</b>

**Hosted Design Solution Agreement**

In June 2015, the Company entered into a three-year agreement to license electronic design automation software in a hosted environment. Pursuant to the agreement, under which services began in July 2015, the Company is required to remit quarterly payments in the amount of approximately \$101,000 with the last payment due in March 2018. In December 2015, the agreement was amended to redefine the hardware and software configuration and the quarterly payments increased to approximately \$198,000. In July 2018, the Company renewed the three-year agreement, and the Company is required to remit quarterly payments in the amount of approximately \$218,000, with the last payment due in March 2021.

**Amended Employee Agreement – Stephen Rizzone**

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

#### **Note 4 – Commitments and Contingencies, continued**

The Employment Agreement has an effective date of January 1, 2015 and an initial term of four years (“Initial Employment Period”). The Employment Agreement provides for an annual base salary of \$365,000, and Mr. Rizzone is eligible to receive quarterly cash bonuses with a total target amount equal to 100% of his base salary based upon achievement of performance-based objectives established by the Company’s board of directors (“Board”).

Pursuant to Mr. Rizzone’s prior employment agreement, on December 12, 2013, Mr. Rizzone was granted a 10-year option to purchase 275,689 shares of common stock at an exercise price of \$1.68 vesting over four years in 48 monthly installments beginning October 1, 2013 (“First Option”). Mr. Rizzone was also granted a second option

award to purchase 496,546 shares of common stock at an exercise price of \$6.00 (“Second Option”). The Second Option vests over the same vesting schedule as the First Option.

Effective May 21, 2015, with the approval by the Company’s stockholders of its new performance-based equity plan, the Employment Agreement provided and Mr. Rizzone received, a grant of 639,075 PSUs. The PSUs, which represent the right to receive shares of common stock, shall be earned based on the Company’s achievement of market capitalization growth between the effective date of the Employment Agreement and the end of the Initial Employment Period. If the Company’s market capitalization is \$100 million or less, no PSUs will be earned. If the Company reaches a market capitalization of \$1.1 billion or more, 100% of the PSUs will be earned. For market capitalization between \$100 million and \$1.1 billion, the percentage of PSUs earned will be determined on a quarterly basis based on straight line interpolation. PSUs earned as of the end of a calendar quarter will be paid 50% immediately and 50% will be deferred until the end of the Initial Employment Period subject to Mr. Rizzone’s continued employment with the Company (See Note 6).

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

The Employment Agreement provides that if Mr. Rizzone’s employment is terminated due to his death or disability, if Mr. Rizzone’s employment is terminated by the Company without cause or if he resigns for good reason, 25% of the shares subject to the First Option and the Second Option shall immediately vest and become exercisable, he will have a period of one year post-termination to exercise the First Option and the Second Option, and if a Liquidation Event (as defined in the Employment Agreement) shall occur prior to the termination of the First Option and the Second Option, 100% of the shares subject to the First Option and Second Option shall immediately vest and become exercisable effective immediately prior to the consummation of the Liquidation Event. In addition, any outstanding deferred PSUs shall be immediately vested and paid, but any remaining unearned portion of the PSUs shall immediately be canceled and forfeited.

#### ***Strategic Alliance Agreement***

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

The Alliance Agreement has an initial term of seven years and will automatically renew annually thereafter unless terminated by either party upon 180 days’ prior written notice. The Company may terminate the Alliance Agreement at any time after the third anniversary of the Agreement upon 180 days’ prior written notice to Dialog, or if Dialog breaches certain exclusivity obligations. Dialog may terminate the Alliance Agreement if sales of Licensed Products do not meet specified targets. The Company Exclusivity Requirement will terminate upon the earlier of January 1, 2021 or the occurrence of certain events relating to the Company’s pre-existing exclusivity obligations. The Dialog Exclusivity Requirement will terminate if no Licensed Products have received the necessary Federal Communications Commission approvals within specified timeframes.

## **Note 5 – Stockholders' Equity**

### ***Authorized Capital***

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

### ***Filing of registration statement***

On April 24, 2015, the Company filed a "shelf" registration statement on Form S-3, which became effective on April 30, 2015. Prior to its expiration in April 2018, the shelf registration statement allowed the Company from time to time to sell any combination of debt or equity securities described in the registration statement up to aggregate proceeds of \$75,000,000.

Pursuant to the shelf registration, in November 2015, the Company consummated an offering of 3,000,005 shares of common stock at \$6.90 per share and received from the underwriters' net proceeds of \$19,333,032 (net of underwriters' discount of \$1,242,002 and underwriters' offering expenses of \$125,000). The Company incurred additional offering expenses of \$284,576, yielding net proceeds from the offering under shelf registration of \$19,048,456.

Pursuant to the shelf registration, in January 2018, the Company raised \$38,846,815 (net of \$1,153,715 in underwriter's discount and issuance costs) from the sale of stock to the public in an "at-the-market" equity offering of its common stock.

### ***Private Placements***

On August 9, 2016, the Company entered into a securities purchase agreement with Ascend Legend Master Fund, Ltd. pursuant to which the Company agreed to sell to Ascend Legend Master Fund, Ltd., and its affiliates, 1,618,123 shares of common stock at a price of \$12.36 per share and a warrant to purchase up to 1,618,123 shares of common stock at an exercise price of \$23.00 per share. The aggregate proceeds from the sale of these shares was \$20,000,000.

On November 7, 2016, the Company and Dialog, a related party (see Note 7—Related Party Transactions), entered into a securities purchase agreement pursuant to which the Company agreed to sell to Dialog 763,552 shares of common stock at a price of \$13.0967 per share and a warrant to purchase up to 763,552 shares of common stock that may be exercised only on a cashless basis at a price of \$17.0257 per share, and may be exercised at any time between the date that is six months and a day after the closing date of the transaction and the three-year anniversary of the closing date. The aggregate proceeds from the sale of these shares was \$10,000,011.

On December 30, 2016, the Company and JT Group entered into a securities purchase agreement pursuant to which the Company agreed to sell to JT Group 292,056 shares of common stock at a price of \$17.12 per share. The aggregate proceeds from the sale of these shares was \$4,999,975.

On June 28, 2017, the Company and Dialog entered into a securities purchase agreement pursuant to which the Company agreed to sell Dialog 976,139 shares of common stock at a price of \$15.3666 per share and a warrant to purchase up to 654,013 shares of common stock that may be exercised only on a cashless basis at a price of \$19.9766 per share, and may be exercised at any time between the date that is six months and one day after the closing date of the transaction and the three-year anniversary of the closing date. The aggregate proceeds from the sale of these shares, which were issued on July 5, 2017, was \$14,999,935.

## **Note 6 – Stock Based Compensation**

### ***Equity Incentive Plans***

#### **2013 Equity Incentive Plan**

In December 2013, the Company's Board and stockholders approved the 2013 Equity Incentive Plan, providing for the issuance of equity-based instruments covering up to an initial total of 1,042,167 shares of common stock.

#### **Note 6 – Stock Based Compensation, continued**

Effective on March 10, 2014, the Company's Board and stockholders approved the First Amendment to the 2013 Equity Incentive Plan which provided for an increase in the aggregate number of shares of common stock that may be issued pursuant to the 2013 Equity Incentive Plan to equal 18% of the total number of shares of common stock outstanding immediately following the completion of the IPO (assuming for this purpose the issuance of all shares issuable under the Company's equity plans, the conversion into common stock of all outstanding securities that are convertible by their terms into common stock and the exercise of all options and warrants exercisable for shares of common stock and including shares and warrants issued to the underwriters for such IPO upon exercise of its over-allotment options).

Effective March 27, 2014, the aggregate total number of shares which may be issued under the 2013 Equity Incentive Plan was increased to 2,335,967.

Effective on May 19, 2016, the Company's stockholders approved the amendment and restatement of the 2013 Equity Incentive Plan to increase the number of shares reserved for issuance thereunder by 2,150,000 shares, bringing the total number of approved shares to 4,485,967 under the 2013 Equity Incentive Plan.

Effective on May 16, 2018, the Company's stockholders approved the amendment and restatement of the 2013 Equity Incentive Plan to increase the number of shares reserved for issuance thereunder by 1,600,000 shares, bringing the total number of approved shares to 6,085,967 under the 2013 Equity Incentive Plan.

As of June 30, 2018, 2,024,465 shares of common stock remain available to be issued through equity-based instruments under the 2013 Equity Incentive Plan.

#### **2014 Non-Employee Equity Compensation Plan**

On March 6, 2014, the Company's Board and stockholders approved the 2014 Non-Employee Equity Compensation Plan for the issuance of equity-based instruments covering up to 250,000 shares of common stock to directors and other non-employees.

Effective on May 19, 2016, the Company's stockholders approved the amendment and restatement of the 2014 Equity Incentive Plan to increase the number of shares reserved for issuance thereunder by 350,000 shares, bringing the total number of approved shares to 600,000 under the 2014 Non-Employee Equity Compensation Plan.

Effective on May 16, 2018, the Company's stockholders approved the amendment and restatement of the 2014 Equity Incentive Plan to increase the number of shares reserved for issuance thereunder by 250,000 shares, bringing the total number of approved shares to 850,000 under the 2014 Non-Employee Equity Compensation Plan.

As of June 30, 2018, 369,329 shares of common stock remain available to be issued through equity-based instruments under the 2014 Non-Employee Equity Compensation Plan.

#### **2015 Performance Share Unit Plan**

On April 10, 2015, the Company's Board approved the Energen Corporation 2015 Performance Share Unit Plan ("Performance Share Plan"), under which 1,310,104 shares of common stock became available for issuance as PSUs to a select group of employees and directors, subject to approval by the stockholders. On May 21, 2015, the Company's stockholders approved the Performance Share Plan.

Effective on May 16, 2018, the Company's stockholders approved the amendment and restatement of the 2014 Equity Incentive Plan to increase the number of shares reserved for issuance thereunder by 1,400,000 shares, bringing the total number of approved shares to 2,710,104 under the 2015 Performance Share Unit Plan.

As of June 30, 2018, 1,431,951 shares of common stock remain available to be issued through equity-based instruments under the Performance Share Unit Plan.

**Note 6 – Stock Based Compensation, continued**

**2017 Equity Inducement Plan**

On December 28, 2017, the Board approved the 2017 Equity Inducement Plan. Under the plan, the Board reserved 600,000 shares of common stock for the grant of RSUs. These grants will be administered by a committee of the Board or the Board acting as a committee. These awards will be granted to individuals who (a) are being hired as an employee by the Company or any subsidiary and such award is a material inducement to such person being hired; (b) are being rehired as an employee following a bona fide period of interruption of employment with the Company or any subsidiary; or (c) will become an employee of the Company or any subsidiary in connection with a merger or acquisition.

As of June 30, 2018, 326,000 shares of common stock remain available to be issued through equity-based instruments under the 2017 Equity Inducement Plan.

**Employee Stock Purchase Plan**

On April 10, 2015, the Company's Board approved the ESPP, under which shares of common stock were reserved for purchase by the Company's employees, subject to approval by the stockholders. On May 21, 2015, the Company's stockholders approved the ESPP. Employees may designate an amount not less than 1% but not more than 10% of their annual compensation, but for not more than 7,500 shares during an offering period. An offering period shall be six months in duration commencing on or about January 1 and July 1 of each year. The exercise price of the option will be the lesser of 85% of the fair market of the common stock on the first business day of the offering period and 85% of the fair market value of the common stock on the applicable exercise date.

As of June 30, 2018, 376,463 shares of common stock remain available to be issued under the ESPP. As of June 30, 2018, employees have contributed \$370,814 through payroll withholdings to the ESPP for the current eligibility period. Shares will be deemed delivered on June 30, 2018 for the current eligibility period.

**Stock Option Activity**

The following is a summary of the Company's stock option activity during the six months ended June 30, 2018:

	Number of Options	Weighted Average Exercise Price	Weighted Average Remaining Life In Years	Intrinsic Value
Outstanding at January 1, 2018	1,037,239	\$ 4.80	6.4	\$ 15,198,044
Granted	-	-	-	-
Exercised	(180,604)	5.44	-	-
Forfeited	-	-	-	-
Outstanding at June 30, 2018	<u>856,635</u>	<u>\$ 4.66</u>	<u>5.9</u>	<u>\$ 8,710,866</u>
Exercisable at January 1, 2018	1,037,239	\$ 4.80	6.4	\$ 15,198,044
Vested	-	-	-	-
Exercised	(180,604)	5.44	-	-
Forfeited	-	-	-	-
Exercisable at June 30, 2018	<u>856,635</u>	<u>\$ 4.66</u>	<u>5.9</u>	<u>\$ 8,710,866</u>

As of June 30, 2018, the unamortized value of options was \$0.

**Restricted Stock Units ("RSUs")**

During the six months ended June 30, 2018, the Compensation Committee of the Board ("Compensation Committee") granted various directors and consultants RSUs under which the holders have the right to receive an aggregate 173,326 shares of common stock. These awards were granted under the 2014 Non-Employee Equity Compensation Plan. The awards granted vest over terms from one to four years.

**Note 6 – Stock Based Compensation, continued**

During the six months ended June 30, 2018, the Compensation Committee granted various employees RSU awards under the 2013 Equity Incentive Plan under which the holders have the right to receive an aggregate 456,550 shares of common stock. The majority of these awards granted vest over terms ranging from one to four years.

During the six months ended June 30, 2018, the Compensation Committee granted employees RSU awards under the 2017 Equity Inducement Plan under which the holders have the right to receive 274,000 shares of common stock. The awards vest over four years beginning on the anniversary of the grant date.

The Company accounts for RSUs granted to consultants using the accounting guidance included in ASC 505-50 “Equity-Based Payments to Non-Employees”. In accordance with ASC 505-50, the Company estimates the fair value of the unvested portion of the RSU award each reporting period using the closing price of common stock.

As of June 30, 2018, the unamortized value of the RSUs was \$33,044,307. The unamortized amount will be expensed over a weighted average period of 2.7 years. A summary of the activity related to RSUs for the six months ended June 30, 2018 is presented below:

	Total	Weighted Average Grant Date Fair Value
Outstanding at January 1, 2018	2,274,325	\$ 13.75
RSUs granted	903,876	\$ 19.70
RSUs forfeited	(92,119)	\$ 14.56
RSUs vested	(446,048)	\$ 14.02
Outstanding at June 30, 2018	<u>2,640,034</u>	<u>\$ 15.71</u>

**Performance Share Units (“PSUs”)**

Performance share units (“PSUs”) are grants that vest upon the achievement of certain performance goals. The goals are commonly related to the Company’s market capitalization or market share price of the common stock.

The PSUs originally issued during 2015 to certain board members and senior management are earned based on the Company’s achievement of market capitalization growth between the effective date of the employment agreement and the end of the initial employment period. If the Company’s market capitalization is \$100 million or less, no PSUs will be earned. If the Company reaches a market capitalization of \$1.1 billion or more, 100% of the PSUs will be earned. For market capitalization between \$100 million and \$1.1 billion, the percentage of PSUs earned will be determined on a quarterly basis based on straight line interpolation.

The Company determined that the PSUs were equity awards with both market and service conditions. The Company utilized a Monte Carlo simulation to determine the fair value of the market condition, as described below. Grantees of PSUs are required to be employed through December 31, 2018 in order to earn the entire award, if and when vested. No PSUs were granted during the six months ended June 30, 2018.

The fair value of the grants of PSUs to purchase a total of 1,342,061 shares of common stock (including 1,278,153 PSUs granted under the 2015 Performance Share Unit Plan and 63,908 granted as an inducement) was determined to be approximately \$3,218,000, and is amortized over the service period of May 21, 2015 through December 31, 2018, on a straight-line basis.

On October 24, 2016, the Compensation Committee granted Mr. Rizzone a PSU award under the 2013 Equity Incentive Plan under which Mr. Rizzone has the right to receive 150,000 shares of common stock. The shares of this award vest upon the Company’s stock price meeting specific targets.

For this PSU award, a Monte Carlo simulation was used to determine the fair value at each of the five target prices of the Company’s common stock, using a market capitalization of \$298,857,000, dividend yield of 0%, expected volatility of 75% and a risk-free interest rate of 0.66%.

The fair value of the PSUs granted to Mr. Rizzone under the 2013 Equity Incentive Plan was determined to be \$2,332,000, and was amortized over the estimated service period from October 24, 2016 through October 30, 2017.



**Note 6 – Stock Based Compensation, continued**

Amortization for all PSU awards was \$204,954 and \$587,433 for the three months ended June 30, 2018 and 2017, respectively, and \$407,656 and \$1,201,293 for the six months ended June 30, 2018 and June 30, 2017.

At June 30, 2018, the unamortized value of all PSUs was approximately \$412,160. The unamortized amount will be expensed over a weighted average period of 0.5 years. A summary of the activity related to PSUs for the six months ended June 30, 2018 is presented below:

	Total	Weighted Average Grant Date Fair Value
Outstanding at January 1, 2018	951,657	\$ 2.65
PSUs granted	-	-
PSUs forfeited	-	-
PSUs vested	(80,098)	2.65
Outstanding at June 30, 2018	871,559	2.65

**Deferred Stock Units (“DSUs”)**

On January 4, 2016, the Compensation Committee granted to John Gaulding, Director and Chairman of the Board, DSUs under the 2014 Non-Employee Equity Compensation Plan for which Mr. Gaulding has the right to receive 14,953 shares of the Company’s common stock. These shares were issued to Mr. Gaulding in lieu of \$125,000 of his anticipated compensation for his services on the Board, including \$75,000 worth of DSUs and \$50,000 of his regular board stipends. The award granted vests fully on the first anniversary of the grant date. There was no amortization for both the three months ended June 30, 2018 and 2017. Amortization was \$0 and \$1,362 for the six months ended June 30, 2018 and 2017, respectively.

As of June 30, 2018, the DSUs were fully amortized and are no longer outstanding.

**Employee Stock Purchase Plan (“ESPP”)**

The recently completed offering period for the ESPP was January 1, 2018 through June 30, 2018. During the year ended December 31, 2017, there were two offering periods for the ESPP. The first offering period started on January 1, 2017 and concluded on June 30, 2017. The second offering period started on July 1, 2017 and concluded on December 31, 2017.

The weighted-average grant-date fair value of the purchase option for each designated share purchased under this plan was approximately \$13.84 and \$5.88 for the six months ended June 30, 2018 and 2017, respectively, which represents the fair value of the option, consisting of three main components: (i) the value of the discount on the enrollment date, (ii) the proportionate value of the call option for 85% of the stock and (iii) the proportionate value of the put option for 15% of the stock. The Company recognized compensation expense for the plan of \$253,201 and \$407,746 for the three and six months ended June 30, 2018, respectively and \$93,541 and \$187,352 for the three and six months ended June 30, 2017, respectively.

The Company estimated the fair value of options granted during the six months ended June 30, 2018 and 2017 using the Black-Scholes option pricing model. The fair values of stock options granted were estimated using the following assumptions:

	Six Months Ended June 30, 2018	Six Months Ended June 30, 2017
Stock price	\$ 22.34	\$ 17.59
Dividend yield	0%	0%
Expected volatility	177%	66%
Risk-free interest rate	1.61%	0.62%
Expected life	6 months	6 months

**Note 6 – Stock Based Compensation, continued****Stock-Based Compensation Expense**

The following tables summarize total stock-based compensation costs recognized for the three and six months ended June 30, 2018 and 2017:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2018	2017	2018	2017
Stock options	\$ -	\$ 265,599	\$ -	\$ 491,982
RSUs	3,884,725	3,419,390	8,136,686	6,022,165
PSUs	204,954	587,433	407,656	1,201,293
ESPP	253,201	93,541	407,746	187,352
DSU				1,362
Total	\$ 4,342,880	\$ 4,365,963	\$ 8,952,088	\$ 7,904,154

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

	Three Months Ended June 30,		Six Months Ended June 30,	
	2018	2017	2018	2017
Research and development	\$ 2,483,693	\$ 2,326,720	\$ 5,542,223	\$ 4,084,622
Sales and marketing	388,533	279,015	669,891	500,848
General and administrative	1,470,654	1,760,228	2,739,974	3,318,684
Total	\$ 4,342,880	\$ 4,365,963	\$ 8,952,088	\$ 7,904,154

**Note 7 – Related Party Transactions**

In November 2016, the Company and Dialog entered into an alliance agreement for the manufacture, distribution and commercialization of products incorporating the Company's wire-free charging technology (See Note 4 – Commitments and Contingencies, Strategic Alliance Agreement). On November 7, 2016 and June 28, 2017, the Company and Dialog entered into securities purchase agreements under which Dialog acquired a total of 1,739,691 shares and received warrants to purchase up to 1,417,565 shares (See Note 5 – Stockholders' Equity, Private Placements). Dialog presently owns approximately 6.8% of the Company's outstanding common shares and could potentially own 11.7% of the Company's outstanding common shares if it exercised all of its warrants for common shares. For the six months ended June 30, 2018, the Company paid \$43,700 to Dialog for chip development costs incurred, which is recorded under research and development expense. Pursuant to the Strategic Alliance Agreement in Note 4 – Commitments and Contingencies, we recorded \$5,773 in revenue for the quarter ended June 30, 2018.

**Note 8 – Customer Concentration**

One customer accounted for approximately 97% and 100% of the Company's revenue for the three months ended June 30, 2018 and 2017, respectively. One customer accounted for approximately 97% and 100% of the Company's revenue for the six months ended June 30, 2018 and 2017. One customer accounted for 97% of the accounts receivable balance as of June 30, 2018. As of December 31, 2017, the Company did not have an accounts receivable balance.

### Forward-Looking Statements

As used in this Quarterly Report on Form 10-Q, unless the context otherwise requires the terms "we," "us," "our," and "Energen" refer to Energen Corporation, a Delaware corporation. This report contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended, that are intended to be covered by the "safe harbor" created by those sections. Forward-looking statements, which are based on certain assumptions and describe our future plans, strategies and expectations, can generally be identified by the use of forward-looking terms such as "believe," "expect," "may," "will," "should," "could," "seek," "intend," "plan," "estimate," "anticipate" or other comparable terms. All statements other than statements of historical facts included in this report regarding our strategies, prospects, financial condition, operations, costs, plans and objectives are forward-looking statements. Examples of forward-looking statements include, among others, statements we make regarding expectations for revenues, liquidity cash flows and financial performance, the anticipated results of our development efforts and the timing for receipt of required regulatory approvals and product launches. Forward-looking statements are neither historical facts nor assurances of future performance. Instead, they are based only on our current beliefs, expectations and assumptions regarding the future of our business, future plans and strategies, projections, anticipated events and trends, the economy and other future conditions. Forward-looking statements are subject to inherent uncertainties, risks and changes in circumstances that are difficult to predict and generally outside of our control, so actual results and financial condition may differ materially from those indicated in the forward-looking statements. Important factors that could cause our actual results and financial condition to differ materially from those indicated in the forward-looking statements include, among others: our ability to develop commercially feasible technology; timing of customer implementations of our technology in consumer products; timing of regulatory approvals in the United States and internationally; our ability to find and maintain development partners; our ability to protect our intellectual property; competition; and other risks and uncertainties described in the Risk Factors and in Management's Discussion and Analysis sections of our most recently filed Annual Report on Form 10-K and subsequently filed Quarterly Reports on Form 10-Q. We undertake no obligation to publicly update any of our forward-looking statements, whether as a result of new information, future developments or otherwise.

### Overview

We have developed our WattUp® technology, consisting of proprietary semiconductor chipsets, software, hardware designs and antennas, that enables radio frequency ("RF") based charging for electronic devices, providing wire-free contact and non-contact charging solutions, with the potential to enable charging with mobility. Dialog Semiconductor plc ("Dialog") manufactures and distributes integrated circuit ("IC") products incorporating our charging technology, pursuant to a Strategic Alliance Agreement. Dialog is the exclusive supplier of these IC products for the general market. We believe our proprietary WattUp technology can be utilized in consumer electronics such as wearables, hearing aids, earbuds, Bluetooth headsets, Internet of Things ("IoT") devices, smartphones, tablets, e-book readers, keyboards, mice, remote controls, rechargeable lights, cylindrical batteries, medical devices and other devices with charging requirements that would otherwise require a battery or external power connection.

We believe our technology is novel in its approach, in that we are developing a solution that charges electronic devices by surrounding them with a focused, radio frequency energy pocket. We are engineering solutions that we expect to enable the wire-free transmission of energy for contact-based applications, non-contact charging up to approximately three feet, and potentially charging applications of up to 15 feet. We are also developing our transmitter technology to seamlessly mesh (like a network of Wi-Fi routers) to potentially form a wire-free charging network that will allow users to charge their devices as they move from room-to-room or throughout a large space. To date, we have developed multiple transmitter prototypes in various form factors and power capabilities, and utilizing various frequencies. We have also developed multiple receiver prototypes, including smartphone battery cases, toys, fitness trackers, Bluetooth headsets and tracking devices, as well as stand-alone receivers. We are in pre-production and initial production stages with early adopters of the WattUp technology to bring our contact-based transmitters and compatible receivers to market.

In November 2016, we entered into a Strategic Alliance Agreement with Dialog, pursuant to which Dialog manufactures and distributes IC products incorporating our technology. Dialog is our exclusive supplier of these products for the general market. Our WattUp technology will use Dialog's SmartBond® Bluetooth low energy solution as the out-of-band communications channel between the wireless transmitter and receiver. In most cases, Dialog's power management technology is used to distribute power from the WattUp receiver IC to the rest of the

device while Dialog's AC/DC Rapid Charge™ power conversion technology delivers power to the wireless transmitter.

On December 26, 2017, we announced Federal Communications Commission (FCC) certification of our first-generation WattUp Mid-Field transmitter, which powers devices at a distance of up to three feet, while charging multiple devices at once. Our WattUp Mid-Field transmitter underwent rigorous, multi-month testing to verify it met consumer safety and regulatory requirements. We believe this achievement represents the first certification of a Part 18 FCC-approved non-contact wireless charging transmitter, and establishes precedents that will streamline our future U.S. and international regulatory approvals, and regulatory approvals for our customers' end-products.

We believe our seasoned management team has the experience and industry expertise to develop and execute our operating plan. In addition, we believe our engineering resources in the areas of IC development, antenna development, hardware, software and firmware engineering as well as integration and testing, will enable us to continue to expand our technology and intellectual property support our licensees.

The market for products using our technology is nascent and unproven, so the Company's success is sensitive to many factors, including technological feasibility, regulatory approval, customer acceptance, competition and global market fluctuations.

#### **Critical Accounting Policies and Estimates**

##### *Revenue Recognition*

On January 1, 2018 the Company adopted Accounting Standards Update No. 2014-09, "Revenue from Contracts with Customers" (Topic 606), which is described in Note 3 of the accompanying financial statements.

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

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

The Company records revenue associated with product development projects that it enters into with certain customers. In general, these projects are associated with complex technology development, and as such the Company does not have certainty about its ability to achieve the program milestones. Achievement of the milestone is dependent on the Company's performance typically requires acceptance by the customer. The payment associated with achieving the milestone is generally commensurate with the Company's effort or the value of the deliverable and is nonrefundable. The Company records the expenses related to these projects, generally included in research and development expense, in the periods incurred.

The Company records royalty revenue from its manufacturing partner, Dialog, based on the number of shipments from Dialog to its customers.

#### **Results of Operations**

##### **Three Months Ended June 30, 2018 and 2017**

*Revenues.* During the three months ended June 30, 2018 and 2017, we recorded revenue of \$205,773 and \$299,506, respectively. The decrease was due to the fact that the milestones completed during the three months ended June 30, 2018 were for less revenue than the milestones completed during the three months ended June 30, 2017.

*Operating Expenses and Loss from Operations.* Operating expenses are made up of research and development, sales and marketing and general and administrative expenses. Loss from operations for the three months ended June 30, 2018 and 2017 were \$12,304,366 and \$12,921,373, respectively.

*Research and Development Costs.* Research and development costs, which include costs for developing our technology, were \$7,639,974 and \$8,692,003, respectively, for the three months ended June 30, 2018 and 2017. The decrease in research and development costs of \$1,052,029 is primarily due to a \$1,211,566 decrease in total chip design, manufacturing, and component costs offset by a \$126,071 increase in regulatory testing.

*Sales and Marketing Costs.* Sales and marketing costs for the three months ended June 30, 2018 and 2017 were \$1,602,137 and \$1,187,313, respectively. The increase in sales and marketing costs of \$414,824 is primarily due to a \$164,646 increase in total compensation costs, a \$83,061 increase in stock-based compensation, and a \$82,624 increase in travel and marketing costs.

*General and Administrative Expenses.* General and administrative expenses include costs for general and corporate functions, including facility fees, travel, telecommunications, insurance, professional fees, consulting fees and other overhead. General and administrative costs for the three months ended June 30, 2018 and 2017 were \$3,268,028 and \$3,341,563, respectively. The decrease in general administrative costs of \$73,535 is primarily due to a \$311,789 decrease in stock-based compensation, partially offset by a \$104,598 increase in compensation costs, a \$72,754 increase in annual meeting expense, and a \$44,459 increase in consulting fees.

*Interest Income.* Interest income for the three months ended June 30, 2018 was \$5,995 as compared to interest income of \$2,363 for the three months ended June 30, 2017.

*Net Loss.* As a result of the above, net loss for the three months ended June 30, 2018 was \$12,298,371 as compared to \$12,919,010 for the three months ended June 30, 2017.

#### **Six Months Ended June 30, 2018 and 2017**

*Revenues.* During the six months ended June 30, 2018 and 2017, we recorded revenue of \$230,773 and \$874,874, respectively. The decrease was due to the combination of the number of milestones achieved and the dollar value associated with each milestone.

*Operating Expenses and Loss from Operations.* Operating expenses are made up of research and development, sales and marketing and general and administrative expenses. Loss from operations for the six months ended June 30, 2018 and 2017 were \$25,753,529 and \$25,397,392, respectively.

*Research and Development Costs.* Research and development costs, which include costs for developing our technology, were \$16,361,526 and \$17,045,187, respectively, for the six months ended June 30, 2018 and 2017. The decrease in research and development costs of \$683,661 is primarily due to a \$1,684,301 decrease in chip design, manufacturing and component cost, a \$629,296 decrease in compensation costs offset by a \$1,303,834 increase in stock-based compensation as a result of adding new grants issued during previous 12 months and a \$264,918 increase in regulatory fees.

*Sales and Marketing Costs.* Sales and marketing costs for the six months ended June 30, 2018 and 2017 were \$3,074,533 and \$2,782,765, respectively. The increase in sales and marketing costs of \$291,768 is primarily due to an increase of \$281,034 in compensation costs, a \$132,321 increase in stock-based compensation, a \$89,222 increase in travel cost, a \$60,000 increase in recruiting cost, offset by a \$343,314 decrease in tradeshow expense.

*General and Administrative Expenses.* General and administrative expenses include costs for general and corporate functions, including facility fees, travel, telecommunications, insurance, professional fees, consulting fees and other overhead. General and administrative costs for the six months ended June 30, 2018 and 2017 were \$6,548,243 and \$6,444,314, respectively. The increase in general administrative costs of \$103,929 is primarily due to a \$563,461 increase in legal, annual meeting fees, consulting fees, investor relations, accounting fees and a \$106,221 increase in compensation, offset by a \$608,617 decrease in stock-based compensation.

*Interest Income.* Interest income for the six months ended June 30, 2018 was \$11,701 as compared to interest income of \$5,968 for the six months ended June 30, 2017.

*Net Loss.* As a result of the above, net loss for the six months ended June 30, 2018 was \$25,741,828 as compared to \$25,392,150 for the six months ended June 30, 2017.

### **Liquidity and Capital Resources**

During the six months ended June 30, 2018 and 2017, we recorded revenue of \$230,773 and \$874,874, respectively. We incurred a net loss of \$25,741,828 and \$25,392,150 for the six months ended June 30, 2018 and 2017, respectively. Net cash used in operating activities was \$15,371,126 and \$18,956,003 for the six months ended June 30, 2018 and 2017, respectively. The Company is currently meeting its liquidity requirements through an at-the-market ("ATM") sale of common stock in January 2018, which raised net proceeds of \$38,846,815, the sales of shares to a private investor during July 2017, which raised net proceeds of \$14,932,547, and payments received under product development projects. As of June 30, 2018, we had cash and cash equivalents of \$37,076,181.

We believe our current cash on hand, together with anticipated payments under product development projects entered into with customers, will be sufficient to fund our operations into the third quarter of 2019. However, depending on how soon we are able to achieve meaningful commercial revenues, we may require additional financing to fully implement our business plan, the ultimate goal of which is to license our technology to device manufacturers, wireless service providers and other commercial partners to make wire-free charging an affordable, ubiquitous and convenient service for end users. Potential financing sources could include follow-on equity offerings, debt financing, co-development agreements or other alternatives. Depending upon market conditions, we may choose to pursue additional financing to, among other reasons, accelerate our product development efforts, regulatory activities and business development and support functions with a view to capitalizing on the market opportunity we see for our wire-free charging technology. On April 24, 2015, we filed a shelf registration statement on Form S-3, which became effective on April 30, 2015. Prior to its expiration in April 2018, the shelf registration statement allowed the Company from time to time to sell any combination of debt or equity securities described in the registration statement up to aggregate proceeds of \$75,000,000, of which approximately \$60,700,000 has already been sold.

During the six months ended June 30, 2018, cash flows used in operating activities were \$15,371,126, consisting of a net loss of \$25,741,828, less non-cash expenses aggregating \$9,567,295 (representing principally stock-based compensation of \$8,952,088 and depreciation expense of \$574,815), a \$436,360 decrease in prepaid expenses and other current assets, a \$361,302 increase in accounts payable, a \$211,518 increase in accrued expenses, offset by a \$205,773 increase in accounts receivable.

During the six months ended June 30, 2017, cash flows used in operating activities were \$18,956,003, consisting of a net loss of \$25,392,150, less non-cash expenses aggregating \$8,627,257 (representing principally stock-based compensation of \$7,904,154 and depreciation expense of \$681,985), a \$101,000 increase in accounts receivable, a \$2,329,892 decrease in accounts payable, a \$222,299 decrease in accrued expenses and a \$102,823 decrease in deferred revenue, partially offset by a \$555,285 decrease in prepaid expenses and other current assets.

During the six months ended June 30, 2018 and 2017, cash flows used in investing activities were \$548,800 and \$417,393, respectively. The cash used in investing activities for the six months ended June 30, 2018 primarily consisted of the purchase of software and laboratory equipment. The cash used for the six months ended June 30, 2017 primarily consisted of the purchase of laboratory equipment and engineering software, offset by \$2,800 in proceeds from the sales of property and equipment.

During the six months ended June 30, 2018, cash flows provided by financing activities were \$40,200,853, which consisted of \$38,846,815 in net proceeds from the sale of shares of our common stock to the public in an ATM offering, \$983,224 in proceeds from the exercises of stock options and \$370,814 in proceeds from contributions to the ESPP. During the six months ended June 30, 2017, cash flows provided by financing activities were \$1,199,119, which consisted of \$471,466 in proceeds from contributions to the ESPP and \$727,653 in proceeds from the exercise of stock options.

Research and development of new technologies is, by its nature, unpredictable. Although we will undertake development efforts with commercially reasonable diligence, there can be no assurance that our available resources including the net proceeds from our public offerings will be sufficient to enable us to develop our technology to the extent needed to create future revenues to sustain our operations.

We cannot assure that our technology will be adopted, that we will ever earn revenues sufficient to support our operations, or that we will ever be profitable. Furthermore, since we have no committed source of financing, there can be no assurance that we will be able to raise capital as and when we need it to continue our operations.

### **Off Balance Sheet Transactions**

As of June 30, 2018, we did not have any off-balance sheet transactions.

***Material Changes in Specified Contractual Obligations***

A table of our specified contractual obligations was provided in the *Management's Discussion and Analysis of Financial Condition and Results of Operation* of our most recent Annual Report on Form 10-K. There were no material changes outside the ordinary course of our business in the specified contractual obligations during the three months ended June 30, 2018.

**Item 3. Quantitative and Qualitative Disclosure About Market Risk**

There has been no material change in our exposure to market risk during the six months ended June 30, 2018. Please refer to "Quantitative and Qualitative Disclosures about Market Risk" contained in Part II, Item 7A of our Form 10-K for the year ended December 31, 2017 for a discussion of our exposure to market risk.

**Item 4. Controls and Procedures**

***Evaluation of Disclosure Controls and Procedures***

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

Based on their evaluation as of June 30, 2018, our principal executive and principal financial and accounting officers have concluded that these disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act) were effective as of June 30, 2018 to provide reasonable assurance that information required to be disclosed by us in reports that we file under the Exchange Act is recorded, processed, summarized, and reported, within the time periods specified in Securities and Exchange Commission rules and forms and that information required to be disclosed by us in our reports filed or submitted under the Exchange Act is accumulated and communicated to management, including our principal executive officer and our principal financial officer, as appropriate to allow timely decisions regarding required disclosures.

***Changes in Internal Control over Financial Reporting***

For the quarter ended June 30, 2018, there were no changes in our internal control over financial reporting that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

**Item 1. Legal Proceedings**

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

**Item 1A. Risk Factors**

In addition to the other information set forth in this report, you should carefully consider the factors discussed under “Risk Factors” in our annual report on Form 10-K as filed with the Securities and Exchange Commission on March 16, 2018. These factors could materially adversely affect our business, financial condition, liquidity, results of operations and capital position, and could cause our actual results to differ materially from our historical results or the results contemplated by any forward-looking statements contained in this report.

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

**Risks Related to Our Business**

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

We have a limited operating history upon which investors may rely in evaluating our business and prospects. We have generated limited revenues to date, and as of June 30, 2018, we had an accumulated deficit of approximately \$200 million. Our ability to generate revenues more reliably and on a larger scale, and to achieve profitability, will depend on our ability to execute our business plan, complete the development and approval of our technology, incorporate the technology into products that customers wish to buy, and, if necessary, to secure financing to enable us to do all this. If we are unable to generate revenues of significant scale to cover our costs of doing business, our losses will continue and we may not achieve profitability, which could negatively impact the value of your investment in our securities.

***Terms of our Development and License Agreement with a tier-one consumer electronics company could inhibit potential licensees from working with us in specific markets.***

We have entered into a Development and License Agreement with a tier-one consumer electronics company to embed our WattUp wire-free charging receiver and transmitter technology in various products, including consumer electronics and related accessories. This agreement provides our strategic partner a time-to-market advantage during the development and until one year after the first customer shipment for specified WattUp-enabled consumer products. This may inhibit other potential licensees of our technology from engaging with us on competing consumer products and may cause them to seek solutions offered by other companies, which could have a negative impact on our revenue opportunities and financial results.

***We may be unable to demonstrate the feasibility of our technology.***

We have developed working prototypes of products using our technology, but additional research and development is required to commercialize our technology for applications that can be successfully integrated into commercial products. Our research and development efforts remain subject to the risks associated with the development of new products that are based on emerging technologies, such as unanticipated technical problems, the inability to identify products utilizing our technology that will be in demand with customers, getting our technology designed in to those products, designing new products for manufacturability, and achieving acceptable price points for final products. Our technology must also satisfy customer expectations and be suitable for them to use in



consumer applications. Any delays in developing our technology that arise from factors of this sort would aggravate our exposure to the risk of having inadequate capital to fund the research and development needed to complete development of these products. Technical problems causing delays would cause us to incur additional expenses that would increase our operating losses. If we experience significant delays in developing our technology and products based on it for use in potential commercial applications, particularly after incurring significant expenditures, our business may fail, and you could lose the value of your investment in our company. To our knowledge, the technological concepts we are applying have never previously been successfully applied. If we fail to develop practical and economical commercial products based on our technology, our business may fail and you could lose the value of your investment in our stock.

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

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

***We depend upon our strategic relationship with Dialog Semiconductor, a provider of electronics products, and there can be no assurance that we will achieve the expected benefits of this relationship.***

We have entered into a strategic cooperation agreement with Dialog Semiconductor, a provider of electronics products, pursuant to which we licensed our WattUp technology to Dialog and it became the exclusive provider of our technology. We intend to leverage Dialog's sales and distribution channels and its operational capabilities to accelerate market adoption of our technology, while we focus our resources on research and development of our technology. There can be no assurance that Dialog will promote our technology successfully, or that it will be successful in producing and distributing related products to our customers' specifications. Dialog may have other priorities or may encounter difficulties in its own business that interfere with the success of our relationship. If this strategic relationship does not work as we intend, then we may be required to seek an arrangement with another strategic partner, or to develop internal capabilities, which will require a commitment of management time and our financial resources to identify a replacement strategic partner, or to develop our own production and distribution capabilities. As a result, we may be unable without undue expense to replace this agreement with one or more new strategic relationships to promote and provide our technology.

***We may require additional financing in order to achieve our business plans, and there is no guarantee that it will be available on acceptable terms, or at all.***

We may not have sufficient funds to fully implement our business plans. We may need to raise additional capital through new financings, even if we begin to generate meaningful commercial revenue. For example, new product development for business partners may require considerable expense in advance of substantial revenue for such products. Such financings could include equity financing, which may be dilutive to stockholders, or debt financing, which could restrict our ability to borrow from other sources. In addition, such securities may contain rights, preferences or privileges senior to those of current stockholders. As a result of economic conditions, general global economic uncertainty, political change, and other factors, we do not know whether additional capital will be available when needed, or that, if available, we will be able to obtain additional capital on reasonable terms. If we are unable to raise additional capital due to the volatile global financial markets, general economic uncertainty or other factors, we may be required to curtail development of our technology or reduce operations as a result, or to sell or dispose of assets. Any inability to raise adequate funds on commercially reasonable terms could have a material

adverse effect on our business, results of operations and financial condition, including the possibility that a lack of funds could cause our business to fail and liquidate with little or no return to investors.

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

To date we have operated primarily in the research and development phase of our business. If we are successful, we will need to expand our business operations, which will impose new demands on our financial, technical, operational and management resources. If we do not upgrade our technical, administrative, operating and financial control systems, or the unexpected expansion difficulties arise, including issues relating to our research and development activities and retention of experienced scientists, managers and engineers, could have a material adverse effect on our business, results of operations and financial condition, and our ability to timely execute our business plan. If we are unable to implement these actions in a timely manner, our results may be adversely affected.

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

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

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

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

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

Our strategy depends on the development of successful commercial products and effectively licensing our technology into the consumer, enterprise and commercial markets. We will need to understand procurement and buying cycles to be successful in licensing our technology. We anticipate it is possible that demand for our technology may vary in different consumer electronics markets, such as laptops, tablet, mobile phones, gaming systems, toys, wearables and the like. Such consumer markets are often seasonal, with peaks in and around the December holiday season and the August-September back-to-school season. Enterprises and commercial customers may have annual or other budgeting and buying cycles that could affect us, and, particularly if we are designated as a capital improvement project, we may have a long or unpredictable sales cycle.

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

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

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

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

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

When used in the field, our technology may not perform as expected based on performance under controlled laboratory conditions. For example, in the laboratory a configuration of obstructions of transmission will be arranged in some fashion, but in the field receivers may be obstructed in many different and unpredictable ways over which we have no control. These conditions may significantly diminish the power received at the receiver or the effective range of the transmitter, because the RF energy from the transmitter may be absorbed by obscuring or blocking material, or may need to be reflected off a surface to reach the receiver, making the transmission distance longer than straight-line distances. The failure of products using our technology to meet the demands of users in the field could harm our business.

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

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

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

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

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

Our competitive position also depends on our ability to:

- generate widespread awareness, acceptance and adoption by the consumer and enterprise markets of our technology under development and future products;
- design a product that may be sold at an acceptable price point;
- develop new or enhanced technologies or features that improve the convenience, efficiency, safety or perceived safety, and productivity of our technology under development and future products;
- properly identify customer needs and deliver new products or product enhancements to address those needs;
- limit the time required from proof of feasibility to routine production;
- limit the timing and cost of regulatory approvals;
- attract and retain qualified personnel;
- protect our inventions with patents or otherwise develop proprietary products and processes; and
- secure sufficient capital resources to expand both our continued research and development, and sales and marketing efforts.

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

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

Our success depends significantly on our ability to obtain, maintain and protect our proprietary rights to the technologies used in products incorporating our technologies. Patents and other proprietary rights provide uncertain protections, and we may be unable to protect our intellectual property. For example, we may be unsuccessful in defending our patents and other proprietary rights against third party challenges. If we do not have the resources to defend our intellectual property, the value of our intellectual property and our licensed technology will decline, threatening our potential revenue and results of operations.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

We pursue the licensing of our technology as a primary means of revenue generation. We believe there are many companies that would be interested in implementing our technology into their devices. We have entered into one product development and license agreement with a tier-one consumer electronics company that has the potential to yield license revenue. We have also entered into a number of evaluation and joint development agreements with potential strategic partners. However, these agreements do not commit either party to a long-term relationship and any of these parties may disengage with us at any time. Creating a licensing business relationship often takes a substantial effort, as we expect to have to convince the counterparty of the efficacy of our technology, meet design and manufacturing requirements, satisfy marketing and product needs, and comply with selection, review and contracting requirements. There can be no assurance that we will be able to gain access to potential licensing partners, or that they will ultimately decide to integrate our technology with their products. We may not be able to secure license agreements with customers on advantageous terms, and the timing and volume of revenue earned from license agreements will be outside of our control. If the license agreements we enter into do not prove to be advantageous to us, our business and results of operations will be adversely affected.

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

We, or our third-party vendors on our behalf, collect, process, store and transmit substantial amounts of information, including information about our customers. We take steps to protect the security and integrity of the information we collect, process, store or transmit, but there is no guarantee that inadvertent or unauthorized use or disclosure will not occur or that third parties will not gain unauthorized access to this information despite such efforts. Security breaches, computer malware, computer hacking attacks and other compromises of information security measures have become more prevalent in the business world and may occur on our systems or those of our vendors in the future. Large Internet companies and websites have from time to time disclosed sophisticated and targeted attacks on portions of their websites, and an increasing number have reported such attacks resulting in breaches of their information security. We and our third-party vendors are at risk of suffering from similar

attacks and breaches. Although we take steps to maintain confidential and proprietary information on our information systems, these measures and technology may not adequately prevent security breaches and we rely on our third-party vendors to take appropriate measures to protect the security and integrity of the information on those information systems. Because techniques used to obtain unauthorized access to or to sabotage information systems change frequently and may not be known until launched against us, we may be unable to anticipate or prevent these attacks. In addition, a party who is able to illicitly obtain a customer's identification and password credentials may be able to access the customer's account and certain account data.

Any actual or suspected security breach or other compromise of our security measures or those of our third-party vendors, whether as a result of hacking efforts, denial-of-service attacks, viruses, malicious software, break-ins, phishing attacks, social engineering or otherwise, could harm our reputation and business, damage our brand and make it harder to retain existing customers or acquire new ones, require us to expend significant capital and other resources to address the breach, and result in a violation of applicable laws, regulations or other legal obligations. Our insurance policies may not be adequate to reimburse us for direct losses caused by any such security breach or indirect losses due to resulting customer attrition.

We rely on email and other messaging services to connect with our existing and potential customers. Our customers may be targeted by parties using fraudulent spoofing and phishing emails to misappropriate passwords, payment information or other personal information or to introduce viruses through Trojan horse programs or otherwise through our customers' computers, smartphones, tablets or other devices. Despite our efforts to mitigate the effectiveness of such malicious email campaigns through product improvements, spoofing and phishing may damage our brand and increase our costs. Any of these events or circumstances could materially adversely affect our business, financial condition and operating results.

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

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

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

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



## **Risks Related to Ownership of Our Common Stock**

### ***You may lose all of your investment.***

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

### ***Our stock price is likely to continue to be volatile.***

The market price of the common stock has fluctuated significantly since it was first listed on The Nasdaq Stock Market in 2014. Our common stock has experienced an intra-day trading high of \$33.50 per share and a low of \$6.91 per share over the last 52 weeks. The price of our common stock is likely to continue to fluctuate significantly in response to many factors that are beyond our control, including:

- Regulatory announcements, such as the recent Federal Communications Commission approval of our Mid-Field range transmitter and receiver technology;
- actual or anticipated variations in operating results;
- the limited number of holders of the common stock;
- changes in the economic performance and/or market valuations of other technology companies;
- our announcements of significant strategic partnerships, regulatory developments and other events;
- announcements by other companies in the wire-free charging space;
- articles published or rumors circulated by third parties regarding our business, technology or development partners;
- additions or departures of key personnel; and
- sales or other transactions involving our capital stock.

### ***We are an “emerging growth company,” and can take advantage of reduced disclosure requirements, excluding applicable to emerging growth companies, which could make our common stock less attractive to investors.***

We are an “emerging growth company,” as defined in the Jumpstart Our Business Startups Act of 2012, and, for as long as we continue to be an emerging growth company, we intend to take advantage of exemptions from various reporting requirements, including, but not limited to, not being required to provide auditor attestation of our internal controls, reduced disclosure about executive compensation, and exemption from the requirement to hold a nonbinding advisory vote on executive compensation. However, we chose not to delay compliance with new or revised financial accounting standards. We will be an emerging growth company until December 31, 2018. If investors find our common stock less attractive as a result of reduced disclosure of this sort, there may be a less active trading market for our common stock and our stock price may decline.

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

As a public company, we are required to maintain internal control over financial reporting and to report any material weaknesses in such internal controls. Section 404 of the Sarbanes-Oxley Act requires that we evaluate and determine the effectiveness of our internal control over financial reporting. Although our management has

determined that our internal control over financial reporting was effective as of December 31, 2017, we cannot assure you that we not identify a material weakness in our internal control in the future.

If we have a material weakness in our internal control over financial reporting in the future, we may not detect errors on a timely basis. If we are not able to comply with the requirements of Section 404 of the Sarbanes-Oxley Act, or if we identify a material weakness in our internal control over financial reporting in the future, it could harm our operating results, cause us to fail to meet our SEC reporting obligations or Nasdaq listing requirements, adversely affect our reputation, cause our stock price to decline or result in inaccurate financial reporting or material misstatements in our annual or interim financial statements. Further, if there are material weaknesses or failures in our ability to meet any of the requirements related to the maintenance and reporting of our internal controls such as Section 404 of the Sarbanes-Oxley Act, investors may lose confidence in the accuracy and completeness of our financial reports and that could cause the price of our common stock to decline. We could become subject to investigations by Nasdaq, the SEC or other regulatory authorities, which could require additional management attention and which could adversely affect our business.

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

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

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

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

All decisions with respect to the management of our company are made by our board of directors and our officers, who beneficially own approximately 6.5% of our common stock collectively. In addition, our greater than 5% stockholders such as Dialog, Emily and Malcolm Fairbairn, Hood River Capital Management, DvineWave, and BlackRock Inc. beneficially owned approximately 11.7%, 6.8%, 6.4%, 6.1%, and 5.2%, respectively, of our common stock as of August 1, 2018. As a result, these stockholders will be able to exercise a significant level of control over all matters requiring stockholder approval, including the election of directors, amendment of our certificate of incorporation and approval of significant corporate transactions. This control could have the effect of delaying or preventing a change of control of our company or changes in management and will make the approval of certain transactions difficult or impossible without the support of these stockholders.

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

As a public reporting company, we incur significant legal, accounting and other expenses. We are subject to reporting requirements of the Securities Exchange Act of 1934 and rules subsequently implemented by the Securities and Exchange Commission ("SEC") that require us to establish and maintain effective disclosure controls and financial controls, as well as some specific corporate governance practices. Our management and other personnel are expected to devote a substantial amount of time to compliance initiatives associated with our public reporting company status.

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

Our stock price has fluctuated in the past, most recently following our announcement of FCC approval of our Mid-Field transmitter technology, and it may be volatile in the future. In the past, companies that have experienced volatility in the market price of their securities have been subject to securities class action litigation, and we may be the target of litigation of this sort in the future. Securities litigation is costly and can divert management attention from other business concerns, which could seriously harm our business and the value of your investment in our company.

***An active trading market for our common stock may not be maintained.***

Our stock is currently traded on The Nasdaq Stock Market, but we can provide no assurance that we will be able to maintain an active trading market on this or any other exchange in the future. If an active market for our common stock is not maintained, it may be difficult for our stockholders to sell or purchase shares. An inactive market may also impair our ability to raise capital to continue to fund operations by selling shares and impair our ability to acquire other companies or technologies using our shares as consideration.

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

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

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

As of December 31, 2017, we had a Federal net operating loss (“NOL”) carryforward of \$84,418,000. Under the U.S. Tax Code, NOL can generally be carried forward to offset future taxable income for a period of 20 years. Our ability to use our NOL during this period will be dependent on our ability to generate taxable income, and the NOL could expire before we generate sufficient taxable income. As of December 31, 2017, based on our history of operating losses it is possible that a portion of our NOL is not fully realizable.

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

Provisions of our certificate of incorporation and bylaws, and applicable Delaware law, may delay or discourage transactions involving an actual or potential change in control or change in our management, including transactions in which stockholders might otherwise receive a premium for their shares, or transactions that our stockholders might otherwise deem to be in their best interests. The provisions in our certificate of incorporation and bylaws:

- authorize our board of directors to issue preferred stock without stockholder approval and to designate the rights, preferences and privileges of each class; if issued, such preferred stock would increase the number of outstanding shares of our capital stock and could include terms that may deter an acquisition of us;
- limit who may call stockholder meetings;
- do not permit stockholders to act by written consent;
- do not provide for cumulative voting rights; and

• provide that all vacancies may be filled by the affirmative vote of a majority of directors then in office, even if less than a quorum.

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

**Item 2. Recent Sales of Unregistered Securities; Use of Proceeds from Registered Securities**

Not applicable.

**Item 3. Defaults Upon Senior Securities**

Not applicable.

**Item 4. Mine Safety Disclosures**

Not applicable.

**Item 5. Other Information**

Not applicable.

**Item 6. Exhibits**

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

EXHIBIT INDEX

Exhibit Number	Description
10.1	<a href="#">Energous Corporation 2013 Equity Incentive Plan, as amended May 16, 2018 (incorporated by reference to Exhibit 10.1 to Energous' Current Report on Form 8-K filed on May 22, 2018)</a>
10.2	<a href="#">Energous Corporation 2014 Non-Employee Equity Compensation Plan, as amended May 16, 2018 (incorporated by reference to Exhibit 10.2 to Energous' Current Report on Form 8-K filed on May 22, 2018)</a>
10.3	<a href="#">Energous Corporation Performance Share Unit Plan, as amended May 16, 2018 (incorporated by reference to Exhibit 10.3 to Energous' Current Report on Form 8-K filed on May 22, 2018)</a>
31.1	<a href="#">Certification of Periodic Report by Chief Executive Officer pursuant to Rule 13a-14(a)/15d-14a and pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 (filed herewith)</a>
31.2	<a href="#">Certification of Periodic Report by Chief Financial Officer pursuant to Rule 13a-14(a)/15d-14a and pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 (filed herewith)</a>
32.1	<a href="#">Certification of Periodic Report by Chief Executive Officer and Chief Financial Officer pursuant to U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 (filed herewith)</a>
101.INS	XBRL Instance Document (filed herewith)
101.SCH	XBRL Taxonomy Schema (filed herewith)
101.CAL	XBRL Taxonomy Extension Calculation Linkbase (filed herewith)
101.DEF	XBRL Taxonomy Extension Definition Linkbase (filed herewith)
101.LAB	XBRL Taxonomy Extension Label Linkbase (filed herewith)
101.PRE	XBRL Taxonomy Extension Presentation Linkbase (filed herewith)

\* Indicates a management contract or any compensatory plan, contract or arrangement

**SIGNATURES**

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

**ENERGIOUS CORPORATION**  
(Registrant)

Date: August 9, 2018

By: /s/ Stephen R. Rizzone

Name: Stephen R. Rizzone  
Title: President, Chief Executive Officer and Director  
(Principal Executive Officer)

Date: August 9, 2018

By: /s/ Brian Sereda

Name: Brian Sereda  
Title: Senior Vice President and Chief Financial Officer  
(Principal Financial and Accounting Officer)

**ENERGIOUS CORPORATION**  
**2013 EQUITY INCENTIVE PLAN**  
**(AS AMENDED AND RESTATED MAY 16, 2018)**

Energous Corporation sets forth herein the terms and conditions of its 2013 Equity Incentive Plan (as Amended and Restated May 16, 2018), as follows:

**1. PURPOSE**

The Plan is intended to enhance the Company's and its Affiliates' ability to attract and retain highly qualified officers, Non-Employee Directors, key employees and Consultants, and to motivate such officers, Non-Employee Directors, key employees and Consultants to serve the Company and its Affiliates and to expend maximum effort to improve the business results and earnings of the Company, by providing to such persons an opportunity to acquire or increase a direct proprietary interest in the operations and future success of the Company. To this end, the Plan provides for the grant of stock options, stock appreciation rights, restricted stock, restricted stock units, unrestricted stock, other share-based awards and cash awards. Any of these awards may, but need not, be made as performance incentives to reward attainment of performance goals in accordance with the terms and conditions hereof. Stock options granted under the Plan may be non-qualified stock options or incentive stock options, as provided herein.

**2. DEFINITIONS**

For purposes of interpreting the Plan and related documents (including Award Agreements), the following definitions shall apply:

**2.1. "Acquiror"** shall have the meaning set forth in **Section 15.2**.

**2.2. "Affiliate"** means any company or other trade or business that "controls," is "controlled by" or is "under common control with" the Company within the meaning of Rule 405 of Regulation C under the Securities Act, including any Subsidiary.

**2.3. "Annual Incentive Award"** means a cash-based Performance Award with a performance period that is the Company's fiscal year or other 12-month (or shorter) performance period as specified under the terms and conditions of the Award as approved by the Committee.

**2.4. "Award"** means a grant of an Option, SAR, Restricted Stock, RSU, Other Share-based Award or cash award under the Plan.

**2.5. "Award Agreement"** means a written agreement between the Company and a Grantee, or notice from the Company or an Affiliate to a Grantee that evidences and sets out the terms and conditions of an Award.

**2.6. "Board"** means the Board of Directors of the Company.

**2.7. "Business Combination"** shall have the meaning set forth in **Section 15.2**.

**2.8. "Cause"** shall be defined as that term is defined in the Grantee's offer letter or other applicable employment agreement; or, if there is no such definition, "Cause" means, unless otherwise provided in the applicable Award Agreement: (i) the commission of any act by the Grantee constituting financial dishonesty against the Company or its Affiliates (which act would be chargeable as a crime under applicable law); (ii) the

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Grantee's engaging in any other act of dishonesty, fraud, intentional misrepresentation, moral turpitude, illegality or harassment that would (a) materially adversely affect the business or the reputation of the Company or any of its Affiliates with their respective current or prospective customers, suppliers, lenders or other third parties with whom such entity does or might do business or (b) expose the Company or any of its Affiliates to a risk of civil or criminal legal damages, liabilities or penalties; (iii) the repeated failure by the Grantee to follow the directives of the Chief Executive Officer of the Company or any of its Affiliates or the Board; or (iv) any material misconduct, violation of the Company's or Affiliates' policies, or willful and deliberate non-performance of duty by the Grantee in connection with the business affairs of the Company or its Affiliates.

**2.9. "Change in Control"** shall have the meaning set forth in **Section 15.2** .

**2.10. "Code"** means the Internal Revenue Code of 1986.

**2.11. "Committee"** means the Compensation Committee of the Board or any committee or other person or persons designated by the Board to administer the Plan. The Board will cause the Committee to satisfy the applicable requirements of any securities exchange on which the Common Stock may then be listed. For purposes of Awards to Covered Employees intended to qualify as "performance-based compensation" under Section 162(m), to the extent required by Section 162(m), Committee means all of the members of the Committee who are "outside directors" within the meaning of Section 162(m). For purposes of Awards to Grantees who are subject to Section 16 of the Exchange Act, Committee means all of the members of the Committee who are "non-employee directors" within the meaning of Rule 16b-3 adopted under the Exchange Act.

**2.12. "Company"** means Energous Corporation, a Delaware Corporation, or any successor corporation.

**2.13. "Common Stock"** means the common stock of the Company.

**2.14. "Consultant"** means a consultant or advisor that provides bona fide services to the Company or any Affiliate and who qualifies as a consultant or advisor under Form S-8.

**2.15. "Covered Employee"** means a Grantee who is a "covered employee" within the meaning of Section 162(m), as qualified by **Section 12.4** .

**2.16. "Disability"** shall be defined as that term is defined in the Grantee's offer letter or other applicable employment agreement; or, if there is no such definition, "Disability" means, unless otherwise provided in the applicable Award Agreement, the Grantee is unable to perform each of the essential duties of such Grantee's position by reason of a medically determinable physical or mental impairment that is potentially permanent in character or that can be expected to last for a continuous period of not less than 12 months; *provided, however*, that, with respect to rules regarding expiration of an Incentive Stock Option following termination of the Grantee's Service, "Disability" means "permanent and total disability" as set forth in Code Section 22(e)(3).

**2.17. "Effective Date"** means May 16, 2018, the date the Plan was most recently approved by the Stockholders.

**2.18. "Exchange Act"** means the Securities Exchange Act of 1934.

**2.19. "Fair Market Value"** of a Share as of a particular date means (i) if the Common Stock is listed on a national securities exchange, the closing or last price of the Common Stock on the composite tape or other comparable reporting system for the applicable date, or if the applicable date is not a trading day, the trading day immediately preceding the applicable date, or (ii) if the Common Stock is not then listed on a national securities exchange, the closing or last price of the Common Stock quoted by an established quotation service for over-the-counter securities, or (iii) if the Common Stock is not then listed on a national securities exchange or quoted by an established quotation service for over-the-counter securities, or the value of the Common Stock is not otherwise determinable, such value as determined by the Committee.



2.20. **"Family Member"** means a person who is a spouse, former spouse, child, stepchild, grandchild, parent, stepparent, grandparent, niece, nephew, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother, sister, brother-in-law or sister-in-law, including adoptive relationships, of the applicable individual, any person sharing the applicable individual's household (other than a tenant or employee), a trust in which any one or more of these persons have more than 50% of the beneficial interest, a foundation in which any one or more of these persons (or the applicable individual) control the management of assets, and any other entity in which one or more of these persons (or the applicable individual) own more than 50% of the voting interests.

2.21. **"Grant Date"** means the latest to occur of (i) the date as of which the Committee approves an Award, (ii) the date on which the recipient of an Award first becomes eligible to receive an Award under **Section 6** or (iii) such other date as may be specified by the Committee in the Award Agreement.

2.22. **"Grantee"** means a person who receives or holds an Award.

2.23. **"Incentive Stock Option"** means an "incentive stock option" within the meaning of Code Section 422.

2.24. **"Incumbent Directors"** shall have the meaning set forth in **Section 15.2**.

2.25. **"Non-Employee Director"** means a member of the Board or the board of directors of an Affiliate, in each case who is not an officer or employee of the Company or any Affiliate.

2.26. **"Non-qualified Stock Option"** means an Option that is not an Incentive Stock Option.

2.27. **"Option"** means an option to purchase one or more Shares pursuant to the Plan.

2.28. **"Option Price"** means the exercise price for each Share subject to an Option.

2.29. **"Other Share-based Awards"** means Awards consisting of Share units, or other Awards, valued in whole or in part by reference to, or otherwise based on, Common Stock, other than Options, SARs, Restricted Stock and RSUs.

2.30. **"Performance Award"** means an Award made subject to the attainment of performance goals (as described in **Section 12**) over a performance period of at least one year established by the Committee, and includes an Annual Incentive Award.

2.31. **"Person"** means an individual, entity or group within the meaning of Section 13(d)(3) or 14(d)(2) of the Exchange Act.

2.32. **"Plan"** means this Energeous Corporation 2013 Equity Incentive Plan.

2.33. **"Purchase Price"** means the purchase price for each Share pursuant to a grant of Restricted Stock.

2.34. **"Restricted Period"** shall have the meaning set forth in **Section 10.1**.

2.35. **"Restricted Stock"** means restricted Shares that are subject to specified terms and conditions, awarded to a Grantee pursuant to **Section 10**.

2.36. **"Restricted Stock Unit"** or **"RSU"** means a bookkeeping entry representing the right to receive Shares or their cash equivalent subject to the satisfaction of specified terms and conditions, awarded to a Grantee pursuant to **Section 10**.

2.37. **"SAR Exercise Price"** means the per Share exercise price of a SAR granted to a Grantee under **Section 9**.

2.38. **"SEC"** means the United States Securities and Exchange Commission.

2.39. **"Section 162(m)"** means Code Section 162(m).

2.40. "Section 409A" means Code Section 409A.

2.41. "Securities Act" means the Securities Act of 1933.

2.42. "Separation from Service" means the termination of a Service Provider's Service, whether initiated by the Service Provider or the Company or an Affiliate; *provided* that if any Award governed by Section 409A is to be distributed on a Separation from Service, then the definition of Separation from Service for such purposes shall comply with the definition provided in Section 409A.

2.43. "Service" means service as a Service Provider to the Company or an Affiliate. Unless otherwise provided in the applicable Award Agreement, a Grantee's change in position or duties shall not result in interrupted or terminated Service, so long as such Grantee continues to be a Service Provider to the Company or an Affiliate.

2.44. "Service Provider" means an employee, officer, Non-Employee Director or Consultant of the Company or an Affiliate.

2.45. "Share" means a share of Common Stock.

2.46. "Stock Appreciation Right" or "SAR" means a right granted to a Grantee pursuant to Section 9 .

2.47. "Stockholder" means a stockholder of the Company.

2.48. "Subsidiary" means any "subsidiary corporation" of the Company within the meaning of Code Section 424(f).

2.49. "Substitute Award" means any Award granted in assumption of or in substitution for an award of a company or business acquired by the Company or an Affiliate or with which the Company or an Affiliate combines.

2.50. "Ten Percent Stockholder" means an individual who owns more than 10% of the total combined voting power of all classes of outstanding stock of the Company, its parent or any of its Subsidiaries. In determining stock ownership, the attribution rules of Code Section 424(d) shall be applied.

2.51. "Termination Date" means the date that is 10 years after the Effective Date, unless the Plan is earlier terminated by the Board under Section 5.2 .

2.52. "Voting Securities" shall have the meaning set forth in Section 15.2 .

### 3. ADMINISTRATION OF THE PLAN

#### 3.1. General

The Board shall have such powers and authorities related to the administration of the Plan as are consistent with the Company's certificate of incorporation and bylaws and applicable law. The Board shall have the power and authority to delegate its responsibilities hereunder to the Committee, which shall have full authority to act in accordance with its charter, and with respect to the power and authority of the Board to act hereunder, all references to the Board shall be deemed to include a reference to the Committee, unless such power or authority is specifically reserved by the Board. Except as specifically provided in Section 14 or as otherwise may be required by applicable law, regulatory requirement or the certificate of incorporation or the bylaws of the Company, the Board shall have full power and authority to take all actions and to make all determinations required or provided for under the Plan, any Award or any Award Agreement, and shall have full power and authority to take all such other actions and make all such other determinations not inconsistent with the specific terms and conditions of the Plan that the Board deems to be necessary or appropriate to the administration of the Plan. The Committee shall administer the Plan; *provided* that, the Board shall retain the right to exercise the authority of the Committee to the extent consistent with applicable law and the applicable requirements of any securities exchange on which the Common Stock may then be listed. All actions, determinations and decisions by the Board or the Committee under the Plan, any Award or any Award Agreement shall be in the Board's (or the Committee's, as applicable) sole discretion and shall be final, binding and conclusive. Without limitation, the Committee shall have full and final power and authority, subject to the other terms and conditions of the Plan, to:

- (i) designate Grantees;
- (ii) determine the type or types of Awards to be made to Grantees;
- (iii) determine the number of Shares to be subject to an Award;
- (iv) establish the terms and conditions of each Award (including the Option Price of any Option, the nature and duration of any restriction or condition (or provision for lapse thereof) relating to the vesting, exercise, transfer or forfeiture of an Award or the Shares subject thereto and any terms or conditions that may be necessary to qualify Options as Incentive Stock Options;
- (v) prescribe the form of each Award Agreement; and
- (vi) amend, modify or supplement the terms or conditions of any outstanding Award including the authority, in order to effectuate the purposes of the Plan, to modify Awards to foreign nationals or individuals who are employed outside the United States to recognize differences in local law, tax policy or custom.

To the extent permitted by applicable law, the Committee may delegate its authority as identified herein to any individual or committee of individuals (who need not be directors), including the authority to make Awards to Grantees who are not subject to Section 16 of the Exchange Act or who are not Covered Employees. To the extent that the Committee delegates its authority to make Awards as provided by this **Section 3.1**, all references in the Plan to the Committee's authority to make Awards and determinations with respect thereto shall be deemed to include the Committee's delegate. Any such delegate shall serve at the pleasure of, and may be removed at any time by, the Committee.

### **3.2. No Repricing**

Notwithstanding any provision herein to the contrary, the repricing of Options or SARs is prohibited without prior approval of the Stockholders. For this purpose, a "repricing" means any of the following (or any other action that has the same effect as any of the following): (i) changing the terms of an Option or SAR to lower its Option Price or SAR Exercise Price; (ii) any other action that is treated as a "repricing" under generally accepted accounting principles; and (iii) repurchasing for cash or canceling an Option or SAR at a time when its Option Price or SAR Exercise Price is greater than the Fair Market Value of the underlying Shares in exchange for another award, unless the cancellation and exchange occurs in connection with a change in capitalization or similar change under **Section 15**. A cancellation and exchange under clause (iii) would be considered a "repricing" regardless of whether it is treated as a "repricing" under generally accepted accounting principles and regardless of whether it is voluntary on the part of the Grantee.

### **3.3. Award Agreements; Clawbacks**

The grant of any Award may be contingent upon the Grantee executing the appropriate Award Agreement. The Company may retain the right in an Award Agreement to cause a forfeiture of the gain realized by a Grantee on account of actions taken by the Grantee in violation or breach of or in conflict with any employment agreement, non-competition agreement, any agreement prohibiting solicitation of employees or clients of the Company or any Affiliate thereof or any confidentiality obligation with respect to the Company or any Affiliate thereof, or otherwise in competition with the Company or any Affiliate thereof, to the extent specified in such Award Agreement applicable to the Grantee. Furthermore, the Company may annul an Award if the Grantee is terminated for Cause.

All awards, amounts or benefits received or outstanding under the Plan shall be subject to clawback, cancellation, recoupment, rescission, payback, reduction or other similar action in accordance with the terms of any Company clawback or similar policy or any applicable law related to such actions, as may be in effect from time to time. A Grantee's acceptance of an Award shall be deemed to constitute the Grantee's acknowledgement of and consent to the Company's application, implementation and enforcement of any applicable Company clawback or similar policy that may apply to the Grantee, whether adopted prior to or following the Effective Date, and any provision of applicable law relating to clawback, cancellation, recoupment, rescission, payback or reduction of compensation, and the Grantee's agreement that the Company may take such actions as may be necessary to effectuate any such policy or applicable law, without further consideration or action.

### 3.4. Deferral Arrangement

The Committee may permit or require the deferral of any Award payment into a deferred compensation arrangement, subject to such rules and procedures as it may establish and in accordance with Section 409A, which may include provisions for the payment or crediting of interest or dividend equivalents, including converting such credits into deferred Share units.

### 3.5. No Liability

No member of the Board or of the Committee shall be liable for any action or determination made in good faith with respect to the Plan, any Award or Award Agreement.

### 3.6. Book Entry

Notwithstanding any other provision of the Plan to the contrary, the Company may elect to satisfy any requirement under the Plan for the delivery of stock certificates through the use of book entry.

## 4. STOCK SUBJECT TO THE PLAN

### 4.1. Authorized Number of Shares

Subject to adjustment under **Section 15**, the aggregate number of Shares authorized to be issued under the Plan is 6,085,967 Shares issued under the Plan may consist in whole or in part of authorized but unissued Shares, treasury Shares or Shares purchased on the open market or otherwise, all as determined by the Board from time to time.

### 4.2. Share Counting

#### 4.2.1. General

Each Share granted in connection with an Award shall be counted as one Share against the limit in **Section 4.1**, subject to the provisions of this **Section 4.2**.

#### 4.2.2. Cash-Settled Awards

Any Award settled in cash shall not be counted as issued Shares for any purpose under the Plan.

#### 4.2.3. Expired or Terminated Awards

If any Award expires, or is terminated, surrendered or forfeited, in whole or in part, the unissued Shares covered by such Award shall again be available for the grant of Awards.

#### 4.2.4. Payment of Option Price or Tax Withholding in Shares

If Shares issuable upon exercise, vesting or settlement of an Award, or Shares owned by a Grantee (which are not subject to any pledge or other security interest) are surrendered or tendered to the Company in payment of the Option Price or Purchase Price of an Award or any taxes required to be withheld in respect of an Award, in each case, in accordance with the terms and conditions of the Plan and any applicable Award Agreement, such surrendered or tendered Shares shall again be available for the grant of Awards. For a stock-settled SAR, only the net Shares actually issued upon exercise of the SAR shall be counted against the limit in **Section 4.1**.

#### 4.2.5. Substitute Awards

Substitute Awards shall not be counted against the number of Shares reserved under the Plan.

### 4.3. Award Limits

#### 4.3.1. Incentive Stock Options

Subject to adjustment under **Section 15**, 6,085,967 Shares available for issuance under the Plan shall be available for issuance as Incentive Stock Options.

#### 4.3.2. Individual Award Limits for Section 162(m) – Share-Based Awards

Subject to adjustment under **Section 15**, the maximum number of each type of Award (other than cash-based Performance Awards) intended to qualify as “performance-based compensation” under Section 162(m) granted to any Grantee in any calendar year shall not exceed the following number of Shares: (i) Options and SARs: 2,000,000 Shares; and (ii) all share-based Performance Awards (including Restricted Stock, RSUs and Other Share-based Awards that are Performance Awards): 2,000,000 Shares.

#### 4.3.3. Individual Award Limits for Section 162(m) – Cash-Based Awards

The maximum amount of cash-based Performance Awards intended to constitute “performance-based compensation” under Section 162(m) granted to any Grantee in any calendar year shall not exceed the following: (i) Annual Incentive Awards: \$1.0 million; and (ii) all other cash-based Performance Awards: \$1.0 million.

#### 4.3.4. Limits on Awards to Non-Employee Directors

The maximum value of Awards granted during any calendar year to any Non-Employee Director, taken together with any cash fees paid to such Non-Employee Director during the calendar year and the value of awards granted to the Non-Employee Director under any other equity compensation plan of the Company or an Affiliate during the calendar year, shall not exceed the following in total value (calculating the value of any Awards or other equity compensation plan awards based on the grant date fair value for financial reporting purposes): (i) \$500,000 for the Chair of the Board and (ii) \$300,000 for each Non-Employee Director other than the Chair of the Board; *provided, however*, that awards granted to Non-Employee Directors upon their initial election to the Board or the board of directors of an Affiliate shall not be counted towards the limit under this **Section 4.3.4**. Any Awards or other equity compensation plan awards that are scheduled to vest over a period of more than one calendar year shall be applied pro rata (based on grant date fair value as provided above) for purposes of the limit under this **Section 4.3.4** based on the number of years over which such awards are scheduled to vest.

### 5. EFFECTIVE DATE, DURATION AND AMENDMENTS

#### 5.1. Term

The Plan shall be effective as of the Effective Date, *provided* that it has been approved by the Stockholders. The Plan shall terminate automatically on the 10-year anniversary of the Effective Date and may be terminated on any earlier date as provided in **Section 5.2**.

#### 5.2. Amendment and Termination of the Plan

The Board may, at any time and from time to time, amend, suspend or terminate the Plan as to any Awards that have not been made. An amendment shall be contingent on approval of the Stockholders to the extent stated by the Board, required by applicable law or required by applicable securities exchange listing requirements. No Awards shall be made after the Termination Date. The applicable terms and conditions of the Plan, and any terms and conditions applicable to Awards granted prior to the Termination Date shall survive the termination of the Plan and continue to apply to such Awards. No amendment, suspension or termination of the Plan shall, without the consent of the Grantee, materially impair rights or obligations under any Award theretofore awarded.

## 6. AWARD ELIGIBILITY AND LIMITATIONS

### 6.1. Service Providers

Subject to this **Section 6.1**, Awards may be made to any Service Provider as the Committee may determine and designate from time to time.

### 6.2. Successive Awards

An eligible person may receive more than one Award, subject to such restrictions as are provided herein.

### 6.3. Stand-Alone, Additional, Tandem, and Substitute Awards

Awards may be granted either alone or in addition to, in tandem with or in substitution or exchange for, any other Award or any award granted under another plan of the Company, any Affiliate or any business entity to be acquired by the Company or an Affiliate, or any other right of a Grantee to receive payment from the Company or any Affiliate. Such additional, tandem or substitute or exchange Awards may be granted at any time. If an Award is granted in substitution or exchange for another award, the Committee shall have the right to require the surrender of such other award in consideration for the grant of the new Award. Subject to the requirements of applicable law, the Committee may make Awards in substitution or exchange for any other award under another plan of the Company, any Affiliate or any business entity to be acquired by the Company or an Affiliate. In addition, Awards may be granted in lieu of cash compensation, including in lieu of cash amounts payable under other plans of the Company or any Affiliate, in which the value of Shares subject to the Award is equivalent in value to the cash compensation (for example, RSUs or Restricted Stock).

## 7. AWARD AGREEMENT

The grant of any Award may be contingent upon the Grantee executing an appropriate Award Agreement, in such form or forms as the Committee shall from time to time determine. Without limiting the foregoing, an Award Agreement may be provided in the form of a notice that provides that acceptance of the Award constitutes acceptance of all terms and conditions of the Plan and the notice. Award Agreements granted from time to time or at the same time need not contain similar provisions but shall be consistent with the terms and conditions of the Plan. Each Award Agreement evidencing an Award of Options shall specify whether such Options are intended to be Non-qualified Stock Options or Incentive Stock Options, and in the absence of such specification such options shall be deemed Non-qualified Stock Options.

## 8. TERMS AND CONDITIONS OF OPTIONS

### 8.1. Option Price

The Option Price of each Option shall be fixed by the Committee and stated in the related Award Agreement. The Option Price of each Option (except those that constitute Substitute Awards) shall be at least the Fair Market Value on the Grant Date; *provided, however*, that in the event that a Grantee is a Ten Percent Stockholder as of the Grant Date, the Option Price of an Option granted to such Grantee that is intended to be an Incentive Stock Option shall be not less than 110% of the Fair Market Value on the Grant Date. In no case shall the Option Price of any Option be less than the par value of a Share.

### 8.2. Vesting

Subject to **Section 8.3**, each Option shall become exercisable at such times and under such conditions (including performance requirements) as stated in the Award Agreement.

### 8.3. Term

Each Option shall terminate, and all rights to purchase Shares thereunder shall cease 10 years from the Grant Date, or under such circumstances and on such date prior thereto as is set forth in the Plan or as may be fixed by the Committee and stated in the related Award Agreement; *provided, however*, that in the event that the Grantee is a Ten Percent Stockholder, an Option granted to such Grantee that is intended to be an Incentive Stock Option at the Grant Date shall not be exercisable after the expiration of five years from its Grant Date.

#### **8.4. Limitations on Exercise of Option**

Notwithstanding any other provision of the Plan, in no event may any Option be exercised, in whole or in part, (i) prior to the date the Plan is approved by the Stockholders as provided herein or (ii) after the occurrence of an event that results in termination of the Option.

#### **8.5. Method of Exercise**

An Option that is exercisable may be exercised by the Grantee's delivery of a notice of exercise to the Company, setting forth the number of Shares with respect to which the Option is to be exercised, accompanied by full payment for the Shares. To be effective, notice of exercise must be made in accordance with procedures established by the Company from time to time.

#### **8.6. Rights of Holders of Options**

Unless otherwise provided in the applicable Award Agreement, an individual holding or exercising an Option shall have none of the rights of a Stockholder (for example, the right to receive cash or dividend payments or distributions attributable to the subject Shares or to direct the voting of the subject Shares) until the Shares covered thereby are fully paid and issued to him. Except as provided in **Section 15** or the related Award Agreement, no adjustment shall be made for dividends, distributions or other rights for which the record date is prior to the date of such issuance.

#### **8.7. Delivery of Stock Certificates**

Subject to **Section 3.6**, promptly after the exercise of an Option by a Grantee and the payment in full of the Option Price, such Grantee shall be entitled to the issuance of a stock certificate or certificates evidencing his or her ownership of the Shares subject to the Option.

#### **8.8. Limitations on Incentive Stock Options**

An Option shall constitute an Incentive Stock Option only (i) if the Grantee is an employee of the Company or any Subsidiary, (ii) to the extent specifically provided in the related Award Agreement and (iii) to the extent that the aggregate Fair Market Value (determined at the time the Option is granted) with respect to which all Incentive Stock Options held by such Grantee become exercisable for the first time during any calendar year (under the Plan and all other plans of the Grantee's employer and its Affiliates) does not exceed \$100,000. This limitation shall be applied by taking Options into account in the order in which they were granted.

### **9. TERMS AND CONDITIONS OF STOCK APPRECIATION RIGHTS**

#### **9.1. Right to Payment**

A SAR shall confer on the Grantee a right to receive, upon exercise thereof, the excess of (i) the Fair Market Value on the date of exercise over (ii) the SAR Exercise Price, as determined by the Committee. The Award Agreement for a SAR (except those that constitute Substitute Awards) shall specify the SAR Exercise Price, which shall be fixed on the Grant Date as not less than the Fair Market Value on that date. SARs may be granted alone or in conjunction with all or part of an Option or at any subsequent time during the term of such Option or in conjunction with all or part of any other Award. A SAR granted in tandem with an outstanding Option following the Grant Date of such Option shall have a grant price that is equal to the Option Price; *provided, however*, that the SAR's grant price may not be less than the Fair Market Value on the Grant Date of the SAR to the extent required by Section 409A.

## 9.2. Other Terms

The Committee shall determine the time or times at which and the circumstances under which a SAR may be exercised in whole or in part (including based on achievement of performance goals and/or future service requirements), the time or times at which SARs shall cease to be or become exercisable following Separation from Service or upon other conditions, the method of exercise, whether or not a SAR shall be in tandem or in combination with any other Award and any other terms and conditions of any SAR.

## 9.3. Term of SARs

The term of a SAR shall be determined by the Committee; *provided, however*, that such term shall not exceed 10 years.

## 9.4. Payment of SAR Amount

Upon exercise of a SAR, a Grantee shall be entitled to receive payment from the Company (in cash or Shares, as determined by the Committee) in an amount determined by multiplying:

- (i) the difference between the Fair Market Value on the date of exercise over the SAR Exercise Price; by
- (ii) the number of Shares with respect to which the SAR is exercised.

## 10. TERMS AND CONDITIONS OF RESTRICTED STOCK AND RESTRICTED STOCK UNITS

### 10.1. Restrictions

At the time of grant, the Committee may establish a period of time (a “**Restricted Period**”) and any additional restrictions including the satisfaction of corporate or individual performance objectives applicable to an Award of Restricted Stock or RSUs. Each Award of Restricted Stock or RSUs may be subject to a different Restricted Period and additional restrictions. Neither Restricted Stock nor RSUs may be sold, transferred, assigned, pledged or otherwise encumbered or disposed of during the Restricted Period or prior to the satisfaction of any other applicable restrictions.

### 10.2. Restricted Stock Certificates

The Company shall issue Shares, in the name of each Grantee to whom Restricted Stock has been granted, stock certificates or other evidence of ownership representing the total number of Shares of Restricted Stock granted to the Grantee, as soon as reasonably practicable after the Grant Date. The Committee may provide in an Award Agreement that either (i) the Secretary of the Company shall hold such certificates for the Grantee’s benefit until such time as the Restricted Stock is forfeited to the Company or the restrictions lapse, or (ii) such certificates shall be delivered to the Grantee; *provided, however*, that such certificates shall bear a legend or legends that comply with the applicable securities laws and regulations and make appropriate reference to the restrictions imposed under the Plan and the Award Agreement.

### 10.3. Rights of Holders of Restricted Stock

Unless the otherwise provided in the applicable Award Agreement and subject to **Section 17.10**, holders of Restricted Stock shall have rights as Stockholders, including voting and dividend rights.

### 10.4. Rights of Holders of RSUs

#### 10.4.1. Settlement of RSUs

RSUs may be settled in cash or Shares, as determined by the Committee and set forth in the Award Agreement. The Award Agreement shall also set forth whether the RSUs shall be settled (i) within the time period specified for “short term deferrals” under Section 409A or (ii) otherwise within the requirements of Section 409A, in which case the Award Agreement shall specify upon which events such RSUs shall be settled.



#### 10.4.2. Voting and Dividend Rights

Unless otherwise provided in the applicable Award Agreement and subject to **Section 17.10**, holders of RSUs shall not have rights as Stockholders, including voting or dividend or dividend equivalents

rights.

#### 10.4.3. Creditor's Rights

A holder of RSUs shall have no rights other than those of a general creditor of the Company. RSUs represent an unfunded and unsecured obligation of the Company, subject to the terms and conditions of the applicable Award Agreement.

#### 10.5. Purchase of Restricted Stock

The Grantee shall be required, to the extent required by applicable law, to purchase the Restricted Stock from the Company at a Purchase Price equal to the greater of (i) the aggregate par value of the Shares represented by such Restricted Stock or (ii) the Purchase Price, if any, specified in the related Award Agreement. If specified in the Award Agreement, the Purchase Price may be deemed paid by Services already rendered. The Purchase Price shall be payable in a form described in **Section 11** or, if so determined by the Committee, in consideration for past Services rendered.

#### 10.6. Delivery of Shares

Upon the expiration or termination of any Restricted Period and the satisfaction of any other conditions prescribed by the Committee, the restrictions applicable to Shares of Restricted Stock or RSUs settled in Shares shall lapse, and, unless otherwise provided in the applicable Award Agreement, a stock certificate for such Shares shall be delivered, free of all such restrictions, to the Grantee or the Grantee's beneficiary or estate, as the case may be.

### 11. FORM OF PAYMENT FOR OPTIONS AND RESTRICTED STOCK

#### 11.1. General Rule

Payment of the Option Price for the Shares purchased pursuant to the exercise of an Option or the Purchase Price for Restricted Stock shall be made in cash or in cash equivalents acceptable to the Company, except as provided in this **Section 11**.

#### 11.2. Surrender of Shares

To the extent the Award Agreement so provides, payment of the Option Price for Shares purchased pursuant to the exercise of an Option or the Purchase Price for Restricted Stock may be made all or in part through the tender to the Company of Shares, which Shares shall be valued, for purposes of determining the extent to which the Option Price or Purchase Price for Restricted Stock has been paid, at their Fair Market Value on the date of exercise or surrender. Notwithstanding the foregoing, in the case of an Incentive Stock Option, the right to make payment in the form of already-owned Shares may be authorized only at the time of grant.

#### 11.3. Cashless Exercise

With respect to an Option only (and not with respect to Restricted Stock), to the extent permitted by law and to the extent the Award Agreement so provides, payment of the Option Price may be made all or in part by delivery (on a form acceptable to the Company) of an irrevocable direction to a licensed securities broker acceptable to the Company to sell Shares and to deliver all or part of the sales proceeds to the Company in payment of the Option Price and any withholding taxes described in **Section 17.3**.

#### 11.4. Other Forms of Payment

To the extent the Award Agreement so provides, payment of the Option Price or the Purchase Price for Restricted Stock may be made in any other form that is consistent with applicable laws, regulations and rules, including the Company's withholding of Shares otherwise due to the exercising Grantee.

## 12. TERMS AND CONDITIONS OF PERFORMANCE AWARDS

### 12.1. Performance Conditions

The right of a Grantee to exercise or receive a grant or settlement of any Award, and the timing thereof, may be subject to such performance conditions as may be specified by the Committee. The Committee may use such business criteria and other measures of performance as it may deem appropriate in establishing any performance conditions.

### 12.2. Performance Awards Granted to Designated Covered Employees

If and to the extent that the Committee determines that a Performance Award to be granted to a Grantee who is designated by the Committee as likely to be a Covered Employee should qualify as "performance-based compensation" for purposes of Section 162(m), the grant, exercise and/or settlement of such Performance Award shall be contingent upon achievement of pre-established performance goals and other terms and conditions set forth in this Section 12.2. Notwithstanding anything herein to the contrary, the Committee may provide for Performance Awards to Covered Employees that are not intended to qualify as "performance-based compensation" for purposes of Section 162(m).

#### 12.2.1. Performance Goals Generally

The performance goals for Performance Awards shall consist of one or more business criteria and a targeted level or levels of performance with respect to each of such criteria, as specified by the Committee consistent with this Section 12.2. Performance goals shall be objective and shall otherwise meet the requirements of Section 162(m), including the requirement that the level or levels of performance targeted by the Committee result in the achievement of performance goals being "substantially uncertain." The Committee may determine that Performance Awards shall be granted, exercised and/or settled upon achievement of any one performance goal or that two or more of the performance goals must be achieved as a condition to grant, exercise and/or settlement of the Performance Awards. Performance goals may be established on a Company-wide basis, or with respect to one or more business units, divisions, Affiliates or business segments, as applicable. Performance goals may be absolute or relative (to the performance of one or more comparable companies or indices). To the extent consistent with the requirements of Section 162(m), the Committee may determine at the time that goals under this Section 12 are established the extent to which measurement of performance goals may exclude the impact of charges for restructuring, discontinued operations, extraordinary items, debt redemption or retirement, asset write downs, litigation or claim judgments or settlements, acquisitions or divestitures, foreign exchange gains and losses and other extraordinary, unusual or non-recurring items, and the cumulative effects of tax or accounting changes (each as defined by generally accepted accounting principles and as identified in the Company's financial statements or other SEC filings). Performance goals may differ for Performance Awards granted to any one Grantee or to different Grantees.

#### 12.2.2. Business Criteria

One or more of the following business criteria for the Company, on a consolidated basis, and/or specified Affiliates or business units of the Company (except with respect to the total stockholder return and earnings per share criteria), shall be used exclusively by the Committee in establishing performance goals for Performance Awards: (i) cash flow; (ii) earnings per share, as adjusted for any stock split, stock dividend or other recapitalization; (iii) earnings measures (including EBIT and EBITDA); (iv) return on equity; (v) total stockholder return; (vi) share price performance, as adjusted for any stock split, stock dividend or other recapitalization; (vii) return on capital; (viii) revenue; (ix) income; (x) profit margin; (xi) return on operating revenue; (xii) brand recognition or acceptance; (xiii) customer metrics (including customer satisfaction, customer retention, customer profitability or customer contract terms); (xiv) productivity; (xv) expense targets; (xvi) market share; (xvii) cost control measures; (xviii) balance sheet metrics; (xix) strategic initiatives; (xx) implementation, completion or attainment of measurable objectives with respect to recruitment or retention of personnel or employee satisfaction;

(xxi) return on assets; (xxii) growth in net sales; (xxiii) the ratio of net sales to net working capital; (xxiv) stockholder value added; (xxv) improvement in management of working capital items (inventory, accounts receivable or accounts payable); (xxvi) sales from newly-introduced products; (xxvii) successful completion of, or achievement of milestones or objectives related to, financing or capital raising transactions, strategic acquisitions or divestitures, joint ventures, partnerships, collaborations or other transactions; (xxviii) product quality, safety, productivity, yield or reliability (on time and complete orders); (xxix) funds from operations; (xxx) regulatory body approval for commercialization of a product; (xxxi) debt levels or reduction or debt ratios; (xxxii) economic value; (xxxiii) operating efficiency; (xxxiv) research and development achievements; or (xxxv) any combination of the forgoing business criteria; *provided, however*, that such business criteria shall include any derivations of business criteria listed above ( *e.g.* , income shall include pre-tax income, net income and operating income).

#### **12.2.3. Timing for Establishing Performance Goals**

Performance goals shall be established not later than 90 days after the beginning of any performance period applicable to Performance Awards, or at such other date as may be required or permitted for “performance-based compensation” under Section 162(m).

#### **12.2.4. Settlement of Performance Awards; Other Terms**

Settlement of Performance Awards may be in cash, Shares, other Awards or other property, as determined by the Committee. The Committee may reduce the amount of a settlement otherwise to be made in connection with Performance Awards.

#### **12.3. Written Determinations**

All determinations by the Committee as to the establishment of performance goals, the amount of any Performance Award pool or individual Performance Awards and as to the achievement of performance goals relating to Performance Awards, shall be made in writing in the case of any Award intended to qualify as “performance-based compensation” under Section 162(m) as required by Section 162(m). To the extent permitted by Section 162(m), the Committee may delegate any responsibility relating to such Performance Awards.

#### **12.4. Status of Section 12.2 Awards under Section 162(m)**

It is the intent of the Company that Performance Awards under **Section 12.2** granted to persons who are designated by the Committee as likely to be Covered Employees within the meaning of Section 162(m) shall, if so designated by the Committee, qualify as “performance-based compensation” within the meaning of Section 162(m). Accordingly, the terms and conditions of **Section 12.2**, including the definitions of Covered Employee and other terms used therein, shall be interpreted in a manner consistent with Section 162(m). The foregoing notwithstanding, because the Committee cannot determine with certainty whether a given Grantee will be a Covered Employee with respect to a fiscal year that has not yet been completed, the term Covered Employee as used herein shall mean only a person designated by the Committee, at the time of grant of Performance Awards, as likely to be a Covered Employee with respect to that fiscal year or any subsequent fiscal year. If any provision of the Plan or any agreement relating to such Performance Awards does not comply or is inconsistent with the requirements of Section 162(m), such provision shall be construed or deemed amended to the extent necessary to conform to such requirements.

### **13. OTHER SHARE-BASED AWARDS**

#### **13.1. Grant of Other Share-based Awards**

Other Share-based Awards may be granted either alone or in addition to or in conjunction with other Awards. Other Share-based Awards may be granted in lieu of other cash or other compensation to which a Service Provider is entitled from the Company or may be used in the settlement of amounts payable in Shares under any other compensation plan or arrangement of the Company. Subject to the provisions of the Plan, the Committee shall have the authority to determine the persons to whom and the time or times at which such Awards will be made, the number of Shares to be granted pursuant to such Awards, and all other terms and conditions of such Awards. Unless the Committee determines otherwise, any such Award shall be confirmed by an Award Agreement, which shall contain such provisions as the Committee determines to be necessary or appropriate to carry out the intent of the Plan with respect to such Award.

### 13.2. Terms of Other Share-based Awards

Any Common Stock subject to Awards made under this Section 13 may not be sold, assigned, transferred, pledged or otherwise encumbered prior to the date on which the Shares are issued, or, if later, the date on which any applicable restriction, performance or deferral period lapses.

## 14. REQUIREMENTS OF LAW

### 14.1. General

The Company shall not be required to sell or issue any Shares under any Award if the sale or issuance of such Shares would constitute a violation by the Grantee, any other individual exercising an Option or the Company of any provision of any law or regulation of any governmental authority, including any federal or state securities laws or regulations. If at any time the Committee determines that the listing, registration or qualification of any Shares subject to an Award upon any securities exchange or under any governmental regulatory body is necessary or desirable as a condition of, or in connection with, the issuance or purchase of Shares hereunder, no Shares may be issued or sold to the Grantee or any other individual exercising an Option pursuant to such Award unless such listing, registration, qualification, consent or approval shall have been effected or obtained free of any conditions not acceptable to the Company, and any delay caused thereby shall in no way affect the date of termination of the Award. Specifically, in connection with the Securities Act, upon the exercise of any Option or the delivery of any Shares underlying an Award, unless a registration statement under such Act is in effect with respect to the Shares covered by such Award, the Company shall not be required to sell or issue such Shares unless the Committee has received evidence satisfactory to it that the Grantee or any other individual exercising an Option may acquire such Shares pursuant to an exemption from registration under the Securities Act. The Company may, but shall in no event be obligated to, register any securities covered hereby pursuant to the Securities Act. The Company shall not be obligated to take any affirmative action in order to cause the exercise of an Option or the issuance of Shares pursuant to the Plan to comply with any law or regulation of any governmental authority. As to any jurisdiction that expressly imposes the requirement that an Option shall not be exercisable until the Shares covered by such Option are registered or are exempt from registration, the exercise of such Option (under circumstances in which the laws of such jurisdiction apply) shall be deemed conditioned upon the effectiveness of such registration or the availability of such an exemption.

### 14.2. Section 25102(o) of the California Corporations Code.

The Plan is intended to comply with Section 25102(o) of the California Corporations Code. In that regard, to the extent required by Section 25102(o), (i) the terms of any Options or SARs, to the extent vested and exercisable upon a Grantee's Separation from Service, shall include any minimum exercise periods following Separation from Service specified by Section 25102(o), and (ii) any repurchase right of the Company with respect to Shares issued under the Plan shall include a minimum 90-day notice requirement. Any provision of the Plan that is inconsistent with Section 25102(o) shall, without further act or amendment by the Company, be reformed to comply with the requirements of Section 25102(o).

### 14.3. Rule 16b-3

During any time when the Company has a class of equity security registered under Section 12 of the Exchange Act, it is the intent of the Company that Awards and the exercise of Options granted hereunder will qualify for the exemption provided by Rule 16b-3 under the Exchange Act. To the extent that any provision of the Plan or action by the Board or Committee does not comply with the requirements of Rule 16b-3, it shall be deemed inoperative to the extent permitted by law and deemed advisable by the Committee, and shall not affect the validity of the Plan. In the event that Rule 16b-3 is revised or replaced, the Committee may modify the Plan in any respect necessary to satisfy the requirements of, or to take advantage of any features of, the revised exemption or its replacement.

## 15. EFFECT OF CHANGES IN CAPITALIZATION

### 15.1. Adjustments for Changes in Capital Structure

Subject to any required action by the Stockholders, in the event of any change in the Shares effected without receipt of consideration by the Company, whether through merger, consolidation, reorganization, reincorporation, recapitalization, reclassification, stock dividend, stock split, reverse stock split, split-up, split-off, spin-off, combination of shares, exchange of shares or similar change in the capital structure of the Company, or in the event of payment of a dividend or distribution to the Stockholders in a form other than Shares (excepting normal cash dividends) that has a material effect on the Fair Market Value of Shares, appropriate and proportionate adjustments shall be made in the number and class of shares subject to the Plan and to any outstanding Awards, and in the Option Price, SAR Exercise Price or Purchase Price per Share of any outstanding Awards in order to prevent dilution or enlargement of Grantees' rights under the Plan. For purposes of the foregoing, conversion of any convertible securities of the Company shall not be treated as "effected without receipt of consideration by the Company." If a majority of the shares which are of the same class as the shares that are subject to outstanding Awards are exchanged for, converted into, or otherwise become (whether or not pursuant to a Change in Control) shares of another corporation (the " **New Shares** "), the Committee may unilaterally amend the outstanding Awards to provide that such Awards are for New Shares. In the event of any such amendment, the number of Shares subject to, and the Option Price, SAR Exercise Price or Purchase Price per Share of, the outstanding Awards shall be adjusted in a fair and equitable manner as determined by the Committee. Any fractional share resulting from an adjustment pursuant to this **Section 15.1** shall be rounded down to the nearest whole number and the Option Price, SAR Exercise Price or Purchase Price per share shall be rounded up to the nearest whole cent. In no event may the exercise price of any Award be decreased to an amount less than the par value, if any, of the stock subject to the Award. The Committee may also make such adjustments in the terms of any Award to reflect, or related to, such changes in the capital structure of the Company or distributions as it deems appropriate. Adjustments determined by the Committee pursuant to this **Section 15.1** shall be made in accordance with Section 409A to the extent applicable.

### 15.2. Change in Control

#### 15.2.1. Consequences of a Change in Control

Subject to the requirements and limitations of Section 409A if applicable, the Committee may provide for any one or more of the following in connection with a Change in Control:

(i) **Accelerated Vesting** . The Committee may provide in any Award Agreement or, in the event of a Change in Control, may take such actions as it deems appropriate to provide for the acceleration of the exercisability, vesting and/or settlement in connection with such Change in Control of each or any outstanding Award or portion thereof and shares acquired pursuant thereto upon such conditions, including termination of the Grantee's Service prior to, upon, or following such Change in Control, to such extent as the Committee shall determine.

(ii) **Assumption, Continuation or Substitution** . In the event of a Change in Control, the surviving, continuing, successor or purchasing corporation or other business entity or parent thereof, as the case may be (the " **Acquiror** "), may, without the consent of any Grantee, either assume or continue the Company's rights and obligations under each or any Award or portion thereof outstanding immediately prior to the Change in Control or substitute for each or any such outstanding Award or portion thereof a substantially equivalent award with respect to the Acquiror's stock, as applicable. For purposes of this **Section 15.2** , if so determined by the Committee, an Award denominated in Shares shall be deemed assumed if, following the Change in Control, the Award confers the right to receive, subject to the terms and conditions of the Plan and the applicable Award Agreement, for each Share subject to the Award immediately prior to the Change in Control, the consideration (whether stock, cash, other securities or property or a combination thereof) to which a holder of a Share on the effective date of the Change in Control was entitled; *provided* , *however* , that if such consideration is not solely common stock of the Acquiror, the Committee may, with the consent of the Acquiror, provide for the consideration to be received upon the exercise or settlement of the Award, for each Share subject to the Award, to consist solely of common stock of the Acquiror equal in Fair Market Value to the per share consideration received by Stockholders pursuant to the Change in Control. If any

portion of such consideration may be received by Stockholders pursuant to the Change in Control on a contingent or delayed basis, the Committee may determine such Fair Market Value as of the time of the Change in Control on the basis of the Committee's good faith estimate of the present value of the probable future payment of such consideration. Any Award or portion thereof which is neither assumed or continued by the Acquiror in connection with the Change in Control nor exercised or settled as of the time of consummation of the Change in Control shall terminate and cease to be outstanding effective as of the time of consummation of the Change in Control.

(iii) **Cash-Out of Awards**. The Committee may, in its discretion and without the consent of any Grantee, determine that, upon the occurrence of a Change in Control, each or any Award or a portion thereof outstanding immediately prior to the Change in Control and not previously exercised or settled shall be canceled in exchange for a payment with respect to each vested Share (and each unvested Share, if so determined by the Committee) subject to such canceled Award in (i) cash, (ii) stock of the Company or of a corporation or other business entity a party to the Change in Control or (iii) other property which, in any such case, shall be in an amount having a Fair Market Value equal to the Fair Market Value of the consideration to be paid per Share in the Change in Control, reduced by the exercise or purchase price per share, if any, under such Award. If any portion of such consideration may be received by Stockholders pursuant to the Change in Control on a contingent or delayed basis, the Committee may determine such Fair Market Value as of the time of the Change in Control on the basis of the Committee's good faith estimate of the present value of the probable future payment of such consideration. In the event such determination is made by the Committee, the amount of such payment (reduced by applicable withholding taxes, if any) shall be paid to Grantees in respect of the vested portions of their canceled Awards as soon as practicable following the date of the Change in Control and in respect of the unvested portions of their canceled Awards in accordance with the vesting schedules applicable to such Awards. For avoidance of doubt, if the amount determined pursuant to this **Section 15.2** for an Option or SAR is zero or less, the affected Option or SAR may be cancelled without any payment therefore.

#### 15.2.2. Change in Control Defined

Unless otherwise provided in the applicable Award Agreement, a "**Change in Control**" means the consummation of any of the following events:

- (i) The acquisition, other than from the Company, by any individual, entity or group (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act), other than the Company or any subsidiary, affiliate (within the meaning of Rule 144 promulgated under the Securities Act) or employee benefit plan of the Company, of beneficial ownership (within the meaning of Rule 13d-3 promulgated under the Exchange Act) of more than 50% of the combined voting power of the then outstanding voting securities of the Company entitled to vote generally in the election of directors (the "**Voting Securities**");
- (ii) A reorganization, merger, consolidation or recapitalization of the Company (a "**Business Combination**"), other than a Business Combination in which more than 50% of the combined voting power of the outstanding voting securities of the surviving or resulting entity immediately following the Business Combination is held by the Persons who, immediately prior to the Business Combination, were the holders of the Voting Securities; or
- (iii) A complete liquidation or dissolution of the Company, or a sale of all or substantially all of the assets of the Company; or
- (iv) During any period of 24 consecutive months, the Incumbent Directors cease to constitute a majority of the Board; "**Incumbent Directors**" means individuals who were members of the Board at the beginning of such period or individuals whose election or nomination for election to the Board by the Stockholders was approved by a vote of at least a majority of the then Incumbent Directors (but excluding any individual whose initial election or nomination is in connection with an actual or threatened proxy contest relating to the election of directors).

Notwithstanding the foregoing, if it is determined that an Award is subject to the requirements of Section 409A and payable upon a Change in Control, the Company will not be deemed to have undergone a Change in Control for purposes of the Plan unless the Company is deemed to have undergone a "change in control event" pursuant to the definition of such term in Section 409A.

### 15.3. Adjustments

Adjustments under this **Section 15** related to Shares or securities of the Company shall be made by the Committee. No fractional Shares or other securities shall be issued pursuant to any such adjustment, and any fractions resulting from any such adjustment shall be eliminated in each case by rounding downward to the nearest whole Share.

### 16. NO LIMITATIONS ON COMPANY

The making of Awards shall not affect or limit in any way the right or power of the Company to make adjustments, reclassifications, reorganizations or changes of its capital or business structure or to merge, consolidate, dissolve or liquidate, or to sell or transfer all or any part of its business or assets.

### 17. TERMS APPLICABLE GENERALLY TO AWARDS

#### 17.1. Disclaimer of Rights

No provision in the Plan or in any Award Agreement shall be construed to confer upon any individual the right to remain in the employ or service of the Company or any Affiliate, or to interfere in any way with any contractual or other right or authority of the Company or any Affiliate either to increase or decrease the compensation or other payments to any individual at any time, or to terminate any employment or other relationship between any individual and the Company or any Affiliate. In addition, notwithstanding anything contained in the Plan to the contrary, unless otherwise provided in the applicable Award Agreement, no Award shall be affected by any change of duties or position of the Grantee, so long as such Grantee continues to be a Service Provider. The obligation of the Company to pay any benefits pursuant to the Plan shall be interpreted as a contractual obligation to pay only those amounts described herein, in the manner and under the conditions prescribed herein. The Plan shall in no way be interpreted to require the Company to transfer any amounts to a third party trustee or otherwise hold any amounts in trust or escrow for payment to any Grantee or beneficiary under the terms and conditions of the Plan.

#### 17.2. Nonexclusivity of the Plan

Neither the adoption of the Plan nor the submission of the Plan to the Stockholders for approval shall be construed as creating any limitations upon the right and authority of the Board or its delegate to adopt such other compensation arrangements as the Board or its delegate determines desirable.

#### 17.3. Withholding Taxes

The Company or an Affiliate, as the case may be, shall have the right to deduct from payments of any kind otherwise due to a Grantee any federal, state or local taxes of any kind required by law to be withheld (i) with respect to the vesting of or other lapse of restrictions applicable to an Award, (ii) upon the issuance of any Shares upon the exercise of an Option or SAR or (iii) otherwise due in connection with an Award. At the time of such vesting, lapse or exercise, the Grantee shall pay to the Company or the Affiliate, as the case may be, any amount that the Company or the Affiliate may reasonably determine to be necessary to satisfy such withholding obligation. Subject to the prior approval of the Committee, the Grantee may elect to satisfy such obligations, or the Company may require such obligations to be satisfied, in whole or in part, (i) by causing the Company or the Affiliate to withhold the minimum required number of Shares otherwise issuable to the Grantee as may be necessary to satisfy such withholding obligation or (ii) by delivering to the Company or the Affiliate Shares already owned by the Grantee. The Shares so delivered or withheld shall have an aggregate Fair Market Value equal to such withholding obligations. The Fair Market Value used to satisfy such withholding obligation shall be determined by the Company or the Affiliate as of the date that the amount of tax to be withheld is to be determined. A Grantee who has made an election pursuant to this **Section 17.3** may satisfy his or her withholding obligation only with Shares that are not subject to any repurchase, forfeiture, unfulfilled vesting or other similar requirements.

#### **17.4. Other Provisions**

Each Award Agreement may contain such other terms and conditions not inconsistent with the Plan as may be determined by the Committee. In the event of any conflict between the terms and conditions of an employment agreement and the Plan, the terms and conditions of the employment agreement shall govern.

#### **17.5. Severability**

If any provision of the Plan or any Award Agreement shall be determined to be illegal or unenforceable by any court of law in any jurisdiction, the remaining provisions hereof and thereof shall be severable and enforceable in accordance with their terms and conditions, and all provisions shall remain enforceable in any other jurisdiction.

#### **17.6. Governing Law**

The Plan shall be governed by and construed in accordance with the laws of the State of Delaware without giving effect to the principles of conflicts of law, and applicable Federal law.

#### **17.7. Section 409A**

The Plan is intended to comply with Section 409A to the extent subject thereto, and, accordingly, to the maximum extent permitted, the Plan shall be interpreted and administered to be in compliance therewith. Any payments described in the Plan that are due within the "short-term deferral period" as defined in Section 409A shall not be treated as deferred compensation unless applicable laws require otherwise. Notwithstanding anything to the contrary in the Plan, to the extent required to avoid accelerated taxation and tax penalties under Section 409A, amounts that would otherwise be payable and benefits that would otherwise be provided pursuant to the Plan during the six-month period immediately following the Grantee's Separation from Service shall instead be paid on the first payroll date after the six-month anniversary of the Grantee's Separation from Service (or the Grantee's death, if earlier). Notwithstanding the foregoing, neither the Company nor the Committee shall have any obligation to take any action to prevent the assessment of any excise tax or penalty on any Grantee under Section 409A and neither the Company nor the Committee shall have any liability to any Grantee for such tax or penalty.

#### **17.8. Separation from Service**

The Committee shall determine the effect of a Separation from Service upon Awards, and such effect shall be set forth in the applicable Award Agreement. Without limiting the foregoing, the Committee may provide in the Award Agreements at the time of grant, or any time thereafter with the consent of the Grantee, the actions that will be taken upon the occurrence of a Separation from Service, including accelerated vesting or termination, depending upon the circumstances surrounding the Separation from Service.

#### **17.9. Transferability of Awards**

##### **17.9.1. Transfers in General**

Except as provided in **Section 17.9.2**, no Award shall be assignable or transferable by the Grantee, other than by will or the laws of descent and distribution, and, during the lifetime of the Grantee, only the Grantee personally (or the Grantee's personal representative) may exercise rights under the Plan.

##### **17.9.2. Family Transfers**

If authorized in the applicable Award Agreement, a Grantee may transfer, not for value, all or part of an Award (other than Incentive Stock Options) to any Family Member. For the purpose of this **Section 17.9.2**, a "not for value" transfer is a transfer that is (i) a gift, (ii) a transfer under a domestic relations order in settlement of marital property rights or (iii) a transfer to an entity in which more than 50% of the voting interests are owned by Family Members (or the Grantee) in exchange for an interest in that entity. Following a transfer under this **Section 17.9.2**, any such Award shall continue to be subject to the same terms and conditions as were applicable immediately prior to transfer. Subsequent transfers of transferred Awards are prohibited except to Family Members of the original Grantee in accordance with this **Section 17.9.2** or by will or the laws of descent and distribution.



#### **17.10. Dividends and Dividend Equivalent Rights**

If specified in the Award Agreement, the recipient of an Award may be entitled to receive, currently or on a deferred basis, dividends or dividend equivalents with respect to the Common Stock or other securities covered by an Award. The terms and conditions of a dividend equivalent right may be set forth in the Award Agreement. Dividend equivalents credited to a Grantee may be paid currently or may be deemed to be reinvested in additional Shares or other securities of the Company at a price per unit equal to the Fair Market Value on the date that such dividend was paid to Stockholders, as determined by the Committee. Notwithstanding the foregoing, in no event will dividends or dividend equivalents on any Award that is subject to the achievement of performance criteria be payable before the Award has become earned and payable.

#### **17.11. Plan Construction**

In the Plan, unless otherwise stated, the following uses apply: (i) references to a statute or law refer to the statute or law and any amendments and any successor statutes or laws, and to all valid and binding governmental regulations, court decisions and other regulatory and judicial authority issued or rendered thereunder, as amended, or their successors, as in effect at the relevant time; (ii) in computing periods from a specified date to a later specified date, the words "from" and "commencing on" (and the like) mean "from and including," and the words "to," "until" and "ending on" (and the like) mean "to and including"; (iii) indications of time of day shall be based upon the time applicable to the location of the principal headquarters of the Company; (iv) the words "include," "includes" and "including" (and the like) mean "include, without limitation," "includes, without limitation" and "including, without limitation" (and the like), respectively; (v) all references to articles and sections are to articles and sections in the Plan; (vi) all words used shall be construed to be of such gender or number as the circumstances and context require; (vii) the captions and headings of articles and sections have been inserted solely for convenience of reference and shall not be considered a part of the Plan, nor shall any of them affect the meaning or interpretation of the Plan or any of its provisions; (viii) any reference to an agreement, plan, policy, form, document or set of documents, and the rights and obligations of the parties under any such agreement, plan, policy, form, document or set of documents, shall mean such agreement, plan, policy, form, document or set of documents as amended from time to time, and any and all modifications, extensions, renewals, substitutions or replacements thereof; and (ix) all accounting terms not specifically defined shall be construed in accordance with generally accepted accounting principles.

**The Plan was originally approved by the Board and the Stockholders in December 2013. This amended and restated version of the Plan was approved by the Board on April 11, 2018 and by the Stockholders on May 16, 2018.**

## ENERGIOUS CORPORATION

## 2014 NON-EMPLOYEE EQUITY COMPENSATION PLAN

(AS AMENDED AND RESTATED MAY 16, 2018)

Energous Corporation sets forth herein the terms and conditions of its 2014 Non-employee Equity Compensation Plan (as Amended and Restated May 16, 2018), as follows:

**18. PURPOSE**

The Plan is intended to enhance the Company's and its Affiliates' ability to attract and retain highly qualified Non-Employee Directors and Consultants, and to motivate such Non-Employee Directors and Consultants to serve the Company and its Affiliates and to expend maximum effort to improve the business results and earnings of the Company, by providing to such persons an opportunity to acquire or increase a direct proprietary interest in the operations and future success of the Company. To this end, the Plan provides for the grant of stock options, stock appreciation rights, restricted stock, restricted stock units, unrestricted stock, other share-based awards and cash awards. Any of these awards may, but need not, be made as performance incentives to reward attainment of performance goals in accordance with the terms and conditions hereof. Stock options granted under the Plan shall be non-qualified stock options.

**19. DEFINITIONS**

For purposes of interpreting the Plan and related documents (including Award Agreements), the following definitions shall apply:

**19.1. "Acquiror"** shall have the meaning set forth in **Section 15.2**.

**19.2. "Affiliate"** means any company or other trade or business that "controls," is "controlled by" or is "under common control with" the Company within the meaning of Rule 405 of Regulation C under the Securities Act, including any Subsidiary.

**19.3. "Award"** means a grant of an Option, SAR, Restricted Stock, RSU, Other Share-based Award or cash award under the Plan.

**19.4. "Award Agreement"** means a written agreement between the Company and a Grantee, or notice from the Company or an Affiliate to a Grantee that evidences and sets out the terms and conditions of an Award.

**19.5. "Board"** means the Board of Directors of the Company.

**19.6. "Business Combination"** shall have the meaning set forth in **Section 15.2**.

**19.7. "Change in Control"** shall have the meaning set forth in **Section 15.2**.

**19.8. "Code"** means the Internal Revenue Code of 1986.

**19.9. "Committee"** means the Compensation Committee of the Board or any committee or other person or persons designated by the Board to administer the Plan. The Board will cause the Committee to satisfy the applicable requirements of any securities exchange on which the Common Stock may then be listed. For purposes of Awards to Grantees who are subject to Section 16 of the Exchange Act, Committee means all of the members of the Committee who are "non-employee directors" within the meaning of Rule 16b-3 adopted under the Exchange Act.

**19.10. "Company"** means Energous Corporation, a Delaware Corporation, or any successor corporation.

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19.11. “**Common Stock**” means the common stock of the Company.

19.12. “**Consultant**” means a consultant or advisor that provides bona fide services to the Company or any Affiliate and who qualifies as a consultant or advisor under Form S-8.

19.13. “**Effective Date**” means May 16, 2018, the date the Plan was most recently approved by the Stockholders.

19.14. “**Exchange Act**” means the Securities Exchange Act of 1934.

19.15. “**Fair Market Value**” of a Share as of a particular date means (i) if the Common Stock is listed on a national securities exchange, the closing or last price of the Common Stock on the composite tape or other comparable reporting system for the applicable date, or if the applicable date is not a trading day, the trading day immediately preceding the applicable date, or (ii) if the Common Stock is not then listed on a national securities exchange, the closing or last price of the Common Stock quoted by an established quotation service for over-the-counter securities, or (iii) if the Common Stock is not then listed on a national securities exchange or quoted by an established quotation service for over-the-counter securities, or the value of the Common Stock is not otherwise determinable, such value as determined by the Committee.

19.16. “**Family Member**” means a person who is a spouse, former spouse, child, stepchild, grandchild, parent, stepparent, grandparent, niece, nephew, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother, sister, brother-in-law or sister-in-law, including adoptive relationships, of the applicable individual, any person sharing the applicable individual’s household (other than a tenant or employee), a trust in which any one or more of these persons have more than 50% of the beneficial interest, a foundation in which any one or more of these persons (or the applicable individual) control the management of assets, and any other entity in which one or more of these persons (or the applicable individual) own more than 50% of the voting interests.

19.17. “**Grant Date**” means the latest to occur of (i) the date as of which the Committee approves an Award, (ii) the date on which the recipient of an Award first becomes eligible to receive an Award under **Section 6** or (iii) such other date as may be specified by the Committee in the Award Agreement.

19.18. “**Grantee**” means a person who receives or holds an Award.

19.19. “**Incumbent Directors**” shall have the meaning set forth in **Section 15.2**.

19.20. “**Non-Employee Director**” means a member of the Board or the board of directors of an Affiliate, in each case who is not an officer or employee of the Company or any Affiliate.

19.21. “**Option**” means an option to purchase one or more Shares pursuant to the Plan.

19.22. “**Option Price**” means the exercise price for each Share subject to an Option.

19.23. “**Other Share-based Awards**” means Awards consisting of Share units, or other Awards, valued in whole or in part by reference to, or otherwise based on, Common Stock, other than Options, SARs, Restricted Stock and RSUs.

19.24. “**Performance Award**” means an Award made subject to the attainment of performance goals (as described in **Section 12**) over a performance period of at least one year established by the Committee.

19.25. “**Person**” means an individual, entity or group within the meaning of Section 13(d)(3) or 14(d)(2) of the Exchange Act.

19.26. “**Plan**” means this Energeous Corporation 2014 Non-employee Equity Compensation Plan.

19.27. “**Purchase Price**” means the purchase price for each Share pursuant to a grant of Restricted Stock.

19.28. “**Restricted Period**” shall have the meaning set forth in **Section 10.1** .

19.29. “**Restricted Stock**” means restricted Shares that are subject to specified terms and conditions, awarded to a Grantee pursuant to **Section 10** .

19.30. “**Restricted Stock Unit**” or “**RSU**” means a bookkeeping entry representing the right to receive Shares or their cash equivalent subject to the satisfaction of specified terms and conditions, awarded to a Grantee pursuant to **Section 10** .

19.31. “**SAR Exercise Price**” means the per Share exercise price of a SAR granted to a Grantee under **Section 9** .

19.32. “**SEC**” means the United States Securities and Exchange Commission.

19.33. “**Section 409A**” means Code Section 409A.

19.34. “**Securities Act**” means the Securities Act of 1933.

19.35. “**Separation from Service**” means the termination of a Service Provider’s Service, whether initiated by the Service Provider or the Company or an Affiliate; *provided* that if any Award governed by Section 409A is to be distributed on a Separation from Service, then the definition of Separation from Service for such purposes shall comply with the definition provided in Section 409A.

19.36. “**Service**” means service as a Service Provider to the Company or an Affiliate. Unless otherwise provided in the applicable Award Agreement, a Grantee’s change in position or duties shall not result in interrupted or terminated Service, so long as such Grantee continues to be a Service Provider to the Company or an Affiliate.

19.37. “**Service Provider**” means a Non-Employee Director or Consultant of the Company or an Affiliate.

19.38. “**Share**” means a share of Common Stock.

19.39. “**Stock Appreciation Right**” or “**SAR**” means a right granted to a Grantee pursuant to **Section 9** .

19.40. “**Stockholder**” means a stockholder of the Company.

19.41. “**Subsidiary**” means any “subsidiary corporation” of the Company within the meaning of Code Section 424(f).

19.42. “**Substitute Award**” means any Award granted in assumption of or in substitution for an award of a company or business acquired by the Company or an Affiliate or with which the Company or an Affiliate combines.

19.43. “**Termination Date**” means the date that is 10 years after the Effective Date, unless the Plan is earlier terminated by the Board under **Section 5.2** .

19.44. “**Voting Securities**” shall have the meaning set forth in **Section 15.2** .

## 20. ADMINISTRATION OF THE PLAN

### 20.1. General

The Board shall have such powers and authorities related to the administration of the Plan as are consistent with the Company’s certificate of incorporation and bylaws and applicable law. The Board shall have the power and authority to delegate its responsibilities hereunder to the Committee, which shall have full authority to act in accordance with its charter, and with respect to the power and authority of the Board to act hereunder, all references to the Board shall be deemed to include a reference to the Committee, unless such power or authority is specifically

reserved by the Board. Except as specifically provided in **Section 14** or as otherwise may be required by applicable law, regulatory requirement or the certificate of incorporation or the bylaws of the Company, the Board shall have full power and authority to take all actions and to make all determinations required or provided for under the Plan, any Award or any Award Agreement, and shall have full power and authority to take all such other actions and make all such other determinations not inconsistent with the specific terms and conditions of the Plan that the Board deems to be necessary or appropriate to the administration of the Plan. The Committee shall administer the Plan; *provided* that, the Board shall retain the right to exercise the authority of the Committee to the extent consistent with applicable law and the applicable requirements of any securities exchange on which the Common Stock may then be listed. All actions, determinations and decisions by the Board or the Committee under the Plan, any Award or any Award Agreement shall be in the Board's (or the Committee's, as applicable) sole discretion and shall be final, binding and conclusive. Without limitation, the Committee shall have full and final power and authority, subject to the other terms and conditions of the Plan, to:

- (i) designate Grantees;
- (ii) determine the type or types of Awards to be made to Grantees;
- (iii) determine the number of Shares to be subject to an Award;
- (iv) establish the terms and conditions of each Award (including the Option Price of any Option, the nature and duration of any restriction or condition (or provision for lapse thereof) relating to the vesting, exercise, transfer or forfeiture of an Award or the Shares subject thereto);
- (v) prescribe the form of each Award Agreement; and
- (vi) amend, modify or supplement the terms or conditions of any outstanding Award including the authority, in order to effectuate the purposes of the Plan, to modify Awards to foreign nationals or individuals who are employed outside the United States to recognize differences in local law, tax policy or custom.

To the extent permitted by applicable law, the Committee may delegate its authority as identified herein to any individual or committee of individuals (who need not be directors), including the authority to make Awards to Grantees who are not subject to Section 16 of the Exchange Act. To the extent that the Committee delegates its authority to make Awards as provided by this **Section 3.1**, all references in the Plan to the Committee's authority to make Awards and determinations with respect thereto shall be deemed to include the Committee's delegate. Any such delegate shall serve at the pleasure of, and may be removed at any time by, the Committee.

#### **20.2. No Repricing**

Notwithstanding any provision herein to the contrary, the repricing of Options or SARs is prohibited without prior approval of the Stockholders. For this purpose, a "repricing" means any of the following (or any other action that has the same effect as any of the following): (i) changing the terms of an Option or SAR to lower its Option Price or SAR Exercise Price; (ii) any other action that is treated as a "repricing" under generally accepted accounting principles; and (iii) repurchasing for cash or canceling an Option or SAR at a time when its Option Price or SAR Exercise Price is greater than the Fair Market Value of the underlying Shares in exchange for another award, unless the cancellation and exchange occurs in connection with a change in capitalization or similar change under **Section 15**. A cancellation and exchange under clause (iii) would be considered a "repricing" regardless of whether it is treated as a "repricing" under generally accepted accounting principles and regardless of whether it is voluntary on the part of the Grantee.

#### **20.3. Award Agreements; Clawbacks**

The grant of any Award may be contingent upon the Grantee executing the appropriate Award Agreement. The Company may retain the right in an Award Agreement to cause a forfeiture of the gain realized by a Grantee on account of actions taken by the Grantee in violation or breach of or in conflict with any service agreement, non-competition agreement, any agreement prohibiting solicitation of employees or clients of the Company or any Affiliate thereof or any confidentiality obligation with respect to the Company or any Affiliate thereof, or otherwise in competition with the Company or any Affiliate thereof, to the extent specified in such Award Agreement applicable to the Grantee. Furthermore, the Company may annul an Award if the Grantee is terminated for "cause" as defined in the applicable Award Agreement.

All awards, amounts or benefits received or outstanding under the Plan shall be subject to clawback, cancellation, recoupment, rescission, payback, reduction or other similar action in accordance with the terms of any Company clawback or similar policy or any applicable law related to such actions, as may be in effect from time to time. A Grantee's acceptance of an Award shall be deemed to constitute the Grantee's acknowledgement of and consent to the Company's application, implementation and enforcement of any applicable Company clawback or similar policy that may apply to the Grantee, whether adopted prior to or following the Effective Date, and any provision of applicable law relating to clawback, cancellation, recoupment, rescission, payback or reduction of compensation, and the Grantee's agreement that the Company may take such actions as may be necessary to effectuate any such policy or applicable law, without further consideration or action.

#### **20.4. Deferral Arrangement**

The Committee may permit or require the deferral of any Award payment into a deferred compensation arrangement, subject to such rules and procedures as it may establish and in accordance with Section 409A, which may include provisions for the payment or crediting of interest or dividend equivalents, including converting such credits into deferred Share units.

#### **20.5. No Liability**

No member of the Board or of the Committee shall be liable for any action or determination made in good faith with respect to the Plan, any Award or Award Agreement.

#### **20.6. Book Entry**

Notwithstanding any other provision of the Plan to the contrary, the Company may elect to satisfy any requirement under the Plan for the delivery of stock certificates through the use of book entry.

### **21. STOCK SUBJECT TO THE PLAN**

#### **21.1. Authorized Number of Shares**

Subject to adjustment under **Section 15**, the aggregate number of Shares authorized to be issued under the Plan is 850,000. Shares issued under the Plan may consist in whole or in part of authorized but unissued Shares, treasury Shares or Shares purchased on the open market or otherwise, all as determined by the Board from time to time.

#### **21.2. Share Counting**

##### **21.2.1. General**

Each Share granted in connection with an Award shall be counted as one Share against the limit in **Section 4.1**, subject to the provisions of this **Section 4.2**.

##### **21.2.2. Cash-Settled Awards**

Any Award settled in cash shall not be counted as issued Shares for any purpose under the Plan.

##### **21.2.3. Expired or Terminated Awards**

If any Award expires, or is terminated, surrendered or forfeited, in whole or in part, the unissued Shares covered by such Award shall again be available for the grant of Awards.

#### 21.2.4. Payment of Option Price or Tax Withholding in Shares

If Shares issuable upon exercise, vesting or settlement of an Award, or Shares owned by a Grantee (which are not subject to any pledge or other security interest) are surrendered or tendered to the Company in payment of the Option Price or Purchase Price of an Award or any taxes required to be withheld in respect of an Award, in each case, in accordance with the terms and conditions of the Plan and any applicable Award Agreement, such surrendered or tendered Shares shall again be available for the grant of Awards. For a stock-settled SAR, only the net Shares actually issued upon exercise of the SAR shall be counted against the limit in **Section 4.1**.

#### 21.2.5. Substitute Awards

Substitute Awards shall not be counted against the number of Shares reserved under the Plan.

#### 21.3. Limits on Awards to Non-Employee Directors

The maximum value of Awards granted during any calendar year to any Non-Employee Director, taken together with any cash fees paid to such Non-Employee Director during the calendar year and the value of awards granted to the Non-Employee Director under any other equity compensation plan of the Company or an Affiliate during the calendar year, shall not exceed the following in total value (calculating the value of any Awards or other equity compensation plan awards based on the grant date fair value for financial reporting purposes): (i) \$500,000 for the Chair of the Board and (ii) \$300,000 for each Non-Employee Director other than the Chair of the Board; *provided, however*, that Awards granted to Non-Employee Directors upon their initial election to the Board or the board of directors of an Affiliate shall not be counted towards the limit under this **Section 4.3.4**. Any Awards or other equity compensation plan awards that are scheduled to vest over a period of more than one calendar year shall be applied pro rata (based on grant date fair value as provided above) for purposes of the limit under this **Section 4.3.4** based on the number of years over which such awards are scheduled to vest.

### 22. EFFECTIVE DATE, DURATION AND AMENDMENTS

#### 22.1. Term

The Plan shall be effective as of the Effective Date, *provided* that it has been approved by the Stockholders. The Plan shall terminate automatically on the 10-year anniversary of the Effective Date and may be terminated on any earlier date as provided in **Section 5.2**.

#### 22.2. Amendment and Termination of the Plan

The Board may, at any time and from time to time, amend, suspend or terminate the Plan as to any Awards that have not been made. An amendment shall be contingent on approval of the Stockholders to the extent stated by the Board, required by applicable law or required by applicable securities exchange listing requirements. No Awards shall be made after the Termination Date. The applicable terms and conditions of the Plan, and any terms and conditions applicable to Awards granted prior to the Termination Date shall survive the termination of the Plan and continue to apply to such Awards. No amendment, suspension or termination of the Plan shall, without the consent of the Grantee, materially impair rights or obligations under any Award theretofore awarded.

### 23. AWARD ELIGIBILITY AND LIMITATIONS

#### 23.1. Service Providers

Subject to this **Section 6.1**, Awards may be made to any Service Provider as the Committee may determine and designate from time to time.

#### 23.2. Successive Awards

An eligible person may receive more than one Award, subject to such restrictions as are provided herein.

### 23.3. Stand-Alone, Additional, Tandem, and Substitute Awards

Awards may be granted either alone or in addition to, in tandem with or in substitution or exchange for, any other Award or any award granted under another plan of the Company, any Affiliate or any business entity to be acquired by the Company or an Affiliate, or any other right of a Grantee to receive payment from the Company or any Affiliate. Such additional, tandem or substitute or exchange Awards may be granted at any time. If an Award is granted in substitution or exchange for another award, the Committee shall have the right to require the surrender of such other award in consideration for the grant of the new Award. Subject to the requirements of applicable law, the Committee may make Awards in substitution or exchange for any other award under another plan of the Company, any Affiliate or any business entity to be acquired by the Company or an Affiliate. In addition, Awards may be granted in lieu of cash compensation, including in lieu of cash amounts payable under other plans of the Company or any Affiliate, in which the value of Shares subject to the Award is equivalent in value to the cash compensation (for example, RSUs or Restricted Stock).

### 24. AWARD AGREEMENT

The grant of any Award may be contingent upon the Grantee executing an appropriate Award Agreement, in such form or forms as the Committee shall from time to time determine. Without limiting the foregoing, an Award Agreement may be provided in the form of a notice that provides that acceptance of the Award constitutes acceptance of all terms and conditions of the Plan and the notice. Award Agreements granted from time to time or at the same time need not contain similar provisions but shall be consistent with the terms and conditions of the Plan.

### 25. TERMS AND CONDITIONS OF OPTIONS

#### 25.1. Option Price

The Option Price of each Option shall be fixed by the Committee and stated in the related Award Agreement. The Option Price of each Option (except those that constitute Substitute Awards) shall be at least the Fair Market Value on the Grant Date. In no case shall the Option Price of any Option be less than the par value of a Share.

#### 25.2. Vesting

Subject to **Section 8.3**, each Option shall become exercisable at such times and under such conditions (including performance requirements) as stated in the Award Agreement.

#### 25.3. Term

Each Option shall terminate, and all rights to purchase Shares thereunder shall cease 10 years from the Grant Date, or under such circumstances and on such date prior thereto as is set forth in the Plan or as may be fixed by the Committee and stated in the related Award Agreement.

#### 25.4. Limitations on Exercise of Option

Notwithstanding any other provision of the Plan, in no event may any Option be exercised, in whole or in part, (i) prior to the date the Plan is approved by the Stockholders as provided herein or (ii) after the occurrence of an event that results in termination of the Option.

#### 25.5. Method of Exercise

An Option that is exercisable may be exercised by the Grantee's delivery of a notice of exercise to the Company, setting forth the number of Shares with respect to which the Option is to be exercised, accompanied by full payment for the Shares. To be effective, notice of exercise must be made in accordance with procedures established by the Company from time to time.



#### 25.6. Rights of Holders of Options

Unless otherwise provided in the applicable Award Agreement, an individual holding or exercising an Option shall have none of the rights of a Stockholder (for example, the right to receive cash or dividend payments or distributions attributable to the subject Shares or to direct the voting of the subject Shares) until the Shares covered thereby are fully paid and issued to him. Except as provided in **Section 15** or the related Award Agreement, no adjustment shall be made for dividends, distributions or other rights for which the record date is prior to the date of such issuance.

#### 25.7. Delivery of Stock Certificates

Subject to **Section 3.6**, promptly after the exercise of an Option by a Grantee and the payment in full of the Option Price, such Grantee shall be entitled to the issuance of a stock certificate or certificates evidencing his or her ownership of the Shares subject to the Option.

### 26. TERMS AND CONDITIONS OF STOCK APPRECIATION RIGHTS

#### 26.1. Right to Payment

A SAR shall confer on the Grantee a right to receive, upon exercise thereof, the excess of (i) the Fair Market Value on the date of exercise over (ii) the SAR Exercise Price, as determined by the Committee. The Award Agreement for a SAR (except those that constitute Substitute Awards) shall specify the SAR Exercise Price, which shall be fixed on the Grant Date as not less than the Fair Market Value on that date. SARs may be granted alone or in conjunction with all or part of an Option or at any subsequent time during the term of such Option or in conjunction with all or part of any other Award. A SAR granted in tandem with an outstanding Option following the Grant Date of such Option shall have a grant price that is equal to the Option Price; *provided, however*, that the SAR's grant price may not be less than the Fair Market Value on the Grant Date of the SAR to the extent required by Section 409A.

#### 26.2. Other Terms

The Committee shall determine the time or times at which and the circumstances under which a SAR may be exercised in whole or in part (including based on achievement of performance goals and/or future service requirements), the time or times at which SARs shall cease to be or become exercisable following Separation from Service or upon other conditions, the method of exercise, whether or not a SAR shall be in tandem or in combination with any other Award and any other terms and conditions of any SAR.

#### 26.3. Term of SARs

The term of a SAR shall be determined by the Committee; *provided, however*, that such term shall not exceed 10 years.

#### 26.4. Payment of SAR Amount

Upon exercise of a SAR, a Grantee shall be entitled to receive payment from the Company (in cash or Shares, as determined by the Committee) in an amount determined by multiplying:

- (i) the difference between the Fair Market Value on the date of exercise over the SAR Exercise Price; by
- (ii) the number of Shares with respect to which the SAR is exercised.

### 27. TERMS AND CONDITIONS OF RESTRICTED STOCK AND RESTRICTED STOCK UNITS

#### 27.1. Restrictions

At the time of grant, the Committee may establish a period of time (a "**Restricted Period**") and any additional restrictions including the satisfaction of corporate or individual performance objectives applicable to an Award of Restricted Stock or RSUs. Each Award of Restricted Stock or RSUs may be subject to a different Restricted Period and additional restrictions. Neither Restricted Stock nor RSUs may be sold, transferred, assigned, pledged or otherwise encumbered or disposed of during the Restricted Period or prior to the satisfaction of any other applicable restrictions.

## 27.2. Restricted Stock Certificates

The Company shall issue Shares, in the name of each Grantee to whom Restricted Stock has been granted, stock certificates or other evidence of ownership representing the total number of Shares of Restricted Stock granted to the Grantee, as soon as reasonably practicable after the Grant Date. The Committee may provide in an Award Agreement that either (i) the Secretary of the Company shall hold such certificates for the Grantee's benefit until such time as the Restricted Stock is forfeited to the Company or the restrictions lapse, or (ii) such certificates shall be delivered to the Grantee; *provided, however*, that such certificates shall bear a legend or legends that comply with the applicable securities laws and regulations and make appropriate reference to the restrictions imposed under the Plan and the Award Agreement.

## 27.3. Rights of Holders of Restricted Stock

Unless the otherwise provided in the applicable Award Agreement and subject to **Section 17.10**, holders of Restricted Stock shall have rights as Stockholders, including voting and dividend rights.

## 27.4. Rights of Holders of RSUs

### 27.4.1. Settlement of RSUs

RSUs may be settled in cash or Shares, as determined by the Committee and set forth in the Award Agreement. The Award Agreement shall also set forth whether the RSUs shall be settled (i) within the time period specified for "short term deferrals" under Section 409A or (ii) otherwise within the requirements of Section 409A, in which case the Award Agreement shall specify upon which events such RSUs shall be settled.

### 27.4.2. Voting and Dividend Rights

Unless otherwise provided in the applicable Award Agreement and subject to **Section 17.10**, holders of RSUs shall not have rights as Stockholders, including voting or dividend or dividend equivalents rights.

### 27.4.3. Creditor's Rights

A holder of RSUs shall have no rights other than those of a general creditor of the Company. RSUs represent an unfunded and unsecured obligation of the Company, subject to the terms and conditions of the applicable Award Agreement.

## 27.5. Purchase of Restricted Stock

The Grantee shall be required, to the extent required by applicable law, to purchase the Restricted Stock from the Company at a Purchase Price equal to the greater of (i) the aggregate par value of the Shares represented by such Restricted Stock or (ii) the Purchase Price, if any, specified in the related Award Agreement. If specified in the Award Agreement, the Purchase Price may be deemed paid by Services already rendered. The Purchase Price shall be payable in a form described in **Section 11** or, if so determined by the Committee, in consideration for past Services rendered.

## 27.6. Delivery of Shares

Upon the expiration or termination of any Restricted Period and the satisfaction of any other conditions prescribed by the Committee, the restrictions applicable to Shares of Restricted Stock or RSUs settled in Shares shall lapse, and, unless otherwise provided in the applicable Award Agreement, a stock certificate for such Shares shall be delivered, free of all such restrictions, to the Grantee or the Grantee's beneficiary or estate, as the case may be.

## **28. FORM OF PAYMENT FOR OPTIONS AND RESTRICTED STOCK**

### **28.1. General Rule**

Payment of the Option Price for the Shares purchased pursuant to the exercise of an Option or the Purchase Price for Restricted Stock shall be made in cash or in cash equivalents acceptable to the Company, except as provided in this **Section 11**.

### **28.2. Surrender of Shares**

To the extent the Award Agreement so provides, payment of the Option Price for Shares purchased pursuant to the exercise of an Option or the Purchase Price for Restricted Stock may be made all or in part through the tender to the Company of Shares, which Shares shall be valued, for purposes of determining the extent to which the Option Price or Purchase Price for Restricted Stock has been paid, at their Fair Market Value on the date of exercise or surrender.

### **28.3. Cashless Exercise**

With respect to an Option only (and not with respect to Restricted Stock), to the extent permitted by law and to the extent the Award Agreement so provides, payment of the Option Price may be made all or in part by delivery (on a form acceptable to the Company) of an irrevocable direction to a licensed securities broker acceptable to the Company to sell Shares and to deliver all or part of the sales proceeds to the Company in payment of the Option Price and any withholding taxes described in **Section 17.3**.

### **28.4. Other Forms of Payment**

To the extent the Award Agreement so provides, payment of the Option Price or the Purchase Price for Restricted Stock may be made in any other form that is consistent with applicable laws, regulations and rules, including the Company's withholding of Shares otherwise due to the exercising Grantee.

## **29. TERMS AND CONDITIONS OF PERFORMANCE AWARDS**

### **29.1. Performance Conditions**

The right of a Grantee to exercise or receive a grant or settlement of any Award, and the timing thereof, may be subject to such performance conditions as may be specified by the Committee. The Committee may use such business criteria and other measures of performance as it may deem appropriate in establishing any performance conditions, and may exercise its discretion to reduce the amounts payable under any Award subject to performance conditions.

### **29.2. Settlement of Performance Awards; Other Terms**

Settlement of Performance Awards may be in cash, Shares, other Awards or other property, as determined by the Committee. The Committee may reduce the amount of a settlement otherwise to be made in connection with Performance Awards.

## **30. OTHER SHARE-BASED AWARDS**

### **30.1. Grant of Other Share-based Awards**

Other Share-based Awards may be granted either alone or in addition to or in conjunction with other Awards. Subject to the provisions of the Plan, the Committee shall have the authority to determine the persons to whom and the time or times at which such Awards will be made, the number of Shares to be granted pursuant to such Awards, and all other terms and conditions of such Awards. Unless the Committee determines otherwise, any such Award shall be confirmed by an Award Agreement, which shall contain such provisions as the Committee determines to be necessary or appropriate to carry out the intent of the Plan with respect to such Award.

### 30.2. Terms of Other Share-based Awards

Any Common Stock subject to Awards made under this **Section 13** may not be sold, assigned, transferred, pledged or otherwise encumbered prior to the date on which the Shares are issued, or, if later, the date on which any applicable restriction, performance or deferral period lapses.

## 31. REQUIREMENTS OF LAW

### 31.1. General

The Company shall not be required to sell or issue any Shares under any Award if the sale or issuance of such Shares would constitute a violation by the Grantee, any other individual exercising an Option or the Company of any provision of any law or regulation of any governmental authority, including any federal or state securities laws or regulations. If at any time the Committee determines that the listing, registration or qualification of any Shares subject to an Award upon any securities exchange or under any governmental regulatory body is necessary or desirable as a condition of, or in connection with, the issuance or purchase of Shares hereunder, no Shares may be issued or sold to the Grantee or any other individual exercising an Option pursuant to such Award unless such listing, registration, qualification, consent or approval shall have been effected or obtained free of any conditions not acceptable to the Company, and any delay caused thereby shall in no way affect the date of termination of the Award. Specifically, in connection with the Securities Act, upon the exercise of any Option or the delivery of any Shares underlying an Award, unless a registration statement under such Act is in effect with respect to the Shares covered by such Award, the Company shall not be required to sell or issue such Shares unless the Committee has received evidence satisfactory to it that the Grantee or any other individual exercising an Option may acquire such Shares pursuant to an exemption from registration under the Securities Act. The Company may, but shall in no event be obligated to, register any securities covered hereby pursuant to the Securities Act. The Company shall not be obligated to take any affirmative action in order to cause the exercise of an Option or the issuance of Shares pursuant to the Plan to comply with any law or regulation of any governmental authority. As to any jurisdiction that expressly imposes the requirement that an Option shall not be exercisable until the Shares covered by such Option are registered or are exempt from registration, the exercise of such Option (under circumstances in which the laws of such jurisdiction apply) shall be deemed conditioned upon the effectiveness of such registration or the availability of such an exemption.

### 31.2. Section 25102(o) of the California Corporations Code.

The Plan is intended to comply with Section 25102(o) of the California Corporations Code. In that regard, to the extent required by Section 25102(o), (i) the terms of any Options or SARs, to the extent vested and exercisable upon a Grantee's Separation from Service, shall include any minimum exercise periods following Separation from Service specified by Section 25102(o), and (ii) any repurchase right of the Company with respect to Shares issued under the Plan shall include a minimum 90-day notice requirement. Any provision of the Plan that is inconsistent with Section 25102(o) shall, without further act or amendment by the Company, be reformed to comply with the requirements of Section 25102(o).

### 31.3. Rule 16b-3

During any time when the Company has a class of equity security registered under Section 12 of the Exchange Act, it is the intent of the Company that Awards and the exercise of Options granted hereunder will qualify for the exemption provided by Rule 16b-3 under the Exchange Act. To the extent that any provision of the Plan or action by the Board or Committee does not comply with the requirements of Rule 16b-3, it shall be deemed inoperative to the extent permitted by law and deemed advisable by the Committee, and shall not affect the validity of the Plan. In the event that Rule 16b-3 is revised or replaced, the Committee may modify the Plan in any respect necessary to satisfy the requirements of, or to take advantage of any features of, the revised exemption or its replacement.

## 32. EFFECT OF CHANGES IN CAPITALIZATION

### 32.1. Adjustments for Changes in Capital Structure

Subject to any required action by the Stockholders, in the event of any change in the Shares effected without receipt of consideration by the Company, whether through merger, consolidation, reorganization, reincorporation, recapitalization, reclassification, stock dividend, stock split, reverse stock split, split-up, split-off, spin-

off, combination of shares, exchange of shares or similar change in the capital structure of the Company, or in the event of payment of a dividend or distribution to the Stockholders in a form other than Shares (excepting normal cash dividends) that has a material effect on the Fair Market Value of Shares, appropriate and proportionate adjustments shall be made in the number and class of shares subject to the Plan and to any outstanding Awards, and in the Option Price, SAR Exercise Price or Purchase Price per Share of any outstanding Awards in order to prevent dilution or enlargement of Grantees' rights under the Plan. For purposes of the foregoing, conversion of any convertible securities of the Company shall not be treated as "effected without receipt of consideration by the Company." If a majority of the shares which are of the same class as the shares that are subject to outstanding Awards are exchanged for, converted into, or otherwise become (whether or not pursuant to a Change in Control) shares of another corporation (the " **New Shares** "), the Committee may unilaterally amend the outstanding Awards to provide that such Awards are for New Shares. In the event of any such amendment, the number of Shares subject to, and the Option Price, SAR Exercise Price or Purchase Price per Share of, the outstanding Awards shall be adjusted in a fair and equitable manner as determined by the Committee. Any fractional share resulting from an adjustment pursuant to this **Section 15.1** shall be rounded down to the nearest whole number and the Option Price, SAR Exercise Price or Purchase Price per share shall be rounded up to the nearest whole cent. In no event may the exercise price of any Award be decreased to an amount less than the par value, if any, of the stock subject to the Award. The Committee may also make such adjustments in the terms of any Award to reflect, or related to, such changes in the capital structure of the Company or distributions as it deems appropriate. Adjustments determined by the Committee pursuant to this **Section 15.1** shall be made in accordance with Section 409A to the extent applicable.

## 32.2. Change in Control

### 32.2.1. Consequences of a Change in Control

Subject to the requirements and limitations of Section 409A if applicable, the Committee may provide for any one or more of the following in connection with a Change in Control:

(i) **Accelerated Vesting** . The Committee may provide in any Award Agreement or, in the event of a Change in Control, may take such actions as it deems appropriate to provide for the acceleration of the exercisability, vesting and/or settlement in connection with such Change in Control of each or any outstanding Award or portion thereof and shares acquired pursuant thereto upon such conditions, including termination of the Grantee's Service prior to, upon, or following such Change in Control, to such extent as the Committee shall determine.

(ii) **Assumption, Continuation or Substitution** . In the event of a Change in Control, the surviving, continuing, successor or purchasing corporation or other business entity or parent thereof, as the case may be (the " **Acquiror** "), may, without the consent of any Grantee, either assume or continue the Company's rights and obligations under each or any Award or portion thereof outstanding immediately prior to the Change in Control or substitute for each or any such outstanding Award or portion thereof a substantially equivalent award with respect to the Acquiror's stock, as applicable. For purposes of this **Section 15.2** , if so determined by the Committee, an Award denominated in Shares shall be deemed assumed if, following the Change in Control, the Award confers the right to receive, subject to the terms and conditions of the Plan and the applicable Award Agreement, for each Share subject to the Award immediately prior to the Change in Control, the consideration (whether stock, cash, other securities or property or a combination thereof) to which a holder of a Share on the effective date of the Change in Control was entitled; *provided, however* , that if such consideration is not solely common stock of the Acquiror, the Committee may, with the consent of the Acquiror, provide for the consideration to be received upon the exercise or settlement of the Award, for each Share subject to the Award, to consist solely of common stock of the Acquiror equal in Fair Market Value to the per share consideration received by Stockholders pursuant to the Change in Control. If any portion of such consideration may be received by Stockholders pursuant to the Change in Control on a contingent or delayed basis, the Committee may determine such Fair Market Value as of the time of the Change in Control on the basis of the Committee's good faith estimate of the present value of the probable future payment of such consideration. Any Award or portion thereof which is neither assumed or continued by the Acquiror in connection with the Change in Control nor exercised or settled as of the time of consummation of the Change in Control shall terminate and cease to be outstanding effective as of the time of consummation of the Change in Control.

(iii) **Cash-Out of Awards**. The Committee may, in its discretion and without the consent of any Grantee, determine that, upon the occurrence of a Change in Control, each or any Award or a portion thereof outstanding immediately prior to the Change in Control and not previously exercised or settled shall be canceled in exchange for a payment with respect to each vested Share (and each unvested Share, if so determined by the Committee) subject to such canceled Award in (i) cash, (ii) stock of the Company or of a corporation or other business entity a party to the Change in Control or (iii) other property which, in any such case, shall be in an amount having a Fair Market Value equal to the Fair Market Value of the consideration to be paid per Share in the Change in Control, reduced by the exercise or purchase price per share, if any, under such Award. If any portion of such consideration may be received by Stockholders pursuant to the Change in Control on a contingent or delayed basis, the Committee may determine such Fair Market Value as of the time of the Change in Control on the basis of the Committee's good faith estimate of the present value of the probable future payment of such consideration. In the event such determination is made by the Committee, the amount of such payment (reduced by applicable withholding taxes, if any) shall be paid to Grantees in respect of the vested portions of their canceled Awards as soon as practicable following the date of the Change in Control and in respect of the unvested portions of their canceled Awards in accordance with the vesting schedules applicable to such Awards. For avoidance of doubt, if the amount determined pursuant to this **Section 15.2** for an Option or SAR is zero or less, the affected Option or SAR may be cancelled without any payment therefore.

### 32.2.2. Change in Control Defined

Unless otherwise provided in the applicable Award Agreement, a "**Change in Control**" means the consummation of any of the following events:

- (i) The acquisition, other than from the Company, by any individual, entity or group (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act), other than the Company or any subsidiary, affiliate (within the meaning of Rule 144 promulgated under the Securities Act) or employee benefit plan of the Company, of beneficial ownership (within the meaning of Rule 13d-3 promulgated under the Exchange Act) of more than 50% of the combined voting power of the then outstanding voting securities of the Company entitled to vote generally in the election of directors (the "**Voting Securities**"); or
- (ii) A reorganization, merger, consolidation or recapitalization of the Company (a "**Business Combination**"), other than a Business Combination in which more than 50% of the combined voting power of the outstanding voting securities of the surviving or resulting entity immediately following the Business Combination is held by the Persons who, immediately prior to the Business Combination, were the holders of the Voting Securities; or
- (iii) A complete liquidation or dissolution of the Company, or a sale of all or substantially all of the assets of the Company; or
- (iv) During any period of 24 consecutive months, the Incumbent Directors cease to constitute a majority of the Board; "**Incumbent Directors**" means individuals who were members of the Board at the beginning of such period or individuals whose election or nomination for election to the Board by the Stockholders was approved by a vote of at least a majority of the then Incumbent Directors (but excluding any individual whose initial election or nomination is in connection with an actual or threatened proxy contest relating to the election of directors).

Notwithstanding the foregoing, if it is determined that an Award is subject to the requirements of Section 409A and payable upon a Change in Control, the Company will not be deemed to have undergone a Change in Control for purposes of the Plan unless the Company is deemed to have undergone a "change in control event" pursuant to the definition of such term in Section 409A.

### 32.3. Adjustments

Adjustments under this **Section 15** related to Shares or securities of the Company shall be made by the Committee. No fractional Shares or other securities shall be issued pursuant to any such adjustment, and any fractions resulting from any such adjustment shall be eliminated in each case by rounding downward to the nearest whole Share.

### 33. NO LIMITATIONS ON COMPANY

The making of Awards shall not affect or limit in any way the right or power of the Company to make adjustments, reclassifications, reorganizations or changes of its capital or business structure or to merge, consolidate, dissolve or liquidate, or to sell or transfer all or any part of its business or assets.

### 34. TERMS APPLICABLE GENERALLY TO AWARDS

#### 34.1. Disclaimer of Rights

No provision in the Plan or in any Award Agreement shall be construed to confer upon any individual the right to remain in the employ or service of the Company or any Affiliate, or to interfere in any way with any contractual or other right or authority of the Company or any Affiliate either to increase or decrease the compensation or other payments to any individual at any time, or to terminate any employment or other relationship between any individual and the Company or any Affiliate. In addition, notwithstanding anything contained in the Plan to the contrary, unless otherwise provided in the applicable Award Agreement, no Award shall be affected by any change of duties or position of the Grantee, so long as such Grantee continues to be a Service Provider. The obligation of the Company to pay any benefits pursuant to the Plan shall be interpreted as a contractual obligation to pay only those amounts described herein, in the manner and under the conditions prescribed herein. The Plan shall in no way be interpreted to require the Company to transfer any amounts to a third party trustee or otherwise hold any amounts in trust or escrow for payment to any Grantee or beneficiary under the terms and conditions of the Plan.

#### 34.2. Nonexclusivity of the Plan

Neither the adoption of the Plan nor the submission of the Plan to the Stockholders for approval shall be construed as creating any limitations upon the right and authority of the Board or its delegate to adopt such other compensation arrangements as the Board or its delegate determines desirable.

#### 34.3. Withholding Taxes

The Company or an Affiliate, as the case may be, shall have the right to deduct from payments of any kind otherwise due to a Grantee any federal, state or local taxes of any kind required by law to be withheld (i) with respect to the vesting of or other lapse of restrictions applicable to an Award, (ii) upon the issuance of any Shares upon the exercise of an Option or SAR or (iii) otherwise due in connection with an Award. At the time of such vesting, lapse or exercise, the Grantee shall pay to the Company or the Affiliate, as the case may be, any amount that the Company or the Affiliate may reasonably determine to be necessary to satisfy such withholding obligation. Subject to the prior approval of the Committee, the Grantee may elect to satisfy such obligations, or the Company may require such obligations to be satisfied, in whole or in part, (i) by causing the Company or the Affiliate to withhold the minimum required number of Shares otherwise issuable to the Grantee as may be necessary to satisfy such withholding obligation or (ii) by delivering to the Company or the Affiliate Shares already owned by the Grantee. The Shares so delivered or withheld shall have an aggregate Fair Market Value equal to such withholding obligations. The Fair Market Value used to satisfy such withholding obligation shall be determined by the Company or the Affiliate as of the date that the amount of tax to be withheld is to be determined. A Grantee who has made an election pursuant to this **Section 17.3** may satisfy his or her withholding obligation only with Shares that are not subject to any repurchase, forfeiture, unfulfilled vesting or other similar requirements.

#### 34.4. Other Provisions

Each Award Agreement may contain such other terms and conditions not inconsistent with the Plan as may be determined by the Committee. In the event of any conflict between the terms and conditions of an employment agreement and the Plan, the terms and conditions of the employment agreement shall govern.

#### **34.5. Severability**

If any provision of the Plan or any Award Agreement shall be determined to be illegal or unenforceable by any court of law in any jurisdiction, the remaining provisions hereof and thereof shall be severable and enforceable in accordance with their terms and conditions, and all provisions shall remain enforceable in any other jurisdiction.

#### **34.6. Governing Law**

The Plan shall be governed by and construed in accordance with the laws of the State of Delaware without giving effect to the principles of conflicts of law, and applicable Federal law.

#### **34.7. Section 409A**

The Plan is intended to comply with Section 409A to the extent subject thereto, and, accordingly, to the maximum extent permitted, the Plan shall be interpreted and administered to be in compliance therewith. Any payments described in the Plan that are due within the "short-term deferral period" as defined in Section 409A shall not be treated as deferred compensation unless applicable laws require otherwise. Notwithstanding anything to the contrary in the Plan, to the extent required to avoid accelerated taxation and tax penalties under Section 409A, amounts that would otherwise be payable and benefits that would otherwise be provided pursuant to the Plan during the six-month period immediately following the Grantee's Separation from Service shall instead be paid on the first payroll date after the six-month anniversary of the Grantee's Separation from Service (or the Grantee's death, if earlier). Notwithstanding the foregoing, neither the Company nor the Committee shall have any obligation to take any action to prevent the assessment of any excise tax or penalty on any Grantee under Section 409A and neither the Company nor the Committee shall have any liability to any Grantee for such tax or penalty.

#### **34.8. Separation from Service**

The Committee shall determine the effect of a Separation from Service upon Awards, and such effect shall be set forth in the applicable Award Agreement. Without limiting the foregoing, the Committee may provide in the Award Agreements at the time of grant, or any time thereafter with the consent of the Grantee, the actions that will be taken upon the occurrence of a Separation from Service, including accelerated vesting or termination, depending upon the circumstances surrounding the Separation from Service.

#### **34.9. Transferability of Awards**

##### **34.9.1. Transfers in General**

Except as provided in **Section 17.9.2**, no Award shall be assignable or transferable by the Grantee, other than by will or the laws of descent and distribution, and, during the lifetime of the Grantee, only the Grantee personally (or the Grantee's personal representative) may exercise rights under the Plan.

##### **34.9.2. Family Transfers**

If authorized in the applicable Award Agreement, a Grantee may transfer, not for value, all or part of an Award to any Family Member. For the purpose of this **Section 17.9.2**, a "not for value" transfer is a transfer that is (i) a gift, (ii) a transfer under a domestic relations order in settlement of marital property rights or (iii) a transfer to an entity in which more than 50% of the voting interests are owned by Family Members (or the Grantee) in exchange for an interest in that entity. Following a transfer under this **Section 17.9.2**, any such Award shall continue to be subject to the same terms and conditions as were applicable immediately prior to transfer. Subsequent transfers of transferred Awards are prohibited except to Family Members of the original Grantee in accordance with this **Section 17.9.2** or by will or the laws of descent and distribution.

#### **34.10. Dividends and Dividend Equivalent Rights**

If specified in the Award Agreement, the recipient of an Award may be entitled to receive, currently or on a deferred basis, dividends or dividend equivalents with respect to the Common Stock or other securities covered by an Award. The terms and conditions of a dividend equivalent right may be set forth in the Award Agreement. Dividend equivalents credited to a Grantee may be paid currently or may be deemed to be reinvested in additional



Shares or other securities of the Company at a price per unit equal to the Fair Market Value on the date that such dividend was paid to Stockholders, as determined by the Committee. Notwithstanding the foregoing, in no event will dividends or dividend equivalents on any Award that is subject to the achievement of performance criteria be payable before the Award has become earned and payable.

#### **34.11. Plan Construction**

In the Plan, unless otherwise stated, the following uses apply: (i) references to a statute or law refer to the statute or law and any amendments and any successor statutes or laws, and to all valid and binding governmental regulations, court decisions and other regulatory and judicial authority issued or rendered thereunder, as amended, or their successors, as in effect at the relevant time; (ii) in computing periods from a specified date to a later specified date, the words “from” and “commencing on” (and the like) mean “from and including,” and the words “to,” “until” and “ending on” (and the like) mean “to and including”; (iii) indications of time of day shall be based upon the time applicable to the location of the principal headquarters of the Company; (iv) the words “include,” “includes” and “including” (and the like) mean “include, without limitation,” “includes, without limitation” and “including, without limitation” (and the like), respectively; (v) all references to articles and sections are to articles and sections in the Plan; (vi) all words used shall be construed to be of such gender or number as the circumstances and context require; (vii) the captions and headings of articles and sections have been inserted solely for convenience of reference and shall not be considered a part of the Plan, nor shall any of them affect the meaning or interpretation of the Plan or any of its provisions; (viii) any reference to an agreement, plan, policy, form, document or set of documents, and the rights and obligations of the parties under any such agreement, plan, policy, form, document or set of documents, shall mean such agreement, plan, policy, form, document or set of documents as amended from time to time, and any and all modifications, extensions, renewals, substitutions or replacements thereof; and (ix) all accounting terms not specifically defined shall be construed in accordance with generally accepted accounting principles.

**The Plan was originally approved by the Board and the Stockholders on March 6, 2014. This amended and restated version of the Plan was approved by the Board on April 11, 2018 and by the Stockholders on May 16, 2018.**

**ENERGOUS CORPORATION**  
**PERFORMANCE SHARE UNIT PLAN**  
(as amended and restated May 16, 2018)

Energous Corporation, a Delaware corporation, sets forth herein the terms and conditions of its Performance Share Unit Plan, as follows:

**1. PURPOSE**

The Plan is intended to enhance the ability of the Company and its Affiliates to attract and retain highly qualified officers, non-employee directors, key employees, consultants, and advisors, and to motivate such officers, directors, key employees, consultants, and advisors to serve the Company and its Affiliates and to expend maximum effort to improve the business results and earnings of the Company, by providing to such persons an opportunity to acquire or increase a direct proprietary interest in the operations and future success of the Company. To this end, the Plan provides for the grant of Performance Share Units.

**2. DEFINITIONS**

For purposes of interpreting the Plan and related documents (including Award Agreements), the following definitions shall apply:

**2.1 “Acquiror”** shall have the meaning set forth in **Section 10.2.1**.

**2.2 “Affiliate”** means any company or other trade or business that “controls,” is “controlled by,” or is “under common control” with the Company within the meaning of Rule 405 of Regulation C under the Securities Act, including any Subsidiary.

**2.3 “Amendment Date”** means May 16, 2018.

**2.4 “Award”** means a grant under the Plan of Performance Share Units.

**2.5 “Award Agreement”** means a written agreement between the Company and a Grantee, in substantially the form set forth as Exhibit A (or such other form as the Committee may determine from time to time), that evidences and sets out the terms and conditions of an Award.

**2.6 “Board”** means the Board of Directors of the Company.

**2.7 “Business Combination”** shall have the meaning set forth in **Section 10.2.2**.

**2.8 “Cause”** shall be defined as that term is defined in the Grantee’s offer letter or other applicable employment or severance agreement; or, if there is no such definition, “Cause” means: (i) the commission of any act by a Grantee constituting financial dishonesty against the Company or its Affiliates (which act would be chargeable as a crime under applicable law); (ii) a Grantee’s engaging in any other act of dishonesty, fraud, intentional misrepresentation, moral turpitude, illegality, or harassment which would (a) materially adversely affect the business or the reputation of the Company or any of its Affiliates with their respective current or prospective customers, suppliers, lenders, or other third parties with whom such entity does or might do business or (b) expose the Company or any of its Affiliates to a risk of civil or criminal legal damages, liabilities, or penalties; (iii) the repeated failure by a Grantee to follow the directives of the chief executive officer of the Company or any of its Affiliates or the Board, or (iv) any material misconduct, violation of the Company’s or Affiliates’ policies, or willful and deliberate non-performance of duty by the Grantee in connection with the business affairs of the Company or its Affiliates.

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2.9 “ **Change in Control** ” shall have the meaning set forth in **Section 10.2.2** .

2.10 “ **Closing Share Price** ” shall mean the closing or last sale price of one Share, as reported on the Nasdaq Stock Market, or such other stock exchange constituting the principal exchange on which the Shares are traded, for the applicable date, or if the applicable date is not a trading day, the trading day immediately preceding the applicable date.

2.11 “ **Code** ” means the Internal Revenue Code of 1986, as now in effect or as hereafter amended. References to the Code shall include the valid and binding governmental regulations, court decisions, and other regulatory and judicial authority issued or rendered thereunder.

2.12 “ **Committee** ” means the Compensation Committee of the Board, or such other committee as determined by the Board. The Compensation Committee of the Board may designate a subcommittee of its members to serve as the Committee (to the extent the Board has not designated another person, committee, or entity as the Committee). The Board shall cause the Committee to satisfy the applicable requirements of any securities exchange on which the Shares may then be listed. For purposes of Awards to Grantees who are subject to Section 16 of the Exchange Act, Committee means all of the members of the Compensation Committee who are “non-employee directors” within the meaning of Rule 16b-3 adopted under the Exchange Act.

2.13 “ **Company** ” means Energen Corporation, a Delaware corporation.

2.14 “ **Common Stock** ” means the common stock of the Company, par value \$.00001 per share.

2.15 “ **Consultant** ” means a consultant or advisor that provides bona fide services to the Company or any Affiliate and who qualifies as a consultant or advisor for purposes of Form S-8.

2.16 “ **Disability** ” shall be defined as that term is defined in the Grantee’s offer letter or other applicable employment agreement; or, if there is no such definition, “Disability” means the Grantee is unable to perform each of the essential duties of such Grantee’s position by reason of a medically-determinable physical or mental impairment that is potentially permanent in character or that can be expected to last for a continuous period of not less than 12 months.

2.17 “ **Effective Date** ” means May 16, 2018, the date the Plan was approved by the Stockholders.

2.18 “ **Exchange Act** ” means the Securities Exchange Act of 1934, as now in effect or as hereafter amended. References to the Exchange Act shall include the valid and binding governmental regulations, court decisions, and other regulatory and judicial authority issued or rendered thereunder.

2.19 “ **Fair Market Value** ” of a Share as of a particular date means (i) if the Shares are listed on a national securities exchange, the closing or last price of a Share on the composite tape or other comparable reporting system for the applicable date, or if the applicable date is not a trading day, the trading day immediately preceding the applicable date, or (ii) if the Shares are not then listed on a national securities exchange, or the value of Shares is not otherwise determinable, such value as determined by the Board.

2.20 “ **Grant Date** ” means the latest to occur of (i) the date as of which the Board approves an Award, (ii) the date on which the recipient of an Award first becomes eligible to receive an Award under Section 6, or (iii) such other date as may be specified by the Board in the Award Agreement.

2.21 “ **Grantee** ” means a person who receives or holds an Award.

2.22 “ **Incumbent Directors** ” shall have the meaning set forth in **Section 10.2.2** .

2.23 “ **Issued Shares** ” means, collectively, all outstanding Shares issued pursuant to Awards.

2.24 “ **New Shares** ” shall have the meaning set forth in **Section 10.1** .

2.25 “ **Performance Share Unit** ” means a bookkeeping entry reflecting the right of a Grantee to receive a Share in the future, on the terms and subject to the conditions of **Section 8** and the applicable Award Agreement.

2.26 “ **Plan** ” means this Energeous Corporation Performance Share Unit Plan (formerly known as the 2015 Performance Share Unit Plan).

2.27 “ **Section 409A** ” means Code Section 409A.

2.28 “ **Securities Act** ” means the Securities Act of 1933, as now in effect or as hereafter amended. References to the Securities Act shall include the valid and binding governmental regulations, court decisions, and other regulatory and judicial authority issued or rendered thereunder.

2.29 “ **Separation from Service** ” means a termination of Service of or by a Service Provider for any reason or no reason; *provided, however* , that if any Award governed by Section 409A is to be distributed on a Separation from Service, then the definition of Separation from Service for such purposes shall comply with the definition provided in Section 409A.

2.30 “ **Service** ” means service as a Service Provider to the Company or an Affiliate. A Grantee’s change in position or duties shall not result in interrupted or terminated Service, so long as such Grantee continues to be a Service Provider to the Company or an Affiliate.

2.31 “ **Service Provider** ” means an employee, officer, non-employee member of the Board, or Consultant of the Company or an Affiliate.

2.32 “ **Share** ” means a share of Common Stock.

2.33 “ **Stockholders** ” means the stockholders of the Company.

2.34 “ **Subsidiary** ” means any “subsidiary corporation” of the Company within the meaning of Code Section 424(f).

2.35 “ **Termination Date** ” means the date that is 10 years after the Effective Date (May 16, 2028), unless the Plan is earlier terminated by the Board under Section 5.2.

2.36 “ **Voting Securities** ” shall have the meaning set forth in **Section 10.2.2** .

### 3. ADMINISTRATION OF THE PLAN

#### 3.1 General

The Board shall have such powers and authorities related to the administration of the Plan as are consistent with the Company’s certificate of incorporation and bylaws and applicable law. The Board shall have the power and authority to delegate its responsibilities hereunder to the Committee, which shall have full authority to act in accordance with its charter (as in effect from time to time), and with respect to the power and authority of the Board to act hereunder, all references to the Board shall be deemed to include a reference to the Committee, unless such power or authority is specifically reserved by the Board. Except as specifically provided in **Section 9** or as otherwise may be required by applicable law, regulatory requirement, or the certificate of incorporation or the bylaws of the Company, the Board shall have full power and authority to take all actions and to make all determinations required or provided for under the Plan, any Award, or any Award Agreement, and shall have full power and authority to take all such other actions and make all such other determinations not inconsistent with the specific terms and provisions of the Plan that the Board deems to be necessary or appropriate to the administration of the Plan. The Committee shall administer the Plan; *provided, however* , the Board shall retain the right to exercise the authority of the Committee to the extent consistent with applicable law and the applicable requirements of any securities exchange

on which the Shares may then be listed. All decisions and actions by the Board or the Committee under the Plan, including the interpretation or construction of any provision of the Plan, any Award, or any Award Agreement, shall be in the sole discretion of the Board or the Committee, as applicable, and shall be final, binding, and conclusive. Without limitation, the Board shall have full and final power and authority, subject to the other terms and conditions of the Plan, to:

- (a) designate Grantees;
- (b) determine the number of Shares to be subject to an Award;
- (c) establish the terms and conditions of each Award;
- (d) prescribe the form of each Award Agreement; and
- (e) amend, modify, or supplement the terms of any outstanding Award, including the authority, in order to effectuate the purposes of the Plan, to modify Awards to foreign nationals or individuals who are employed outside the United States to recognize differences in local law, tax policy, or custom.

### 3.2 Forfeitures; Clawbacks

Upon notification of a Separation from Service for Cause, any outstanding Award held by the Grantee, whether vested or unvested, shall terminate immediately, such Award shall be forfeited, and the Grantee shall have no further rights thereunder.

Any Award, amount, or benefit received under the Plan shall be subject to potential cancellation, recoupment, rescission, payback, or other action in accordance with the terms of any applicable Company clawback policy or any applicable law, as may be in effect from time to time, including the requirements of (i) Section 304 of the Sarbanes Oxley Act and Section 954 of the Dodd-Frank Wall Street Reform and Consumer Protection Act and any implementing rules and regulations thereunder; (ii) similar rules under the laws of any other jurisdiction; and (iii) any policies adopted by the Company to implement such requirements, all to the extent determined by the Board to be applicable to the Grantee. By accepting an Award, the Grantee shall be deemed to have acknowledged and consented to the Company's application, implementation, and enforcement of any applicable Company clawback policy that may apply to the Grantee, whether adopted prior to or following the date of the Award, and any provision of applicable law relating to cancellation, recoupment, rescission, or payback of compensation, and to have agreed that the Company may take such actions as may be necessary to effectuate any such policy or applicable law, without further consideration or action.

If the Grantee breaches a non-competition, non-solicitation, non-disclosure, non-disparagement, or other restrictive covenant set forth in an Award Agreement or any other agreement between the Grantee and the Company or any Affiliate, whether during the Grantee's Service or after the Grantee's Separation from Service, in addition to any other penalties or restrictions that may apply under any such agreement, state law, or otherwise, the Grantee shall forfeit or pay to the Company:

(i) any and all outstanding Awards granted to the Grantee, including Awards that have become earned or vested;

(ii) any Shares held by the Grantee in connection with the Plan that were acquired by the Grantee after the Grantee's Separation from Service and within the 12-month period immediately preceding the Grantee's Separation from Service; and

(iii) the profit realized by the Grantee from the sale, or other disposition for consideration, of any Shares received by the Grantee in connection with the Plan after the Grantee's Separation from Service, and within the 12-month period immediately preceding the Grantee's Separation from Service where such sale or disposition occurs in such similar time period.

### **3.3 Deferral Arrangement**

The Board may permit or require the deferral of any Award payment into a deferred compensation arrangement, subject to such rules and procedures as it may establish and in accordance with Section 409A, which may include provisions for the payment or crediting of interest or dividend equivalents, including converting such credits into deferred stock units.

### **3.4 No Liability**

No member of the Board or of the Committee shall be liable for any action or determination made in good faith with respect to the Plan, any Award, or Award Agreement.

## **4. SHARES SUBJECT TO THE PLAN**

Subject to adjustment under Section 10, the aggregate number of Shares available for the grant of Awards shall be increased by an additional 1,400,000 is for a total of 2,710,104. In the event that Shares previously issued under the Plan on or after the Amendment Date are reacquired by the Company pursuant to a forfeiture provision, or repurchase by the Company, such Shares shall be added to the number of Shares then available for issuance under the Plan. Shares issued under the Plan may consist in whole or in part of authorized but unissued Shares, treasury Shares, or Shares purchased on the open market or otherwise.

## **5. EFFECTIVE DATE, DURATION AND AMENDMENTS**

### **5.1 Term**

The Plan shall be effective as of the Effective Date, *provided* that it has been approved by the Stockholders. The Plan shall terminate automatically on the 10-year anniversary of the Effective Date (May 16, 2018) and may be terminated on any earlier date as provided in Section 5.2.

### **5.2 Amendment and Termination of the Plan**

The Board may, at any time and from time to time, amend, suspend, or terminate the Plan as to any Awards that have not been made. An amendment shall be contingent on approval of the Stockholders to the extent stated by the Board, required by applicable law, or required by applicable securities exchange listing requirements. No Awards shall be made after the Termination Date. The applicable terms and conditions of the Plan, and any terms and conditions applicable to Awards granted prior to the Termination Date, shall survive the termination of the Plan and continue to apply to such Awards. No amendment, suspension, or termination of the Plan shall, without the consent of the Grantee, materially impair rights or obligations under any Award theretofore awarded.

## **6. AWARD ELIGIBILITY**

Awards may be made to any Service Provider as the Committee shall determine and designate from time to time.

## **7. AWARD AGREEMENT**

The grant of any Award may be contingent upon the Grantee executing an Award Agreement. Without limiting the foregoing, an Award Agreement may be provided in the form of a notice which provides that acceptance of the Award constitutes acceptance of all terms of the Plan and the notice. Award Agreements granted from time to time or at the same time need not contain similar provisions but shall be consistent with the terms of the Plan.

## 8. TERMS AND CONDITIONS OF PERFORMANCE SHARE UNITS

### 8.1 Performance Measures and Terms and Conditions

Performance Share Units shall be eligible to become earned during an applicable performance period based upon the applicable performance metric chosen by the Board of either the level of (i) the Company's market capitalization, or (ii) the Company's average Closing Share Price, in each case during and at the end of such performance period, as set forth in the applicable Award Agreement. At the time of grant, the Board may establish a period of time and any additional terms and conditions applicable to Performance Share Units. Each Award of Performance Share Units may be subject to different restrictions.

### 8.2 Rights of Holders of Performance Share Units

#### 8.2.1. Settlement of Performance Share Units

Performance Share Units shall be settled in Shares in accordance with the terms of the applicable Award Agreement.

#### 8.2.2. Voting and Dividend Rights

Holders of Performance Share Units shall not have rights as Stockholders, including voting or dividend or dividend equivalent rights.

#### 8.2.3. Creditor's Rights

A holder of Performance Share Units shall have no rights other than those of a general creditor of the Company. Performance Share Units represent an unfunded and unsecured obligation of the Company, subject to the terms and conditions of the Plan and the applicable Award Agreement.

### 8.3 Delivery of Shares

Upon the satisfaction of all applicable terms and conditions prescribed by the Board, the restrictions applicable to Performance Share shall lapse, and a stock certificate for such Shares shall be delivered, free of all such restrictions, to the Grantee or the Grantee's beneficiary or estate, as the case may be; *provided, however*, that the Company may elect to satisfy any requirement for the delivery of stock certificates through the use of book entry.

### 8.4 Maximum number of Performance Share Units

The maximum number of Shares that may be subject to Performance Share Units that are granted to any one Grantee during any calendar year shall be 639,075.

## 9. REQUIREMENTS OF LAW

### 9.1 General

The Company shall not be required to issue Shares under any Award if the issuance of such Shares would constitute a violation by the Grantee, any other person, or the Company of any provision of any law or regulation of any governmental authority, including any federal or state securities laws or regulations. If at any time the Company determines that the listing, registration, or qualification of any Shares subject to an Award upon any securities exchange or under any governmental regulatory body is necessary or desirable as a condition of, or in connection with, the issuance or purchase of Shares hereunder, no Shares may be issued or sold to the Grantee or any other person pursuant to such Award unless such listing, registration, qualification, consent, or approval shall have been effected or obtained free of any conditions not acceptable to the Company, and any delay caused thereby shall in no way affect the date of termination of the Award. Specifically, in connection with the Securities Act, upon the delivery of any Shares underlying an Award, unless a registration statement under such Act is in effect with respect to the Shares covered by such Award, the Company shall not be required to sell or issue such Shares unless the Board has received evidence satisfactory to it that the Grantee or other person may acquire such Shares pursuant to an exemption from registration under the Securities Act. The Company may, but shall in no event be obligated to, register any securities covered hereby pursuant to the Securities Act. The Company shall not be obligated to take any affirmative action in order to cause the issuance of Shares pursuant to the Plan to comply with any law or regulation of any governmental authority.

## 9.2 Rule 16b-3

During any time when the Company has a class of equity security registered under Section 12 of the Exchange Act, it is the intent of the Company that Awards granted to officers and directors will qualify for the exemption provided by Rule 16b-3 under the Exchange Act. To the extent that any provision of the Plan or action by the Board or Committee does not comply with the requirements of Rule 16b-3, it shall be deemed inoperative to the extent permitted by law and deemed advisable by the Board, and shall not affect the validity of the Plan. In the event that Rule 16b-3 is revised or replaced, the Board may modify the Plan in any respect necessary to satisfy the requirements of, or to take advantage of any features of, the revised exemption or its replacement.

## 10. EFFECT OF CHANGES IN CAPITALIZATION

### 10.1 Adjustments for Changes in Capital Structure

Subject to any required action by the Stockholders, in the event of any change in the Shares effected without receipt of consideration by the Company, whether through merger, consolidation, reorganization, reincorporation, recapitalization, reclassification, stock dividend, stock split, reverse stock split, split-up, split-off, spin-off, combination of shares, exchange of shares, or similar change in the capital structure of the Company, or in the event of payment of a dividend or distribution to the Stockholders in a form other than Shares (excepting normal cash dividends) that has a material effect on the Fair Market Value of Shares, appropriate and proportionate adjustments shall be made in the number and class of Shares subject to the Plan and to any outstanding Awards in order to prevent dilution or enlargement of Grantees' rights under the Plan. For purposes of the foregoing, conversion of any convertible securities of the Company shall not be treated as "effected without receipt of consideration by the Company." If a majority of the Shares that are of the same class as the Shares that are subject to outstanding Awards are exchanged for, converted into, or otherwise become (whether or not pursuant to a Change in Control) shares of another corporation (the "New Shares"), the Board may unilaterally amend the outstanding Awards to provide that such Awards are for New Shares. In the event of any such amendment, the number of shares subject to the outstanding Awards and the outstanding Awards shall be adjusted by the Board in a fair and equitable manner. The Board may also make such adjustments in the terms of any Award to reflect, or related to, such changes in the capital structure of the Company or distributions as it deems appropriate. Adjustments determined by the Board pursuant to this **Section 10.1** shall be made in accordance with Section 409A to the extent applicable.

### 10.2 Change in Control

#### 10.2.1. Consequences of a Change in Control

Subject to the requirements and limitations of Section 409A if applicable, the Board may provide for any one or more of the following in connection with a Change in Control:

(a) **Accelerated Vesting** . In the event of a Change in Control, all outstanding Awards made to non-employee directors shall be automatically deemed earned based on the applicable transaction price and such Awards shall be payable in full in connection therewith. In the event of a Change in Control, the Board may take such actions as it deems appropriate to provide for the acceleration of the vesting or settlement in connection with such Change in Control of each or any other outstanding Award or portion thereof and Shares acquired pursuant thereto upon such conditions, including termination of the Grantee's Service prior to, upon, or following such Change in Control, to such extent as the Board shall determine.

(b) **Assumption, Continuation, or Substitution** . In the event of a Change in Control, the surviving, continuing, successor, or purchasing corporation or other business entity or parent thereof, as the case may be (the "Acquiror"), may, without the consent of any Grantee, either assume or continue the Company's rights and obligations under each or any Award or portion thereof outstanding immediately prior to the Change in Control or substitute for each or any such outstanding Award or portion thereof a substantially equivalent award with respect to the Acquiror's stock, as applicable. For purposes of this **Section 10.2.1**, if so determined by the Board, an Award denominated in Shares shall be deemed assumed if, following the Change in Control, the Award confers the right to



receive, subject to the terms and conditions of the Plan and the applicable Award Agreement, for each Share subject to the Award immediately prior to the Change in Control, the consideration (whether stock, cash, other securities or property, or a combination thereof) to which a holder of a Shares on the effective date of the Change in Control was entitled; *provided, however*, that if such consideration is not solely common stock of the Acquiror, the Board may, with the consent of the Acquiror, provide for the consideration to be received upon the settlement of the Award, for each Share subject to the Award, to consist solely of common stock of the Acquiror equal in Fair Market Value to the per Share consideration received by holders of Shares pursuant to the Change in Control. If any portion of such consideration may be received by holders of Shares pursuant to the Change in Control on a contingent or delayed basis, the Board may determine such Fair Market Value per Share as of the time of the Change in Control on the basis of the Board's good faith estimate of the present value of the probable future payment of such consideration. Any Award or portion thereof which is neither assumed or continued by the Acquiror in connection with the Change in Control nor settled as of the time of consummation of the Change in Control shall terminate and cease to be outstanding effective as of the time of consummation of the Change in Control.

(c) **Cash-Out of Awards**. The Board may, without the consent of any Grantee, determine that, upon the occurrence of a Change in Control, each or any Award or a portion thereof outstanding immediately prior to the Change in Control and not previously settled shall be canceled in exchange for a payment with respect to each vested Share (and each unvested Share, if so determined by the Board) subject to such canceled Award in (i) cash, (ii) stock of the Company or of a corporation or other business entity a party to the Change in Control, or (iii) other property which, in any such case, shall be in an amount having a Fair Market Value equal to the Fair Market Value of the consideration to be paid per Shares in the Change in Control. If any portion of such consideration may be received by holders of Shares pursuant to the Change in Control on a contingent or delayed basis, the Board may determine such Fair Market Value per Share as of the time of the Change in Control on the basis of the Board's good faith estimate of the present value of the probable future payment of such consideration. In the event such determination is made by the Board, the amount of such payment (reduced by applicable withholding taxes, if any) shall be paid to Grantees in respect of the vested portions of their canceled Awards as soon as practicable following the date of the Change in Control and in respect of the unvested portions of their canceled Awards in accordance with the vesting schedules applicable to such Awards.

#### 10.2.2. Change in Control Defined

A "Change in Control" means the consummation of any of the following events:

(a) the acquisition, other than from the Company, by any individual, entity, or group (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act), other than the Company or any subsidiary, affiliate (within the meaning of Rule 144 promulgated under the Securities Act), or employee benefit plan of the Company, of beneficial ownership (within the meaning of Rule 13d-3 promulgated under the Exchange Act) of more than 50% of the combined voting power of the then outstanding voting securities of the Company entitled to vote generally in the election of directors (the "Voting Securities"); or

(b) a reorganization, merger, consolidation, or recapitalization of the Company (a "Business Combination"), other than a Business Combination in which more than 50% of the combined voting power of the outstanding voting securities of the surviving or resulting entity immediately following the Business Combination is held by the persons who, immediately prior to the Business Combination, were the holders of the Voting Securities; or

(c) a complete liquidation or dissolution of the Company, or a sale of all or substantially all of the assets of the Company; or

(d) during any period of 24 consecutive months, the Incumbent Directors cease to constitute a majority of the Board; "Incumbent Directors" means individuals who were members of the Board at the beginning of such period or individuals whose election or nomination for election to the Board by the Stockholders was approved by a vote of at least a

(e) majority of the then Incumbent Directors (but excluding any individual whose initial election or nomination is in connection with an actual or threatened proxy contest relating to the election of directors).

Notwithstanding the foregoing, if it is determined that an Award is subject to the requirements of Section 409A and payable upon a Change in Control, the Company shall not be deemed to have undergone a Change in Control for purposes of the Plan unless the Company is deemed to have undergone a "change in control event" pursuant to the definition of such term in Section 409A.

### **10.3 Adjustments**

Adjustments under this Section 10 related to Shares or other securities of the Company shall be made by the Board. No fractional Shares or other securities shall be issued pursuant to any such adjustment, and any fractions resulting from any such adjustment shall be eliminated in each case by rounding downward to the nearest whole Share.

## **11. NO LIMITATIONS ON COMPANY**

The making of Awards shall not affect or limit in any way the right or power of the Company to make adjustments, reclassifications, reorganizations, or changes of its capital or business structure or to merge, consolidate, dissolve, or liquidate, or to sell or transfer all or any part of its business or assets.

## **12. TERMS APPLICABLE GENERALLY TO AWARDS GRANTED UNDER THE PLAN**

### **12.1 Disclaimer of Rights**

No provision in the Plan or in any Award Agreement shall be construed to confer upon any individual the right to remain in the employ or service of the Company or any Affiliate, or to interfere in any way with any contractual or other right or authority of the Company or any Affiliate either to increase or decrease the compensation or other payments to any individual at any time, or to terminate any employment or other relationship between any individual and the Company or any Affiliate. In addition, notwithstanding anything contained in the Plan to the contrary, no Award shall be affected by any change of duties or position of the Grantee, so long as such Grantee continues to be a Service Provider. The obligation of the Company to pay any benefits pursuant to the Plan shall be interpreted as a contractual obligation to pay only those amounts described herein, in the manner and under the conditions prescribed herein. The Plan shall in no way be interpreted to require the Company to transfer any amounts to a third party trustee or otherwise hold any amounts in trust or escrow for payment to any Grantee or beneficiary under the terms of the Plan.

### **12.2 Nonexclusivity of the Plan**

Neither the adoption of the Plan nor the submission of the Plan to the Stockholders for approval shall be construed as creating any limitations upon the right and authority of the Board to adopt such other incentive compensation arrangements (which arrangements may be applicable either generally to a class or classes of individuals or specifically to a particular individual or particular individuals), including the granting of stock options as the Board determines desirable.

### **12.3 Withholding Taxes**

The Company or an Affiliate, as the case may be, shall have the right to deduct from payments of any kind otherwise due to a Grantee any federal, state, or local taxes of any kind required by law to be withheld (i) with respect to the vesting of or other lapse of restrictions applicable to an Award or (ii) otherwise due in connection with an Award. At the time of such vesting or lapse, the Grantee shall pay to the Company or the Affiliate, as the case may be, any amount that the Company or the Affiliate may reasonably determine to be necessary to satisfy such withholding obligation. Subject to the prior approval of the Company or the Affiliate, which may be withheld by the Company or the Affiliate, as the case may be, in its sole discretion, the Grantee may elect to satisfy such obligations, in whole or in part, (i) by causing the Company or the Affiliate to withhold the minimum required number of Shares otherwise issuable to the Grantee as may be necessary to satisfy such withholding obligation or (ii) by delivering to the Company or the Affiliate Shares already owned by the Grantee. The Shares so delivered or withheld shall have an aggregate Fair Market Value equal to such withholding obligations. The Fair Market Value of the Shares used to

satisfy such withholding obligation shall be determined by the Company or the Affiliate as of the date that the amount of tax to be withheld is to be determined. A Grantee who has made an election pursuant to this Section 12.3 may satisfy his or her withholding obligation only with Shares that are not subject to any repurchase, forfeiture, unfulfilled vesting, or other similar requirements.

#### **12.4 Captions**

The use of captions in the Plan or any Award Agreement is for the convenience of reference only and shall not affect the meaning of any provision of the Plan or any Award Agreement.

#### **12.5 Other Provisions**

Each Award Agreement may contain such other terms and conditions not inconsistent with the Plan as may be determined by the Board. In the event of any conflict between the terms of an employment agreement and the Plan, the terms of the employment agreement shall govern.

#### **12.6 Number and Gender; References**

With respect to words used in the Plan, the singular form shall include the plural form, the masculine gender shall include the feminine gender, etc., as the context requires. Unless provided otherwise, all references to articles, sections, exhibits, attachments, and the like shall be to articles, sections, exhibits, attachments, and the like in the Plan.

#### **12.7 Severability**

If any provision of the Plan or any Award Agreement shall be determined to be illegal or unenforceable by any court of law in any jurisdiction, the remaining provisions hereof and thereof shall be severable and enforceable in accordance with their terms, and all provisions shall remain enforceable in any other jurisdiction.

#### **12.8 Governing Law**

The Plan shall be governed by and construed in accordance with the laws of the State of Delaware without giving effect to the principles of conflicts of law.

#### **12.9 Section 409A**

The Plan is intended to comply with Section 409A to the extent subject thereto and, accordingly, to the maximum extent permitted, the Plan shall be interpreted and administered to be in compliance therewith. Any payments described in the Plan that are due within the "short-term deferral period" as defined in Section 409A shall not be treated as deferred compensation unless applicable laws require otherwise. Notwithstanding anything to the contrary in the Plan, to the extent required to avoid accelerated taxation and tax penalties under Section 409A, amounts that would otherwise be payable and benefits that would otherwise be provided pursuant to the Plan during the six-month period immediately following the Grantee's Separation from Service shall instead be paid on the first payroll date after the six-month anniversary of the Grantee's Separation from Service (or the Grantee's death, if earlier). Notwithstanding the foregoing, neither the Company nor the Committee shall have any obligation to take any action to prevent the assessment of any excise tax or penalty on any Grantee under Section 409A and neither the Company nor the Committee shall have any liability to any Grantee for such tax or penalty.

#### **12.10 Transferability of Awards and Issued Shares**

##### **12.10.1. Transfers in General**

No Award shall be sold, transferred, assigned, pledged, or otherwise encumbered or disposed of by the Grantee to whom it is granted, other than by will or the laws of descent and distribution or under a domestic relations order in settlement of marital property rights and, during the lifetime of the Grantee, only the Grantee personally (or the Grantee's personal representative) may exercise rights under the Plan.

#### **12.10.2. Issued Shares**

No Issued Shares shall be sold, assigned, transferred, pledged, hypothecated, given away, or in any other manner disposed of or encumbered, whether voluntarily or by operation of law, unless (i) such transfer is in compliance with the terms of the applicable Award, all applicable securities laws, and with the terms and conditions of the Plan and (ii) the transferee consents in writing to be bound by the provisions of the Plan, if so required by the Board. In connection with any proposed transfer, the Board may require the transferor to provide at the transferor's own expense an opinion of counsel to the transferor, satisfactory to the Board, that such transfer is in compliance with all foreign, federal, and state securities laws. Any attempted disposition of Issued Shares not in accordance with the terms and conditions of this **Section 12.10.2** shall be null and void, and the Company shall not reflect on its records any change in record ownership of any Issued Shares as a result of any such disposition, shall otherwise refuse to recognize any such disposition, and shall not in any way give effect to any such disposition of Issued Shares.

**Adopted by the Board (as Amended): April 11, 2018**

**Approved by the Stockholders: May 16, 2018**

**Scheduled Termination Date: May 16, 2028**

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

I, Stephen R. Rizzone, certify that:

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

Date: August 9, 2018

/s/ Stephen R. Rizzone

Name: Stephen R. Rizzone

Title: President, Chief Executive Officer and Director

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

I, Brian Sereda, certify that:

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

Date: August 9, 2018

/s/ Brian Sereda

Name: Brian Sereda

Title: Senior Vice President and Chief Financial Officer

**CERTIFICATION PURSUANT TO  
18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report of Energeous Corporation, (the "Company") on Form 10-Q for the period ended June 30, 2018 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), we, Stephen R. Rizzone, President and Chief Executive Officer of the Company, and Brian Sereda, Senior Vice President and Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

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

/s/ Stephen R. Rizzone

Name: Stephen R. Rizzone  
Title: President, Chief Executive Officer and Director  
Date: August 9, 2018

/s/ Brian Sereda

Name: Brian Sereda  
Title: Senior Vice President and Chief Financial Officer  
Date: August 9, 2018