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

Schedule 14A

**Proxy Statement Pursuant to Section 14(a) of the
Securities Exchange Act of 1934**

Filed by the Registrant

Filed by a party other than the Registrant

Check the appropriate box:

- Preliminary Proxy Statement
- Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))
- Definitive Proxy Statement
- Definitive Additional Materials
- Soliciting Material Under §240.14a-12

EOS ENERGY ENTERPRISES, INC.

(Exact Name of Registrant as Specified in Its Charter)
(Name of Person(s) Filing Proxy Statement, if other than the Registrant)

Payment of Filing Fee (Check the appropriate box):

- No fee required.
 - Fee paid previously with preliminary materials.
 - Fee computed on table in exhibit required by Item 25 (b) per Exchange Act Rules 14a-6(i)(1) and 0-11.
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Eos Energy Enterprises, Inc.

3920 Park Avenue

Edison, New Jersey 08820

NOTICE OF ANNUAL MEETING OF STOCKHOLDERS TO BE HELD ON MAY 16, 2023

To the Stockholders of Eos Energy Enterprises, Inc.:

NOTICE IS HEREBY GIVEN that the Annual Meeting of Stockholders (the “Annual Meeting”) of Eos Energy Enterprises, Inc., a Delaware corporation (the “Company”), will be a virtual meeting conducted exclusively via live webcast at www.virtualshareholdermeeting.com/EOSE2023 on May 16, 2023, at 10:00 a.m. Eastern time for the following purposes:

1. to elect the three directors as Class III directors of Eos Energy Enterprises, Inc., each to serve for three years and until his successor has been elected and qualified, or until his earlier death, resignation or removal;
2. to ratify the selection of Deloitte & Touche LLP as our independent registered public accounting firm for the fiscal year ending December 31, 2023;
3. to approve a non-binding advisory resolution approving the compensation of the named executive officers;
4. to grant the Board of Directors the discretionary authority to amend the Company's Third Amended and Restated Certificate of Incorporation to effect a reverse stock split of the Company's common stock (the “Reverse Stock Split Proposal”);
5. to approve an amendment to our Third Amended and Restated Certificate of Incorporation to update the exculpation provision (the “Exculpation Amendment”);
6. to approve, in accordance with Nasdaq Marketplace Rule 5635(d), the issuance of our common stock to YA II PN, Ltd. (“Yorkville”) in excess of the exchange cap of the Standby Equity Purchase Agreement dated April 28, 2022, by and between the Company and Yorkville (the “SEPA”), the issuance of certain promissory notes to Yorkville and the offset of amounts due thereunder pursuant to the SEPA and the issuance of our common stock to Yorkville pursuant to advances under the SEPA and any amounts remaining for issuance pursuant to the SEPA under the exchange cap, including the issuance pursuant to any future advances (the “SEPA Matters Proposal”); and
7. to approve an amendment to our Amended and Restated 2020 Incentive Plan.

The Company will also transact such other business as may properly come before the Annual Meeting or any adjournment or postponement thereof.

The foregoing items of business are more fully described in the Proxy Statement accompanying this Notice of Annual Meeting of Stockholders. Only stockholders who owned common stock of the Company at the close of business on March 22, 2023 (the “Record Date”) can vote at this meeting or any adjournments that take place. The Company will begin mailing the Notice of Internet Availability to our stockholders of record as of the Record Date for the first time on or about March 27, 2023.

The Board of Directors recommends that you vote:

Proposal 1: **FOR** the election of the three director nominees;

Proposal 2: **FOR** the ratification of the appointment of Deloitte & Touche LLP, as the independent registered public accounting firm;

Proposal 3: **FOR** the approval of the non-binding advisory resolution to approve the compensation of our named executive officers;

Proposal 4: **FOR** the Reverse Stock Split Proposal;

Proposal 5: **FOR** the Exculpation Amendment;

Proposal 6: **FOR** the SEPA Matters Proposal ; and

Proposal 7: **FOR** the approval of an amendment to our Amended and Restated 2020 Incentive Plan.

2023 Virtual Annual Stockholder Meeting

The Board of Directors has determined to hold the annual meeting virtually in order to facilitate stockholder attendance and participation by stockholders from all locations at no cost. We believe this is the right choice for the Company at this time, as it enables engagement with our stockholders, regardless of size, resources, or physical location while safeguarding the health of our stockholders, Board and management. We are committed to ensuring that stockholders will be afforded the same rights and opportunities to participate as they would at an in-person meeting. You will be able to attend the meeting online, vote your shares electronically and submit questions during the meeting by visiting www.virtualshareholdermeeting.com/EOSE2023 at the meeting date and time. The meeting webcast will begin promptly at 10:00 a.m. Eastern Time. We encourage you to access the meeting prior to the start time. Online check-in will begin at 9:45 a.m. Eastern Time, and you should allow ample time for the check-in procedures. If you experience technical difficulties during the check-in process or during the meeting please call the technical support number that will be posted on the virtual Annual Meeting login page for assistance. Technical assistance will be available through the conclusion of the Annual Meeting.

YOUR VOTE IS IMPORTANT. WHETHER OR NOT YOU PLAN TO ATTEND THE VIRTUAL MEETING ONLINE, WE ENCOURAGE YOU TO READ THE ACCOMPANYING PROXY STATEMENT AND OUR ANNUAL REPORT ON FORM 10-K FOR THE FISCAL YEAR ENDED DECEMBER 31, 2022, AND SUBMIT YOUR PROXY AS SOON AS POSSIBLE USING ONE OF THE THREE CONVENIENT VOTING METHODS DESCRIBED IN “INFORMATION ABOUT THE PROXY PROCESS AND VOTING” IN THE PROXY STATEMENT. IF YOU RECEIVE MORE THAN ONE SET OF PROXY MATERIALS OR NOTICE OF INTERNET AVAILABILITY BECAUSE YOUR SHARES ARE REGISTERED IN DIFFERENT NAMES OR ADDRESSES, EACH PROXY SHOULD BE SIGNED AND SUBMITTED TO ENSURE THAT ALL OF YOUR SHARES WILL BE VOTED.

IMPORTANT NOTICE REGARDING THE AVAILABILITY OF PROXY MATERIALS FOR THE ANNUAL MEETING OF STOCKHOLDERS TO BE HELD ON MAY 16, 2023

The Notice of Annual Meeting of Stockholders to be held on May 16, 2023, the accompanying Proxy Statement and the Company’s 2022 Annual Report on Form 10-K are available, free of charge, at www.proxyvote.com.

The Notice contains instructions on how to access our proxy materials and vote over the internet at www.proxyvote.com and how stockholders can receive a paper copy of our proxy materials, including the accompanying Proxy Statement, a proxy card or voting instruction card and our fiscal year ended December 31, 2022 Annual Report on Form 10-K. Stockholders can also request to receive future proxy materials in printed form by mail or electronically by email by contacting Investor Relations Department at 312-445-2870 or email ir@eose.com.

By Order of the Board of Directors

/s/Melissa Berube
Melissa Berube
General Counsel and Corporate Secretary

March 27, 2023

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Eos Energy Enterprises, Inc.

3920 PARK AVENUE

EDISON, NEW JERSEY 08820

PROXY STATEMENT

FOR THE 2023 ANNUAL MEETING OF STOCKHOLDERS

MAY 16, 2023

We have made available our proxy materials because the Board of Directors (the “Board”) of Eos Energy Enterprises, Inc. (referred to herein as the “Company,” “Eos,” “we,” “us” or “our”) is soliciting your proxy to vote at our 2023 Annual Meeting of Stockholders (the “Annual Meeting”) to be held on May 16, 2023, at 10:00 a.m. Eastern time, at www.virtualshareholdermeeting.com/EOSE2023.

- This Proxy Statement summarizes information about the proposals to be considered at the Annual Meeting and other information you may find useful in determining how to vote.
- The Proxy Card is the means by which you actually authorize another person to vote your shares in accordance with your instructions.

In addition to solicitations by mail, our directors, officers and employees, without additional remuneration, may solicit proxies by telephone, e-mail and personal interviews. All costs of solicitation of proxies will be borne by us. Brokers, custodians and fiduciaries will be requested to forward proxy soliciting material to the owners of stock held in their names, and we will reimburse them for their reasonable out-of-pocket expenses incurred in connection with the distribution of proxy materials.

Pursuant to the rules adopted by the Securities and Exchange Commission (the “SEC”), we have elected to provide access to our Annual Meeting materials, which include this Proxy Statement and our Annual Report on Form 10-K for the fiscal year ended December 31, 2022 (the “Form 10-K”), over the internet in lieu of mailing printed copies. We will begin mailing the Notice of Internet Availability to our stockholders of record as of March 22, 2023 (the “Record Date”) for the first time on or about March 27, 2023. The Notice of Internet Availability will contain instructions on how to access and review the Annual Meeting materials and will also contain instructions on how to request a printed copy of the Annual Meeting materials. Additionally, we have provided brokers, dealers, banks, voting trustees and their nominees, at our expense, with additional copies of our proxy materials and our Annual Report on Form 10-K so that they can supply these materials to the beneficial owners of shares of our common stock as of the Record Date. Our Annual Report on Form 10-K and the 2023 Proxy Statement are available, free of charge, at proxyvote.com.

**PROPOSAL NO. 1
ELECTION OF DIRECTORS**

Our Board is divided into three (3) classes with only one class of directors being elected in each year and each class serving a three (3) year term. The directors hold their office for a term of three (3) years or until their respective successors are elected and qualified, subject to such director’s earlier death, resignation, disqualification or removal. Class I directors are Marian “Mimi” Walters and Audrey Zibelman; Class II directors are Joe Mastrangelo, our CEO, and Alex Dimitrief; and Class III directors are Russell Stidolph, the Chair of our Board, Jeff Bornstein and Claude Demby.

Class III directors standing for re-election at the Annual Meeting are Russell Stidolph, the Chair of our Board, Jeff Bornstein and Claude Demby. Class I and Class II directors will stand for election at the 2024 and 2025 annual meetings of stockholders, respectively.

Each of the nominees for election as Class III directors is currently a director. If elected at the Annual Meeting, each of the nominees for election as Class III directors would serve for three years and until his successor is duly elected and qualified, or until his earlier death, resignation or removal. If any nominee is unable or unwilling to be a candidate for election, the Board may appoint another nominee or reduce the size of the Board.

The following table sets forth information for the nominees who are currently standing for election:

Name	Age	Director Since
Russell Stidolph (1)	47	2020
Jeff Bornstein (2)	57	2022
Claude Demby (3)	58	2021

-
- (1) Chair of the Leadership Development & Compensation Committee and member of the Nominating and Corporate Governance Committee.
 - (2) Chair of the Audit Committee and member of the Leadership Development & Compensation Committee.
 - (3) Member of the Audit Committee and member of the Nominating and Corporate Governance Committee.

Set forth below is biographical information for the nominees. The following includes certain information regarding the nominees’ individual experience, qualifications, attributes and skills that led the Board to conclude that they should serve as a director.

Russell Stidolph, 47, has served as a member of our Board since the closing of the Business Combination in 2020. He has also served as a director of Eos Energy Storage LLC (“EES LLC”) since 2014 and the chairman of the board of EES LLC since 2018, and continued in both positions following the closing of the Business Combination. Mr. Stidolph is the founder of AltEnergy, LLC a private equity firm focused on alternative energy investing, where he has served as Managing Director since 2006 and is the Chairman and CEO of AltEnergy Acquisition Corp. (NASDAQ: AEAE). Prior to forming AltEnergy, Mr. Stidolph was a Principal at J.H. Whitney & Co., LLC, a middle-market private equity firm based in New Canaan, Connecticut. While at J.H. Whitney Mr. Stidolph was responsible for starting and developing the firm’s alternative energy investing practice where he was responsible for Hawkeye Renewables, LLC and Iowa Winds, LLC. Mr. Stidolph was both the Chief Financial Officer and Vice Chairman of Hawkeye Renewables, LLC before it was sold in 2006 to Thomas H. Lee Partners, LP. Prior to joining J.H. Whitney, Mr. Stidolph was a member of the corporate finance group at PaineWebber, Inc., that was responsible for high yield and leverage finance origination. Mr. Stidolph also acted as Senior Vice President and the Chief Financial Officer of Tres Amigas, LLC and he still sits on the company’s board of directors, and was Chair of the board of directors of Viridity Energy, Inc. before it was sold to Ormat Technologies in 2017. Russell received a Bachelor of Arts degree from Dartmouth College. Mr. Stidolph’s qualifications to serve on our Board include: his background in financial investments, financial and risk management, equity capital markets and the renewable energy industry.

Jeff Bornstein, 57, has served as a member of our Board since September 2022, and was recommended by both a non-management director and our chief executive officer. Mr. Bornstein is the founder, principal and co-managing partner of Whipstick Ventures LLC, an investment company focused on early stage companies with novel solutions across energy storage and efficiency, services, bio-tech and fin-tech. He also currently serves as the managing partner of Generation Capital Partners and sits on the board of AlloVir (NASDAQ: ALVR) and as Chair of their Audit Committee. Prior to founding Whipstick Ventures in 2018, he served as Vice Chairman and Chief Financial Officer of General Electric from 2013 to 2017. In this role, he focused on portfolio transformation, including the sale of the Appliances division of GE, executing the merger of GE Oil & Gas with Baker Hughes, the sale of businesses and assets of GE Capital worth over \$300 billion and GE’s acquisition of Alstom, as well as driving down structural costs. Previously, Mr. Bornstein served as Senior Vice President and Chief Financial Officer of GE Capital for 12 years. During his tenure, he played a pivotal role managing the company through the financial crisis and, subsequently, the on-boarding of the Federal Reserve as Regulator. Mr. Bornstein originally joined GE in 1989 with the GE Power Systems’ Financial Management Program. In 1992, he joined the GE Corporate Audit Staff and then became Executive Audit Manager. In 1996, he was named Chief Financial Officer for GE Aircraft Engine Services and Vice President in 1998. In 1999, he was promoted to Chief Financial Officer of GE Plastics and served in that role until 2002. He is a trustee of Northeastern University and on the board of Build On. He has also been involved in a number of youth programs. He received his B.S. in Business Administration from Northeastern University. Mr. Bornstein's qualifications to serve on our Board include: his background in finance, extensive executive leadership experience, and experience in the energy industry.

Claude Demby, 58, has served as a member of our Board since 2021, and was recommended by a third-party search firm. He has led complex global organizations through turnaround and fast growth periods with his extensive executive leadership experience within the automotive, aerospace and materials technology industries. He has established international operations and infrastructure throughout the world including Asia, Europe and the Americas during his career. Claude served as President of Cree LED, a lighting and industrials innovation company with 2,400 employees, 13 global locations servicing over 25,000 customers in 101 different countries from 2018 to 2022. In this role, Claude led the turnaround and growth of this recognized global brand delivering application optimized solutions worldwide. Prior to leading the LED business, Claude led Mergers and Acquisitions for Cree Inc., driving the M&A strategy establishing the foundation for Cree's future growth platform into the power, communications and infrastructure sectors. Prior to joining Cree, Claude served as the CEO and Director of Noel Group, an industrial holding company owning 5 global businesses focused on the manufacture of synthetic materials. At Noel Group, Claude led the turnaround of this business across the globe establishing the strategy, processes and global footprint significantly improving company financial health and shareholder value. And prior to joining Noel Group, Claude served as the President and COO of L&L Products Inc., a global automotive and aerospace OEM delivering solutions to reduce the noise and vibration while reinforcing application structural integrity. Claude led L&L Products through one of its fastest growth periods in the company's history establishing operations throughout the world. Claude began his career in engineering roles with Proctor and Gamble and GE. Claude has extensive public and private board experience. He currently serves as the Chair of Nominating and Governance Committee and Director on the board of Brown Capital Management Mutual Fund Trust; and as the Chair of the Nominating and Governance Committee, member of the Audit Committee, and Director on the board of Piedmont Lithium Incorporated (NASDAQ: PLL), a clean energy company, with prior service as a Director on the board of the Federal Reserve Bank of Richmond Charlotte branch from 2012 to 2017 including a period as Chairman. In addition to his professional experience and corporate board service, Claude has a strong record of community service through his founding and leadership of Valour Academy Schools Inc. Raleigh, past service on multiple leadership committees on Raleigh Chamber of Commerce Board including Chair Elect and past service as an advisor. Mr. Demby's qualifications to serve on our Board include: his extensive experience in industrial manufacturing, materials technology, executive level leadership as well as his experience in international operations.

THE BOARD RECOMMENDS A VOTE

FOR THE ELECTION OF EACH OF THE ABOVE-NAMED CLASS III NOMINEES

DIRECTORS

The following table sets forth the name, age as of March 1, 2023 and position of the nominees for election at the Annual Meeting and the other current directors of Eos Energy Enterprises, Inc. whose terms extend past the Annual Meeting. The following also includes certain information regarding our directors' individual experience, qualifications, attributes and skills and brief statements of those aspects of our directors' backgrounds that led us to conclude that they are qualified to serve as directors (information for Messrs. Stidolph, Bornstein and Demby is set forth above in "Proposal No. 1 Election of Directors").

Name	Age	Position	Independent
Russell Stidolph (2) (3)	47	Independent Chair; Director	<input checked="" type="checkbox"/>
Jeff Bornstein (1) (2)	57	Director	<input checked="" type="checkbox"/>
Claude Demby (1) (3)	58	Director	<input checked="" type="checkbox"/>
Alex Dimitrief (1) (3)	64	Director	<input checked="" type="checkbox"/>
Joe Mastrangelo	54	Chief Executive Officer and Director	
Marian "Mimi" Walters (2) (3)	60	Director	<input checked="" type="checkbox"/>
Audrey Zibelman (1) (2)	65	Director	<input checked="" type="checkbox"/>

-
- (1) Member of the Audit Committee
 - (2) Member of the Leadership Development & Compensation Committee
 - (3) Member of the Nominating and Corporate Governance Committee

Alex Dimitrief, 64, has served as a director since the closing of the Business Combination in 2020. Mr. Dimitrief is an experienced director, C-suite leader and general counsel who has steered varied energy-related and other global businesses through a wide range of complex commercial, legal and organizational challenges. He has previously served as a director of both public and non-public companies including The We Company, Synchrony Financial (NYSE: SF) and GE Capital Bank and presently serves as a director of SmileDirectClub (Nasdaq: SDC) and sits on the Advisory Board of Cresset Capital Management. Since November 2022, Mr. Dimitrief has been serving as Senior Vice President and General Counsel of Sotera Health Co. (SHC: NASDAQ). Previously, as President and Chief Executive Officer of General Electric's Global Growth Organization, Mr. Dimitrief was responsible for driving GE's growth in more than 180 countries. Under Mr. Dimitrief's watch in 2018, GE achieved \$76 billion in international orders and secured billions in financing for many of GE's emerging market customers. As GE's General Counsel from 2015-2018, Mr. Dimitrief served as the principal executive advisor to GE's board and led a global team responsible for GE's legal matters, compliance, SEC reporting, government affairs and environmental safety programs. In previous roles at GE, Mr. Dimitrief was a leader of the transformation of GE Capital (including the IPO/split-off of Synchrony Financial) and led joint venture negotiations for GE Energy in China and Russia. In announcing Mr. Dimitrief's retirement from GE in January 2019, Chief Executive Officer Larry Culp described Mr. Dimitrief as "one of the most respected leaders at GE" who "effectively represented GE before governments, regulators and customers throughout the world and is widely recognized as a compelling champion of integrity, transparency and the rule of law." In 2007, Mr. Dimitrief came to GE after 20 years as a senior partner at Kirkland & Ellis LLP, where he "first chaired" and regularly advised boards about securities, restructuring, intellectual property, product liability, environmental, governance and commercial disputes. Mr. Dimitrief earned his B.A. from Yale College and his J.D. from Harvard Law School. Mr. Dimitrief's qualifications to serve on our board of directors include: his lengthy executive and board experiences, as well as his expertise in managing risk, legal compliance, governance and other functions at mature companies with large workforces.

Joe Mastrangelo, 54, has served as a director and the Chief Executive Officer since the closing of the Business Combination in 2020. He joined EES LLC as a Board advisor in March 2018 and assumed the role of Chief Executive Officer from August 2019 until the closing of the Business Combination. Before coming to Eos, Mr. Mastrangelo was president and chief executive officer of Gas Power Systems since September 2015. As an energy industry leader for the past two decades, Mr. Mastrangelo has extensive experience leading diverse teams to develop and deploy commercial scale projects around the world. Mr. Mastrangelo has broad operating experience across the energy value chain including serving as Chief Executive Officer of GE's Power Conversion business, applying science and systems of power conversion to increase the efficiency of the world's energy infrastructure. Mr. Mastrangelo spent ten years with GE Oil & Gas, in leadership roles in finance, quality, and commercial operations, culminating in being named a GE Corporate Officer in 2008. Joe began his career with GE in the company's Financial Management Program and then joined GE's Corporate Audit Staff. Originally from New York, Mr. Mastrangelo earned a Bachelor of Science in Finance from Clarkson University and an Associate of Science, Business Administration and Management from Westchester Community College. Mr. Mastrangelo's qualifications to serve on our Board include: his extensive experience in operations management at executive level positions, as well as his educational background in finance and business.

Marian "Mimi" Walters, 60, has served as a director since the closing of the Business Combination in 2020. Ms. Walters has been serving as a director for B. Riley Financial, Inc. (NASDAQ: RILY) since July 2019 and has been Chief Commercial Officer for Leading Edge Power Solutions, LLC since November 2019. From 2015 to 2019, she served as a Member of the U.S. House of Representatives (the "House") from California's 45th District where she worked on key legislation, business and policy initiatives related to energy, technology, environmental and healthcare. Ms. Walters was a member of House Leadership and served on the influential Energy and Commerce Committee. She was a member of the Communications and Technology, Digital Commerce and Consumer Protection, and Oversight and Investigations subcommittees. Prior to her election to Congress, Ms. Walters was a member of the California State Senate, from 2008 to 2014, where she served on the Banking and Financial Institutions Committee and was Vice Chair of the Appropriations Committee. She previously served in the California State Assembly and was mayor and council member for the City of Laguna Niguel. Prior to her career in public service, Ms. Walters was an investment professional at Drexel Burnham Lambert and Kidder, Peabody & Co. She earned a B.A. in Political Science from the University of California, Los Angeles. Ms. Walters' qualifications to serve on our board of directors include: her experience with the alternative energy industry, policy and government affairs and her background in investment banking.

Audrey Zibelman, 65, has served as a director since the closing of the Business Combination in 2020. Ms. Zibelman most recently served as Vice President at X, the Alphabet Moonshot Factory, from January 2021 to October of 2022, before transitioning to an advisor role. Ms. Zibelman has been serving as a director for AltEnergy Acquisition Corp. (NASDAQ: AEAE) since August 2021. Previously, Ms. Zibelman was the Managing Director and Chief Executive Officer of the Australian Energy Market Operator (“AEMO”), responsible for overseeing AEMO’s strategy, operations and administrative functions. In addition to taking on the role as Chief Executive Officer of AEMO, Ms. Zibelman also served on the CSIRO Energy Advisory Committee, the Melbourne Energy Institute’s Advisory Board, and as a Director of the Melbourne Recital Centre. Ms. Zibelman is also on the board of the Advanced Energy Economy Institute. Ms. Zibelman has extensive experience in the public, private and not-for-profit energy and electricity sectors in the United States. Prior to joining AEMO in March 2017, her roles included Chair of the New York State Public Service Commission (“NYPSC”), from August 2013 to March 2018, Executive Vice President and Chief Operating Officer of system operator PJM from January 2008 to February 2013, executive roles with Xcel Energy, from 1992 to 2004, one of the United States largest integrated gas and electricity utilities and served on a number of energy industry advisory groups and boards. During her tenure at the NYPSC, Ms. Zibelman led the design and implementation of extensive regulatory and retail market changes to modernize and transform the state’s electricity industry under New York Governor Andrew M. Cuomo’s ‘Reforming the Energy Vision’ plan. A recognized national and international expert in energy policy, markets and Smart Grid innovation, Ms. Zibelman is a Founder and past President and CEO of Viridity Energy, Inc., which she formed after more than 25 years of electric utility industry leadership experience in both the public and private sectors. Previously, Ms. Zibelman was the Executive Vice President and Chief Executive Officer of GO15 member organization, PJM, a regional transmission organization responsible for operating the power grid and wholesale power market which serves fourteen states across the eastern United States. Ms. Zibelman also held legal and executive positions at Xcel Energy, served as General Counsel to the New Hampshire Public Utilities Commission, and was Special Assistant Attorney General in the Minnesota Attorney General’s Office. During her career, Ms. Zibelman has served on numerous industry-related and non-profit boards, including, but not limited to the Midwest and Mid-Atlantic Reliability Councils. Ms. Zibelman’s board experience also includes Advisor to Secretary of Energy for the U.S. Department of Energy and Advisory Council, New York State Energy Research and Development Authority, the New York State Planning Board and the New York State Emergency Planning Council. Ms. Zibelman received her B.A. from Penn State University, her Executive MBA from University of Minnesota — Carlson School of Management and her J.D. from Hamline University of Law. Ms. Zibelman’s qualifications to serve on our Board include: her extensive management experience within the energy industry, and her background in energy regulation, policy and government affairs and advising energy companies and public utilities.

CORPORATE GOVERNANCE

Board Composition

In accordance with the terms of the Director Nomination Agreement, the Board of the Company presently comprises seven directors.

Our Charter provides the number of directors, which is fixed from time to time by a resolution of our Board. Our Board is divided into three classes with only one class of directors being elected in each year and each class serving a three-year term, as follows:

- Our Class I directors, consisting of Marian “Mimi” Walters and Audrey Zibelman, will expire at the Company’s annual meeting of stockholders in 2024;
- Our Class II directors, consisting of Joe Mastrangelo and Alex Dimitrief, will expire at the Company's annual meeting of stockholders in 2025;
- Our Class III directors, consisting of Russell Stidolph, Claude Demby, and Jeff Bornstein, are nominated for re-election at this Annual Meeting.

The directors hold their office for a term of three years or until their respective successors are elected and qualified, subject to such director’s earlier death, resignation, disqualification or removal. In accordance with the Second Amended and Restated Bylaws of the Company, the Board will also be responsible for filling vacancies or newly-created directorships on the Board that may occur between annual meetings of stockholders.

Continuously Improving Our Board and Director Nomination Considerations

As the Company evolves, so will our Board. The Company and its Board are committed to continuing to develop a Board comprising experienced and qualified directors with integrity and expertise who can serve as effective stewards for an increasingly diverse base of stockholders and other stakeholders and institute robust governance principles.

To this end, our Board has instituted a process designed to regularly review the mix of skills and experience of our current directors and those it expects would be desirable in the future, including industry experience; public company experience; operational, manufacturing and supply chain expertise, especially in high-technology start-ups; finance and accounting, including capital markets expertise; cognitive diversity, both in terms of demographics and personal and professional experience; enterprise risk management; regulation and government affairs; talent development; environmental, social and governance (“ESG”) and sustainability; and growth, with a focus on leading businesses through periods of significant growth and transformation and exposure to various domestic and international markets. The Board also assesses its own performance and the performance of its committees.

We view continuous self-improvement of our corporate governance processes as an imperative for the Nominating and Corporate Governance Committee and our Board. We have retained Heidrick & Struggles to provide consulting and assistance in support of the Company’s Board composition and effectiveness planning. We selected Heidrick & Struggles based on its record as a preeminent firm in working with boards on succession planning, board effectiveness and culture shaping.

Directors are expected to possess certain personal traits and, in fulfilling its responsibility to identify qualified candidates for membership on the Board, the Nominating and Corporate Governance Committee will examine each director nominee on a case-by-case basis regardless of who recommended the nominee (including with respect to stockholder recommendations) and take into account all factors it considers appropriate, including those described above as well as, enhanced independence, financial literacy and financial expertise, diversity of background and perspective, including, but not limited to, with respect to age, gender, race, demographics, and any other relevant qualifications, attributes or skills.

Our directors self-identify as set forth in the table below.

Board Composition							
Total Number of Directors	7						
Director Name	Claude Demby	Alex Dimitrief	Joe Mastrangelo	Jeff Bornstein	Russell Stidolph	Marian "Mimi" Walters	Audrey Zibelman
Gender Identification							
Male	✓	✓	✓	✓	✓		
Female						✓	✓
Race/Ethnicity							
African American or Black	✓						
White		✓	✓	✓	✓	✓	✓

Independence of the Board of Directors

Nasdaq rules require that a majority of our Board be independent. Consistent with its charter, the Nominating and Corporate Governance Committee has reviewed the relationships between directors, the Company and members of management and recommended to the Board whether each director qualifies as "independent" under the Board's definition of "independence" and the applicable rules of Nasdaq and the Company's Corporate Governance Guidelines. Our Board has determined that six of the seven directors, Claude Demby, Alex Dimitrief, Audrey Zibelman, Marian "Mimi" Walters, Jeff Bornstein and Russell Stidolph, are "independent directors" as defined in the rules of Nasdaq and applicable SEC rules.

Board Leadership Structure

Mr. Stidolph serves as the Chair of the Board and is an independent member of the Board. The Independent Directors meet in executive session without non-Independent Directors or management present no less than twice per year. Each executive session of the Independent Directors is presided over by the Chair of the Board.

Our Board believes that, at this time, the foregoing structure separating the Chair of the Board and CEO roles achieves an appropriate balance between the effective development of key strategic and operational objectives by the CEO, and independent oversight of management's execution of such objectives. Our Board also believes that this structure improves its risk oversight function. Our Board also periodically evaluates our leadership structure to determine if it remains in our best interests based on circumstances existing at the time. If the Chair of the Board is a member of management or does not otherwise qualify as independent, the Independent Directors may elect a Lead Director.

Committees of the Board of Directors

Our Board has three fully independent standing committees: the Audit Committee, the Leadership Development & Compensation Committee and the Nominating and Corporate Governance Committee. Each of the committees reports to the Board as they deem appropriate and as the Board may request.

Audit Committee

The Company's Audit Committee oversees the Company's corporate accounting and financial reporting process and the Company's compliance with legal and regulatory requirements. Among other matters, the Audit Committee:

- appoints our independent registered public accounting firm;
- evaluates the independent registered public accounting firm's qualifications, independence and performance;
- determines the engagement of the independent registered public accounting firm;
- reviews and approves the scope of the annual audit and the audit fee;
- discusses with management and the independent registered public accounting firm the results of the annual audit and the review of the Company's quarterly financial statements;
- approves the retention of the independent registered public accounting firm to perform any proposed permissible non-audit services;
- monitors the rotation of the lead audit partner of the independent registered public accounting firm on the Company's engagement team in accordance with requirements established by the SEC;
- is responsible for reviewing our financial statements and our management's discussion and analysis of financial condition and results of operations to be included in our annual and quarterly reports to be filed with the SEC;
- reviews our critical accounting policies and practices; and
- reviews the audit committee charter and the committee's performance at least annually.

The members of the Audit Committee are Jeff Bornstein, Claude Demby, Alex Dimitrief and Audrey Zibelman, with Jeff Bornstein serving as the chair of the committee. Under the rules of the SEC, members of the Audit Committee must also meet heightened independence standards. All of the members of the Audit Committee are independent directors as defined under the applicable rules and regulations of the SEC and Nasdaq with respect to Audit Committee membership. Jeff Bornstein qualifies as an "audit committee financial expert," as such term is defined in Item 407(d)(5)(ii) of Regulation S-K.

Leadership Development & Compensation Committee

Our Leadership Development & Compensation Committee (the "Compensation Committee") reviews and recommends policies relating to compensation and benefits of our officers and employees. Among other matters, the Compensation Committee:

- establishes, reviews and approves corporate goals and objectives of the Company's management compensation programs, its basic compensation policies and annual and long-term performance goals and objectives;
- reviews the Company's employee compensation policies and practices;
- reviews and approves any employment, compensation, benefit or severance agreement with any executive officer;
- evaluates the performance of executive officers against corporate goals and objectives and recommends to our Board the compensation of these officers based on such evaluations;
- reviews, approves and recommends to the Board the adoption of any equity-based compensation plan for employees of or consultants to the Company and any modification of any such plan; and
- reviews and evaluates, at least annually, the directors' compensation and makes recommendations thereon to the Board.

Pursuant to the Compensation Committee’s charter, the Compensation Committee may, by resolution approved by a majority of the Compensation Committee members, form and delegate any of its responsibilities to a subcommittee so long as such subcommittee is solely comprised of one or more members of the Committee and such delegation is not otherwise inconsistent with law and applicable rules and regulations of the SEC and Nasdaq. The Compensation Committee may also, in certain instances by resolution approved by a majority of the Compensation Committee members, delegate to management the administration of the Company’s incentive compensation and equity-based compensation plans, to the extent permitted by law and as may be permitted by such plans and subject to such rules, policies and guidelines (including limits on the aggregate awards that may be made pursuant to such delegation) as the Compensation Committee shall approve.

The Compensation Committee consults with members of our management team, including our CEO, when making compensation decisions. While the Compensation Committee considers our CEO’s recommendations, the Compensation Committee ultimately uses its own business judgment and experience in approving, or making recommendations to the Board, where applicable, regarding individual compensation elements and the amount of each element for our NEOs. Our CEO recuses himself from all determinations regarding his own compensation. The members of our Company’s Compensation Committee are Russell Stidolph, Audrey Zibelman, Marian “Mimi” Walters and Jeff Bornstein, with Russell Stidolph serving as the chair of the committee.

Our Board has determined that each member of the Compensation Committee meets the independence requirements under the applicable rules and regulations of the SEC and the applicable listing standards of Nasdaq, and each is a “non-employee director” as defined in Rule 16b-3 promulgated under the Securities Exchange Act of 1934.

Nominating and Corporate Governance Committee

The Nominating and Corporate Governance Committee is responsible for making recommendations to our Board regarding candidates for directorships and the size and composition of our Board. In addition, the Nominating and Corporate Governance Committee is responsible for overseeing our corporate governance policies and reporting and making recommendations to our Board concerning governance matters. This includes oversight of ESG matters.

The members of the Company’s Nominating and Corporate Governance Committee are Alex Dimitrief, Claude Demby, Russell Stidolph and Marian “Mimi” Walters, with Alex Dimitrief serving as the chair of the committee. Our Board has determined that each member of the Nominating and Corporate Governance Committee meets the independence requirements under the applicable rules and regulations of the SEC and the applicable listing standards of Nasdaq.

Code of Business Conduct and Ethics

Our Board of Directors has adopted a Code of Business Conduct and Ethics (the “Code”) that applies to all officers, directors and employees. The Company intends to disclose any amendments to or waivers of certain provisions of the Code on its website at <https://investors.eose.com> within the time period required by the SEC and the Nasdaq.

Copies of our Code, along with our Corporate Governance Guidelines and the charter of each of our Audit, Compensation and Nominating and Corporate Governance Committees are available on our website at investors.eose.com. Information on or accessible through our website is not part of, or incorporated by reference into, this Proxy Statement. In addition, a copy of the Code will be provided, without charge upon request from us.

Hedging and Pledging Policy

Our Insider Trading Policy prohibits employees and directors from engaging in any hedging transactions or from pledging Company securities in any circumstance, including by purchasing Company securities on margin or holding Company securities in a margin account.

Role of Compensation Consultant

The Compensation Committee has engaged Mercer to provide the services of executive compensation consulting and to assist it on matters relating to our executive compensation program pursuant to its authority under the Compensation Committee charter. During 2022, Mercer provided benchmarking studies to the Compensation Committee, as well as information on corporate governance, regulatory issues, and developments regarding executive compensation. When requested by the Compensation Committee, Mercer consultants attend certain meetings of the Compensation Committee.

The Compensation Committee has evaluated Mercer's independence by considering the requirements adopted by Nasdaq and the SEC and has determined that no conflict of interest exists. The Compensation Committee is directly responsible for the appointment, compensation and oversight of the work performed by any such advisor and the sole authority to approve all such advisors' fees. Mercer has not provided any other services to us and has received no compensation other than with respect to the services described above.

Meetings of the Board, Board and Committee Member Attendance and Annual Meeting Attendance

Our Board met thirteen times during the fiscal year ended December 31, 2022. The Audit Committee met eight times, the Compensation Committee met five times and the Nominating and Corporate Governance Committee met six times. During fiscal year ended December 31, 2022, there was 95% attendance of the meetings of the Board and the committees of the Board. We encourage and expect all of our directors and nominees for director to attend our annual meeting of stockholders. All but one of the directors then in service attended the 2022 annual stockholders meeting.

Stockholder Communications with the Board

Should stockholders or other interested parties wish to communicate with the Board, non-management directors or independent directors as a group or any specified individual directors, such correspondence should be sent to the attention of our Secretary at 3920 Park Avenue, Edison, NJ 08820. Our Secretary will forward correspondence relating to a director's duties or responsibilities to the specified recipient. Correspondence that is unrelated to a director's duties will be handled at the Secretary's discretion. Stockholders may also submit recommendations of director candidates by following the same procedures.

Role of the Board in Risk Oversight

Our Board oversees our risk management. Our Board, directly and through the Audit Committee carries out this oversight role by reviewing the Company's policies and practices with respect to risk assessment and risk management, and by discussing with management the risks inherent in the operation of our business. Our Compensation Committee reviews risks arising out of the Company's compensation policies and practices, which are monitored and mitigated on an ongoing basis. Any necessary adjustments are addressed in the Company's risk profile.

Board Oversight of Material Environmental and Social Risk

Eos takes into account considerations that affect all of our key stakeholders, including our stockholders, customers, employees, communities, regulators and suppliers. Our Board oversees the Company's overall social responsibility strategy and supports the implementation of the Company's ESG strategy. The Board continues to monitor and evaluate the impact of the Company's ESG efforts and strives for improvement and growth of the Company's social responsibility benchmarks.

DIRECTOR COMPENSATION TABLE

The following table sets forth information concerning the compensation earned by each of our non-employee directors during the fiscal year ended December 31, 2022. Mr. Mastrangelo does not earn any additional compensation for service on our Board.

Name and Principal Position	Fees Earned or Paid in Cash (\$)	Stock Awards(1) (\$)	Option Awards(2) (\$)	All Other Compensation (\$)	Total (\$)
Daniel Shribman(3)	\$ 18,750	\$ 75,000	\$ 75,085	\$ —	\$ 168,835
Russell Stidolph	25,000	169,050	75,085	—	269,135
Alex Dimitrief	25,000	122,025	75,085	—	222,110
Audrey Zibelman	25,000	75,000	75,085	—	175,085
Marian "Mimi" Walters	25,000	75,000	75,085	—	175,085
Claude Demby	25,000	75,000	75,085	—	175,085
Jeff Bornstein(4)	6,250	109,936	75,107	—	191,293

- (1) Represents the grant date fair value of restricted stock unit awards, computed in accordance with Financial Accounting Standards Board (“FASB”) Accounting Standards Codification (“ASC”) Topic 718. For a discussion of the valuation methodology used, see Note 18, “Stock-Based Compensation” of the notes to our consolidated financial statements included in the Form 10-K. These amounts do not necessarily correspond to the actual value that may be realized from the stock awards by the non-employee directors. The aggregate number of stock awards (in the form of restricted stock units) outstanding for our non-employee directors as of December 31, 2022 was: Mr. Stidolph: 108,559, Mr. Dimitrief: 86,059, Ms. Zibelman: 63,559, Ms. Walters: 63,559, Mr. Demby: 63,559, and Mr. Bornstein: 52,601.
- (2) Represents the grant date fair value of option awards, computed in accordance with FASB ASC Topic 718. Grant date fair value is calculated based on the Black-Scholes option pricing model. For information regarding the assumptions used in determining the grant date fair value, see Note 18, “Stock-Based Compensation” of the notes to our consolidated financial statements included in the Form 10-K. These amounts do not necessarily correspond to the actual value that may be realized from the option awards by the named executive officers. The aggregate number of option awards outstanding for our non-employee directors as of December 31, 2022 was: Mr. Stidolph: 145,018, Mr. Dimitrief: 145,018, Ms. Zibelman: 145,018, Ms. Walters: 145,018, Mr. Demby: 145,018, and Mr. Bornstein: 80,116.
- (3) Effective on September 2, 2022, Mr. Shribman stepped down from the Board. Upon his resignation, Mr. Shribman forfeited his restricted stock units and stock options that were unvested as of such date. In accordance with the terms of his stock option awards, Mr. Shribman remains eligible to exercise his outstanding and vested options until September 3, 2023.
- (4) Mr. Bornstein was appointed to the Board effective September 7, 2022.

Director Compensation

On December 8, 2020, our compensation committee approved our Non-Employee Director Compensation Policy (the “Director Compensation Policy”). Under the Director Compensation Policy, each non-employee director is eligible to receive (i) an annual cash retainer equal to \$25,000, payable in equal quarterly installments in arrears, and (ii) an annual equity-based retainer (the “Equity Retainer”) with a grant date fair value of \$150,000, payable 50% in restricted stock units and 50% in stock options. The Equity Retainers vest, subject to continued service, on the earlier of (i) the one-year anniversary of the grant date and (ii) immediately prior to the date of the next annual stockholders meeting of the Company following the grant date (with accelerated vesting upon a change in control). In addition, all members of our Board will be reimbursed for their costs and expenses in attending Board meetings.

In addition to the Equity Retainer, the chair of the Nominating and Corporate Governance Committee received a special grant in September 2022, of 22,500 restricted stock units (“RSUs”), and the chair of the board and chair of the Compensation Committee, received a special grant in September 2022, of 45,000 RSUs. In connection with his appointment as the chair of the Audit Committee, Mr. Bornstein received a grant of restricted stock units, valued at \$35,000. Each of the immediately aforementioned grants vest, subject to continued service, on the earlier of (i) the one-year anniversary of the grant date and (ii) immediately prior to the date of the next annual stockholders meeting of the Company following the grant date (with accelerated vesting upon a change in control).

On September 7, 2022, the Board approved certain amendments to the Director Compensation Policy, which provide for additional equity compensation, in the form of stock options, to be paid to any chairperson of the Board or one of its committees (the “Chairperson Grants”). The chairperson of the Board or the Audit Committee are eligible to receive a Chairperson Grant valued at \$50,000 and the chairperson of the compensation committee or the nominating committee are eligible to receive a Chairperson Grant valued at \$25,000. The Chairperson Grants will be effective beginning with the service year beginning at the Annual Meeting.

The Equity Retainer for 2022 was granted to our non-employee directors on May 19, 2022. In the future, Equity Retainers and Chairperson Grants will generally be granted on the second trading day following each annual meeting of our stockholders. Any individual that becomes a non-employee director for the first time other than by election or appointment at an annual meeting of our stockholders will be granted an Equity Retainer in connection with his or her appointment and will be eligible to receive an Equity Retainer with the next annual stockholders meeting so long as such annual stockholders meeting is more than four calendar months from the date such individual becomes a non-employee director. The Equity Retainer and Chairperson Grants will be granted pursuant to our 2020 Plan.

PROPOSAL NO. 2

RATIFICATION OF SELECTION OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

The Audit Committee of our Board has selected Deloitte (as defined below), as our independent registered public accounting firm for the fiscal year ending December 31, 2023, and is seeking ratification of such selection by our stockholders at the Annual Meeting. “Deloitte” shall mean (i) Deloitte & Touche LLP, and the other subsidiaries of its parent company, Deloitte LLP, a U.S. member firm of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee (“DTTL”); and (ii) any of the other member firms of DTTL and their affiliates that, in case of both (i) and (ii) of this sentence, provide professional services to the Company. A representative of Deloitte is expected to be present at the Annual Meeting to make a statement and be available to respond to questions.

Neither our Second Amended and Restated Bylaws nor other governing documents or applicable law require stockholder ratification of the selection of Deloitte as our independent registered public accounting firm. Still, the Audit Committee is submitting the selection of Deloitte to our stockholders for ratification as a matter of good corporate practice. If our stockholders fail to ratify the selection, the Audit Committee will reconsider whether or not to retain Deloitte. Even if the selection is ratified, the Audit Committee in its discretion may direct the appointment of a different independent registered public accounting firm at any time during the year if they determine that such a change would be in the best interests of the Company and our stockholders.

Principal Accountant Fees and Services

The following table provides information regarding the fees incurred to Deloitte during the fiscal year ended December 31, 2022 and the fiscal year ended December 31, 2021. All of the services of Deloitte for 2021 and 2022 described below were pre-approved by the Audit Committee.

	Fiscal Year Ended December 31,	
	2022	2021
Audit Fees (1)	\$ 1,922,919	\$ 1,977,358
Tax Fees	—	—
Audit-Related Fees	—	—
All Other Fees	—	—
Total Fees	<u>\$ 1,922,919</u>	<u>\$ 1,977,358</u>

(1) Audit fees for fiscal years ended December 31, 2022 and December 31, 2021 consisted of fees billed for professional services rendered for the audit of our consolidated financial statements, review of the financial statements included in the Company’s Form 10-Q filings, and services in connection with regulatory filings.

Pre-Approval Policies and Procedures

The Audit Committee is responsible for appointing, setting compensation and overseeing the work of the independent auditors. In recognition of this responsibility, the Audit Committee is exclusively authorized and directed to consider and, in its discretion, approve in advance any services proposed to be carried out for the Company by the independent auditor or by any other firm proposed to be engaged by the Company as its independent auditor. As permitted by applicable law, the Audit Committee delegates to its committee chair the authority to grant pre-approvals of permissible services and fees. All such pre-approvals are disclosed to the full Audit Committee on a regular basis, generally quarterly. In connection with approval of any permissible tax services and services related to internal control over financial reporting, the Audit Committee discusses with the independent auditor the potential effects of such services on the independence of the auditor.

THE BOARD RECOMMENDS A VOTE FOR RATIFICATION OF OUR INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM.

REPORT OF THE AUDIT COMMITTEE OF THE BOARD OF DIRECTORS

The material in this report is not “soliciting material,” is not deemed “filed” with the SEC, and is not to be incorporated by reference into any filing of Eos under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended.

The primary purpose of the Audit Committee is to oversee our financial reporting processes on behalf of our Board. The Audit Committee’s functions are more fully described in its charter, which is available on our website at <https://investors.eose.com> (but which is not hereby incorporated by reference). Management is responsible for the preparation, presentation, and integrity of the Company’s financial statements, for the appropriateness of the accounting principles and reporting policies that are used by the Company, and for establishing and maintaining effective internal control over financial reporting. In fulfilling its oversight responsibilities, the Audit Committee reviewed and discussed with management the Company’s audited consolidated financial statements included in the Company’s Annual Report on Form 10-K for the fiscal year ended December 31, 2022.

The Audit Committee has discussed with Deloitte, the Company’s independent registered public accounting firm, the matters required to be discussed by the applicable requirements of the Public Company Accounting Oversight Board (the “PCAOB”) and the SEC. In addition, the Audit Committee has received from Deloitte the written disclosures and the letter required by the applicable requirements of the PCAOB regarding Deloitte’s communications with the Audit Committee concerning independence, and has discussed with Deloitte their independence. Finally, the Audit Committee discussed with Deloitte, with and without management present, the scope and results of Deloitte’s audit of the Company’s audited consolidated financial statements included in the Company’s Annual Report on Form 10-K for the fiscal year ended December 31, 2022.

Based on these reviews and discussions, the Audit Committee has recommended to our Board that such audited consolidated financial statements be included in our Annual Report on Form 10-K for the fiscal year ended December 31, 2022 filed with the SEC. The Audit Committee also has selected Deloitte as our independent registered public accounting firm for year ended December 31, 2023 and is seeking ratification of such selection by the stockholders.

Audit Committee

Jeff Bornstein
Claude Demby
Alex Dimitrief
Audrey Zibelman

EXECUTIVE OFFICERS

The following table sets forth the name, age as of March 1, 2023 and position of the individuals who currently serve as the executive officers of the Company (with the exception of Mr. Mastrangelo, which is set forth above under "Directors"). The following also includes certain information regarding our officers' individual experience, qualifications, attributes and skills. Our officers are appointed by the Board and serve at the discretion of the Board, rather than for specific terms of office. Our Board is authorized to appoint persons to the offices set forth in our Third Amended and Restated Certificate of Incorporation and our Second Amended and Restated Bylaws as it deems appropriate.

Name	Age	Position
Joe Mastrangelo	54	Chief Executive Officer
Nathan Kroeker	49	Chief Financial Officer
Melissa Berube	42	General Counsel, Chief Compliance Officer and Corporate Secretary

Nathan Kroeker, 49, joined Eos as Chief Financial Officer in January 2023. In this position, Mr. Kroeker is responsible for the overall financial strategy and direction at Eos, overseeing all financial functions, he guides the controller, treasury, shareholder relations, accounting, tax, financial planning and internal audit functions to support Eos's aggressive growth strategy and meet its clients' and investors' expectations. Prior to joining Eos, Mr. Kroeker spent ten years with Spark Energy, a retail energy services company, serving as Chief Financial Officer and then as Chief Executive Officer. As Spark Energy's Chief Executive Officer, he led the company through its initial public offering and subsequent mergers and acquisitions transactions. From 2009 to 2010, Mr. Kroeker served as Senior VP, Head of Energy Finance for Macquarie Bank, and from 2004 to 2009 worked for Direct Energy, a provider of home and business energy services, ultimately becoming VP of Finance. Mr. Kroeker began his career in public accounting with Coopers & Lybrand and Arthur Andersen, before transitioning into a transaction advisory role with Ernst & Young. Mr. Kroeker holds a Bachelor of Commerce in Accounting from the University of Manitoba, and is a Certified Public Accountant.

Melissa Berube, 42, joined Eos as General Counsel and Corporate Secretary in June 2021. In February 2022, Ms. Berube was appointed Chief Compliance Officer in addition to her existing titles and, in connection with that appointment and the expansion of the General Counsel role, was appointed as an executive officer of Eos. Prior to joining Eos, Ms. Berube served as General Counsel and Senior Vice President of Legal & People of Erickson Incorporated, a global aerial services provider and OEM aerospace manufacturer, guiding Erickson through its successful Chapter 11 reorganization, restructure and post-emergence. Ms. Berube served as General Counsel and Vice President of Erickson between 2017 and 2019 and held various other in-house legal positions at Erickson between 2013 and 2017. Before she joined Erickson, Ms. Berube was an associate with the law firm of Schwabe, Williamson & Wyatt in Portland, Oregon. Ms. Berube received her law degree from the University of Washington and earned a Bachelor of Arts degree in History from the University of Portland. She is a member of the Hispanic National Bar Association.

EXECUTIVE COMPENSATION

We have opted to comply with the executive compensation disclosure rules applicable to “smaller reporting companies,” as such term is defined under the Securities Act, which require compensation disclosure for (i) all individuals who served as our principal executive officer or in a similar capacity during fiscal years ended December 31, 2021 and December 31, 2022, (ii) our two most highly compensated executive officers other than our principal executive officer who were serving as executive officers as of the fiscal year ended December 31, 2022, and (iii) up to two additional individuals for whom disclosure would have been provided pursuant to clause (ii), but for the fact that the individual was not serving as an executive officer as of the fiscal year ended December 31, 2022. We refer to these executive officers collectively as the named executive officers (“NEOs”). This section should be read in conjunction with our financial statements and related notes appearing in our annual report on Form 10-K for fiscal year ended December 31, 2022, filed with the SEC on February 28, 2023 (“Form 10-K”), along with the section of this proxy entitled “*Certain Relationships and Related Party Transactions.*” Compensation information included in the following section is presented in actual dollar amounts. For fiscal year ended December 31, 2022, the NEOs were:

- Joe Mastrangelo, Chief Executive Officer
- Randall Gonzales, former Chief Financial Officer
- Melissa Berube, General Counsel, Chief Compliance Officer and Corporate Secretary

Summary Compensation Table

The following table presents summary information regarding the total compensation paid to, earned by and awarded to each of our NEOs for the fiscal year ended December 31, 2022.

Name and Principal Position	Year	Salary (\$)	Bonus (\$)	Stock Awards(1) (\$)	Option Awards(2) (\$)	Non-Equity Incentive Plan and Compensation (\$)	All Other Compensation (3) (\$)	Total (\$)
Joe Mastrangelo, Chief Executive Officer	2022	648,929	—	—	298,568	162,500	125,302	1,235,299
	2021	611,538	—	15,945,000	—	—	122,134	16,678,672
Randall Gonzales(4), Chief Financial Officer	2022	452,992	—	2,000,002	238,056	56,373	—	2,747,423
Melissa Berube, General Counsel, Chief Compliance Officer and Corp. Secretary	2022	332,723	—	259,500	158,704	41,683	—	792,610

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- (1) Represents the grant date fair value of restricted stock unit awards, computed in accordance with FASB ASC Topic 718. For a discussion of the valuation methodology used, see Note 18, “Stock-Based Compensation” of the notes to Eos Energy Enterprises, Inc. consolidated financial statements included in our Form 10-K. These amounts do not necessarily correspond to the actual value that may be realized from the stock awards by the NEOs.
 - (2) Represents the grant date fair value of option awards, computed in accordance with FASB ASC Topic 718. Grant date fair value is calculated based on the Black-Scholes option pricing model. For information regarding the assumptions used in determining the grant date fair value, see Note 18, “Stock-Based Compensation” of the notes to our consolidated financial statements included in our Form 10-K. These amounts do not necessarily correspond to the actual value that may be realized from the option awards by the NEOs.

- (3) Amounts in this column reflect for Mr. Mastrangelo (i) for fiscal 2022, \$6,120 in a car allowance, \$54,750 in residential expenses and \$64,432 in travel expense reimbursement, and (ii) for fiscal 2021, \$54,751 in residential expenses and \$5,820 in car allowance. In addition, amounts in this column for Mr. Mastrangelo in 2021 reflect \$61,563 of tax gross-up, paid to him after the Company under withheld taxes Mr. Mastrangelo owed upon the vesting of certain RSUs, which were eligible to vest in the event the Company's stock price achieved a dollar threshold following our IPO.
- (4) Mr. Gonzales was appointed Chief Financial Officer on January 11, 2022. Mr. Gonzales resigned from his position effective January 23, 2023.

Narrative Disclosure to the Summary Compensation Table

Employment Agreements

Employment Agreement with Mr. Mastrangelo

Effective as of February 24, 2021, the Company entered into an Employment Agreement with Mr. Mastrangelo, which replaced and terminated Mr. Mastrangelo's June 22, 2020 employment agreement.

Mr. Mastrangelo's employment agreement contains the following material compensation terms:

- An annual base salary of \$650,000 per year based on full-time employment;
- An annual performance-based incentive bonus with an annual target payout of 100% of base salary, payable in cash; and
- Participation in the Company's health insurance and other employee benefits the Company maintains; provided, that if Mr. Mastrangelo elects not to participate in the Company's medical and other health benefit plans, the Company will pay for Mr. Mastrangelo and his family's current medical and other health benefit plans in Italy, in an amount not to exceed a cumulative maximum of \$17,000 per calendar year.

Pursuant to the terms of his employment agreement, if Mr. Mastrangelo is terminated without "cause" or resigns for "good reason" he will be entitled to (i) continued payment of his annual base salary for twenty-four months, (ii) a pro-rated annual bonus for the year of termination, if the applicable performance targets are achieved, and (iii) full vesting of any then-unvested equity awards, in each case, subject to his execution and non-revocation of a release of claims against the Company and continued compliance with certain restrictive covenants.

Pursuant to the terms of his employment agreement Mr. Mastrangelo is subject to certain restrictive covenants, including perpetual confidentiality obligation, a 12-month post-termination non-compete, a 12-month post-termination non-solicit covering our employees and business relationships, invention assignment provisions and a mutual non-disparagement obligation.

Agreements with Mr. Gonzales

Effective as of December 13, 2021, the Company entered into an employment agreement with Mr. Gonzales which contained the following material compensation terms:

- An annual base salary of \$465,000 per year;
- An annual performance-based incentive bonus with an annual target payout of 50% of base salary, payable in cash;
- Participation in the Company's health insurance and other employee benefits the Company maintains;
- Reimbursement of reasonable legal expenses incurred in connection with the negotiation of Mr. Gonzales' employment agreement; and

- A grant of restricted stock units with a grant date value of \$2,000,000.00, vesting in equal amounts annually over three years, and fully vesting upon a change in control. This grant was made on January 11, 2022.

Pursuant to the terms of his employment agreement, had Mr. Gonzales been terminated without “cause” or resigned for “good reason” he would have been entitled to (i) continued payment of his annual base salary for twenty-four months, (ii) payment of the excess of the COBRA monthly premiums over the amount he paid for like coverage under the Company health, dental, and vision plans for the duration of COBRA coverage period for himself and his dependents (but not longer than eighteen months), (iii) a pro-rated annual bonus for the year of termination, if the applicable performance targets were achieved, and (iv) full vesting of any then-unvested equity awards, in each case, subject to his execution and non-revocation of a release of claims against the Company and continued compliance with certain restrictive covenants. Pursuant to the terms of his employment agreement, Mr. Gonzales remains subject to certain restrictive covenants, including perpetual confidentiality obligations, a 12-month post-termination non-compete, a 12-month post-termination non-solicit covering our employees and business relationships, invention assignment provisions and a mutual non-disparagement obligation.

In connection with his resignation, Mr. Gonzales entered into a separation agreement with the Company dated January 20, 2023, which provides that, subject to his execution and non-revocation of a release of claims and his agreement to cooperate with the Company’s executive management team through July 31, 2023 in connection with the transition of projects and matters with which he has familiarity: (i) the vesting of 104,493 of his unvested restricted stock units accelerated, (ii) his previously granted performance options were amended to allow for the unvested performance options to remain outstanding subject to the achievement of the existing performance goals and the vested performance options (whether vesting before or after the Separation Date) to remain outstanding until the earlier of Mr. Gonzales exercising the options or the expiration of the options on June 16, 2032, (iii) Mr. Gonzales will receive a cash bonus for 2022 in proportion and to the extent one is paid to our executive officers, and (iv) the Company will pay Mr. Gonzales’ COBRA continuation coverage for six months following the Separation Date. Mr. Gonzales also agreed that he will continue to be subject to the restrictive covenants set forth in his employment agreement with the Company.

Agreements with Ms. Berube

Effective as of July 29, 2022, the Company entered into an employment agreement with Ms. Berube, which replaced and superseded her prior offer letter, and which set forth the terms and conditions of her employment. Ms. Berube’s employment agreement contains the following material compensation terms:

- An annual base salary of \$334,750 per year based on full-time employment;
- An annual performance-based incentive bonus with an annual target payout of 50% of base salary, payable in cash;
- Participation in the Company’s health insurance and other employee benefits the Company maintains; and
- Amendment of the terms of the Ms. Berube’s outstanding equity awards to clarify that her equity grants will fully vest upon a change in control.

Pursuant to the terms of the Berube Agreement, if Ms. Berube is terminated without “cause” or resigns for “good reason” she will be entitled to (i) continued payment of her annual base salary for twelve months, (ii) a pro-rated annual bonus for the year of termination, if the applicable performance targets are achieved, and (iii) full vesting of any then-unvested equity awards, in each case, subject to her execution and non-revocation of a release of claims against the Company and continued compliance with certain restrictive covenants. Pursuant to her employment agreement, Ms. Berube is subject to certain restrictive covenants, including perpetual confidentiality obligations, a 12-month post-termination non-solicit covering our employees and business relationships, invention assignment provisions and a mutual non-disparagement obligation.

Annual Bonus Plan

We maintain a cash-based annual bonus program for executives, including the NEOs, in which the NEOs are eligible to receive bonuses based on performance goals established in 2022. Such awards are designed to incentivize the NEOs with a variable level of compensation that is based on performance measures established by the Compensation Committee and tied to pre-defined business and personal goals and objectives.

Each NEO's target annual bonus opportunity was approved by the Compensation Committee and is reflected as a percentage of the NEO's base salary. In 2022, Mr. Mastrangelo's target was 100% of his base salary and Mr. Gonzales' and Ms. Berube's targets were 50% of their respective base salaries.

In 2022, the Compensation Committee established five performance metrics for the 2022 bonus as follows:

Performance Metrics	Weighting	Threshold (1)	Target (1)	Stretch (1)
Booked Orders	25%	\$300M	\$400M	\$500M
Revenue	25%	\$35M	\$50M	\$65M
Cost Reduction per KWh vs 2021	20%	(44)%	(49)%	(54)%
Factory Capacity	15%	600MWh	800MWh	1GWh
Eos Z3 Battery Production	15%	1 test container manufactured	3 battery systems manufactured	3 battery systems manufactured with 2 commissioned

(1) Interpolation is used to determine the performance award when the Company's performance is between the target, threshold and stretch amounts.

The Company earned a 17.3% payout for the Booked Orders target and a 7.7% payout for the Factory Capacity target; achieving a 25% total performance award. Based on the level of achievement of the financial and performance targets, the Compensation Committee awarded bonuses as follows: \$162,500 for Mr. Mastrangelo, \$56,373 for Mr. Gonzales and \$41,683 for Ms. Berube.

Outstanding Equity Awards at Fiscal Year-End

The following table sets forth information concerning outstanding equity awards for our NEOs as of the end of our fiscal year ended December 31, 2022.

Name	Grant Date	Option Awards					Stock Awards	
		Number of Securities Underlying Unexercised Options (#) Exercisable	Number of Securities Underlying Unexercised Options (#) Unexercisable	Number of Securities Underlying Unexercised Options (#) Unearned	Option Exercise Price (\$)	Option Expiration Date	Number of shares or units of stock that have not vested (#)	Market value of shares of units of stock that have not vested (\$)(1)
Joe Mastrangelo	10/23/2020 (2)	456,493	235,163	—	\$ 8.67	6/30/2025	—	—
	10/23/2020 (3)	345,828	—	—	\$ 8.67	10/23/2030	—	—
	2/26/2021 (4)	—	—	—	—	—	500,000	\$ 740,000
	6/16/2022 (5)	200,000	—	—	\$ 1.34	6/16/2032	—	—
Randall Gonzales.....	1/11/2022 (6)	—	—	—	—	—	313,480	\$ 463,950
	6/16/2022 (7)	150,000	—	150,000	\$ 1.34	6/16/2032	—	—
Melissa Berube.....	7/28/2021 (8)	—	—	—	—	—	50,000	\$ 74,000
	2/9/2022 (9)	—	—	—	—	—	75,000	\$ 111,000
	6/16/2022 (10)	100,000	—	100,000	\$ 1.34	6/16/2032	—	—

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- (1) The market value is calculated by multiplying the closing price of the Company's common stock on December 30, 2022, which was \$1.48, by the number of restricted stock units that had not vested.
 - (2) The 235,163 unexercisable shares will fully vest on June 22, 2023, subject to continued service through the vesting date.
 - (3) 345,828 of the shares of common stock subject to this option vested upon the Board's determination that the Company had successfully closed an equity financing transaction prior to June 22, 2023 in connection with the merger agreement with BMRG.
 - (4) The RSUs vest in three equal installments on each of January 3, 2022, January 2, 2023 and January 1, 2024, subject to continued service through each vesting date.
 - (5) The stock options vest in two equal installments based on the achievement of certain performance conditions during specified time periods (each, a "Milestone Event"), with the full vesting of the applicable tranche of stock options to occur 60 days after the achievement of the applicable Milestone Event. The first of the Milestone Events was achieved on July 29, 2022 and the stock options with respect to 200,000 shares of common stock became fully vested and exercisable on the 60th day following the date of the achievement of the Milestone Event, subject to Mr. Mastrangelo's continued employment with the issuer through such date. The remaining 200,000 stock options pertaining to the second of the Milestone Events were forfeited on December 30, 2022.
 - (6) The RSUs were originally scheduled to vest in three equal installments on each of January 11, 2023, January 11, 2024 and January 11, 2025. In connection with Mr. Gonzales' resignation effective January 23, 2023, 104,493 RSUs were accelerated and the remaining 104,493 RSUs were forfeited.
 - (7) The stock options vest in two equal installments based on the achievement of a Milestone Event, with the full vesting of the applicable tranche of stock options to occur 60 days after the achievement of the applicable Milestone Event. The first of the Milestone Events was achieved on July 29, 2022 and the stock options with respect to 150,000 shares of common stock became fully vested and exercisable on the 60th day following the date of the achievement of the Milestone Event, subject to Mr. Gonzales' continued employment with the issuer through such date. In connection with Mr. Gonzales' resignation, his previously granted performance options were amended to allow for the unvested performance options to remain outstanding subject to the achievement of the existing performance goals and the vested performance options to remain outstanding until the earlier of Mr. Gonzales exercising the options or the expiration of the options on June 16, 2032.
 - (8) The RSUs vest in three equal installments on each of June 15, 2022, June 15, 2023 and June 15, 2024, subject to continued service through each vesting date.
 - (9) The RSUs vest in three equal installments on each of February 9, 2023, February 9, 2024 and February 9, 2025, subject to continued service through each vesting date.
 - (10) The stock options vest in two equal installments based on the achievement of a Milestone Event, with the full vesting of the applicable tranche of stock options to occur 60 days after the achievement of the applicable Milestone Event. The first of the Milestone Events was achieved on July 29, 2022 and the stock options with respect to 100,000 shares of common stock became fully vested and exercisable on the 60th day following the date of the achievement of the Milestone Event, subject to Ms. Berube's continued employment with the issuer through such date. The second of the Milestone Events is expected to be met on or before June 30, 2023.

Other Compensation Plans

Eos Energy Enterprises, Inc. 2020 Incentive Plan

The Eos Energy Enterprises, Inc. 2020 Incentive Plan (the “2020 Plan”) was approved by our stockholders and became effective on November 16, 2020. The 2020 Plan was further amended, and such amendment was approved by our stockholders, effective May 17, 2022. As described in more detail under Proposal 7, we are submitting an amendment to the 2020 Plan for shareholder approval at the Annual Meeting to provide for the addition of 8,000,000 shares of our common stock to the number of shares available for issuance under the 2020 Plan. The terms of the 2020 Plan are described in more detail under Proposal 7.

Health and Retirement Benefits

We provide medical, dental, vision, life insurance and disability benefits to all eligible employees. The NEOs are eligible to participate in these benefits on the same basis as all other employees. In addition, we maintain a tax-qualified defined contribution plan (the “401(k) Plan”), under which eligible employees of Eos, including our named executive officers, may defer a portion of their annual compensation on a pre-tax basis. We do not provide a pension plan for employees and none of our named executive officers participates in a nonqualified deferred compensation plan.

Clawback

The Compensation Committee is reviewing the final rule issued by the SEC and the proposed rule issued by Nasdaq implementing the provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act relating to recoupment of incentive-based compensation and will adopt a clawback policy in accordance with the final rules when Nasdaq adopts its final listing standards.

Termination and Change in Control Benefits

Our NEOs are entitled to severance benefits under their respective employment agreements, as described under “- Employment Agreements,” above.

Pay Versus Performance

The following table sets forth the compensation for our Chief Executive Officer and the average compensation for our other NEOs, both as reported in the Summary Compensation Table and with certain adjustments to reflect the “compensation actually paid” to such individuals, as defined under SEC rules, for each of 2022 and 2021. The table also provides information on our cumulative total shareholder return (“TSR”) and Net Income.

Year	Summary Compensation Table Total for PEO ⁽¹⁾	Compensation Actually Paid to PEO ⁽²⁾	Average Summary Compensation Table Total for Non-PEO Named Executive Officers ⁽¹⁾	Average Compensation Actually Paid to Non-PEO Named Executive Officers ⁽²⁾	Value of Initial Fixed \$100 Investment Based On Total Shareholder Return ⁽³⁾	Net Income (Loss) (in Thousands) ⁽⁴⁾
2022	\$ 1,235,299	\$ (3,054,439)	\$ 1,770,017	\$ 490,324	6.62	\$ (229,813)
2021	\$ 16,678,672	\$ 2,432,410	\$ 3,177,554	\$ 1,770,916	33.65	\$ (124,216)

- (1) Compensation for our PEO, Joe Mastrangelo, reflects the amounts reported in the “Summary Compensation Table” for the respective years. Average compensation for non-PEOs includes the following NEOs: (i) in 2022, Randall Gonzales and Melissa Berube, and (ii) in 2021, Sagar Kurada and Jody Markopoulos.
- (2) Compensation “actually paid” for the PEO and average compensation “actually paid” for our non-PEOs in 2022 and 2021 reflects the respective amounts set forth in columns (b) and (d), adjusted as follows in the table below, as determined in accordance with SEC rules. These dollar amounts do not reflect the actual amount of compensation earned by or paid to the PEO and our other NEOs during the applicable year.
- (3) Total Shareholder Return is cumulative for the measurement periods beginning on December 31, 2020 and ending on December 31 of each of 2022 and 2021, respectively, calculated in accordance with Item 201(e) of Regulation S-K.
- (4) Reflects “Net Income” in the Company’s Consolidated Statements of Income included in the Company’s Annual Reports on Form 10-K for each of the years ended December 31, 2022 and 2021.

	PEO 2022	PEO 2021	Non-PEOs 2022	Non-PEOs 2021
Summary Compensation Table Total	\$ 1,235,299	\$ 16,678,672	\$ 1,770,017	\$ 3,177,554
<i>Less</i> Stock Award and Option Award Value Reported in Summary Compensation Table for the Covered Year	(298,568)	(15,945,000)	(1,328,131)	(2,837,250)
<i>Plus</i> Fair Value for Unvested Awards Granted in the Covered Year	—	5,640,000	393,438	940,000
<i>Change</i> in Fair Value of Outstanding Unvested Awards from Prior Years	(3,605,415)	(2,833,150)	(302,000)	—
<i>Plus</i> Fair Value for Vested Awards Granted in the Covered Year	168,400	—	105,250	508,413
<i>Change</i> in Fair Value of Awards from Prior Years that Vested in the Covered Year	(554,155)	(1,108,112)	(148,250)	(17,801)
<i>Less</i> Fair Value of Awards Forfeited during the Covered Year	—	—	—	—
Compensation Actually Paid	<u>\$ (3,054,439)</u>	<u>\$ 2,432,410</u>	<u>\$ 490,324</u>	<u>\$ 1,770,916</u>

Note: Fair values set forth in the table above are computed in accordance with ASC 718 as of the end of the respective fiscal year, other than fair values of awards that vest in the covered year, which are valued as of the applicable vesting date.

Relationship Between Compensation Actually Paid and Cumulative TSR

The amount of compensation actually paid to the PEO and the average amount of compensation actually paid to the Non-PEO NEOs have generally aligned with the Company’s cumulative TSR over the two-year period presented in the table. From January 1, 2021 to December 31, 2022, cumulative TSR decreased by approximately 93%. For the two-years presented, the decline in both compensation actually paid and cumulative TSR are primarily driven by the decline in the Company’s stock price from \$22.35 as of December 31, 2020, \$7.52 as of December 31, 2021, to \$1.48 as of December 31, 2022. Stock price is a large driver in the value of the equity incentive awards, which is a major component of compensation actually paid to the PEO and the average compensation actually paid to the Non-PEO NEOs.

Equity Compensation Plans

The following table summarizes our equity compensation plan information as of December 31, 2022:

Plan Category	Number of Securities to Be Issued Upon Exercise of Outstanding Options, Warrants, Rights and Restricted Stock Units (a)	Weighted-average Exercise Price of Outstanding Options, Warrants and Rights (b)	Number of Securities Remaining Available for Future Issuance Under Equity Compensation Plans (excluding securities reflected in column (a)) (c)
Equity Compensation Plans Approved by Security Holders	7,340,702	\$ 4.37	994,108
Equity Compensation Plans Not Approved by Security Holders	—	—	—
Total	7,340,702	\$ 4.37	994,108

Total shares outstanding as of December 31, 2022 was 82,653,781 shares of common stock of the Company.

PROPOSAL NO. 3
ADVISORY VOTE TO APPROVE OUR NAMED EXECUTIVE OFFICER COMPENSATION

In accordance with the requirements of Section 14A of the Securities Exchange Act of 1934 (the “Exchange Act”) and the related rules of the SEC, our Board is submitting a proposal providing our stockholders the opportunity to cast a non-binding advisory vote on the executive compensation paid to the Company’s executive officers named in this Proxy Statement (“named executive officers” or “NEOs”).

This advisory vote on named executive officer compensation is non-binding on the Board, will not overrule any decision by the Board and does not compel the Board to take any action. However, the Board and the Compensation Committee may consider the outcome of the vote when considering future executive compensation decisions. Specifically, to the extent there is any significant vote against the named executive officer compensation as disclosed in this Proxy Statement, the Board will consider our stockholders’ concerns and the Compensation Committee will evaluate whether any actions are necessary to address those concerns.

Our Board and the Compensation Committee believe that the Company’s executive compensation programs and policies and the compensation decisions described in this Proxy Statement (i) support the Company’s business objectives, (ii) link the interests of the executive officers and stockholders, (iii) align NEO pay with individual and the Company’s performance, without encouraging excessive risk-taking that could have a material adverse effect on the Company, (iv) provide NEOs with a competitive level of compensation and (v) promote retention of the NEOs and other senior leaders.

For the reasons discussed above (and further amplified in the compensation disclosures made in this Proxy Statement), the Board recommends that stockholders vote in favor of the following resolution:

RESOLVED, that the compensation paid to the company’s named executive officers, as disclosed pursuant to Item 402 of Regulation S-K, compensation tables and narrative disclosure is hereby APPROVED.

THE BOARD RECOMMENDS A VOTE *FOR* THE ADVISORY VOTE TO APPROVE OUR NAMED EXECUTIVE OFFICER COMPENSATION.

PROPOSAL NO. 4
APPROVAL OF GRANT TO THE BOARD OF DIRECTORS THE DISCRETIONARY AUTHORITY TO
EFFECT A REVERSE STOCK SPLIT TO THE COMPANY'S COMMON STOCK

We are seeking stockholder approval to grant the Board discretionary authority to amend the Company's certificate of incorporation to effect a reverse stock split of the issued and outstanding shares of our common stock, par value \$0.0001 per share, at a ratio in the range of one-for-two (1:2) to one-for-twelve (1:12) of our common stock, with the exact ratio to be determined at the discretion of our Board, and effected at such time and date, if at all, as determined by the Board (the "Reverse Stock Split Proposal").

The amendment will not change the number of authorized shares of common stock, Preferred Stock, or the relative voting power of our stockholders, subject to certain immaterial adjustments that may result from the treatment of fractional shares as described below under "—Procedures for Effecting Reverse Stock Split." Because the number of authorized shares will not be reduced, the number of authorized but unissued shares of our common stock will materially increase and will be available for reissuance by the Company. The reverse stock split, if effected, would affect all of our holders of common stock uniformly.

The Board unanimously approved, subject to stockholder approval, this Reverse Stock Split Proposal, on March 13, 2023.

Even if the stockholders approve the Reverse Stock Split Proposal, we reserve the right not to effect any reverse stock split if the Board does not deem it to be in the best interests of our stockholders. The Board believes that granting this discretion provides the Board with maximum flexibility to act in the best interests of our stockholders. If this Reverse Stock Split Proposal is approved by the stockholders, the Board will have the authority, in its sole discretion, without further action by the stockholders, to effect a reverse stock split.

The Board's decision as to whether and when to effect the reverse stock split will be based on a number of factors, including prevailing market conditions, existing and expected trading prices for our common stock, actual or forecasted results of operations, and the likely effect of such results on the market price of our common stock.

Following a reverse stock split, the number of our outstanding shares of common stock will be significantly reduced. If effected, a reverse stock split will also affect (i) our outstanding stock options and shares of common stock issued under the Company's Amended and Restated 2020 Incentive Plan (the "Incentive Plan"), as well as (ii) the number of shares of common stock issuable upon conversion of (a) our outstanding 5%/6% convertible senior PIK toggle notes due 2026 to Wood River Capital, LLC, a wholly-owned, indirect subsidiary of Koch Industries, Inc., and (b) our 26.5% convertible senior PIK notes due 2026 issued to Great American Insurance Company, Ardsley Partners Renewable Energy, LP, CCI SPV III, LP, Denman Street LLC, John B. Berding Irrevocable Children's Trust, John B. Berding, and AE Convert, LLC (collectively, the "Convertible Notes"). If we effect the Reverse Stock Split Proposal, the number of shares of common stock deliverable upon exercise, conversion or grant of such stock options and Convertible Notes will be adjusted to reflect the reverse stock split and any adjustments will be made to the exercise price or the conversion rate, as applicable, to reflect the reverse stock split in each case in accordance with the terms of such stock options and Convertible Notes.

The reverse stock split is not being proposed in response to any effort of which we are aware to accumulate our shares of common stock or obtain control of the Company, nor is it a plan by management to recommend a series of similar actions to our Board or our stockholders.

There are certain risks associated with a reverse stock split, and we cannot accurately predict or assure the reverse stock split will produce or maintain the desired results (for more information on the risks see the section below entitled "Certain Risks Associated with a Reverse Stock Split"). However, our Board believes that the benefits to the Company and our stockholders outweigh the risks and recommends that you vote in favor of granting the Board the discretionary authority to effect a reverse stock split.

Reasons for the Reverse Stock Split

The primary purpose for effecting the reverse stock split, should the Board choose to effect one, would be to increase the per share price of our common stock. Our Board believes that, should the appropriate circumstances arise, effecting the reverse stock split would, among other things, help us to:

- Continue to ensure we meet certain continued listing requirements of the Nasdaq Stock Exchange;
- Improve the perception of our common stock as an investment security; and
- Appeal to a broader range of investors to generate greater investor interest in the Company.

Improve the Perception of our common stock as an Investment Security - We believe that the overall economic environment in which we and other renewable energy and energy storage companies are currently operating has been a significant contributing factor in the decline in the price of our common stock. Our Board unanimously approved the discretionary authority to effect a reverse stock split, subject to stockholder approval, as one potential means of increasing the share price of our common stock to improve the perception of our common stock as a viable investment security. Lower-priced stocks have a perception in the investment community as being risky and speculative, which may negatively impact not only the price of our common stock, but also our market liquidity.

Appeal to a Broader Range of Investors to Generate Greater Investor Interest in the Company - An increase in our stock price may make our common stock more attractive to investors. Brokerage firms may be reluctant to recommend lower-priced securities to their clients. Many institutional investors have policies prohibiting them from holding lower-priced stocks in their portfolios, which reduces the number of potential purchasers of our common stock. Investment funds may also be reluctant to invest in lower-priced stocks. Investors may also be dissuaded from purchasing lower-priced stocks because the brokerage commissions, as a percentage of the total transaction, tend to be higher for such stocks. Moreover, the analysts at many brokerage firms do not monitor the trading activity or otherwise provide coverage of lower-priced stocks. Giving the Board the ability to effect a reverse stock split, and thereby increase the price of our common stock, would give the Board the ability to address these issues if it is deemed necessary.

Certain Risks Associated with a Reverse Stock Split

Even if a reverse stock split is effected, some or all of the expected benefits discussed above may not be realized or maintained. The market price of our common stock will continue to be based, in part, on our performance, market conditions and other factors unrelated to the number of shares outstanding. There can be no assurance that the total market capitalization of our common stock after the implementation of the reverse stock split will be equal to or greater than the total market capitalization before the reverse stock split or that the per-share market price of our common stock following the reverse stock split will increase in proportion to the reduction in the number of shares of our common stock outstanding in connection with the reverse stock split. Furthermore, the implementation of a reverse stock split does not have an effect on the actual or intrinsic value of our business or a stockholder's proportional ownership in our company (subject to the treatment of fractional shares). However, should the overall value of our common stock decline after the proposed reverse stock split, then the actual or intrinsic value of the shares of our common stock held by you will also proportionately decrease as a result of the overall decline in value.

The reverse stock split will reduce the number of outstanding shares of our common stock without reducing the number of shares of available but unissued common stock, which will also have the effect of increasing the number of authorized but unissued shares. The issuance of additional shares of our common stock may have a dilutive effect on the ownership of existing stockholders. In addition, if we effect the reverse stock split, the resulting per-share stock price may nevertheless fail to attract a broader range of investors or may not satisfy the investing guidelines of such investors and, consequently, the trading liquidity of our common stock may not improve.

Even though a potential reverse stock split would result in an increased proportion of unissued authorized shares to issued shares, which could, under certain circumstances, have an anti-takeover effect (for example, by permitting issuances that would dilute the stock ownership of a person seeking to effect a change in the composition of the Board or contemplating a tender offer or other transaction for the combination of us with another company), the Reverse Stock Split Proposal is not being proposed in response to any effort of which we are aware to accumulate shares of our common stock or obtain control of us, nor is it part of a plan by management to recommend a series of similar amendments to our Board and our stockholders.

Principal Effects of a Reverse Stock Split

If our stockholders approve this Reverse Stock Split Proposal and our Board elects to effect a reverse stock split, our issued and outstanding shares of common stock would decrease. The reverse stock split would be effected simultaneously for all of our common stock, and the exchange ratio would be the same for all shares of common stock, except for immaterial adjustments that may result from the treatment of fractional shares as described below under “—Procedures for Effecting Reverse Stock Split.” The reverse stock split would affect all of our stockholders uniformly and would not affect any stockholder's percentage ownership interests in the Company, voting rights or other rights that accompany the shares of our common stock, except for immaterial adjustments that may result from the treatment of fractional shares as described below under “—Procedures for Effecting Reverse Stock Split.” common stock issued pursuant to the reverse stock split would remain fully paid and non-assessable. The reverse stock split would not affect our securities law reporting and disclosure obligations, and we would continue to be subject to the periodic reporting requirements of the Securities Exchange Act of 1934, as amended (the “Exchange Act”). We have no current plans to take the Company private. Accordingly, a reverse stock split is not related to a strategy to do so.

Upon the reverse stock split, we intend to treat common stock held by stockholders in “street name,” through a bank, broker or other nominee, in the same manner as stockholders whose shares are registered in their own names. Banks, brokers or other nominees will be instructed to effect the reverse stock split for their customers holding common stock in “street name.” However, these banks, brokers or other nominees may have different procedures than registered stockholders for processing the reverse stock split. If you hold shares of common stock with a bank, broker or other nominee and have any questions in this regard, you are encouraged to contact your bank, broker or other nominee.

Registered holders of common stock who hold some or all of their shares electronically in book-entry form with our transfer agent, Continental Stock Transfer & Trust Company, LLC, do not need to take any action to receive post-reverse stock split shares. If a stockholder is entitled to post-reverse stock split shares, a transaction statement will automatically be sent to the stockholder's address of record indicating the number of shares (including fractional shares) of common stock held following the reverse stock split.

In addition to the change in the number of shares of common stock outstanding, a reverse stock split would have the following effects:

Increase the Per Share Price of Our Common Stock - By effectively condensing a number of pre-split shares into one share of common stock, the per share price of a post-split share is generally greater than the per share price of a pre-split share. The amount of the initial increase in per share price and the duration of such increase, however, is uncertain. If appropriate circumstances exist, our Board may utilize the reverse stock split as part of its plan to maintain the required minimum per share price of the common stock under the Nasdaq listing standards.

Increase in the Number of Shares of Common Stock Available for Future Issuance - By reducing the number of shares outstanding without reducing the number of shares of available but unissued common stock, a reverse stock split will also increase the number of authorized but unissued shares. Our Board believes the increase is appropriate for use to fund the future operations of the Company.

The following table contains illustrative information relating to our common stock, based on share information as of December 31, 2022, without giving effect to the treatment of fractional shares:

	Before Reverse Stock Split	Reverse Stock Split Ratio of 1-for-2	Reverse Stock Split Ratio of 1-for-12
Number of Shares of Common Stock Issued and Outstanding	82,653,781	41,326,891	6,887,815
Number of Shares of Common Stock Reserved for Issuance Pursuant to Outstanding Options and RSUs	7,340,702	3,670,351	611,725
Weighted Average Exercise Price of Outstanding Options	\$ 4.37	\$ 8.74	\$ 52.44

Although a reverse stock split would not have any dilutive effect on our stockholders, a reverse stock split without a reduction in the number of shares authorized for issuance would reduce the proportion of shares owned by our stockholders relative to the number of shares authorized for issuance, giving our Board an effective increase in the authorized shares available for future issuance for corporate needs such as equity financing, retirement of outstanding indebtedness, stock splits and stock dividends, employee benefit plans, or other corporate purposes as may be deemed by the Board to be in the best interests of the Company and its stockholders. Our Board from time to time may deem it to be in the best interests of the Company and our stockholders to enter into transactions and other ventures that may include the issuance of shares of our common stock. If our Board authorizes the issuance of additional shares subsequent to the reverse stock split described above, the dilution to the ownership interest of our existing stockholders may be greater than would occur had the reverse stock split not been effected. Many stock issuances not involving equity compensation do not require stockholder approval, and our Board generally seeks approval of our stockholders in connection with a proposed issuance only if required at that time with the ability to issue additional shares of stock without further vote of the stockholders of the Company, except as provided under Delaware corporate law or under the rules of any national securities exchange on which shares of stock of the Company are then listed.

Require Adjustment to Currently Outstanding Securities Exercisable or Convertible into Shares of our Common Stock - A reverse stock split would effect a reduction in the number of shares of common stock issuable upon the exercise or conversion of our outstanding stock options, warrants and Convertible Notes in proportion to the reverse stock split ratio. Additionally, the exercise price of outstanding options, warrants and conversion price of our Convertible Notes would increase, likewise in proportion to the reverse stock split ratio.

Require Adjustment to the Number of Shares of Common Stock Available for Future Issuance Under our 2020 Incentive Plan - In connection with any reverse stock split, our Board would also make a corresponding reduction in the number of shares available for future issuance under the foregoing plan so as to avoid the effect of increasing the number of authorized but unissued shares available for future issuance under such plans.

In addition, a reverse stock split may result in some stockholders owning “odd lots” of less than 100 shares of common stock, which may be more difficult to sell and may cause those holders to incur greater brokerage commissions and other costs upon sale.

Our directors and executive officers have no substantial interests, directly or indirectly, in the matters set forth in the Reverse Stock Split Proposal, except to the extent of their ownership in shares of our common stock and securities exercisable for our common stock, which shares and securities would be subject to the same proportionate adjustment in accordance with the terms of the reverse stock split as all other outstanding shares of our common stock and securities exercisable for our common stock.

Procedure for Effecting Reverse Stock Split

The exact ratio of the reverse stock split, within the approved range, would be determined by our Board and publicly announced by us prior to the effective time of the reverse stock split. Upon approval of a reverse stock split and at such time as our Board determines is the appropriate effective time to effect the reverse stock split, we would file a certificate of amendment to our certificate of incorporation with the Secretary of the State of Delaware. The certificate of amendment would add a new provision providing that holders of our common stock immediately prior to the filing of the amendment will receive one share of common stock for each number of shares as determined by the Board. A copy of the proposed amendment is attached to this proxy statement as Appendix A and is considered a part of this proxy statement. Upon the filing of the certificate of amendment, and without any further action on the part of the Company or our stockholders, the issued shares of common stock held by stockholders of record as of the effective date of the reverse stock split would be converted into a lesser number of shares of common stock calculated in accordance with the reverse stock split ratio of not less than one-for-two (1:2) and not more than one-for-twelve (1:12), as determined by our Board and set forth in the certificate of amendment. As soon as practicable after the effective date of the reverse stock split, stockholders would be notified that the reverse stock split had been effected.

No fractional shares will be issued in connection with a reverse stock split. Instead, we will issue one full share of post-reverse stock split common stock to any stockholder who would have been entitled to receive a fractional share as a result of the reverse stock split. Each stockholder will hold the same percentage of the outstanding common stock immediately following the reverse stock split as that stockholder did immediately prior to the reverse stock split, except for any minor adjustment due to the additional whole shares that will be issued as a result of the treatment of fractional shares.

The par value of our common stock would remain unchanged at \$0.0001 per share, if a reverse stock split is effected.

The Company's stockholders' equity in its consolidated balance sheet would not change in total. However, the Company's stated capital (i.e., \$0.0001 par value times the number of shares issued and outstanding), would be proportionately reduced based on the reduction in shares of common stock outstanding. Additional paid in capital would be increased by an equal amount, which would result in no overall change to the balance of stockholders' equity.

Additionally, net income or loss per share for all periods would increase proportionately as a result of a reverse stock split since there would be a lower number of shares outstanding. We do not anticipate that any other material accounting consequences would arise as a result of a reverse stock split.

Under Delaware law, our stockholders will not be entitled to appraisal rights with respect to the reverse stock split amendment.

Certain U.S. Federal Income Tax Consequences of a Reverse Stock Split

The following is a discussion of certain material U.S. federal income tax consequences of a reverse stock split to U.S. holders of our common stock. This discussion is included for general information purposes only and does not purport to address all aspects of U.S. federal income tax law that may be relevant to stockholders in light of their particular circumstances. This discussion is based on the Internal Revenue Code of 1986, as amended (the "Code"), and current Treasury Regulations, administrative rulings and court decisions, all of which are subject to change, possibly on a retroactive basis. Any such change could affect the continuing validity of this discussion.

This discussion does not address the tax consequences to U.S. holders that are subject to special tax rules, such as financial institutions, regulated investment companies, partnerships, dealers or traders in securities or currencies that use a mark-to-market method of accounting, tax-exempt entities, persons holding shares as part of a straddle, hedge, conversion transaction or other integrated investment, persons subject to alternative minimum taxes or the unearned income Medicare tax and persons whose functional currency is not the U.S. dollar. In addition, this discussion does not address stockholders that are not U.S. holders (as defined below). This summary also assumes that the U.S. holder held and will hold the pre-reverse stock split common stock, and will hold the post-reverse stock split common stock, as a “capital asset” as defined in Section 1221 of the Code. All stockholders are urged to consult with their own tax advisors with respect to the U.S. federal tax consequences, as well as any state, local or non-U.S. tax consequences, of a reverse stock split.

As used herein, the term “U.S. holder” means a holder that, for U.S. federal income tax purposes, is a beneficial owner of our common stock and is:

- a citizen or individual resident of the United States;
- a corporation or other entity taxable as a corporation created or organized in or under the laws of the United States, any state thereof or the District of Columbia; or
- an estate or trust the income of which is subject to U.S. federal income tax regardless of its source.

In general, a reverse stock split should be treated as a tax-free recapitalization and no gain or loss should be recognized by a U.S. holder upon the exchange of pre-reverse stock split common stock for post-reverse stock split common stock. The aggregate tax basis of the post-reverse stock split common stock should be the same as the aggregate tax basis of the pre-reverse stock split common stock exchanged in the reverse stock split. A U.S. holder’s holding period in the post-reverse stock split common stock should include the period during which the U.S. holder held the pre-reverse stock split common stock exchanged in the reverse stock split.

As noted above, we will not issue fractional shares of common stock in connection with a reverse stock split. Instead, U.S. holders who would be entitled to receive fractional shares of common stock because they hold a number of shares not evenly divisible by the reverse stock split ratio will automatically be entitled to receive an additional fraction of a Common Share to round up to the next whole share of post-reverse stock split common stock. The U.S. federal income tax consequences of the receipt of such an additional fraction of a share of common stock are not clear. It is possible that U.S. holders whose fractional shares are rounded up to the nearest whole share may recognize income or gain for U.S. federal income tax purposes. U.S. holders whose fractional shares are rounded up to the nearest whole share should consult their tax advisors.

The tax treatment of a U.S. holder may vary depending upon the particular facts and circumstances of such stockholder. Each U.S. holder is urged to consult with its own tax advisor with respect to the tax consequences of a reverse stock split.

Reservation of Right to Abandon Reverse Stock Split

We reserve the right to abandon a reverse stock split without further action by our stockholders at any time before the effectiveness of the filing with the Secretary of the State of Delaware of the certificate of amendment to our certificate of incorporation, even if the authority to effect a reverse stock split has been approved by our stockholders at the Annual Meeting. By voting in favor of a reverse stock split, you are expressly also authorizing the Board to delay, not to proceed with, and abandon, a reverse stock split if it should so decide, in its sole discretion, that such action is in the best interests of the stockholders.

Required Vote and Voting Recommendation

The approval of this Reverse Stock Split Proposal, including the reverse stock split Amendment, requires the affirmative vote of the holders of at least 66 2/3% of the voting power of all outstanding shares of capital stock of the Company entitled to vote generally in the election of directors, voting together as a single class. Abstentions and broker non-votes will have the same effect as a vote against.

THE BOARD RECOMMENDS A VOTE FOR PROPOSAL 4 TO GRANT THE BOARD THE DISCRETIONARY AUTHORITY TO EFFECT A REVERSE STOCK SPLIT.

PROPOSAL NO. 5

AMEND OUR CERTIFICATE OF INCORPORATION TO UPDATE EXCULPATION PROVISION

As part of its continuing review of the elements of our corporate governance standards and practices, the Nominating and Corporate Governance Committee concluded that the current exculpation and indemnification provisions in Article VIII of our Third Amended and Restated Certificate of Incorporation should be updated to, among other things, reflect recent developments in applicable laws. Recent legislation has been enacted in Delaware that enables a Delaware corporation to include in its certificate of incorporation a provision exculpating certain officers from monetary liability for breach of the duty of care in certain conditions. Such a provision cannot exculpate such officers from liability for breach of the duty of loyalty, acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law, or with respect to any transaction in which the officer derived an improper personal benefit. Nor can such a provision exculpate such officers from liability for claims brought by or in the right of the corporation, such as derivative claims.

Taking into account the narrow class and type of claims that such officers would be exculpated from liability for, and the benefits that the Nominating and Corporate Governance Committee believes would accrue to the Company from providing such exculpation, the Nominating and Corporate Governance Committee recommended to the Board an amendment to the Third Amended and Restated Certificate of Incorporation to provide such exculpation to the fullest extent permitted by law.

EFFECT OF THE AMENDMENT

Consistent with the exculpation presently provided to our directors, the amendment would provide exculpation to officers of the Company “to the fullest extent permitted by law.” Once effective, this provision would exculpate such officers from monetary liability for breach of the duty of care in any direct claim. This provision would not exculpate such officers from liability for breaches of the duty of loyalty, acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law, or any transaction in which the officer derived an improper personal benefit. Nor would this provision exculpate such officers from liability for claims brought by or in the right of the Company, such as derivative claims.

In addition, Article VIII will continue to provide that, to the fullest extent permitted by law, the Company is authorized to provide indemnification of, and advancement of expenses to, directors, officers, employees and agents (and any other persons to which Delaware law permits the Company to provide indemnification) through bylaw provisions, agreements with such persons, votes of stockholders or disinterested directors or otherwise.

LANGUAGE OF PROPOSED AMENDMENT

The proposed amendment to Article VIII of our Third Amended and Restated Certificate of Incorporation, is set forth in Appendix B to this Proxy Statement. This summary is qualified in its entirety by reference to Appendix B.

REQUIRED VOTE AND VOTING RECOMMENDATION

The approval of this proposed amendment to Article VIII of our Third Amended and Restated Certificate of Incorporation requires the affirmative vote of the holders of at least 66 2/3% of the voting power of all outstanding shares of capital stock of the Company entitled to vote generally in the election of directors, voting together as a single class. Abstentions and broker non-votes will have the same effect as a vote against

THE BOARD RECOMMENDS A VOTE FOR THE EXCULPATION AMENDMENT.

PROPOSAL NO. 6
APPROVAL, IN ACCORDANCE WITH NASDAQ MARKETPLACE RULE 5635(D), OF THE SEPA
MATTERS

Background

Original SEPA

As previously disclosed, on April 28, 2022, we entered into a Standby Equity Purchase Agreement (the “Original SEPA”) with YA II PN, Ltd. (“Yorkville”). Pursuant to the Original SEPA, the Company had the right, but not the obligation, to sell to Yorkville up to \$200,000,000 of its shares of common stock (the “SEPA Shares”), par value \$0.0001 per share, at the Company’s request any time during the commitment period commencing on April 28, 2022 and terminating on the earliest of (i) the first day of the month following the 24-month anniversary of the SEPA and (ii) the date on which Yorkville has made payment of any advances requested pursuant to the SEPA for shares of the Company’s common stock equal to the commitment amount of \$200,000,000. Each sale the Company requested under the Original SEPA (each, an “Advance”) would be for a number of shares of common stock with an aggregate value of up to \$20,000,000. The shares would be purchased at 97.0% of the Market Price (as defined below) and would be subject to certain limitations, including that Yorkville could not purchase any shares that would result in it owning more than 9.99% of the Company’s outstanding common stock at the time of an Advance or 19.99% of the Company’s outstanding common stock as of the date of the Original SEPA (the “Original Exchange Cap”). “Market Price” was defined in the Original SEPA as the average of the VWAPs (as defined below) during each of the three consecutive trading days commencing on the trading day following the Company’s submission of an Advance notice to Yorkville. “VWAP” was defined in the Original SEPA to mean, for any trading day, the daily volume weighted average price of the Company’s common stock for such date on The Nasdaq Capital Market as reported by Bloomberg L.P. during regular trading hours.

Amendment No. 1 to the SEPA

On June 13, 2022, the Company and Yorkville amended the Original SEPA pursuant to Amendment No. 1 thereto (“Amendment No. 1”), to revise the definition of “Commitment Amount” to clarify that the Original Exchange Cap will not apply if the average price of all applicable sales of common stock under the Original SEPA (including the Commitment Fee Shares (as defined in the Original SEPA) in the number of shares sold for these purposes) equals or exceeds \$2.15 per share (which represents the lower of (i) the Nasdaq Official Closing Price on the Trading Day (each as defined in the Original SEPA) immediately preceding the date of Amendment No. 1 to the Original SEPA; or (ii) the average Nasdaq Official Closing Price for the five Trading Days immediately preceding the date of Amendment No. 1 to the Original SEPA).

At the Company’s Special Meeting of Stockholders held on June 28, 2022, the Company’s stockholders approved, in accordance with Nasdaq Marketplace Rule 5635(d), the issuance of our common stock to Yorkville in excess of the Original Exchange Cap.

Amendment No. 2 to the SEPA

On November 14, 2022, the Company and Yorkville entered into Amendment No. 2 to the Original SEPA (“Amendment No. 2”), to decrease the commitment amount under the SEPA from \$200,000,000 to \$125,000,000.

Amendment No. 3 to the SEPA

On December 29, 2022, the Company and Yorkville entered into Amendment No 3. (“Amendment No. 3”) to the Original SEPA, to (i) decrease the commitment amount under the SEPA from \$125,000,000 to \$75,000,000; and (ii) reinstitute the Exchange Cap (as defined in the Original SEPA), which amounts to 19.99% of the outstanding shares of common stock immediately prior to entering into Amendment No. 3 and applies to all subsequent issuances of common stock under the SEPA, together with any issuances of convertible promissory notes issued by the Company to Yorkville as a pre-advance loan pursuant to Section 2.05 of the SEPA. Under Amendment No. 3, the Exchange Cap did not apply (a) if the Company’s stockholders have approved issuances in excess of the Exchange Cap or (b) to sales of shares of common stock under the SEPA at a price that equals or exceeds \$1.08 per share (which represents the lower of (x) the Nasdaq Official Closing Price on the Trading Day immediately preceding the date of the Amendment No. 3; and (y) the average Nasdaq Official Closing Price for the five Trading Days immediately preceding the date of Amendment No. 3); provided that, in the case of clause (b), the average price of all applicable sales of shares of common stock under the SEPA after the date of Amendment No. 3 thereto equals or exceeds \$1.08 per share.

As of the date of Amendment No. 3, there were 82,587,573 shares of common stock issued and outstanding. Accordingly, the Exchange Cap is 16,509,255 shares.

Amendment No. 4 to the SEPA

On March 17, 2023, the Company and Yorkville entered into Amendment No 4. (“Amendment No. 4”) to the Original SEPA (the Original SEPA, as amended by Amendment No.1, Amendment No. 2, Amendment No. 3 and Amendment No. 4, the “SEPA”), to clarify that the Exchange Cap does not apply (a) if the Company’s stockholders have approved issuances in excess of the Exchange Cap or (b) to sales of shares of common stock under the SEPA at a price that equals or exceeds \$1.88 per share (which represents the lower of (x) the Nasdaq Official Closing Price on the Trading Day (each as defined in the SEPA) immediately preceding the date of the Amendment No. 4; and (y) the average Nasdaq Official Closing Price for the five Trading Days immediately preceding the date of the Amendment No. 4); provided that, in the case of clause (b), the average price of all applicable sales of shares of common stock under the SEPA after December 29, 2022 equals or exceeds \$1.88 per share.

As of the date of Amendment No. 4, there were 89,538,715 shares of common stock issued and outstanding.

December 29, 2022 Yorkville Note Issuance

On December 29, 2022, we issued and sold a convertible promissory note with an aggregate principal amount of \$2.0 million (the “December Promissory Note”) in a private placement to Yorkville under a supplemental agreement to the SEPA dated as of December 29, 2022 (the “Second Supplemental Agreement”). The December Promissory Note had a maturity date of June 29, 2023 (the “December Note Maturity Date”) and was issued with a 2% original issue discount. The December Promissory Note was convertible into shares of the Company’s common stock at a conversion price equal to the lower of \$1.1779 and 96.5% of the lowest daily VWAP of the Company’s common stock during the seven consecutive trading days immediately preceding the conversion date (the “December Note Conversion Price”) any time prior to the December Note Maturity Date, subject to the terms and conditions of the December Promissory Note. The December Note Conversion Price could not be less than \$0.35 per share (the “Floor Price”). If the VWAP of the Company’s common stock was less than the Floor Price for five consecutive trading days, subject to certain limitations, the Company agreed to make weekly payments on the December Promissory Note. At any time that there was an outstanding balance owed under the December Promissory Note, Yorkville could, pursuant to the terms of the Second Supplemental Agreement, require the Company to deliver an advance under the SEPA for the issuance and sale of common stock at the December Note Conversion Price in order to offset the amounts owed by the Company to Yorkville under the December Promissory Note. In addition, while there was an outstanding balance owed under the December Promissory Note, Yorkville could use any advance requested by the Company pursuant to the SEPA to offset the amounts owed by the Company to Yorkville under the December Promissory Note.

In December 2022 and January 2023, Yorkville required the Company to deliver advances under the SEPA for the issuance and sale of 982,510, 488,663 and 482,429 shares of common stock at an aggregate amount of \$1,000,000, \$500,000 and \$500,000, respectively, in order to offset all of the amounts owed by the Company to Yorkville under the December Promissory Note. As of January 10, 2023, there were no amounts outstanding under the December Promissory Note.

February 1, 2023 Yorkville Note Issuance

On February 1, 2023, we issued and sold a convertible promissory note with an aggregate principal amount of \$5.0 million (the “February Promissory Note”) in a private placement to Yorkville under the Second Supplemental Agreement. The February Promissory Note had a maturity date of June 29, 2023 (the “February Note Maturity Date”) and was issued with a 2% original issue discount. Interest would accrue on the outstanding principal balance of the February Promissory Note, beginning on the 29th day following the date of issuance, at an annual rate equal to 5.0% unless and until there was an event of default, upon the occurrence of which, interest would accrue at a rate of 15% per year until collected in full. The February Promissory Note was convertible into shares of the Company’s common stock at a conversion price equal to the lower of \$1.4883 and 96.5% of the lowest daily VWAP of the Company’s common stock during the seven consecutive trading days immediately preceding the conversion date (the “February Note Conversion Price”) any time prior to the February Note Maturity Date, subject to the terms and conditions of the February Promissory Note. The February Note Conversion Price could not be less than the Floor Price. If the VWAP of the Company’s common stock was less than the Floor Price for five consecutive trading days, subject to certain limitations, the Company would have been required to make weekly payments on the February Promissory Note. At any time that there was an outstanding balance owed under the February Promissory Note, Yorkville could, pursuant to the terms of the Second Supplemental Agreement, require the Company to deliver an advance notice under the SEPA for the issuance and sale of common stock at the February Note Conversion Price in order to offset the amounts owed by the Company to Yorkville under the February Promissory Note. In addition, while there was an outstanding balance owed under the February Promissory Note, Yorkville could use any advance requested by the Company pursuant to the SEPA to offset the amounts owed by the Company to Yorkville under the February Promissory Note.

In February 2023, Yorkville required the Company to deliver advance notices under the SEPA for the issuance and sale of 1,981,453 and 1,898,353 shares of common stock for an aggregate of \$2,500,000 and \$2,500,000, respectively, in order to offset all of the amounts owed by the Company to Yorkville under the February Promissory Note. As of February 28, 2023, there were no amounts outstanding under the February Promissory Note.

March 8, 2023 Advance Notice

On March 8, 2023, we delivered an Advance (the “March Advance”) to Yorkville requiring Yorkville to purchase 683,908 shares of common stock of the Company in accordance with the pricing terms set forth in the SEPA.

March 17, 2023 Yorkville Note Issuance

On March 17, 2023, we issued and sold a convertible promissory note with an aggregate principal amount of \$15.0 million (the “March Promissory Note”) in a private placement to Yorkville under a supplemental agreement to the SEPA dated as of March 17, 2023 (the “Third Supplemental Agreement”). The March Promissory Note has a maturity date of August 17, 2023 (the “March Note Maturity Date”) and was issued with a 2% original issue discount. Interest will accrue on the outstanding principal balance of the March Promissory Note, beginning on the 29th day following the date of issuance, at an annual rate equal to 5.0% unless and until there is an event of default, upon the occurrence of which, interest will accrue at a rate of 15% per year until collected in full. The March Promissory Note is convertible into shares of the Company’s common stock at a conversion price equal to the lower of \$1.9368 and 92.5% of the lowest daily VWAP of the Company’s common stock during the seven consecutive trading days immediately preceding the conversion date (the “March Note Conversion Price”) any time prior to the March Note Maturity Date, subject to the terms and conditions of the March Promissory Note. The March Note Conversion Price shall not be less than the Floor Price. If the VWAP of the Company’s common stock is less than the Floor Price for five consecutive trading days, subject to certain limitations, the Company will be required to make weekly payments on the March Promissory Note. At any time that there is an outstanding balance owed under the March Promissory Note, Yorkville can, pursuant to the terms of the Third Supplemental Agreement, require the Company to deliver an advance notice under the SEPA for the issuance and sale of common stock at the March Note Conversion Price in order to offset the amounts owed by the Company to Yorkville under the March Promissory Note. In addition, while there is an outstanding balance owed under the March Promissory Note, Yorkville shall use any advance requested by the Company pursuant to the SEPA to offset the amounts owed by the Company to Yorkville under the March Promissory Note.

Pursuant to the SEPA, we will use the proceeds from the sale of SEPA Shares for working capital and other general corporate purposes or, if different, in a manner consistent with the application thereof described in the registration statement pursuant to which such shares are registered with the SEC. There are no other restrictions in the SEPA on future financing transactions, provided such use of proceeds also does not violate the laws and regulations set forth by the U.S. Office of Foreign Assets Control.

From December 29, 2022, the date of Amendment No. 3, through the close of business on the record date, we offered and sold to Yorkville an aggregate of 7,747,238 shares of our common stock, which shares were counted against the Exchange Cap and are not entitled to vote on Proposal No. 6 in accordance with Nasdaq Marketplace Rule 5635(d) as described in the Proxy Statement.

Reasons for Seeking Stockholder Approval

Our common stock is currently listed on The Nasdaq Capital Market and, as such, we are subject to Nasdaq Marketplace Rules (the “Nasdaq Rules”). Nasdaq Listing Rule 5635(d) requires us to obtain stockholder approval prior to the sale, issuance or potential issuance of common stock (or securities convertible into or exercisable for common stock) in connection with a transaction other than a public offering at a price less than the “Minimum Price” which either alone or together with sales by officers, directors or substantial stockholders of the company equals 20% or more of the common stock or 20% or more of the voting power outstanding before the issuance. For Nasdaq purposes, “Minimum Price” means a price that is the lower of: (i) the Nasdaq Official Closing Price (as reflected on Nasdaq.com) immediately preceding the signing of the binding agreement; or (ii) the average Nasdaq Official Closing Price of the common stock (as reflected on Nasdaq.com) for the five trading days immediately preceding the signing of the binding agreement. Stockholder approval of this proposal will constitute stockholder approval for purposes of Nasdaq Listing Rule 5635(d). Our Board has determined that the SEPA and our ability to issue the SEPA Shares thereunder in excess of the Exchange Cap, or pursuant to the terms of the SEPA for any amounts remaining for issuance under the SEPA under the Exchange Cap, are in the best interests of us and our stockholders because the right to sell the SEPA Shares to Yorkville provides us with a reliable source of capital for working capital and general corporate purposes.

We cannot predict the Market Price (as defined above) of our common stock at any future date, and therefore cannot predict the number of SEPA Shares to be issued under the SEPA or whether the Market Price for any Advance will be greater than the Minimum Price (as defined above) under the Nasdaq Rules. Under certain circumstances, it is possible that we may need to issue shares of common stock to Yorkville in excess of the Exchange Cap, and at a price that is less than the Minimum Price, which would require stockholder approval pursuant to Nasdaq Listing Rule 5635(d).

Therefore, we are seeking stockholder approval under this Proposal No. 6 of (i) the issuance of shares of common stock in excess of the Exchange Cap, if necessary, to Yorkville under the terms of the SEPA, (ii) the issuance of the December Promissory Note and the offset of amounts due thereunder at the December Note Conversion Price, (iii) the issuance of the February Promissory Note and the offset of amounts owed by the Company to Yorkville under the February Promissory Note at the February Note Conversion Price, (iv) the issuance of the March Promissory Note and the potential offset of amounts owed by the Company to Yorkville under the March Promissory Note at the March Note Conversion Price and (v) the issuance of common stock to Yorkville pursuant to the terms of the SEPA for amounts remaining for issuance under the SEPA under the Exchange Cap following the offset of the December Promissory Note and the February Promissory Note, including issuances pursuant to the March Advance and any future Advances (collectively, the “SEPA Matters”). The failure of the Company’s stockholders to approve this Proposal No. 6 will, among other things, make it impossible for the Company to sell, at less than the Minimum Price, shares of common stock to Yorkville in excess of the Exchange Cap. However, it would be possible to sell shares to Yorkville in excess of the Exchange Cap if the sale of shares covered by any Advance is equal to or greater than the Minimum Price for such Advance; provided that the average price of all applicable shares of common stock under the SEPA after the date of Amendment No. 3 thereto exceeds the Minimum Price.

Consequences of Non-Approval

As previously disclosed, as of December 31, 2022, the Company concluded that there was substantial doubt about its ability to continue to operate as a going concern for the 12 months following the issuance of its consolidated financial statements. The ability of the Company to continue as a going concern is dependent upon the Company’s ability to access additional sources of capital, including, but not limited to, equity and/or debt financings, licensing revenue, and government loans or grants. If the Company is unable to raise additional capital, the Company may have to significantly delay, scale back or discontinue the development or commercialization of its product. Accordingly, our Board believes that providing the Company the flexibility to issue shares of common stock pursuant to the SEPA is advisable and in the best interests of the Company and our stockholders.

Effect on Current Stockholders

The issuance of shares of common stock under the SEPA as described above, including any shares that may be issued in excess of the Exchange Cap (including any such shares issued below the Minimum Price that are the subject of this Proposal No. 6), would result in an increase in the number of shares of common stock outstanding, and our stockholders will incur dilution of their percentage ownership. Because the number of SEPA Shares that may be issued to Yorkville pursuant to the SEPA is determined based on the Market Price at the time of issuance, the exact magnitude of the dilutive effect cannot be conclusively determined. However, the dilutive effect may be material to our current stockholders.

Required Vote

Approval of Proposal No. 6 requires the affirmative vote of a majority of the total votes cast on the proposal. Abstentions and broker non-votes are not considered votes cast for the foregoing purpose, and will have no effect on the outcome of vote for this proposal.

The 7,747,238 shares of the Company’s common stock offered and sold to Yorkville under the SEPA from December 29, 2022, the date of Amendment No. 3, through the close of business on the record date, are not entitled to vote on Proposal No. 6 in accordance with Nasdaq Marketplace Rule 5635(d) as described in the Proxy Statement.

**THE BOARD RECOMMENDS A VOTE
FOR APPROVAL, IN ACCORDANCE WITH NASDAQ MARKETPLACE RULE 5635(D), OF THE SEPA
MATTERS PROPOSAL**

PROPOSAL NO. 7
APPROVAL OF AMENDMENTS TO THE EOS ENERGY ENTERPRISES, INC.
AMENDED AND RESTATED 2020 INCENTIVE PLAN

We are asking our stockholders to approve an amendment to the Eos Energy Enterprises, Inc. Amended and Restated 2020 Incentive Plan, as amended on May 17, 2022 (the “2020 Plan”) in order to (i) increase the number of shares reserved for issuance under the 2020 Plan by 8,000,000 shares, and (ii) increase the limit on the number of shares that may be issued through the exercise of incentive stock options by 8,000,000 shares. The approval of this amendment to the 2020 Plan will be effective on May 16, 2023, the date of our Annual Meeting (“Effective Date”), if approved by our shareholders.

The 2020 Plan was approved by our stockholders and became effective on November 16, 2020. At our 2022 annual meeting of stockholders, our shareholders approved an initial amendment to the 2020 Plan to (i) increase the number of shares reserved for issuance under the 2020 Plan by 2,000,000 shares, (ii) increase the limit on the number of shares that may be issued through the exercise of incentive stock options by 2,000,000 shares, (iii) remove the automatic increase to the share pool on the first day of each year and (iv) remove certain share recycling provisions.

The 2020 Plan provides for the grant of equity-based awards to our employees, consultants, service providers and non-employee directors and provides a means to attract and retain employees and non-employee directors and to help promote a pay-for-performance linkage for such persons. In addition, the 2020 Plan provides a means whereby certain of our directors, officers, employees, consultants and advisors can acquire and maintain an equity interest in the Company, or be paid incentive compensation, which may be measured by reference to the value of our common stock, thereby strengthening their commitment to the welfare of Eos and aligning their interests with those of our stockholders.

The 2020 Plan has a remaining balance of 994,108 shares available for the issuance of new awards as of January 1, 2023, which reflects the remaining balance of the shares originally reserved for issuance under the 2020 Plan, plus the shares added to the share pool automatically pursuant to the terms of the 2020 Plan on January 1, 2021 and 2022, plus the shares added to the share pool on May 17, 2022.

Currently, the 2020 Plan is the only plan under which we can grant equity-based awards. Given the decreasing number of shares that are available for issuance under the 2020 Plan, the Board is requesting stockholders approve an increase to the number of shares available for issuance under the 2020 Plan in order to ensure the Company is able to continue to provide equity-based and incentive-based awards to attract, motivate and retain high quality employees and directors. If the additional share reserve is approved by stockholders, based on historic grant practices, the Company anticipates that the requested share authorization under the 2020 Plan will last until December 31, 2023.

Our Board is submitting the following amendments, which were approved by the Board on March 13, 2023 for approval by our stockholders:

- Increase the shares reserved for issuance under the 2020 Plan by 8,000,000 shares.
- Increase the limit on the number of shares that may be issued through the exercise of an incentive stock option by 8,000,000 shares.

THE BOARD UNANIMOUSLY RECOMMENDS A VOTE
FOR THE APPROVAL OF THE PROPOSED AMENDMENTS TO THE 2020 PLAN.

Reasons the Board Recommends Voting For Approval of the Amendments to the 2020 Plan

Our Board believes that encouraging our employees and non-employee directors to own shares of our common stock fosters broad alignment between the interests of our employees and directors and the interests of our stockholders. We believe the proposed amendments to the 2020 Plan, including the increase to the maximum number of shares available for awards thereunder, is necessary to ensure that we have adequate capacity to continue to attract and retain talented employees and non-employee directors. We believe that this number represents a reasonable amount of potential equity dilution and allows the Company to continue to award equity incentives, which are an important component of our overall compensation program.

Compensation and Governance Best Practices

The 2020 Plan currently includes certain compensation and governance best practices, with some of the key features as follows:

- **No Evergreen.** The number of shares available for issuance under the 2020 Plan is fixed and can only be increased with stockholder approval.
- **Prohibition on Liberal Share Recycling.** Shares tendered by a participant, withheld by the Company to satisfy any tax withholding or which are not issued in connection with the settlement of a stock-settled SAR do not become available for issuance as future awards under the 2020 Plan.
- **Prohibition on Repricing.** The 2020 Plan expressly prohibits the “repricing” of stock options or SARs without stockholder approval.
- **Prohibition on Paying Dividends or Dividend Equivalents on Unvested Awards.** Dividends or dividend equivalents credited or payable in connection with an award under the 2020 Plan that is not yet vested will be subject to the same restrictions and risk of forfeiture as the underlying award and will not be paid until the underlying award vests;
- **Limit on Non-Employee Director Compensation.** The 2020 Plan contains an annual limit on total compensation paid and granted to each non-employee director.
- **Stock Options and SARs Granted at No Less than Fair Market Value.** The exercise price for stock options and SARs granted under the 2020 Plan must equal or exceed the underlying stock's fair market value as of the grant date, subject to a limited exception for awards that are assumed or substituted in corporate transactions.
- **No Change in Control / 280G Tax Gross-Ups.** The 2020 Plan does not provide for any excise tax gross-up payments, including with respect to Section 280G and 4999 of the Internal Revenue Code, and, as a general business matter, the Company does not provide such benefits.
- **Transfer Restrictions.** The 2020 Plan contains robust restrictions on the transfer of awards granted under the 2020 Plan.
- **Fixed Term.** The 2020 Plan has a fixed, ten-year term.

Matters Considered by the Board With Respect to the Number of Shares to be Added to the Shares Available for Issuance under the 2020 Plan

Our Board is proposing an additional 8,000,000 shares be reserved for issuance of equity-based awards under the 2020 Plan. We believe the current number of shares available for grant under the 2020 Plan is insufficient and will harm our ability to attract and retain qualified employees and directors. Further, we believe that the additional shares, under these circumstances, represents a reasonable amount of potential equity dilution and allows the Company to recruit, motivate, and retain talented employees and directors who will help us achieve our business goals, including creating long-term value for our stockholders.

When considering the number of additional shares proposed to be made available for grant under the 2020 Plan, the Compensation Committee reviewed, among other things, the potential dilution to our shareholders.

The following table sets forth certain information about the equity awards that are outstanding under the 2020 Plan as of January 1, 2023:

Total number of shares that would be authorized for issuance upon stockholder approval of the amendments to the 2020 Plan (1)	17,035,887
Number of shares relating to outstanding stock options under the 2020 Plan	4,344,812
Number of shares relating to outstanding full-value awards under the 2020 Plan	2,995,890
Weighted average remaining term of outstanding stock options under the 2020 Plan	7.7
Number of shares remaining for issuance under the 2020 Plan upon shareholder approval of the amendments to the 2020 Plan	8,994,108

(1) Reflects the sum of (i) the 6,000,000 shares originally reserved for issuance under the 2020 Plan, (ii) the shares automatically added to the share reserve on January 1, 2021 and 2022 and (iii) the additional 2,000,000 shares added to the share pool pursuant to the amendments to the 2020 Plan approved by shareholders on May 17, 2022, and (iv) the additional 8,000,000 shares to be added to the share pool pursuant to the proposed amendments to the 2020 Plan.

Description of the 2020 Plan

The key features of the 2020 Plan are described below, but are qualified in their entirety by reference to the full text of the second amendment of the 2020 Plan included as Appendix C to this Proxy Statement. Appendix D to this Proxy Statement contains a full draft of the 2020 Plan as a blackline showing the proposed amendments thereto.

Administration. The 2020 Plan is administered by a committee appointed by our Board, or if no such committee has been appointed, by our Board (the “Committee”). The Committee will, subject to the terms and conditions of the 2020 Plan, have the authority to, among other actions, designate participants in the 2020 Plan, determine the type of awards to be granted to a participant and the terms of conditions of such awards, determine the terms of settlement or exercise of awards, reconcile any inconsistency and correct any defect in the 2020 Plan or an award agreement, accelerate the vesting or exercisability of an award and make any other determination and take any other action that the Committee deems necessary or desirable for the administration of the 2020 Plan.

Eligibility. Those eligible to participate in the 2020 Plan consist of employees, directors and consultants of the Company or one of its affiliates (provided that such person is eligible to be offered securities registrable on Form S-8 under the Securities Act of 1933), as well as prospective employees, directors, officers, consultants or advisors who have accepted offers of employment or consultancy from the Company or its affiliates (and would satisfy the eligibility criteria once he or she begins employment with or begins providing services to the Company or its affiliates).

While all employees are eligible to receive awards under the 2020 Plan, the Committee currently expects that approximately 321 employees participate in the 2020 Plan. In addition, all non-employee directors, of whom there are 6, also participate in the 2020 Plan. The basis for participation in the 2020 Plan is the Committee’s (or its authorized delegate’s) decision, in its sole discretion, that an award to an eligible participant will further the 2020 Plan’s purposes of providing a means through which the Company and its affiliates may attract and retain key personnel and to providing a means whereby certain directors, officers, employees, consultants and advisors (and certain prospective directors, officers, employees, consultants, and advisors) of the Company and its affiliates can acquire and maintain an equity interest in the Company, or be paid incentive compensation, which may be measured by reference to the value of shares of common stock, thereby strengthening their commitment to the welfare of the Company and its affiliates and aligning their interests with those of the Company’s stockholders. In exercising its discretion, the Committee (or its delegate) will consider the recommendations of management and the purposes of the 2020 Plan.

Shares Reserve; Adjustments. The maximum number of shares of our common stock available for issuance under the 2020 Plan will be 17,035,887 shares. Shares of common stock underlying awards that are forfeited, canceled, expire unexercised, or are settled in cash shall be available again for issuance under the 2020 Plan. However, shares of common stock underlying an Award shall not again be available for issuance under the Plan if such shares are (i) tendered or withheld in payment of the exercise price of a stock option or other award, (ii) delivered to or withheld by the Company to satisfy any tax withholding liabilities arising from an award, or (iii) covered by a stock-settled SAR and were not issued upon the settlement of the SAR. The maximum number of shares of our common stock available for issuance upon exercise of incentive stock options granted under the 2020 Plan will be 16,000,000 shares.

Non-Employee Director Limits. Under the 2020 Plan, the maximum number of shares of our common stock that may be granted during a single fiscal year to any non-employee director, taken together with any cash fees paid during the fiscal year, in respect to the director's service as a member of our Board during such year, shall not exceed \$500,000 in total value. The independent directors may make exception to this limit for a non-executive chair of the Board, provided that the non-employee director receiving such additional compensation may not participate in the decision to award such compensation.

Available Awards. The 2020 Plan permits the grant of incentive stock options to employees and/or nonstatutory stock options to all eligible participants, as well as, SARs, restricted stock, restricted stock units ("RSUs"), performance awards, other cash-based awards and other stock-based awards to all eligible participants.

Dividends and Dividend Equivalents. No adjustment may be made in the shares of common stock issuable or taken into account under an award on account of cash dividends made prior to settlement of such award. The Committee may grant Dividend Equivalents based on the dividends declared on shares of common stock subject to any award (other than stock options or SARs), provided that any such dividend equivalents will not be payable unless and until the award becomes payable, and shall be subject to forfeiture to the same extent as the underlying award.

No Repricing. The Committee may not, without stockholder consent, reduce the exercise price of outstanding stock options or SARs or cancel any outstanding stock options or SARs with an exercise price below the fair market value of our common stock and replace it with a new award or cash or take any other action considered a "repricing" for purposes of the stockholder approval rules of the applicable securities exchange.

Change in Control. Upon a change in control (as defined in the 2020 Plan) and certain other corporate events, the Committee will make adjustments it may deem necessary or appropriate and equitable, subject to the requirements of Sections 409A, 421 and 422 of the Internal Revenue Code, including (i) adjusting the number of shares which may be delivered upon settlement of an award and the terms of any outstanding awards, (ii) providing for the substitution or assumption of awards, (iii) accelerating the vesting of awards, (iv) deeming any performance measures satisfied at target, maximum or actual performance, (v) providing for a period of time during which stock options and SARs will remain exercisable or (vi) canceling any awards in exchange for cash or other securities or property, or a combination thereof

Termination of Employment. The treatment of awards upon a participant's termination of employment is generally set forth in the applicable award agreement. Unless otherwise provided in such an award agreement, any unvested restricted stock or RSUs will be forfeited upon the participant's termination of employment.

Clawback; Anti-Hedging and Pledging. All awards (including on a retroactive basis) granted under the 2020 Plan are subject to the terms of any Company forfeiture, incentive compensation recoupment, clawback or similar policy as it may be in effect from time to time, as well as any similar provisions of Applicable Laws, as well as any other policy of the Company that may apply to the Awards, such as anti-hedging or pledging policies, as they may be in effect from time to time.

Plan Amendment or Suspension. Our Board has the authority to amend, suspend or terminate the 2020 Plan, provided that no such action may be taken without stockholder approval if the approval is necessary to comply with a tax or regulatory requirement or other applicable law for which the Committee deems it necessary or desirable to comply. No amendment may adversely and materially affect a participant's rights under any award without such participant's consent.

Term of the Plan. No awards may be granted under the 2020 Plan after our Board terminates the plan or after ten years from the effective date.

Federal Income Tax Consequences

The following discussion summarizes certain material federal income tax consequences of the issuance and receipt of awards under the 2020 Plan under the law as in effect on the date of this proxy statement. This summary does not purport to cover all federal employment tax or other federal tax consequences that may be associated with the 2020 Plan, nor does it cover state, local, or non-U.S. taxes.

- ***Incentive Stock Options (ISOs).*** An optionee generally realizes no taxable income upon the grant or exercise of an ISO. However, the exercise of an ISO may result in an alternative minimum tax liability to the employee. With some exceptions, a disposition of shares purchased under an ISO within two years from the date of grant or within one year after exercise produces ordinary income to the optionee equal to the value of the shares at the time of exercise less the exercise price. The same amount is deductible by the Company as compensation, provided that the Company reports the income to the optionee. Any additional gain recognized in the disposition is treated as a capital gain for which the Company is not entitled to a deduction. However, if the optionee exercises an ISO and satisfies the holding period requirements, the Company may not deduct any amount in connection with the ISO. If a sale or disposition of shares acquired with the ISO occurs after the holding period, the employee will recognize long-term capital gain or loss at the time of sale equal to the difference between proceeds realized and the exercise price paid. In general, an ISO that is exercised by the optionee more than three months after termination of employment is treated as an NQSO. ISOs are also treated as NQSOs to the extent that they first become exercisable by an individual in any calendar year for shares having a fair market value (determined as of the date of grant) in excess of \$100,000.
- ***Non-Qualified Stock Options (NQSOs).*** An optionee generally has no taxable income at the time of grant of an NQSO but realizes income in connection with exercise of the option in an amount equal to the excess (at the time of exercise) of the fair market value of shares acquired upon exercise over the exercise price. The same amount is deductible by the Company as compensation, provided that, in the case of an employee option, the Company reports the income to the employee. Upon a subsequent sale or exchange of the shares, any recognized gain or loss after the date of exercise is treated as capital gain or loss for which the Company is not entitled to a deduction.
- ***SARs.*** Generally, the recipient of a stand-alone SAR will not recognize taxable income at the time the SAR is granted. If a participant receives the appreciation inherent in the SAR in cash, the cash will be taxed as ordinary income to the participant at the time it is received. If a participant receives the appreciation inherent in the SAR in shares, the spread between the then-current market value and the base price will be taxed as ordinary income to the participant at the time it is received. In general, there will be no federal income tax deduction allowed to the Company upon the grant or termination of SARs. However, upon the settlement of a SAR, the Company will be entitled to a deduction equal to the amount of ordinary income the recipient is required to recognize as a result of the settlement.

- **Restricted Stock.** The recipient of restricted stock will not recognize any taxable income for federal income tax purposes in the year of the award, provided that the shares are subject to restrictions (that is, they are nontransferable and subject to a substantial risk of forfeiture). However, the recipient may elect under Section 83(b) of the IRC to recognize compensation income in the year of the award in an amount equal to the fair market value of the shares on the date of the award (less the purchase price, if any, paid for such shares), determined without regard to the restrictions. If a Section 83(b) election is made, the capital gain/loss holding period for such shares commences on the date of the award. Any further change in the value of the shares will be taxed as a capital gain or loss only if and when the shares are disposed of by the recipient. If the recipient does not make a Section 83(b) election, the fair market value of the shares on the date the restrictions lapse will be treated as compensation income to the recipient and will be taxable in the year the restrictions lapse, and the capital gain/loss holding period for such shares will also commence on such date.
- **RSUs.** No income generally will be recognized upon the award of RSUs. The recipient of a RSU award generally will be subject to tax at ordinary income rates on the market price of unrestricted shares on the date that such shares are transferred to the participant under the award (reduced by any amount paid, if any, by the participant for such restricted stock units), and the capital gain/loss holding period for such shares will also commence on such date.

New Plan Benefits

The benefits that will be awarded or paid under the 2020 Plan are not currently determinable. Any future awards granted to eligible participants under the 2020 Plan will be made at the discretion of the Committee, the Board, or under delegated authority, and no such determination as to future awards or who might receive them has been made.

Existing Plan Benefits

The following tables summarizes the grants made to our named executive officers, all current executive officers as a group, all current non-executive directors as a group, each nominee for election as a director and all non-executive employees as a group, from the inception of the 2020 Plan through December 31, 2022. The closing price per share of our common stock on was \$1.48 as of December 30, 2022.

Name	Number of Stock Options Granted Since Adoption of the 2020 Plan	Number of RSUs Granted Since Adoption of the 2020 Plan
Joe Mastrangelo	1,437,484	750,000
Randall Gonzales ^(a)	300,000	313,480
Melissa Berube	200,000	150,000
Current Executive Officers as a Group (3)	1,937,484	1,213,480
Current Non-Employee Directors as a Group, excluding the three director nominees below (3)	527,093	240,057
Russell Stidolph	473,613	117,519
Jeff Bornstein	93,085	52,601
Claude Demby	158,795	68,955
Non-Executive Officer Employees as a Group ^(b)	1,154,742	1,303,278

(a) Mr. Gonzales is no longer an employee of the Company as of January 23, 2023. In connection with his departure, Mr. Gonzales forfeited 104,493 RSUs.

(b) Represents total stock options and RSUs granted since the adoption of the 2020 Plan to all employees (current and former) who received awards under the 2020 Plan, other than current executive officers.

Registration with the SEC

If our stockholders approve the amendment to the 2020 Plan, we will file with the SEC a registration statement on Form S-8, as soon as reasonably practicable after the approval, to register the additional shares available for issuance under the 2020 Plan.

CERTAIN RELATIONSHIPS AND RELATED PARTY TRANSACTIONS

Unless otherwise stated or unless the context otherwise requires, the terms “Company,” “we,” “us,” “our,” and “Eos” refer to Eos Energy Enterprises, Inc., a Delaware corporation, and the term “BMRG” refers to the Company prior to the consummation of the business combination.

The following is a summary of transactions since January 1, 2022 to which we and BMRG have been a participant, in which:

- i. the amount involved exceeded or will exceed the lesser of \$120,000 or 1% of the average of our total assets at year end for the last two completed fiscal years; and
- ii. any of our directors, executive officers, or holders of more than 5% of our capital stock, or any member of the immediate family of the foregoing persons, had or will have a direct or indirect material interest, other than compensation and other arrangements that are described in the section titled “Executive Compensation” or that were approved by our compensation committee.

B Riley Principal Merger Corp. II

B. Riley Financial is the ultimate parent company of B. Riley Securities, Inc. (“BRFBR”), the Sponsor and B. Riley Principal Investments, LLC (“BRPI”). Daniel Shribman, who was BMRG’s Chief Executive Officer and Chief Financial Officer prior to the business combination, is the President of BRPI and the Chief Investment Officer of B. Riley Financial. Bryant Riley, a member of BMRG’s board of directors prior to the business combination, is the Chairman and Co-Chief Executive Officer of B. Riley Financial. Kenneth Young, a member of BMRG’s board of directors prior to the business combination, is the President of B. Riley Financial and the Chief Executive Officer of BRPI.

BMRG Registration Rights Agreement

The holders of the founder shares, private placement shares, private placement warrants, and shares of common stock underlying the private placement warrants have rights to require us to maintain an effective registration statement with respect to such securities. These holders are also entitled to make up to three demands, excluding short form registration demands, that we register such securities for sale under the Securities Act. In addition, these holders have “piggy-back” registration rights to include their securities in other registration statements filed by us. Notwithstanding the foregoing, the Sponsor may not exercise its demand and “piggyback” registration rights after five (5) and seven (7) years, respectively, after the effective date of IPO registration statement and may not exercise its demand rights on more than one occasion.

Eos Registration Rights Agreement

In connection with the Closing, we entered into a registration rights agreement with certain of our security holders, which requires us to maintain an effective registration statement registering the resale of their shares of common stock. Such security holders also have certain “piggyback” registration rights and rights to require us to register for resale such securities pursuant to Rule 415 under the Securities Act. We will bear the expenses incurred in connection with the filing of any such registration statements.

Director Nomination Agreement

In connection with the Closing, we entered into the Director Nomination Agreement with the Sponsor and certain Eos equity holders (the “Sellers”), pursuant to which the Sponsor and the Sellers have the right to designate members to be appointed or nominated for election to the Board of the Company, subject to terms and conditions set forth therein.

Merger Consideration

Subject to certain downward adjustments and the other terms and conditions set forth in the Merger Agreement, at Closing the EES LLC security holders received total aggregate consideration of 29,644,680 shares of common stock.

The EES LLC security holders also received an additional 1,994,171 shares of our common stock upon the achievement of certain earnout targets pursuant to the terms of the Merger Agreement.

Acquisition of Hi-Power

On April 8, 2021, the Company entered into a unit purchase agreement (the "Purchase Agreement") with Holtec Power, Inc. ("Holtec"), in accordance with the terms and conditions of which the Company purchased from Holtec the remaining 51% percent interest in HI-POWER, LLC ("Hi-Power") that was not already owned by the Company. The Purchase Agreement provides that the Company will pay an aggregate purchase price of \$25 million for 51% interest in Hi-Power, pursuant to the following schedule: \$5 million each of May 31, 2021, May 31, 2022, May 31, 2023, May 31, 2024, and May 31, 2025, evidenced by a secured promissory note secured by the assets of the Company. The Purchase Agreement also requires that the Company pay to Holtec, on the closing of the Transactions, an amount in cash equal to \$10.3 million. Payments to Holtec under this Purchase Agreement totaled \$35.3 million. During the year ended December 31, 2021, \$30.4 million was charged to loss on pre-existing agreement. During the third quarter of 2022, the Company repaid all outstanding amounts under the Purchase Agreement.

Settlement Agreement

As disclosed at the time of the Merger Agreement, prior to the execution and delivery of the Merger Agreement, certain unitholders of EES LLC ("Hellman parties") asserted claims ("Threatened Claims") against another director and affiliated investors, including AltEnergy Storage VI, LLC (the "Securityholder Representative"), questioning the dilutive effect of certain historical security issuance on the former EES common unitholders.

Under the Merger Agreement, the Securityholder Representative had the obligation and duty to vigorously defend against the Threatened Claims, and the Company had the obligation to advance or cause to be advanced to the Securityholder Representative up to \$5,000,000 of defense costs, subject to a deductible of \$2,000,000 (the "Deductible"), in connection with the investigation, defense, or settlement of any Threatened Claims. The Deductible was to be borne by the company, and any additional amounts advanced were reimbursable by the former unitholders of EES.

On December 1, 2021, a Settlement Agreement was entered into between Hellman Parties and the Securityholder Representative pursuant to which, 300,000 Eos Shares ("Settlement Shares") would be transferred to the Hellman parties from the EES unitholders at the time of merger.

On December 28, 2021, the independent members of the Board approved a contribution of \$1,200,000 towards the Settlement. Such determination was based on the independent members of the Board's business judgment that, among other reasons, such a contribution (i) would ensure that the Company would not have to spend the entire \$2,000,000 Deductible towards the costs of defense of any litigation, (ii) would avoid the additional cost, distraction, uncertainty, and overhang of litigation relating to the Mergers, (iii) would benefit the Company's future relationships with its long-term investors, and (iv) would generate future goodwill with such investors during an important growth stage of the Company. As the Company's contribution benefits certain Eos stockholders at the time of the Merger Agreement, including AltEnergy LLC and B. Riley Financial Inc., who are considered as related parties owning more than 5% of the equity interest in the Company, this transaction is considered a related party transaction. On December 29, 2021, an amendment to the Settlement Agreement between the Hellman Parties and the Securityholder Representative was entered into, pursuant to which, \$1,200,000 of the value represented by the Settlement Shares was to be paid in cash, representing the equivalent of 140,023 of the Settlement Shares.

The Company accrued \$1,200,000 in accounts payable and accrued expenses - related party on December 31, 2021, which has been paid on January 4, 2022. The remaining 159,977 in Settlement Shares were transferred to the Hellman parties from the former EES unitholders, on a pro rata basis, on December 29, 2021.

Issuance and Sale of 26.5% Convertible Senior PIK Notes due 2026

On January 18, 2023, the Company entered into an investment agreement (the “Investment Agreement”) with Great American Insurance Company, Ardsley Partners Renewable Energy, LP, CCI SPV III, LP, Denman Street LLC, John B. Berding Irrevocable Children’s Trust, John B. Berding, and AE Convert, LLC, a Delaware limited liability company managed by Russell Stidolph, a director of the Company relating to the issuance and sale to the Purchasers of \$13,750,000 in aggregate principal amount of the Company’s 26.5% Convertible Senior PIK Notes due 2026 (the “Notes”). The Board reviewed and approved the issuance of the Notes to AE Convert, LLC in accordance with the Company’s related person transaction policy. The Notes are governed by a form of indenture (the “Indenture”) incorporated by reference into the Notes. The Notes will bear interest at a rate of 26.5% per annum, which interest shall be entirely paid-in-kind. All interest payments on the Notes shall be made through an increase in the principal amount of the outstanding Notes or through the issuance of additional Notes (such interest is referred to herein as “PIK Interest”). Interest on the Notes is payable semi-annually in arrears on June 30 and December 30, commencing on June 30, 2023. It is expected that the Notes will mature on June 30, 2026, subject to earlier conversion, redemption or repurchase. The Notes are convertible at the option of the holder at any time until the business day prior to the maturity date, including in connection with a redemption by the Company. The Notes will be convertible into shares of the Company’s common stock, par value \$0.0001 per share, based on an initial conversion rate of 598.824 shares of the Company’s common stock per \$1,000 principal amount of the Notes (which is equal to an initial conversion price of approximately \$1.67 per share), in each case subject to customary anti-dilution and other adjustments (as described in the Indenture).

Policies and Procedures for Related Person Transactions

Our Board adopted a written related person transaction policy that sets forth the following policies and procedures for the review and approval or ratification of related person transactions.

A “Related Person Transaction” is a transaction, arrangement or relationship in which we or any of our subsidiaries was, is or will be a participant, the amount of which involved exceeds \$120,000, and in which any related person had, has or will have a direct or indirect material interest. A “Related Person” means:

- any person who is, or at any time during the applicable period was, one of our officers or one of our directors;
- any person who is known to be the beneficial owner of more than 5% of our voting stock;
- any immediate family member of any of the foregoing persons, which means any child, stepchild, parent, stepparent, spouse, sibling, mother-in-law, father-in-law, daughter-in-law, brother-in-law or sister-in-law of a director, officer or a beneficial owner of more than 5% of our voting stock, and any person (other than a tenant or employee) sharing the household of such director, officer or beneficial owner of more than 5% of our voting stock; and
- any firm, corporation or other entity in which any of the foregoing persons is a partner or principal or in a similar position or in which such person has a 10% or greater beneficial ownership interest.

Pursuant to our related person transaction policy, the Chief Financial Officer of the Company is responsible for collecting information regarding Related Person Transactions, determining whether a transaction, arrangement or relationship meets the definition of Related Person Transaction, and preparing information regarding Related Person Transactions for presentation to the Nominating and Corporate Governance Committee. Directors and officers are expected to promptly notify the Chief Financial Officer or the Chair of the Nominating and Corporate Governance Committee of any potential or existing Related Person Transactions of which they are aware.

We have policies and procedures designed to minimize potential conflicts of interest arising from any dealings we may have with our affiliates and to provide appropriate procedures for the disclosure of any real or potential conflicts of interest that may exist from time to time.

SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT

The following table sets forth information relating to the beneficial ownership of our common stock as of March 1, 2023 by:

- each person, or group of affiliated persons, known by us to beneficially own more than 5% of our outstanding shares of common stock;
- each of our directors, nominees and named executive officers; and
- all directors and executive officers as a group.

A person is a “beneficial owner” of a security if that person has or shares voting or investment power over the security or if that person has the right to acquire sole or shared voting or investment power over the security within 60 days. Unless otherwise noted, these persons, to our knowledge, have sole voting and investment power over the shares listed. In computing the number of shares of common stock beneficially owned by a person and the percentage ownership of that person, we deemed outstanding shares of common stock subject to options, warrants and restricted stock units held by that person that are currently exercisable or exercisable within 60 days of March 1, 2023.

Unless stated otherwise, the percentage of shares beneficially owned is computed on the basis of 88,854,807 shares of our common stock outstanding as of March 1, 2023.

Name of beneficial owner	Shares of Common Stock Beneficially Owned	
	Number of Securities Beneficially Owned	Percentage
5% Stockholder		
Wood River Capital, LLC (4)	7,996,591	8.48 %
YA II PN, Ltd. (5)	9,568,780	9.99 %
Point72 Asset Management, L.P. (6)	5,535,030	6.23 %
Directors and Executive Officers		
Joe Mastrangelo (1) (2)	1,525,421	1.72 %
Randall Gonzales (1) (2)	417,143	*
Melissa Berube (1) (2)	131,524	*
Nathan Kroecker (1)	—	*
Russell Stidolph (2) (3)	4,355,051	4.84 %
Daniel Shribman (1) (2)	74,365	*
Alex Dimitrief (1) (2)	80,082	*
Audrey Zibelman (1) (2)	37,100	*
Marian "Mimi" Walters (1) (2)	42,050	*
Claude Demby (1) (2)	32,373	*
Jeff Bornstein (1) (2) (7)	182,666	*
All directors, director nominees and executive officers as a group (9 individuals)	6,386,267	7.09 %

*Less than 1%.

(1) The business address of each of these entities or individuals is c/o 3920 Park Avenue Edison, New Jersey 08820.

(2) Includes shares of common stock underlying restricted stock units.

(3) Represents (i) 328,595 shares of common stock issuable upon exercise of vested options held by Mr. Stidolph, (ii) 160,310 shares of common stock directly owned by Mr. Stidolph, (iii) 2,653,272 shares of common stock in which Mr. Stidolph has a pecuniary interest in that are held directly by AltEnergy LLC, or AltEnergy, AltEnergy Storage LLC, or AltEnergy I, AltEnergy Storage II LLC, or AltEnergy II, AltEnergy Storage V LLC, or AltEnergy V, AltEnergy VI LLC, or AltEnergy VI, AltEnergy Storage Bridge LLC, or Bridge, AltEnergy Transmission LLC, or Transmission, AltEnergy Storage Bridge Phase II LLC, or Bridge II (collectively, the “AltEnergy Shares”) and (iv) 1,212,874 shares of common stock issuable upon conversion of the outstanding 26.5% Convertible Senior PIK Notes due 2026 held by AE Convert, LLC. Mr. Stidolph disclaims beneficial ownership of these shares, except to the extent of his pecuniary interest therein. Mr. Stidolph is the managing director of AltEnergy, the managing member of each of AltEnergy I, AltEnergy II, AltEnergy VI, AltEnergy V, Bridge, Transmission and Bridge II, and has voting and dispositive power with respect to the AltEnergy Shares. Mr. Stidolph is a manager of AE Convert, LLC, and has voting and dispositive power with respect to the securities owned by AE Convert, LLC. The percentage of shares beneficially owned by Mr. Stidolph is computed on the basis of 88,854,807 shares of our common stock outstanding as of March 1, 2023 and 1,212,874 shares of common stock issuable upon conversion of the outstanding 26.5% Convertible Senior PIK Notes due 2026 held by AE Convert, LLC. The address of Mr. Stidolph and each of the above referenced entities is 137 Rowayton Avenue, Rowayton, CT 06853.

(4) Represents (i) 2,538,261 shares of common stock held by Wood River Capital, LLC (“Wood River”) and (ii) 5,458,300 shares of common stock issuable upon conversion of the outstanding 5%/6% Convertible Senior PIK Toggle Notes due 2026 held by Wood River. Wood River is beneficially owned by SCC Holdings, LLC (“SCC”), SCC is beneficially owned by KIM, LLC (“KIM”), KIM is beneficially owned by Koch Investment Group, LLC (“KIG”), KIG is beneficially owned by Koch Investment Group Holdings, LLC (“KIGH”), and KIGH is beneficially owned by Koch Industries, Inc. (“Koch Industries”), in each case by means of ownership of all voting equity instruments. The percentage of shares beneficially owned by Wood River is computed on the basis of 88,854,807 shares of our common stock outstanding as of March 1, 2023 and 5,458,300 shares of common stock issuable upon conversion of the outstanding 5%/6% Convertible Senior PIK Toggle Notes held by Wood River. The address for this stockholder is 4111 E. 37th Street North, Wichita, KS 67220.

(5) Represents (i) 2,640,000 shares of common stock held directly by YA II PN, Ltd. and (ii) 6,928,780 shares of common stock deemed to be beneficially owned under the 9.99% ownership cap. The percentage of shares beneficially owned by YA II PN, Ltd is computed on the basis of 88,854,807 shares of our common stock outstanding as of March 1, 2023 and 6,928,780 shares of our common stock from the deemed beneficial ownership by YA II PN, Ltd, as of March 1, 2023. The address for this stockholder is 1012 Springfield Ave. Mountainside, NJ 07092.

(6) The information in the table above is based solely on information contained in this stockholder’s Schedule 13G under the Exchange Act filed by such stockholder with the SEC on February 14, 2023. Point72 Asset Management, L.P. (“Point72 Asset Management”) maintains investment and voting power with respect to the securities held by Point72 Associates, LLC, an investment fund it manages (“Point72 Associates”). Point72 Capital Advisors, Inc. is the general partner of Point72 Asset Management. Steven A. Cohen controls each of Point72 Asset Management, Point72 Capital Advisors, Inc. Point72 Asset Management, Point72 Capital Advisors Inc. and Mr. Cohen own directly no shares of common stock. This statement should not be construed as an admission that any of the foregoing persons or any reporting person is the beneficial owner of the shares listed herein. The address for this stockholder is 72 Cummings Point Road, Stamford, CT 06902.

(7) The number of securities beneficially owned by Jeff Bornstein has been adjusted by 862 shares of common stock from what was previously reported for his holdings.

DELINQUENT SECTION 16(A) REPORTS

Section 16(a) of the Exchange Act requires the Company's directors and executive officers, and persons who own more than 10% of a registered class of the Company's equity securities, to file with the SEC initial reports of ownership and reports of changes in ownership of common stock and other equity securities of the Company. Such officers, directors and greater than 10% stockholders are required by SEC regulations to furnish the Company with copies of all Section 16(a) forms they file.

To the Company's knowledge, based solely on a review of the copies of such reports furnished to the Company and written representations that no other reports were required, all Section 16(a) filing requirements applicable to our officers, directors and greater than 10% beneficial owners were complied with during fiscal year ended December 31, 2022, except for the following: a late Form 4 for Melissa Berube related to the grant of RSUs (see Form 4 filed on February 17, 2022).

ADDITIONAL INFORMATION

Householding of Proxy Materials

The SEC has adopted rules that permit companies and intermediaries (e.g., brokers) to satisfy the delivery requirements for proxy statements and annual reports with respect to two or more stockholders sharing the same address by delivering a single proxy statement addressed to those stockholders. This process, which is commonly referred to as “householding,” potentially means extra convenience for stockholders and cost savings for companies.

Brokers with account holders who are Eos stockholders may be “householding” our proxy materials. A single proxy statement may be delivered to multiple stockholders sharing an address unless contrary instructions have been received from the affected stockholders. Once you have received notice from your broker that it will be “householding” communications to your address, “householding” will continue until you are notified otherwise or until you notify your broker or the Company that you no longer wish to participate in “householding.”

If, at any time, you no longer wish to participate in “householding” and would prefer to receive a separate proxy statement and annual report, you may (1) notify your broker or (2) direct your written request to our Investor Relations Department at 3920 Park Avenue, Edison, New Jersey 08820, 312-445-2870 or email ir@eose.com. Stockholders who currently receive multiple copies of this Proxy Statement at their address and would like to request “householding” of their communications should contact their broker. In addition, the Company will promptly deliver, upon written request to the address above, a separate copy of the Form 10-K, Proxy Statement and Proxy Card or Notice of Internet Availability of Proxy Material to a stockholder at a shared address to which a single copy of the documents was delivered.

Other Matters

As of the date of this Proxy Statement, the Board does not intend to present any matters other than those described herein at the Annual Meeting and is unaware of any matters to be presented by other parties. If other matters are properly brought before the Annual Meeting for action by the stockholders, proxies will be voted in accordance with the recommendation of the Board or, in the absence of such a recommendation, in the discretion of the proxy holder.

We have filed our Annual Report on Form 10-K for fiscal year ended December 31, 2022 with the SEC. It is available free of charge at the SEC’s web site at www.sec.gov. Upon written request by a Eos stockholder, we will mail without charge a copy of our Annual Report on Form 10-K, including the financial statements and financial statement schedules, but excluding exhibits to the Annual Report on Form 10-K. Exhibits to the Annual Report on Form 10-K are available upon payment of a reasonable fee, which is limited to our expenses in furnishing the requested exhibit. All requests should be directed our Investor Relations department at 3920 Park Avenue, Edison, New Jersey 08820, 312-445-2870 or email ir@eose.com.

INFORMATION ABOUT THE PROXY PROCESS AND VOTING

Why am I receiving these materials?

We have made a Notice of Internet Availability that contains instructions on accessing this Proxy Statement and Proxy Card available to you or have delivered printed proxy materials to you because the Board is soliciting your proxy to vote at the Annual Meeting, including at any adjournments or postponements of the Annual Meeting. You are invited to attend the virtual Annual Meeting to vote on the proposals described in this Proxy Statement. However, you do not need to attend the virtual Annual Meeting to vote your shares. Instead, you may simply complete, sign and return the Proxy Card, or follow the instructions below to submit your proxy on the internet.

The Notice of Internet Availability or the printed proxy materials are being sent to our stockholders on or about March 27, 2023.

Who can vote at the Annual Meeting?

The outstanding voting securities of Eos are shares of common stock, \$0.0001 par value per share. There were 90,788,131 shares of common stock outstanding as of March 22, 2023. Only stockholders of record at the close of business on the Record Date will be entitled to vote at the Annual Meeting.

Stockholder of Record: Shares Registered in Your Name

If you are a stockholder of record as of March 22, 2023, you may vote online during the virtual Annual Meeting. Alternatively, you may vote by proxy by using the accompanying Proxy Card, over the internet. Whether or not you plan to attend online the virtual Annual Meeting, we encourage you to vote by proxy ahead of the Annual Meeting to ensure your vote is counted. Even if you have submitted a proxy before the Annual Meeting, you may still attend the Annual Meeting and vote. In such case, your previously submitted proxy will be disregarded.

- To vote using the Proxy Card, simply complete, sign and date the accompanying Proxy Card and return it promptly in the envelope provided. If you return your signed Proxy Card to us before the Annual Meeting, we will vote your shares in accordance with the Proxy Card.
- To vote by proxy over the internet before the Annual Meeting, follow the instructions as directed on the enclosed proxy card or on the Notice of Internet Availability.
- To vote by telephone, you may vote by proxy by calling the toll free number found on the enclosed proxy card or on the Notice of Internet Availability.
- To vote at the virtual Annual meeting, you will need the 16-digit control number included on your proxy card or voting instruction form. The meeting webcast will begin promptly at 10:00 a.m., Eastern time. We encourage you to access the meeting prior to the start time. Online check-in will begin at 9:45 a.m. Eastern time, and you should allow ample time for the check-in procedures. If you encounter any difficulties accessing the virtual meeting during the check-in or meeting time, please call the technical support number that will be posted on the virtual Annual Meeting login page for assistance.

Beneficial Owner: Shares Registered in the Name of a Broker, Bank or Other Agent

If, on the Record Date, your shares were held in an account at a brokerage firm, bank, dealer or other similar organization, then you are the beneficial owner of shares held in “street name” and these proxy materials are being forwarded to you by that organization. The organization holding your account is considered the stockholder of record for purposes of voting at the Annual Meeting. As a beneficial owner, you have the right to direct your broker or other agent on how to vote the shares in your account.

If you are a beneficial owner as described above, you should have received a Proxy Card and voting instructions with these proxy materials from the brokerage firm, bank, dealer or other similar organization that holds your shares, rather than from us. Simply complete and mail the Proxy Card to ensure that your vote is counted. To vote online at the virtual Annual Meeting, you must obtain a valid proxy from your broker, bank, dealer or other agent and follow the accompanying instructions included with these proxy materials.

We provide internet proxy voting to allow you to vote your shares online before the Annual Meeting, with procedures designed to ensure the authenticity and correctness of your proxy vote instructions. However, please be aware that you must bear any costs associated with your internet access, such as usage charges from internet access providers and telephone companies.

What is the required vote to approve the proposals discussed in this Proxy Statement?

- With respect to Proposal No. 1, directors are elected by a plurality of the votes cast. “Withhold” votes have no effect. There is no ability to “abstain.” Broker non-votes will have no effect on the outcome of the vote.
- With respect to Proposal No. 2, the affirmative vote of the majority of votes cast is required for approval. Abstentions will have no effect on the outcome of the vote. In addition, because this is a routine item, there will not be any broker non-votes.
- With respect to Proposal No. 3, the affirmative vote of the majority of votes cast is required for approval. Abstentions and broker non-votes will have no effect on the outcome of the vote. We note that this is an advisory vote and is not binding on the Company, the Board or the Leadership Development & Compensation Committee.
- With respect to Proposals No. 4 and No. 5, the affirmative vote of the holders of at least 66 2/3% of the voting power of all outstanding shares of capital stock of the Company entitled to vote generally in the election of directors, voting together as a single class is required for approval. Abstentions and broker non-votes will have the same effect as a vote against.
- With respect to Proposals No. 6 and No. 7, the affirmative vote of the majority of votes cast is required for approval. Abstentions and broker non-votes will have no effect on the outcome of the vote.

What are “broker non-votes”?

If your shares are held by your broker as your nominee (that is, in “street name”), you will need to instruct your broker to vote your shares. If you do not give instructions to your broker, your broker can vote your shares with respect to “routine” items, but not with respect to “non-routine” items. Only Proposal No. 2, the ratification of the appointment of Deloitte as our independent registered public accounting firm for the fiscal year ending December 31, 2023, is considered “routine” under applicable rules.

If a broker, bank, custodian, nominee or other record holder of common stock indicates on a proxy that it does not have discretionary authority to vote certain shares on a particular proposal, then those shares will be treated as “broker non-votes” with respect to that proposal. Broker non-votes may affect the result of a Proposal, as stated above in “What is the required vote to approve the proposals discussed in this Proxy Statement?”

How many votes do I have?

On each matter to be voted upon, you have one vote for each share of common stock you own as of the Record Date.

What if I return a Proxy Card but do not make specific choices?

If we receive a signed and dated Proxy Card and the Proxy Card does not specify how your shares are to be voted, your shares will be voted “For” the election of each of the three nominees for director, “For” the ratification of the appointment of Deloitte as our independent registered public accounting firm, “For” the approval of the non-binding advisory resolution to approve the compensation of our named executive officers, “For” the Reverse Stock Split Proposal, “For” the Exculpation Amendment, “For” the SEPA Matters Proposal, and “For” an amendment to our Amended and Restated 2020 Incentive Plan. If any other matter is properly presented at the Annual Meeting, your proxy (one of the individuals named on your Proxy Card) will vote your shares in his or her discretion.

What does it mean if I receive more than one set of materials?

If you receive more than one set of materials, your shares are registered in more than one name or are registered in different accounts. In order to vote all the shares you own, you must either sign and return all of the Proxy Cards or follow the instructions for any alternative voting procedure on each of the Proxy Cards.

Can I change my vote after submitting my proxy?

Yes. You can revoke your proxy at any time before the final vote at the Annual Meeting. If you are the record holder of your shares, you may revoke your proxy in any one of three ways:

- You may submit another properly completed proxy with a later date.
- You may send a written notice that you are revoking your proxy to our Investor Relations Department at 3920 Park Avenue, Edison, New Jersey 08820, 312-445-2870 or email ir@eose.com.
- You may attend the virtual Annual Meeting through online presence and vote online. Simply attending the Annual Meeting will not, by itself, revoke your prior proxy.

If your shares are held by your broker, bank or other agent, you should follow the instructions provided by them.

When are stockholder proposals due for next year's Annual Meeting?

If you wish to submit a stockholder proposal pursuant to Rule 14a-8 of the Securities Exchange Act to be considered for inclusion in next year's proxy materials, your proposal must be submitted in writing by November 28, 2023 to Eos Energy Enterprises Inc., c/o Laura Ellis, 3920 Park Avenue, Edison, New Jersey 08820, or email at ir@eose.com.

Pursuant to our Second Amended and Restated Bylaws, in order for a stockholder to present a proposal at the annual meeting, other than 14a-8 proposals to be included in the Proxy Statement as described above, or to nominate a director, you must give timely notice thereof in writing to the Secretary at Eos Energy Enterprises Inc., 3920 Park Avenue, Edison, New Jersey 08820, which must be received between January 17, 2024 and February 16, 2024; *provided* that if the date of the 2024 annual meeting is more than 30 days before or more than 60 days after May 16, 2024, notice must be received no earlier than 120 days prior to such annual meeting and no later than the later of the 90th day prior to the annual meeting date or the 10th day following the day on which public announcement of the 2024 annual meeting date is first made by the Company. You are also advised to review our Second Amended and Restated Bylaws, which contain additional requirements about advance notice of stockholder proposals and director nominations.

In addition to satisfying the foregoing requirements, including the timing and other requirements, under the Company's Second Amended and Restated Bylaws, to comply with the universal proxy rules, stockholders who intend to solicit proxies in support of director nominees other than the Company's nominees for the 2024 Annual Meeting of Stockholders must also provide notice to our Secretary that sets forth all information required by Rule 14a-19 under the Exchange Act, and such notice must be received no later than March 17, 2024. A shareholder seeking to utilize the universal proxy rules must comply with those rules and must also comply with the Company's Second Amended and Restated Bylaws, including the obligation to provide timely notice as described above.

What is the quorum requirement?

A quorum of stockholders is necessary to hold a valid meeting. A quorum will be present if the holders of a majority in voting power of the shares of common stock issued and outstanding and entitled to vote are present online at the virtual Annual Meeting represented by proxy. Your shares will be counted towards the quorum only if you submit a valid proxy or vote at the Annual Meeting. If there is no quorum, either the chair of the Annual Meeting or a majority in voting power of the stockholders entitled to vote at the Annual Meeting, present online or represented by proxy, may adjourn the Annual Meeting to another time or place.

How can I find out the results of the voting at the Annual Meeting?

Voting results will be announced by the filing of a Current Report on Form 8-K within four business days after the Annual Meeting.

Who can help answer my questions?

If you have questions about this Proxy Statement or if you need additional copies of the proxy materials, you should contact our Investor Relations department at 312-445-2870 or ir@eose.com. To obtain timely delivery, our stockholders must request the materials on or before April 29, 2023 to facilitate timely delivery.

Who will solicit and pay the cost of soliciting proxies?

Eos will pay the cost of soliciting proxies for the general meeting. Eos will reimburse banks, brokers and other custodians, nominees and fiduciaries representing beneficial owners of ordinary shares for their expenses in forwarding soliciting materials to beneficial owners of ordinary shares and in obtaining voting instructions from those owners. Our directors, officers and employees may also solicit proxies by telephone, mail, on the Internet or at the Annual Meeting. They will not be paid any additional amounts for soliciting proxies. In addition, we have retained Morrow Sodali to act as a proxy solicitor in conjunction with the Annual Meeting. We have agreed to pay that firm \$12,500, plus reasonable out-of-pocket expenses, for proxy solicitation services.

How do I attend the Annual Meeting?

In light of on-going developments related to coronavirus (COVID-19) and after careful consideration, our Board has determined to hold a virtual-only annual meeting in order to protect the health and safety of our stockholders, management, directors and our community.

You may attend the Annual Meeting live via the Internet at www.virtualshareholdermeeting.com/EOSE2023. Stockholders will need the 16-digit control number provided on their proxy card, voting instruction form or notice. We suggest you log in at least 15 minutes before the start of the meeting.

Can I ask questions at the Annual Meeting?

Stockholders as of our record date will have an opportunity to submit questions live via the Internet during the meeting.

How to Participate in the Annual Meeting	Online: 1. Visit www.virtualshareholdermeeting.com/EOSE2023; and
	2. Enter the 16 digit control number included on your Notice Regarding the Availability of Proxy Materials (“Notice”), on your Proxy Card (if you received a printed copy of the proxy materials), or on the instructions that accompanied your proxy materials. You may begin to log into the meeting platform beginning at 9:45 a.m. Eastern Time on May 16, 2023. The meeting will begin promptly at 10:00 a.m. Eastern Time.

EOS ENERGY ENTERPRISES, INC.
 3920 PARK AVENUE
 EDISON, NEW JERSEY 08820



VOTE BY INTERNET

Before The Meeting - Go to www.proxyvote.com or scan the QR Barcode above

Use the Internet to transmit your voting instructions and for electronic delivery of information up until 11:59 p.m. Eastern Daylight Time on May 15, 2023. Have your proxy card in hand when you access the web site and follow the instructions to obtain your records and to create an electronic voting instruction form.

During The Meeting - Go to www.virtualshareholdermeeting.com/EOSE2023

You may attend the meeting via the Internet and vote during the meeting. Have the information that is printed in the box marked by the arrow available and follow the instructions.

VOTE BY PHONE - 1-800-690-6903

Use any touch-tone telephone to transmit your voting instructions up until 11:59 p.m. Eastern Daylight Time on May 15, 2023. Have your proxy card in hand when you call and then follow the instructions.

VOTE BY MAIL

Mark, sign and date your proxy card and return it in the postage-paid envelope we have provided or return it to Vote Processing, c/o Broadridge, 51 Mercedes Way, Edgewood, NY 11717.

TO VOTE, MARK BLOCKS BELOW IN BLUE OR BLACK INK AS FOLLOWS:

V04354-P8B933

KEEP THIS PORTION FOR YOUR RECORDS
 DETACH AND RETURN THIS PORTION ONLY

THIS PROXY CARD IS VALID ONLY WHEN SIGNED AND DATED.

EOS ENERGY ENTERPRISES, INC.

The Board of Directors recommends you vote FOR the following:

1. Election of Directors

Nominees:

- O1) Russell Stidolph
- O2) Jeff Bomstein
- O3) Claude Demby

For All Withhold All For All Except

To withhold authority to vote for any individual nominee(s), mark "For All Except" and write the number(s) of the nominee(s) on the line below.

The Board of Directors recommends you vote FOR proposals 2-7.

- 2. Ratification of selection of Deloitte & Touche LLP as our independent registered public accounting firm for fiscal year ending December 31, 2023.
- 3. Non-binding advisory vote to approve our named executive officer compensation.
- 4. Approval of grant to the Board of Directors the discretionary authority to effect a reverse stock split to the Company's common stock.
- 5. Amendment to our certificate of incorporation to update the exculpation provision.
- 6. Approval, in accordance with NASDAQ marketplace Rule 5635 (D), of the SEPA Matters.
- 7. Amendment to our Amended and Restated 2020 Equity Compensation Plan.

For Against Abstain

NOTE: In their discretion, the proxies are authorized to vote on such other business as may properly come before the meeting or any adjournment thereof.

You may attend the meeting and vote during the meeting when the polls are open via the Internet. We recommend, however, that you vote before the meeting even if you plan to participate in the meeting. When voting, have the information that is printed in the box marked by the arrow and follow instructions.

Please sign exactly as your name(s) appear(s) hereon. When signing as attorney, executor, administrator, or other fiduciary, please give full title as such. Joint owners should each sign personally. All holders must sign. If a corporation or partnership, please sign in full corporate or partnership name by authorized officer.

 Signature [PLEASE SIGN WITHIN BOX] Date

 Signature (Joint Owners) Date

Important Notice Regarding the Availability of Proxy Materials for the Annual Meeting:

The Annual Report and Proxy Statement are available at www.proxyvote.com.

V04355-P88933

**Eos Energy Enterprises, Inc.
Annual Meeting of Stockholders
May 16, 2023 10:00 AM EDT
This proxy is solicited by the Board of Directors**

The stockholder(s) hereby appoint(s) Melissa Berube and Laura Ellis, or each of them, as proxies, each with the power to appoint (his/her) substitute, and hereby authorize(s) them to represent and to vote, as designated on the reverse side of this ballot, all of the shares of Common stock of EOS ENERGY ENTERPRISES, INC., that the stockholder(s) is/are entitled to vote at the Annual Meeting of Stockholders to be held at 10:00 AM EDT on May 16, 2023, via a live webcast at www.virtualshareholdermeeting.com/EQSE2023, and any adjournment or postponement thereof.

This proxy, when properly executed, will be voted in the manner directed herein. If no such direction is made, this proxy will be voted in accordance with the Board of Directors' recommendations.

Continued and to be signed on reverse side

APPENDIX A

EOS ENERGY ENTERPRISES, INC.

**CERTIFICATE OF AMENDMENT TO THE
[] AMENDED AND RESTATED CERTIFICATE OF INCORPORATION**

Pursuant to the provisions of § 242 of the General Corporation Law of the State of Delaware

FIRST: The present name of the corporation is Eos Energy Enterprises, Inc., a Delaware corporation (the “**Corporation**”). The original certificate of incorporation of the Corporation was filed with the Secretary of State of the State of Delaware on June 3, 2019 (the “**Original Certificate**”). An Amended and Restated Certificate of Incorporation (the “**Amended and Restated Certificate**”) was filed with the Secretary of State of the State of Delaware on February 4, 2020. A Second Amended and Restated Certificate of Incorporation (the “**Second Amended and Restated Certificate**”) was filed with the Secretary of State of the State of Delaware on May 19, 2020. A Third Amended and Restated Certificate of Incorporation (the “**Third Amended and Restated Certificate**”) was filed with the Secretary of State of the State of Delaware on November 16, 2020. A certificate of amendment to the Third Amended and Restated Certificate was filed with the Secretary of State of the State of Delaware on June 28, 2022.

SECOND: Section 4.1(b) of Article IV of the Company’s [] Amended and Restated Certificate is hereby amended to read in its entirety as set forth below:

(b) The total number of shares of all classes of capital stock, each with a par value of \$0.0001 per share, which the Corporation is authorized to issue is 301,000,000 shares, consisting of (a) 300,000,000 shares of common stock (the “Common Stock”) and (b) 1,000,000 shares of preferred stock (the “Preferred Stock”).

Effective at 5:00 p.m. Eastern Time on _____, 20__, the date of filing with the Secretary of State of the State of Delaware (such time, on such date, the “Effective Time”) of this [] Certificate of Amendment to the Certificate of Incorporation of the Corporation, every [] shares of the Corporation’s issued and outstanding Common Stock, par value \$0.0001 per share, that are issued and outstanding immediately prior to the Effective Time (“Old Common Stock”) shall, automatically and without any further action on the part of the Corporation or the holder thereof, be combined into one (1) validly issued, fully paid and non-assessable share of the Corporation’s Common Stock, par value \$0.0001 per share, subject to the treatment of fractional interests as described below (the “Reverse Stock Split”). No fractional share shall be issued in connection with the Reverse Stock Split. The Corporation shall issue and deliver one full share of post-Reverse Stock Split Common Stock or Preferred Stock to any stockholder (other than with respect to shares held by the Corporation as treasury stock) who would have been entitled to receive a fractional share of Common Stock or Preferred Stock, respectively, as a result of the Reverse Stock Split, in lieu of receiving such fractional share. The Reverse Stock Split shall occur whether or not any certificates representing such shares are surrendered to the Corporation or its transfer agent.

THIRD: The foregoing amendment has been duly proposed and declared advisable by the Corporation’s Board of Directors and adopted by the Corporation’s stockholders in accordance with the provisions of Sections 222 and 242 of the General Corporation Law of the State of Delaware.

FOURTH: This Certificate of Amendment shall become effective as of upon the filing of this Amended and Restated Certificate of Incorporation with the Secretary of State of the State of Delaware.

* * * * *

IN WITNESS WHEREOF, the Corporation has caused this Certificate of Amendment to be signed by an authorized officer of the Corporation this _____ day of _____, 20__.

By: _____
Name: Melissa Berube
Title: Authorized Officer

APPENDIX B

EOS ENERGY ENTERPRISES, INC.

**CERTIFICATE OF AMENDMENT TO THE
THIRD AMENDED AND RESTATED CERTIFICATE OF INCORPORATION**

Pursuant to the provisions of § 242 of the General Corporation Law of the State of Delaware

FIRST: The present name of the corporation is Eos Energy Enterprises, Inc., a Delaware corporation (the “**Corporation**”). The original certificate of incorporation of the Corporation was filed with the Secretary of State of the State of Delaware on June 3, 2019 (the “**Original Certificate**”). An Amended and Restated Certificate of Incorporation (the “**Amended and Restated Certificate**”) was filed with the Secretary of State of the State of Delaware on February 4, 2020. A Second Amended and Restated Certificate of Incorporation (the “**Second Amended and Restated Certificate**”) was filed with the Secretary of State of the State of Delaware on May 19, 2020. A Third Amended and Restated Certificate of Incorporation (the “**Third Amended and Restated Certificate**”) was filed with the Secretary of State of the State of Delaware on November 16, 2020. A certificate of amendment to the Third Amended and Restated Certificate was filed with the Secretary of State of the State of Delaware on June 28, 2022.

SECOND: Section 8.1 of Article VIII of the Company’s Third Amended and Restated Certificate is hereby amended to read in its entirety as set forth below:

Section 8.1 Limitation of Personal Liability. To the full extent permitted by the DGCL and any other applicable law currently or hereafter in effect, a director or officer of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director or officer. Any amendment, modification or repeal of the foregoing sentence shall not adversely affect any right or protection of a director or officer of the Corporation hereunder in respect of any act or omission occurring prior to the time of such amendment, modification or repeal.

THIRD: The foregoing amendment has been duly proposed and declared advisable by the Corporation’s Board of Directors and adopted by the Corporation’s stockholders in accordance with the provisions of Sections 222 and 242 of the General Corporation Law of the State of Delaware.

FOURTH: This Certificate of Amendment shall become effective as of upon the filing of this Amended and Restated Certificate of Incorporation with the Secretary of State of the State of Delaware.

* * * * *

IN WITNESS WHEREOF, the Corporation has caused this Certificate of Amendment to be signed by an authorized officer of the Corporation this day of , 20 .

By: _____
Name: Melissa Berube
Title: Authorized Officer

APPENDIX C

SECOND AMENDMENT TO THE EOS ENERGY ENTERPRISES, INC. AMENDED AND RESTATED 2020 INCENTIVE PLAN

This Second Amendment (the "Amendment") to the Eos Energy Enterprises, Inc. Amended and Restated 2020 Incentive Plan (as amended or restated from time to time, the "Plan") is approved and adopted to be effective as of _____, 2023, (the "Effective Date").

RECITALS

A. The stockholders of Eos Enterprises, Inc., a Delaware corporation (the "Company") approved the Amendment effective as of _____, 2023.

B. The Company now desires to amend the Plan in accordance with the terms and conditions of this Amendment.

AMENDMENT

NOW THEREFORE, effective as of the Effective Date, Sections 5(b) and Section 7(a) of the Plan are hereby deleted in their entirety and restated as follows:

5. Grant of Awards; Shares Subject to the Plan; Limitations.

(b) Subject to Section 12 of the Plan and this Section 5, Awards granted under the Plan shall be subject to the following limitations: (i) the Committee is authorized to deliver under the Plan an aggregate of 17,035,887 Common Stock; provided, that the maximum number of Common Stock that may be granted under the Plan during any single fiscal year to any Participant who is a non-employee director, when taken together with any cash fees paid to such non-employee director during such year in respect of his service as a non-employee director (including service as a member or chair of any committee of the Board), shall not exceed \$500,000 in total value (calculating the value of any such Awards based on the Fair Market Value on the Date of Grant of such Awards for financial reporting purposes); provided that the non-employee directors who are considered independent (under the rules of The Nasdaq Capital Market or other securities exchange on which the Common Stock is traded) may make exceptions to this limit for a non-executive chair of the Board, if any, in which case the non-employee director receiving such additional compensation may not participate in the decision to award such compensation.

7. Options.

(a) Generally. Each Option granted under the Plan shall be evidenced by an Award Agreement (whether in paper or electronic medium (including email or the posting on a web site maintained by the Company or a third party under contract with the Company)). Each Option so granted shall be subject to the conditions set forth in this Section 7 and to such other conditions not inconsistent with the Plan as may be reflected in the applicable Award Agreement. All Options granted under the Plan shall be Nonqualified Stock Options unless the applicable Award Agreement expressly states that the Option is intended to be an Incentive Stock Option. Subject to Section 12, the maximum aggregate number of Common Stock that may be issued through the exercise of Incentive Stock Options granted under the Plan is 16,000,000 Common Stock. Incentive Stock Options shall be granted only to Eligible Persons who are employees of the Company and its Affiliates, and no Incentive Stock Option shall be granted to any Eligible Person who is ineligible to receive an Incentive Stock Option under the Code. No Option shall be treated as an Incentive Stock Option unless the Plan has been approved by the stockholder of the Company in a manner intended to comply with the stockholder approval requirements of Section 422(b)(1) of the Code; provided that any Option intended to be an Incentive Stock Option shall not fail to be effective solely on account of a failure to obtain such approval, but rather such Option shall be treated as a Nonqualified Stock Option unless and until such approval is obtained. In the case of an Incentive Stock Option, the terms and conditions of such grant shall

be subject to and comply with such rules as may be prescribed by Section 422 of the Code. If for any reason an Option intended to be an Incentive Stock Option (or any portion thereof) shall not qualify as an Incentive Stock Option, then, to the extent of such nonqualification, such Option or portion thereof shall be regarded as a Nonqualified Stock Option appropriately granted under the Plan.

IN WITNESS WHEREOF, the Company has executed this Amendment to the Plan as of _____, 2023.

EOS ENERGY ENTERPRISES, INC.

/s/Melissa Berube
Melissa Berube
General Counsel and Corporate Secretary

APPENDIX D

EOS ENERGY ENTERPRISES, INC. AMENDED AND RESTATED 2020 INCENTIVE PLAN

1. Establishment of the Plan; Effective Date; Duration.

(a) Establishment of the Plan; Effective Date. Eos Energy Enterprises, Inc. (f/k/a B. Riley Principal Merger Corp. II), a Delaware corporation (the “Company”), hereby establishes this incentive compensation plan to be known as the “Eos Energy Enterprises, Inc. Amended and Restated 2020 Incentive Plan”, as amended from time to time (the “Plan”). The Plan permits the grant of Incentive Stock Options, Nonqualified Stock Options, Stock Appreciation Rights, Restricted Stock, Restricted Stock Units, Other Stock-Based Awards, Other Cash-Based Awards and Dividend Equivalents. If the Plan is not so approved by the stockholders of the Company, then the Plan will be null and void in its entirety. The Plan shall remain in effect as provided in Section 1(b) of the Plan. Capitalized but undefined terms shall have the meaning set forth in Section 3 of the Plan.

(b) Duration of the Plan. The Plan shall commence on the Effective Date and shall remain in effect, subject to the right of the Board to amend or terminate the Plan at any time pursuant to Section 13. However, in no event may an Award be granted under the Plan on or after ten years from the Effective Date.

2. Purpose. The purpose of the Plan is to provide a means through which the Company and its Affiliates may attract and retain key personnel and to provide a means whereby certain directors, officers, employees, consultants and advisors (and certain prospective directors, officers, employees, consultants, and advisors) of the Company and its Affiliates can acquire and maintain an equity interest in the Company, or be paid incentive compensation, which may be measured by reference to the value of Common Stock, thereby strengthening their commitment to the welfare of the Company and its Affiliates and aligning their interests with those of the Company’s stockholders.

3. Definitions. Certain terms used herein have the definitions given to them in the first instance in which they are used. In addition, for purposes of the Plan, the following terms are defined as set forth below:

(a) “Affiliate” means (i) any person or entity that directly or indirectly controls, is controlled by or is under common control with the Company and/or (ii) to the extent provided by the Committee, any person or entity in which the Company has a significant interest. The term “control” (including, with correlative meaning, the terms “controlled by” and “under common control with”), as applied to any person or entity, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such person or entity, whether through the ownership of voting or other securities, by contract or otherwise.

(b) “Applicable Laws” means the requirements relating to the administration of equity incentive plans under U.S. federal and state securities, tax and other applicable laws, rules and regulations, the applicable rules of any stock exchange or quotation system on which the Common Stock are listed or quoted, and the applicable laws and rules of any foreign country or other jurisdiction where Awards are granted, as are in effect from time to time.

(c) “*Award*” means, individually or collectively, any Incentive Stock Option, Nonqualified Stock Option, Stock Appreciation Right, Restricted Stock, Restricted Stock Unit, Other Stock-Based Awards, Other Cash-Based Awards, and/or Dividend Equivalents, granted under the Plan.

(d) “*Award Agreement*” means a written agreement between a Participant and the Company which sets out the terms of the grant of an Award.

(e) “*Board*” means the Board of Directors of the Company.

(f) “*Cause*” means, in the case of a particular Award, unless the applicable Award Agreement states otherwise, (i) the Company or an Affiliate having “cause” to terminate a Participant’s employment or service, as defined in any employment or consulting or similar agreement between the Participant and the Company or an Affiliate in effect at the time of such termination, or (ii) in the absence of any such employment or consulting or similar agreement (or the absence of any definition of “Cause” contained therein), a Participant’s (A) conviction of, or the entry of a plea of guilty or no contest to, a felony or any other crime that causes the Company or its Affiliates public disgrace or disrepute, or materially and adversely affects the Company’s or its Affiliates’ operations or financial performance or the relationship the Company has with its customers; (B) gross negligence or willful misconduct with respect to the Company or any of its Affiliates, including, without limitation, fraud, embezzlement, theft or proven dishonesty in the course of his employment or other service to the Company or an Affiliate; (C) alcohol abuse or use of controlled substances other than in accordance with a physician’s prescription; (D) refusal to perform any lawful, material obligation or fulfill any duty (other than any duty or obligation of the type described in clause (F) below) to the Company or its Affiliates (other than due to a disability, as determined by the Committee), which refusal, if curable, is not cured within 15 days after delivery of written notice thereof; (E) material breach of any agreement with or duty owed to the Company or any of its Affiliates, which breach, if curable, is not cured within 15 days after the delivery of written notice thereof; or (F) any breach of any obligation or duty to the Company or any of its Affiliates (whether arising by statute, common law or agreement) relating to confidentiality, noncompetition, nonsolicitation and/or proprietary rights.

(g) “*Change in Control*” shall, in the case of a particular Award, unless the applicable Award Agreement states otherwise or contains a different definition of “Change in Control,” be deemed to occur upon any of the following events:

(i) any “person” as such term is used in Sections 13(d) and 14(d) of the Exchange Act (other than (A) the Company or any of its Affiliates, (B) any trustee or other fiduciary holding securities under any employee benefit plan of the Company or any of its Affiliates, (C) an underwriter temporarily holding securities pursuant to an offering of such securities, or (D) an entity owned, directly or indirectly, by the stockholders of the Company in substantially the same proportions as their ownership of Common Stock) becomes the “beneficial owner” (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, by way of merger, consolidation, recapitalization, reorganization or otherwise, of fifty percent (50%) or more of the total voting power of the then outstanding voting securities of the Company;

(ii) the cessation of control (by virtue of their not constituting a majority of directors) of the Board by the individuals (the “*Continuing Directors*”) who (x) were directors on the Effective Date or (y) become directors after Effective Date and whose election or nomination for election by the Company’s stockholders was approved by a vote of at least two-thirds of the directors then in office who were directors on the Effective Date or whose election or nomination for election was previously so approved;

(iii) the consummation of a merger or consolidation of the Company with any other company, other than a merger or consolidation which would result in the voting securities of the Company outstanding

immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity) at least fifty percent (50%) of the total voting power represented by the voting securities of the Company or such surviving entity outstanding immediately after such merger or consolidation;

(iv) the consummation of a plan of complete liquidation of the Company or the sale or disposition by the Company of all or substantially all the Company's assets; or

(v) any other event specified as a "Change in Control" in an applicable Award Agreement.

Notwithstanding the foregoing, if a Change in Control constitutes a payment event with respect to any Award (or any portion of an Award) that provides for the deferral of compensation that is subject to Section 409A of the Code, to the extent required to avoid the imposition of additional taxes under Section 409A of the Code, the transaction or event described in subsection (i), (ii), (iii), (iv), or (v) with respect to such Award (or portion thereof) shall only constitute a Change in Control for purposes of the payment timing of such Award if such transaction also constitutes a "change in control event," as defined in Treasury Regulation Section 1.409A-3(i)(5).

(h) "Claim" means any claim, liability or obligation of any nature, arising out of or relating to the Plan or an alleged breach of the Plan or an Award Agreement.

(i) "Code" means the Internal Revenue Code of 1986, as amended, and any successor thereto. Reference in the Plan to any section of the Code shall be deemed to include any regulations or other interpretative guidance under such section, and any amendments or successor provisions to such section, regulations or guidance.

(j) "Committee" means a committee of at least two people as the Board may appoint to administer the Plan or, if no such committee has been appointed by the Board, the Board.

(k) "Common Stock" means the Class A common stock of the Company, par value \$0.0001 per share.

(l) "Company" means Eos Energy Enterprises, Inc. (f/k/a B. Riley Principal Merger Corp. II), a Delaware corporation.

(m) "Date of Grant" means the date on which the granting of an Award is authorized, or such other date as may be specified in such authorization or applicable Award Agreement.

(n) "Dividend Equivalent" means a right awarded under Section 11 to receive the equivalent value (in cash or Common Stock) of ordinary dividends that would otherwise be paid on the Common Stock subject to an Award that is a full-value award but that have not been issued or delivered.

(o) "Effective Date" means November 16, 2020.

(p) "Eligible Director" means a person who is a "non-employee director" within the meaning of Rule 16b-3 under the Exchange Act.

(q) "Eligible Person" with respect to an Award denominated in Common Stock, means any (i) individual employed by the Company or an Affiliate; (ii) director of the Company or an Affiliate; (iii) consultant or advisor to the Company or an Affiliate; provided, that, if the Securities Act applies, such persons must be eligible to be offered securities registrable on Form S-8 under the Securities Act; or (iv) prospective employees, directors, officers, consultants or advisors who have accepted offers of employment or consultancy from the Company or its Affiliates (and would satisfy the provisions of clauses (i) through (iii) above once he or she begins employment with or begins providing services to the Company or its Affiliates, provided, that, the Date of Grant of any Award to such

individual shall not be prior to the date he begins employment with or begins providing services to the Company or its Affiliates).

(r) “Exchange Act” means the U.S. Securities Exchange Act of 1934, as it may be amended from time to time, including the rules and regulations promulgated thereunder and successor provisions and rules and regulations thereto.

(s) “Exercise Price” has the meaning given such term in Section 7(b) of the Plan.

(t) “Fair Market Value” means, as of any date, the value of Common Stock determined as follows:

(i) If the Common Stock are listed on any established stock exchange or a national market system, the closing sales price for such shares (or the closing bid, if no sales were reported) as quoted on such exchange or system on the day of determination, as reported in *The Wall Street Journal* or such other source as the Committee deems reliable;

(ii) If the Common Stock are regularly quoted by a recognized securities dealer but selling prices are not reported, the Fair Market Value of a Common Share will be the mean between the high bid and low asked prices for the Common Stock on the day of determination, as reported in *The Wall Street Journal* or such other source as the Committee deems reliable; or

(iii) In the absence of an established market for the Common Stock, the Fair Market Value will be determined in good faith by the Committee (acting on the advice of an Independent Third Party, should the Committee elect in its sole discretion to utilize an Independent Third Party for this purpose).

(iv) Notwithstanding the foregoing, the determination of Fair Market Value in all cases shall be in accordance with the requirements set forth under Section 409A of the Code to the extent necessary for an Award to comply with, or be exempt from, Section 409A of the Code.

(u) “Immediate Family Members” shall have the meaning set forth in Section 14(b)(ii).

(v) “Incentive Stock Option” means an Option that is designated by the Committee as an incentive stock option as described in Section 422 of the Code and otherwise meets the requirements set forth in the Plan for incentive stock options.

(w) “Indemnifiable Person” shall have the meaning set forth in Section 4(e) of the Plan.

(x) “Independent Third Party” means an individual or entity independent of the Company having experience in providing investment banking or similar appraisal or valuation services and with expertise generally in the valuation of securities or other property for purposes of this Plan. The Committee may utilize one or more Independent Third Parties.

(y) “Mature Shares” means Common Stock owned by a Participant that are not subject to any pledge or security interest and that have been either previously acquired by the Participant on the open market or meet such other requirements, if any, as the Committee may determine are necessary in order to avoid an accounting earnings charge on account of the use of such shares to pay the Exercise Price or satisfy a tax or deduction obligation of the Participant.

(z) “Nonqualified Stock Option” means an Option that is not designated by the Committee as an Incentive Stock Option.

(aa) “Option” means an Award granted under Section 7 of the Plan.

- (ab) “Option Period” has the meaning given such term in Section 7(c) of the Plan.
- (ac) “Other Cash-Based Award” means a cash Award granted to a Participant under Section 10 of the Plan, including cash awarded as a bonus or upon the attainment of performance goals or otherwise as permitted under the Plan.
- (ad) “Other Stock-Based Award” means an equity-based or equity-related Award, other than an Option, SAR, Restricted Stock, Restricted Stock Unit or Dividend Equivalent, granted in accordance with the terms and conditions set forth under Section 10 of the Plan (including upon the attainment of any performance goals or otherwise as permitted under the Plan).
- (ae) “Participant” means an Eligible Person who has been selected by the Committee to participate in the Plan and to receive an Award pursuant to Section 6 of the Plan.
- (af) “Permitted Transferee” shall have the meaning set forth in Section 14(b)(ii) of the Plan.
- (ag) “Person” means any individual, entity or group within the meaning of Section 13(d)(3) or 14(d)(2) of the Exchange Act.
- (ah) “Plan” means this Eos Energy Enterprises, Inc. Amended and Restated 2020 Incentive Plan, as amended from time to time.
- (ai) “Restricted Period” means the period of time determined by the Committee during which an Award is subject to restrictions or, as applicable, the period of time within which performance is measured for purposes of determining whether an Award has been earned.
- (aj) “Restricted Stock Unit” means an unfunded and unsecured promise to deliver Common Stock, cash, other securities or other property, subject to certain performance or time-based restrictions (including, without limitation, a requirement that the Participant remain continuously employed, provide continuous services for a specified period of time, or attain specified performance objectives), granted under Section 9 of the Plan.
- (ak) “Restricted Stock” means Common Stock, subject to certain specified performance or time-based restrictions (including, without limitation, a requirement that the Participant remain continuously employed, provide continuous services for a specified period of time, or attain specified performance objectives), granted under Section 9 of the Plan.
- (al) “SAR Period” has the meaning given such term in Section 8(c) of the Plan.
- (am) “Securities Act” means the Securities Act of 1933, as amended, and any successor thereto. Reference in the Plan to any section of the Securities Act shall be deemed to include any rules, regulations or other interpretative guidance under such section, and any amendments or successor provisions to such section, rules, regulations or guidance.
- (an) “Stock Appreciation Right” or “SAR” means an Award granted under Section 8 of the Plan.
- (ao) “Strike Price” means, except as otherwise provided by the Committee in the case of Substitute Awards, (i) in the case of a SAR granted in tandem with an Option, the Exercise Price of the related Option, or (ii) in the case of a SAR granted independent of an Option, the Fair Market Value on the Date of Grant.

(ap) “Subsidiary” means, with respect to any specified Person:

(i) any corporation, association or other business entity of which more than 50% of the total voting power of shares (without regard to the occurrence of any contingency and after giving effect to any voting agreement or stockholders’ agreement that effectively transfers voting power) is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person (or a combination thereof); and

(ii) any partnership (or any comparable foreign entity (A) the sole general partner (or functional equivalent thereof) or the managing general partner of which is such Person or Subsidiary of such Person or (B) the only general partners (or functional equivalents thereof) of which are that Person or one or more Subsidiaries of that Person (or any combination thereof).

(aq) “Substitute Award” has the meaning given such term in Section 5(e).

4. Administration.

(a) The Committee shall administer the Plan. To the extent required to comply with the provisions of Rule 16b-3 promulgated under the Exchange Act (if the Board is not acting as the Committee under the Plan), it is intended that each member of the Committee shall, at the time he takes any action with respect to an Award under the Plan, be an Eligible Director. However, the fact that a Committee member shall fail to qualify as an Eligible Director shall not invalidate any Award granted by the Committee that is otherwise validly granted under the Plan.

(b) Subject to the provisions of the Plan and Applicable Law, the Committee shall have the sole and plenary authority, in addition to other express powers and authorizations conferred on the Committee by the Plan, to: (i) designate Participants; (ii) determine the type or types of Awards to be granted to a Participant; (iii) determine the number of Common Stock to be covered by, or with respect to which payments, rights, or other matters are to be calculated in connection with, Awards; (iv) determine the terms and conditions of any Award (including any performance goals, criteria, and/or periods applicable to Awards); (v) determine whether, to what extent, and under what circumstances Awards may be settled or exercised in cash, Common Stock, other securities, other Awards or other property, or canceled, forfeited, or suspended and the method or methods by which Awards may be settled, exercised, canceled, forfeited, or suspended; (vi) determine whether, to what extent, and under what circumstances the delivery of cash, Common Stock, other securities, other Awards or other property and other amounts payable with respect to an Award shall be deferred either automatically or at the election of the Participant or of the Committee; (vii) interpret, administer, reconcile any inconsistency in, correct any defect in and/or supply any omission in the Plan and any instrument or agreement relating to, or Award granted under, the Plan, including any changes required to comply with Applicable Laws; (viii) establish, amend, suspend, or waive any rules and regulations and appoint such agents as the Committee shall deem appropriate for the proper administration of the Plan; (ix) accelerate the vesting or exercisability of, payment for or lapse of restrictions on, Awards; (x) modify any performance goals, criteria and/or periods; and (y) make any other determination and take any other action that the Committee deems necessary or desirable for the administration of the Plan, in each case, to the extent consistent with the terms of the Plan.

(c) The Committee may delegate to one or more officers of the Company or any Affiliate the authority to act on behalf of the Committee with respect to any matter, right, obligation, or election that is the responsibility of or that is allocated to the Committee herein, and that may be so delegated as a matter of law, except for grants of Awards to persons subject to Section 16 of the Exchange Act.

(d) Unless otherwise expressly provided in the Plan, all designations, determinations, interpretations, and other decisions under or with respect to the Plan or any Award or any documents evidencing Awards granted pursuant to the Plan shall be within the sole discretion of the Committee, may be made at any time and shall be final,

conclusive and binding upon all persons or entities, including, without limitation, the Company, any Affiliate, any Participant, any holder or beneficiary of any Award, and any stockholder of the Company.

(e) No member of the Board, the Committee, delegate of the Committee or any employee or agent of the Company (each such person, an “Indemnifiable Person”) shall be liable for any action taken or omitted to be taken or any determination made in good faith with respect to the Plan or any Award hereunder. Each Indemnifiable Person shall be indemnified and held harmless by the Company against and from any loss, cost, liability, or expense (including attorneys’ fees) that may be imposed upon or incurred by such Indemnifiable Person in connection with or resulting from any action, suit or proceeding to which such Indemnifiable Person may be a party or in which such Indemnifiable Person may be involved by reason of any action taken or omitted to be taken under the Plan or any Award Agreement and against and from any and all amounts paid by such Indemnifiable Person with the Company’s approval, in settlement thereof, or paid by such Indemnifiable Person in satisfaction of any judgment in any such action, suit or proceeding against such Indemnifiable Person, provided that the Company shall have the right, at its own expense, to assume and defend any such action, suit or proceeding and once the Company gives notice of its intent to assume the defense, the Company shall have sole control over such defense with counsel of the Company’s choice. The foregoing right of indemnification shall not be available to an Indemnifiable Person to the extent that a final judgment or other final adjudication (in either case not subject to further appeal) binding upon such Indemnifiable Person determines that the acts or omissions of such Indemnifiable Person giving rise to the indemnification claim resulted from such Indemnifiable Person’s bad faith, fraud or willful criminal act or omission or that such right of indemnification is otherwise prohibited by law or by the Company’s Articles of Incorporation or Bylaws. The foregoing right of indemnification shall not be exclusive of any other rights of indemnification to which such Indemnifiable Persons may be entitled under the Company’s Articles of Incorporation or Bylaws, as a matter of law, or otherwise, or any other power that the Company may have to indemnify such Indemnifiable Persons or hold them harmless.

(f) Notwithstanding anything to the contrary contained in the Plan, the Board may, in its sole discretion, at any time and from time to time, grant Awards and administer the Plan with respect to such Awards. In any such case, the Board shall have all the authority granted to the Committee under the Plan.

5. Grant of Awards; Shares Subject to the Plan; Limitations.

(a) The Committee may, from time to time, grant Awards to one or more Eligible Persons.

(b) Subject to Section 12 of the Plan and this Section 5, Awards granted under the Plan shall be subject to the following limitations: (i) the Committee is authorized to deliver under the Plan an aggregate of ~~9,035,887~~ 17,035,887 Common Stock; provided, that that the maximum number of Common Stock that may be granted under the Plan during any single fiscal year to any Participant who is a non-employee director, when taken together with any cash fees paid to such non-employee director during such year in respect of his service as a non-employee director (including service as a member or chair of any committee of the Board), shall not exceed \$500,000 in total value (calculating the value of any such Awards based on the Fair Market Value on the Date of Grant of such Awards for financial reporting purposes); provided that the non-employee directors who are considered independent (under the rules of The Nasdaq Capital Market or other securities exchange on which the Common Stock is traded) may make exceptions to this limit for a non-executive chair of the Board, if any, in which case the non-employee director receiving such additional compensation may not participate in the decision to award such compensation.

(c) Common Stock underlying Awards under this Plan that are forfeited, canceled, expire unexercised, or are settled in cash shall be available again for issuance as Awards under the Plan. Notwithstanding the foregoing,

Common Stock underlying an Award shall not again be available for issuance under the Plan if such Common Stock are (i) Common Stock tendered or withheld in payment of the exercise price of an Option or other Award, (ii) Common Stock delivered to or withheld by the Company to satisfy any tax withholding liabilities arising from an Award, or (iii) Common Stock covered by a stock-settled Stock Appreciation Right that were not issued upon the settlement of the Stock Appreciation Right.

(d) Common Stock delivered by the Company in settlement of Awards may be authorized and unissued shares, shares held in the treasury of the Company, shares purchased on the open market or by private purchase, or a combination of the foregoing.

(e) Awards may, in the sole discretion of the Committee, be granted under the Plan in assumption of, or in substitution for, outstanding awards previously granted by an entity acquired by the Company or with which the Company combines (“Substitute Awards”). The number of Common Stock underlying any Substitute Awards shall not be counted against the aggregate number of Common Stock available for Awards under the Plan.

(f) Without limiting the generality of the foregoing, in connection with the closing (the “Closing”) of the transactions contemplated by that certain Agreement and Plan of Merger, dated September 7, 2020, by and among the Company, Eos Energy Storage LLC, and the other parties thereto, (x) the board of directors of Eos Energy Storage LLC agreed to assign, and the board of directors of Eos Energy Enterprises Intermediate Holdings LLC (f/k/a New Eos Energy LLC) (“Intermediate”) agreed to assume, the Eos Energy Storage LLC 2012 Equity Incentive Plan (as amended from time to time, the “2012 Plan”), and (y) the board of directors of Intermediate determined to “freeze” the 2012 Plan such that no new awards may be granted under the 2012 Plan. Following such assignment and assumption, (i) the sole member of Intermediate agreed to assign, and the Board agreed to assume, the 2012 Plan, (ii) the Board agreed to amend the 2012 Plan to, among other things, reduce the number of shares available for issuance under the 2012 Plan to 280,403 shares, and (iii) the Board determined to “freeze” the 2012 Plan such that no new awards may be granted under the 2012 Plan. In connection therewith, any shares to be issued under the 2012 Plan in excess of 280,403 shares with respect to awards previously issued under the 2012 Plan prior to the “freeze” of the 2012 Plan shall instead be issued out of the shares reserved for issuance under Section 5(b) of this Plan. Additionally, in the event that any shares with respect to awards previously issued under the 2012 Plan prior to the “freeze” of the 2012 Plan are never issued due to settlement in cash rather than in shares, or due to an award’s forfeiture, cancellation, expiration, or net settlement through the issuance of shares, such shares (A) will no longer be available for future awards under the 2012 Plan, and (B) will instead be added to the shares reserved for issuance under Section 5(b) of this Plan for future awards in accordance with this Plan, as determined by the Committee in its sole discretion. As a result of the foregoing, the issuance of shares under this Plan and under the 2012 Plan will be no greater, in the aggregate, than previously disclosed in the documentation publicly filed by the Company in connection with the Closing.

6. Eligibility. Participation shall be limited to Eligible Persons who have entered into an Award Agreement or who have received written notification from the Committee, or from a person designated by the Committee, that they have been selected to participate in the Plan.

7. Options.

(a) Generally. Each Option granted under the Plan shall be evidenced by an Award Agreement (whether in paper or electronic medium (including email or the posting on a web site maintained by the Company or a third party under contract with the Company)). Each Option so granted shall be subject to the conditions set forth in this Section 7 and to such other conditions not inconsistent with the Plan as may be reflected in the applicable Award Agreement. All Options granted under the Plan shall be Nonqualified Stock Options unless the applicable

Award Agreement expressly states that the Option is intended to be an Incentive Stock Option. Subject to Section 12, the maximum aggregate number of Common Stock that may be issued through the exercise of Incentive Stock Options granted under the Plan is ~~8,000,000~~16,000,000 Common Stock. Incentive Stock Options shall be granted only to Eligible Persons who are employees of the Company and its Affiliates, and no Incentive Stock Option shall be granted to any Eligible Person who is ineligible to receive an Incentive Stock Option under the Code. No Option shall be treated as an Incentive Stock Option unless the Plan has been approved by the stockholder of the Company in a manner intended to comply with the stockholder approval requirements of Section 422(b)(1) of the Code; provided that any Option intended to be an Incentive Stock Option shall not fail to be effective solely on account of a failure to obtain such approval, but rather such Option shall be treated as a Nonqualified Stock Option unless and until such approval is obtained. In the case of an Incentive Stock Option, the terms and conditions of such grant shall be subject to and comply with such rules as may be prescribed by Section 422 of the Code. If for any reason an Option intended to be an Incentive Stock Option (or any portion thereof) shall not qualify as an Incentive Stock Option, then, to the extent of such nonqualification, such Option or portion thereof shall be regarded as a Nonqualified Stock Option appropriately granted under the Plan.

(b) *Exercise Price.* Except with respect to Substitute Awards, the exercise price (“Exercise Price”) per Common Share for each Option shall not be less than 100% of the Fair Market Value of such share determined as of the Date of Grant; provided, however, that in the case of an Incentive Stock Option granted to an employee who, at the time of the grant of such Option, owns shares representing more than 10% of the total combined voting power of all classes of shares of the Company or any related corporation (as determined in accordance with Treasury Regulation Section 1.422-2(f)), the Exercise Price per share shall not be less than 110% of the Fair Market Value per share on the Date of Grant and provided further, that, notwithstanding any provision herein to the contrary, the Exercise Price shall not be less than the par value per Common Share.

(c) *Vesting and Expiration.* Options shall vest and become exercisable in such manner and on such date or dates determined by the Committee (including, if applicable, the attainment of any performance goals, as determined by the Committee in the applicable Award Agreement) and shall expire after such period, not to exceed ten years, as may be determined by the Committee (the “Option Period”); provided, however, that the Option Period shall not exceed five years from the Date of Grant in the case of an Incentive Stock Option granted to a Participant who on the Date of Grant owns shares representing more than 10% of the total combined voting power of all classes of shares of the Company or any related corporation (as determined in accordance with Treasury Regulation Section 1.422-2(f)); provided, further, that notwithstanding any vesting dates set by the Committee, the Committee may, in its sole discretion, accelerate the exercisability of any Option, which acceleration shall not affect the terms and conditions of such Option other than with respect to exercisability. In the event of any termination of employment or service with the Company or its Affiliates thereof of a Participant who has been granted one or more Options, the Options shall be exercisable at the time or times and subject to the terms and conditions set forth in the Award Agreement. If the Option would expire at a time when the exercise of the Option would violate applicable securities laws, the expiration date applicable to the Option will be automatically extended to a date that is 30 calendar days following the date such exercise would no longer violate applicable securities laws (so long as such extension shall not violate Section 409A of the Code); provided, that in no event shall such expiration date be extended beyond the expiration of the Option Period.

(d) *Method of Exercise and Form of Payment.* No Common Stock shall be delivered pursuant to any exercise of an Option until payment in full of the Exercise Price therefor is received by the Company and the Participant has paid to the Company an amount equal to any taxes required to be withheld or paid upon exercise of such Option. Options that have become exercisable may be exercised by delivery of written or electronic notice of exercise to the Company in accordance with the terms of the Option, accompanied by payment of the Exercise Price. The Exercise Price shall be payable (i) in cash, check, cash equivalent and/or Common Stock valued at the Fair Market Value at the time the Option is exercised (including, pursuant to procedures approved by the Committee, by means of attestation of ownership of a sufficient number of Common Stock in lieu of actual delivery of such shares to the Company); provided, that, such Common Stock are not subject to any pledge or other security interest and are Mature Shares; and (ii) by such other method as the Committee may permit in accordance with Applicable Law, in its sole discretion, including without limitation: (A) in other property having a Fair Market Value on the date of exercise equal to the Exercise Price, (B) if there is a public market for the Common Stock at such time, by means of

a broker-assisted “cashless exercise” pursuant to which the Company is delivered a copy of irrevocable instructions to a stockbroker to sell the Common Stock otherwise deliverable upon the exercise of the Option and to deliver promptly to the Company an amount equal to the Exercise Price, or (C) by a “net exercise” method whereby the Company withholds from the delivery of the Common Stock for which the Option was exercised that number of Common Stock having a Fair Market Value equal to the aggregate Exercise Price for the Common Stock for which the Option was exercised. No fractional Common Stock shall be issued or delivered pursuant to the Plan or any Award, and the Committee shall determine whether cash, other securities or other property shall be paid or transferred in lieu of any fractional Common Stock, or whether such fractional Common Stock or any rights thereto shall be canceled, terminated or otherwise eliminated.

(e) Notification upon Disqualifying Disposition of an Incentive Stock Option. Each Participant awarded an Incentive Stock Option under the Plan shall notify the Company in writing immediately after the date he makes a disqualifying disposition of any Common Stock acquired pursuant to the exercise of such Incentive Stock Option. A disqualifying disposition is any disposition (including, without limitation, any sale) of such Common Stock before the later of (i) two years after the Date of Grant of the Incentive Stock Option or (ii) one year after the date of exercise of the Incentive Stock Option. The Company may, if determined by the Committee and in accordance with procedures established by the Committee, retain possession of any Common Stock acquired pursuant to the exercise of an Incentive Stock Option as agent for the applicable Participant until the end of the period described in the preceding sentence.

(f) Compliance With Laws, etc. Notwithstanding the foregoing, in no event shall a Participant be permitted to exercise an Option in a manner that the Committee determines would violate the SarbanesOxley Act of 2002, if applicable; any other Applicable Law; the applicable rules and regulations of the Securities and Exchange Commission; or the applicable rules and regulations of any securities exchange or inter-dealer quotation system on which the securities of the Company are listed or traded.

8. Stock Appreciation Rights.

(a) Generally. Each SAR granted under the Plan shall be evidenced by an Award Agreement (whether in paper or electronic medium (including email or the posting on a web site maintained by the Company or a third party under contract with the Company)). Each SAR so granted shall be subject to the conditions set forth in this Section 8 and to such other conditions not inconsistent with the Plan as may be reflected in the applicable Award Agreement. Any Option granted under the Plan may include tandem SARs. The Committee also may award SARs to Eligible Persons independent of any Option.

(b) Strike Price. The Strike Price per Common Share for each SAR shall not be less than 100% of the Fair Market Value of such share determined as of the Date of Grant.

(c) Vesting and Expiration. A SAR granted in connection with an Option shall become exercisable and shall expire according to the same vesting schedule and expiration provisions as the corresponding Option. A SAR granted independent of an Option shall vest and become exercisable and shall expire in such manner and on such date or dates determined by the Committee (including, if applicable, the attainment of any performance goals, as shall be determined by the Committee in the applicable Award Agreement) and shall expire after such period, not to exceed ten years, as may be determined by the Committee (the “SAR Period”); *provided, however*, that notwithstanding any vesting dates set by the Committee, the Committee may, in its sole discretion, accelerate the exercisability of any SAR, which acceleration shall not affect the terms and conditions of such SAR other than with respect to exercisability. In the event of any termination of employment or service with the Company and its Affiliates thereof of a Participant who has been granted one or more SARs, the SARs shall be exercisable at the time or times and subject to the terms and conditions as set forth in the Award Agreement (or in the underlying Option Award Agreement, as may be applicable). If the SAR would expire at a time when the exercise of the SAR would violate applicable securities laws, the expiration date applicable to the SAR will be automatically extended to a date

that is 30 calendar days following the date such exercise would no longer violate applicable securities laws (so long as such extension shall not violate Section 409A of the Code); *provided*, that, in no event shall such expiration date be extended beyond the expiration of the SAR Period.

(d) *Method of Exercise.* SARs that have become exercisable may be exercised by delivery of written or electronic notice of exercise to the Company in accordance with the terms of the Award, specifying the number of SARs to be exercised and the date on which such SARs were awarded.

(e) *Payment.* Upon the exercise of a SAR, the Company shall pay to the Participant an amount equal to the number of shares subject to the SAR that are being exercised, multiplied by the excess, if any, of the Fair Market Value of one Common Share on the exercise date over the Strike Price, less an amount equal to any taxes required to be withheld or paid. The Company shall pay such amount in cash, in Common Stock having a Fair Market Value equal to such amount, or any combination thereof, as determined by the Committee. No fractional Common Stock shall be issued or delivered pursuant to the Plan or any Award, and the Committee shall determine whether cash, other securities or other property shall be paid or transferred in lieu of any fractional Common Stock, or whether such fractional Common Stock or any rights thereto shall be canceled, terminated or otherwise eliminated.

9. *Restricted Stock and Restricted Stock Units.*

(a) *Generally.* Each grant of Restricted Stock and Restricted Stock Units shall be evidenced by an Award Agreement (whether in paper or electronic medium (including email or the posting on a web site maintained by the Company or a third party under contract with the Company)). Each such grant shall be subject to the conditions set forth in this Section 9 and to such other conditions not inconsistent with the Plan as may be reflected in the applicable Award Agreement (including the performance goals, if any, upon whose attainment the Restricted Period shall lapse in part or full).

(b) *Restricted Accounts; Escrow or Similar Arrangement.* Upon the grant of Restricted Stock, a book entry in a restricted account shall be established in the Participant's name at the Company's transfer agent and, if the Committee determines that the Restricted Stock shall be held by the Company or in escrow rather than held in such restricted account pending the release of the applicable restrictions, the Committee may require the Participant to additionally execute and deliver to the Company (i) an escrow agreement satisfactory to the Committee, if applicable, and (ii) the appropriate stock power (endorsed in blank) with respect to the Restricted Stock covered by such agreement. If a Participant shall fail to execute an agreement evidencing an Award of Restricted Stock and, if applicable, an escrow agreement and blank stock power within the amount of time specified by the Committee, the Award shall be null and void. Subject to the restrictions set forth in this Section 9 and the applicable Award Agreement, the Participant generally shall have the rights and privileges of a stockholder as to such Restricted Stock, including, without limitation, the right to vote such Restricted Stock and the right to receive dividends, if applicable. To the extent shares of Restricted Stock are forfeited, any share certificates issued to the Participant evidencing such shares shall be returned to the Company, and all rights of the Participant to such shares and as a stockholder with respect thereto shall terminate without further obligation on the part of the Company.

(c) *Vesting.* Unless otherwise provided by the Committee in an Award Agreement the unvested portion of Restricted Stock and Restricted Stock Units shall terminate and be forfeited upon termination of employment or service of the Participant granted the applicable Award.

(d) *Delivery of Restricted Stock and Settlement of Restricted Stock Units.*

(i) Upon the expiration of the Restricted Period with respect to any shares of Restricted Stock, the restrictions set forth in the applicable Award Agreement shall be of no further force or effect with respect to such shares, except as set forth in the applicable Award Agreement. If an escrow arrangement is used,

upon such expiration, the Company shall deliver to the Participant, or his beneficiary, without charge, the share certificate evidencing the shares of Restricted Stock that have not then been forfeited and with respect to which the Restricted Period has expired (rounded down to the nearest full share) or shall register such shares in the Participants name without any such restrictions. Dividends, if any, that may have been withheld by the Committee and attributable to any particular share of Restricted Stock shall be distributed to the Participant in cash or, at the sole discretion of the Committee, in Common Stock having a Fair Market Value equal to the amount of such dividends, upon the release of restrictions on such share and, if such share is forfeited, the Participant shall have no right to such dividends (except as otherwise set forth by the Committee in the applicable Award Agreement).

(ii) Unless otherwise provided by the Committee in an Award Agreement, upon the expiration of the Restricted Period with respect to any outstanding Restricted Stock Units, the Company shall deliver to the Participant, or his beneficiary, without charge, one Common Share for each such outstanding Restricted Stock Unit; provided, however, that the Committee may, in its sole discretion, elect to (A) pay cash or part cash and part Common Share in lieu of delivering only Common Stock in respect of such Restricted Stock Units or (B) defer the delivery of Common Stock (or cash or part Common Stock and part cash, as the case may be) beyond the expiration of the Restricted Period if such delivery would result in a violation of Applicable Law until such time as is no longer the case. If a cash payment is made in lieu of delivering Common Stock, the amount of such payment shall be equal to the Fair Market Value of the Common Stock as of the date on which the Restricted Period lapsed with respect to such Restricted Stock Units, less an amount equal to any taxes required to be withheld or paid.

10. Other Stock-Based Awards and Other Cash-Based Awards.

(a) Other Stock-Based Awards. The Committee may grant types of equity-based or equityrelated Awards not otherwise described by the terms of the Plan (including the grant or offer for sale of unrestricted Common Stock), in such amounts and subject to such terms and conditions, as the Committee shall determine (including, if applicable, the attainment of any performance goals, as set forth in the applicable Award Agreement). Such Other Stock-Based Awards may involve the transfer of actual Common Stock to Participants, or payment in cash or otherwise of amounts based on the value of Common Stock. The terms and conditions of such Awards shall be consistent with the Plan and set forth in the Award Agreement and need not be uniform among all such Awards or all Participants receiving such Awards.

(b) Other Cash-Based Awards. The Committee may grant a Participant a cash Award not otherwise described by the terms of the Plan, including cash awarded as a bonus or upon the attainment of performance goals or otherwise as permitted under the Plan.

(c) Value of Awards. Each Other Stock-Based Award shall be expressed in terms of Common Stock or units based on Common Stock, as determined by the Committee, and each Other Cash-Based Awards shall be expressed in terms of cash, as determined by the Committee. The Committee may establish performance goals in its discretion and any such performance goals shall be set forth in the applicable Award Agreement. If the Committee exercises its discretion to establish performance goals, the number and/or value of Other Stock-Based Awards or Other Cash-Based Awards that will be paid out to the Participant will depend on the extent to which such performance goals are met.

(d) Payment of Awards. Payment, if any, with respect to an Other Stock-Based Award or Other Cash-Based Award shall be made in accordance with the terms of the Award, as set forth in the Award Agreement, in cash, Common Stock or a combination of cash and Common Stock, as the Committee determines.

(e) Vesting. The Committee shall determine the extent to which the Participant shall have the right to receive Other Stock-Based Awards or Other Cash-Based Awards following the Participant's termination of employment or service (including by reason of such Participant's death, disability (as determined by the Committee), or termination without Cause). Such provisions shall be determined in the sole discretion of the Committee and will be included in the applicable Award Agreement but need not be uniform among all Other Stock-Based Awards or Other Cash-Based Awards issued pursuant to the Plan and may reflect distinctions based on the reasons for the termination of employment or service.

11. Dividend Equivalents. No adjustment shall be made in the Common Stock issuable or taken into account under Awards on account of cash dividends that may be paid or other rights that may be issued to the holders of Common Stock prior to issuance of such Common Stock under such Award. The Committee may grant Dividend Equivalents based on the dividends declared on Common Stock that are subject to any Award (other than an Option or Stock Appreciation Right). Any Award of Dividend Equivalents may be credited as of the dividend payment dates, during the period between the Date of Grant of the Award and the date the Award becomes payable or terminates or expires, as determined by the Committee; however, Dividend Equivalents shall not be payable unless and until the Award becomes payable, and shall be subject to forfeiture to the same extent as the underlying Award. Dividend Equivalents may be subject to any additional limitations and/or restrictions determined by the Committee. Dividend Equivalents shall be payable in cash, Common Stock or converted to full-value Awards, calculated based on such formula, as may be determined by the Committee.

12. Changes in Capital Structure and Similar Events. In the event of (a) any dividend (other than ordinary cash dividends) or other distribution (whether in the form of cash, Common Stock, other securities or other property), recapitalization, stock split, reverse stock split, reorganization, merger, amalgamation, consolidation, spin-off, split-up, split-off, combination, repurchase or exchange of Common Stock or other securities of the Company, issuance of warrants or other rights to acquire Common Stock or other securities of the Company, or other similar corporate transaction or event (including, without limitation, a Change in Control) that affects the Common Stock, or (b) unusual or infrequently occurring events (including, without limitation, a Change in Control) affecting the Company, any Affiliate, or the financial statements of the Company or any Affiliate, or changes in applicable rules, rulings, regulations or other requirements of any governmental body or securities exchange or inter-dealer quotation system, accounting principles or law, such that in either case an adjustment is determined by the Committee in its sole discretion to be necessary or appropriate, then the Committee shall make any such adjustments in such manner as it may deem equitable, subject to the requirements of Code Sections 409A, 421, and 422, if applicable, including without limitation any or all of the following:

(a) adjusting any or all of (i) the number of Common Stock or other securities of the Company (or number and kind of other securities or other property) that may be delivered in respect of Awards or with respect to which Awards may be granted under the Plan (including, without limitation, adjusting any or all of the limitations under Section 5 of the Plan) and (ii) the terms of any outstanding Award, including, without limitation, (A) the number of Common Stock or other securities of the Company (or number and kind of other securities or other property) subject to outstanding Awards or to which outstanding Awards relate, (B) the Exercise Price or Strike Price with respect to any Award or (C) any applicable performance measures;

(b) providing for a substitution or assumption of Awards in a manner that substantially preserves the applicable terms of such Awards;

(c) accelerating the exercisability or vesting of, lapse of restrictions on, or termination of, Awards or providing for a period of time for exercise prior to the occurrence of such event;

(d) modifying the terms of Awards to add events, conditions or circumstances (including termination of employment within a specified period after a Change in Control) upon which the exercisability or vesting of or lapse of restrictions thereon will accelerate;

(e) deeming any performance measures satisfied at target, maximum or actual performance through closing or such other level determined by the Committee in its sole discretion, or providing for the performance measures to continue (as is or as adjusted by the Committee) after closing;

(f) providing that for a period prior to the Change in Control determined by the Committee in its sole discretion, any Options or SARs that would not otherwise become exercisable prior to the Change in Control will be exercisable as to all Common Stock subject thereto (but any such exercise will be contingent upon and subject to the occurrence of the Change in Control and if the Change in Control does not take place after giving such notice for any reason whatsoever, the exercise will be null and void) and that any Options or SARs not exercised prior to the consummation of the Change in Control will terminate and be of no further force and effect as of the consummation of the Change in Control; and

(g) canceling any one or more outstanding Awards and causing to be paid to the holders thereof, in cash, Common Stock, other securities or other property, or any combination thereof, the value of such Awards, if any, as determined by the Committee (which if applicable may be based upon the price per Common Share received or to be received by other stockholders of the Company in such event), including without limitation, in the case of an outstanding Option or SAR, a cash payment in an amount equal to the excess, if any, of the Fair Market Value (as of a date specified by the Committee) of the Common Stock subject to such Option or SAR over the aggregate Exercise Price or Strike Price of such Option or SAR, respectively (it being understood that, in such event, any Option or SAR having a per share Exercise Price or Strike Price equal to, or in excess of, the Fair Market Value of a Common Share subject thereto may be canceled and terminated without any payment or consideration therefor); provided, however, that in the case of any “equity restructuring” (within the meaning of the Financial Accounting Standards Board Accounting Standards Codification Topic 718), the Committee shall make an equitable or proportionate adjustment to outstanding Awards to reflect such equity restructuring. The Company shall give each Participant notice of an adjustment hereunder and, upon notice, such adjustment shall be final, conclusive and binding for all purposes.

13. Amendments and Termination.

(a) Amendment and Termination of the Plan. The Board may amend, alter, suspend, discontinue, or terminate the Plan or any portion thereof at any time; provided that (i) no amendment to Section 13(b) (to the extent required by the proviso in such Section 13(b)) shall be made without stockholder approval and (ii) no such amendment, alteration, suspension, discontinuation or termination shall be made without stockholder approval if such approval is necessary to comply with any tax or regulatory requirement applicable to the Plan (including, without limitation, as necessary to comply with any rules or requirements of any securities exchange or inter-dealer quotation system on which the Common Stock may be listed or quoted); provided, further, that any such amendment, alteration, suspension, discontinuance or termination that would materially and adversely affect the rights of any Participant or any holder or beneficiary of any Award theretofore granted shall not to that extent be effective without the consent of the affected Participant, holder or beneficiary.

(b) Amendment of Award Agreements. The Committee may, to the extent consistent with the terms of any applicable Award Agreement, waive any conditions or rights under, amend any terms of, or alter, suspend, discontinue, cancel or terminate, any Award theretofore granted or the associated Award Agreement, prospectively or retroactively; provided that any such waiver, amendment, alteration, suspension, discontinuance, cancellation or termination that would materially and adversely affect the rights of any Participant with respect to any Award theretofore granted shall not to that extent be effective without the consent of the affected Participant, unless the Committee determines, in its sole discretion, that the amendment is necessary for the Award to comply with Code Section 409A; provided, further, that without stockholder approval, except as otherwise permitted under Section 12 of the Plan, (i) no amendment or modification may reduce the Exercise Price of any Option or the Strike Price of any SAR, (ii) the Committee may not cancel any outstanding Option or SAR where the Fair Market Value of the

Common Stock underlying such Option or SAR is less than its Exercise Price and replace it with a new Option or SAR, another Award or cash and (iii) the Committee may not take any other action that is considered a “repricing” for purposes of the stockholder approval rules of the applicable securities exchange or inter-dealer quotation system on which the Common Stock are listed or quoted.

14. *General.*

(a) *Award Agreements.* Each Award under the Plan shall be evidenced by an Award Agreement, which shall be delivered to the Participant (whether in paper or electronic medium (including email or the posting on a web site maintained by the Company or a third party under contract with the Company)) and shall specify the terms and conditions of the Award and any rules applicable thereto, including, without limitation, the effect on such Award of the death, disability or termination of employment or service of a Participant, or of such other events as may be determined by the Committee. Except as the Plan otherwise provides, each Award may be made alone or in addition or in relation to any other Award. The terms of each Award to a Participant need not be identical, and the Committee need not treat Participants or Awards (or portions thereof) uniformly.

(b) *Nontransferability.*

(i) Each Award shall be exercisable only by a Participant during the Participant’s lifetime, or, if permissible under Applicable Law, by the Participant’s legal guardian or representative. No Award may be assigned, alienated, pledged, attached, sold or otherwise transferred or encumbered by a Participant other than by will or by the laws of descent and distribution and any such purported assignment, alienation, pledge, attachment, sale, transfer or encumbrance shall be void and unenforceable against the Company or an Affiliate; provided that the designation of a beneficiary shall not constitute an assignment, alienation, pledge, attachment, sale, transfer or encumbrance.

(ii) Notwithstanding the foregoing, the Committee may, in its sole discretion, permit Awards (other than Incentive Stock Options) to be transferred by a Participant, without consideration, subject to such rules as the Committee may adopt consistent with any applicable Award Agreement to preserve the purposes of the Plan, to: (A) any person who is a “family member” of the Participant, as such term is used in the instructions to Form S-8 under the Securities Act (collectively, the “Immediate Family Members”); (B) a trust solely for the benefit of the Participant and his Immediate Family Members; (C) a partnership or limited liability company whose only partners or stockholders are the Participant and his Immediate Family Members; or (D) any other transferee as may be approved either (I) by the Board or the Committee in its sole discretion, or (II) as provided in the applicable Award Agreement (each transferee described in clauses (A), (B), (C) and (D) above is hereinafter referred to as, a “Permitted Transferee”); provided that the Participant gives the Committee advance written notice describing the terms and conditions of the proposed transfer and the Committee notifies the Participant in writing that such a transfer would comply with the requirements of the Plan.

(iii) The terms of any Award transferred in accordance with the immediately preceding sentence shall apply to the Permitted Transferee and any reference in the Plan, or in any applicable Award Agreement, to a Participant shall be deemed to refer to the Permitted Transferee, except that (A) Permitted Transferees shall not be entitled to transfer any Award, other than by will or the laws of descent and distribution; (B) Permitted Transferees shall not be entitled to exercise any transferred Option unless there shall be in effect a registration statement on an appropriate form covering the Common Stock to be acquired pursuant to the exercise of such Option if the Committee determines, consistent with any applicable Award Agreement, that such a registration statement is necessary or appropriate; (C) the Committee or the Company shall not be required to provide any notice to a Permitted Transferee, whether or not such notice is or would otherwise have been required to be given to the Participant under the Plan or otherwise; and (D) the consequences of the termination of the Participant’s employment by, or services to, the Company or an Affiliate under the terms of the Plan and the applicable Award Agreement shall continue to be applied with respect to the Participant, including, without limitation, that an Option shall be exercisable by the Permitted

Transferee only to the extent, and for the periods, specified in the Plan and the applicable Award Agreement.

(c) Tax Withholding and Deductions.

(i) A Participant shall be required to pay to the Company or any Affiliate, and the Company or any Affiliate shall have the right and is hereby authorized to deduct and withhold, from any cash, Common Stock, other securities or other property deliverable under any Award or from any compensation or other amounts owing to a Participant, the amount (in cash, Common Stock, other securities or other property) of any required taxes (up to the maximum statutory rate under Applicable Law as in effect from time to time as determined by the Committee) and deduction in respect of an Award, its grant, vesting or exercise, or any payment or transfer under an Award or under the Plan and to take such other action as may be necessary in the opinion of the Committee or the Company to satisfy all obligations for the payment of such taxes.

(ii) Without limiting the generality of clause (i) above, the Committee may, in its sole discretion, permit a Participant to satisfy, in whole or in part, the foregoing tax and deduction liability by (A) the delivery of Common Stock (which are not subject to any pledge or other security interest and are Mature Shares, except as otherwise determined by the Committee) owned by the Participant having a Fair Market Value equal to such liability or (B) having the Company withhold from the number of Common Stock otherwise issuable or deliverable pursuant to the exercise or settlement of the Award a number of shares with a Fair Market Value equal to such liability.

(d) No Claim to Awards; No Rights to Continued Employment; Waiver. No employee of the Company or an Affiliate, or other person, shall have any Claim or right to be granted an Award under the Plan or, having been selected for the grant of an Award, to be selected for a grant of any other Award. A Participant's sole remedy for any Claim related to the Plan or any Award shall be against the Company, and no Participant shall have any Claim or right of any nature against any Subsidiary or Affiliate of the Company or any stockholder or existing or former director, officer or employee of the Company or any Subsidiary of the Company. There is no obligation for uniformity of treatment of Participants or holders or beneficiaries of Awards. The terms and conditions of Awards and the Committee's determinations and interpretations with respect thereto need not be the same with respect to each Participant and may be made selectively among Participants, whether or not such Participants are similarly situated. Neither the Plan nor any action taken hereunder shall be construed as giving any Participant any right to be retained in the employ or service of the Company or an Affiliate, nor shall it be construed as giving any Participant any rights to continued service on the Board. The Company or any of its Affiliates may at any time dismiss a Participant from employment or discontinue any consulting relationship, free from any liability or any Claim under the Plan, unless otherwise expressly provided in the Plan or any Award Agreement. By accepting an Award under the Plan, a Participant shall thereby be deemed to have waived any Claim to continued exercise or vesting of an Award or to damages or severance entitlement related to non-continuation of the Award beyond the period provided under the Plan or any Award Agreement, notwithstanding any provision to the contrary in any written employment contract or other agreement between the Company and its Affiliates and the Participant, whether any such agreement is executed before, on or after the Date of Grant.

(e) International Participants. With respect to Participants who reside or work outside of the United States of America, the Committee may in its sole discretion amend the terms of the Plan or outstanding Awards with respect to such Participants in order to conform such terms with the requirements of local law or to obtain more favorable tax or other treatment for a Participant, the Company or its Affiliates.

(f) Designation and Change of Beneficiary. Each Participant may file with the Committee a written designation of one or more persons as the beneficiary(ies) who shall be entitled to receive the amounts payable with respect to an Award, if any, due under the Plan upon his death. A Participant may, from time to time, revoke or change his beneficiary designation without the consent of any prior beneficiary by filing a new designation with the

Committee. The last such designation received by the Committee shall be controlling; provided, however, that no designation, or change or revocation thereof, shall be effective unless received by the Committee prior to the Participant's death, and in no event shall it be effective as of a date prior to such receipt. If no beneficiary designation is filed by a Participant, the beneficiary shall be deemed to be his spouse or, if the Participant is unmarried at the time of death, his estate.

(g) Termination of Employment/Service. Unless determined otherwise by the Committee at any time following such event: (i) neither a temporary absence from employment or service due to illness, vacation or leave of absence nor a transfer from employment or service with the Company to employment or service with an Affiliate (or vice-versa) shall be considered a termination of employment or service with the Company or an Affiliate; and (ii) if a Participant's employment with the Company and its Affiliates terminates, but such Participant continues to provide services to the Company and its Affiliates in a non-employee capacity (or vice-versa), such change in status shall not be considered a termination of employment with the Company or an Affiliate.

(h) No Rights as a Stockholder. Except as otherwise specifically provided in the Plan or any Award Agreement, no person shall be entitled to the privileges of ownership in respect of Common Stock or other securities that are subject to Awards hereunder until such shares have been issued or delivered to that person.

(i) Government and Other Regulations.

(i) The obligation of the Company to settle Awards in Common Stock or other consideration shall be subject to all Applicable Laws, rules, and regulations, and to such approvals by governmental agencies as may be required. Notwithstanding any terms or conditions of any Award to the contrary, the Company shall be under no obligation to offer to sell or to sell, and shall be prohibited from offering to sell or selling, any Common Stock or other securities pursuant to an Award unless such shares have been properly registered for sale pursuant to the Securities Act with the Securities and Exchange Commission or unless the Company has received an opinion of counsel, satisfactory to the Company, that such shares may be offered or sold without such registration pursuant to an available exemption therefrom and the terms and conditions of such exemption have been fully complied with. The Company shall be under no obligation to register for sale under the Securities Act any of the Common Stock or other securities to be offered or sold under the Plan. The Committee shall have the authority to provide that all certificates for Common Stock or other securities of the Company or any Affiliate delivered under the Plan shall be subject to such stop transfer orders and other restrictions as the Committee may deem advisable under the Plan, the applicable Award Agreement, the federal securities laws, or the rules, regulations and other requirements of the Securities and Exchange Commission, any securities exchange or interdealer quotation system upon which such shares or other securities are then listed or quoted and any other applicable federal, state, local or non-U.S. laws, and, without limiting the generality of Section 9 of the Plan, the Committee may cause a legend or legends to be put on any such certificates to make appropriate reference to such restrictions. Notwithstanding any provision in the Plan to the contrary, the Committee reserves the right to add any additional terms or provisions to any Award granted under the Plan that it in its sole discretion deems necessary or advisable in order that such Award complies with the legal requirements of any governmental entity to whose jurisdiction the Award is subject.

(ii) The Committee may cancel an Award or any portion thereof if the Committee determines, in its sole discretion, that legal or contractual restrictions and/or blockage and/or other market considerations would make the Company's acquisition of Common Stock from the public markets, the Company's issuance of Common Stock or other securities to the Participant, the Participant's acquisition of Common Stock or other securities from the Company and/or the Participant's sale of Common Stock to the public markets, illegal, impracticable or inadvisable. If the Committee determines to cancel all or any portion of an Award denominated in Common Stock in accordance with the foregoing, the Company shall pay to the

Participant an amount equal to the excess of (A) the aggregate Fair Market Value of the Common Stock subject to such Award or portion thereof that is canceled (determined as of the applicable exercise date, or the date that the shares would have been vested or delivered, as applicable), over (B) the aggregate Exercise Price or Strike Price (in the case of an Option or SAR, respectively) or any amount payable as a condition of delivery of Common Stock (in the case of any other Award). Such amount shall be delivered to the Participant as soon as practicable following the cancellation of such Award or portion thereof.

(j) Payments to Persons Other Than Participants. If the Committee shall find that any person to whom any amount is payable under the Plan is unable to care for his or her affairs because of illness or accident, or is a minor, or has died, then any payment due to such person or his estate (unless a prior Claim therefor has been made by a duly appointed legal representative) may, if the Committee so directs the Company, be paid to his or her spouse, child, relative, an institution maintaining or having custody of such person, or any other person deemed by the Committee to be a proper recipient on behalf of such person otherwise entitled to payment. Any such payment shall be a complete discharge of the liability of the Committee and the Company therefor.

(k) Nonexclusivity of the Plan. Neither the adoption of this Plan by the Board nor the submission of this Plan to the stockholders of the Company for approval shall be construed as creating any limitations on the power of the Board to adopt such other incentive arrangements as it may deem desirable, including, without limitation, the granting of stock options or other equity-based awards otherwise than under this Plan, and such arrangements may be either applicable generally or only in specific cases.

(l) No Trust or Fund Created. The Plan is intended to constitute an “unfunded” plan for incentive compensation. Neither the Plan nor any Award shall create or be construed to create a trust or separate fund of any kind or a fiduciary relationship between the Company or any Affiliate, on the one hand, and a Participant or other person or entity, on the other hand. No provision of the Plan or any Award shall require the Company, for the purpose of satisfying any obligations under the Plan, to purchase assets or place any assets in a trust or other entity to which contributions are made or otherwise to segregate any assets, nor shall the Company maintain separate bank accounts, books, records or other evidence of the existence of a segregated or separately maintained or administered fund for such purposes. Participants shall have no rights under the Plan other than as unsecured general creditors of the Company, except that insofar as they may have become entitled to payment of additional compensation by performance of services, they shall have the same rights as other employees or service providers under general law.

(m) Reliance on Reports. Each member of the Committee and each member of the Board shall be fully justified in acting or failing to act, as the case may be, and shall not be liable for having so acted or failed to act in good faith, in reliance upon any report made by the independent public accountant of the Company and its Affiliates and/or any other information furnished in connection with the Plan by any agent of or service provider to the Company or the Committee or the Board, other than himself.

(n) Relationship to Other Benefits. No payment under the Plan shall be taken into account in determining any benefits under any pension, retirement, profit sharing, group insurance or other benefit plan of the Company except as otherwise specifically provided in such other plan.

(o) Governing Law. The Plan shall be governed by and construed in accordance with the internal laws of the State of Delaware applicable to contracts made and performed wholly within the State of Delaware, without giving effect to the conflict of laws provisions thereof.

(p) Severability. If any provision of the Plan or any Award or Award Agreement is or becomes or is deemed to be invalid, illegal, or unenforceable in any jurisdiction or as to any person or entity or Award, or would disqualify the Plan or any Award under any law deemed applicable by the Committee, such provision shall be

construed or deemed amended to conform to the Applicable Laws, or if it cannot be construed or deemed amended without, in the determination of the Committee, materially altering the intent of the Plan or the Award, such provision shall be construed or deemed stricken as to such jurisdiction, person or entity or Award and the remainder of the Plan and any such Award shall remain in full force and effect.

(q) Obligations Binding on Successors. The obligations of the Company under the Plan shall be binding upon any successor corporation or organization resulting from the merger, amalgamation, consolidation or other reorganization of the Company, or upon any successor corporation or organization succeeding to substantially all of the assets and business of the Company.

(r) Code Section 409A.

(i) Notwithstanding any provision of this Plan to the contrary, all Awards made under this Plan are intended to be exempt from or, in the alternative, comply with Code Section 409A and the authoritative guidance thereunder, including the exceptions for stock rights and short-term deferrals. The Plan shall be construed and interpreted in accordance with such intent. Each payment under an Award shall be treated as a separate payment for purposes of Code Section 409A.

(ii) If a Participant is a “specified employee” (as such term is defined for purposes of Code Section 409A) at the time of his termination of service, no amount that is nonqualified deferred compensation subject to Code Section 409A and that becomes payable by reason of such termination of service shall be paid to the Participant (or in the event of the Participant’s death, the Participant’s representative or estate) before the earlier of (x) the first business day after the date that is six months following the date of the Participant’s termination of service, and (y) within 30 days following the date of the Participant’s death. For purposes of Code Section 409A, a termination of service shall be deemed to occur only if it is a “separation from service” within the meaning of Code Section 409A, and references in the Plan and any Award Agreement to “termination of service” or similar terms shall mean a “separation from service.” If any Award is or becomes subject to Code Section 409A, unless the applicable Award Agreement provides otherwise, such Award shall be payable upon the Participant’s “separation from service” within the meaning of Code Section 409A. If any Award is or becomes subject to Code Section 409A and if payment of such Award would be accelerated or otherwise triggered under a Change in Control, then the definition of Change in Control shall be deemed modified, only to the extent necessary to avoid the imposition of any additional tax under Code Section 409A, to mean a “change in control event” as such term is defined for purposes of Code Section 409A.

(iii) Any adjustments made pursuant to Section 13 to Awards that are subject to Code Section 409A shall be made in compliance with the requirements of Code Section 409A, and any adjustments made pursuant to Section 13 to Awards that are not subject to Code Section 409A shall be made in such a manner as to ensure that after such adjustment, the Awards either (x) continue not to be subject to Code Section 409A or (y) comply with the requirements of Code Section 409A.

(s) Notification of Election Under Code Section 83(b). If any Participant, in connection with the acquisition of Common Stock under an Award, makes the election permitted under Code Section 83(b), if applicable, the Participant shall notify the Company of the election within ten days of filing notice of the election with the Internal Revenue Service.

(t) Expenses; Gender; Titles and Headings; Interpretation. The expenses of administering the Plan shall be borne by the Company and its Affiliates. Masculine pronouns and other words of masculine gender shall refer to both men and women. The titles and headings of the sections in the Plan are for convenience of reference

only, and in the event of any conflict, the text of the Plan, rather than such titles or headings shall control. Unless the context of the Plan otherwise requires, words using the singular or plural number also include the plural or singular number, respectively; derivative forms of defined terms will have correlative meanings; the terms “hereof,” “herein” and “hereunder” and derivative or similar words refer to this entire Plan; the term “Section” refers to the specified Section of this Plan and references to “paragraphs” or “clauses” shall be to separate paragraphs or clauses of the Section or subsection in which the reference occurs; the words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation”; and the word “or” shall be disjunctive but not exclusive

(u) Other Agreements. Notwithstanding the above, the Committee may require, as a condition to the grant of and/or the receipt of Common Stock or other securities under an Award, that the Participant execute lock-up, stockholder or other agreements, as it may determine in its sole and absolute discretion.

(v) Payments. Participants shall be required to pay, to the extent required by Applicable Law, any amounts required to receive Common Stock or other securities under any Award made under the Plan.

(w) Clawback; Erroneously Awarded Compensation. All Awards (including on a retroactive basis) granted under the Plan are subject to the terms of any Company forfeiture, incentive compensation recoupment, clawback or similar policy as it may be in effect from time to time, as well as any similar provisions of Applicable Laws, as well as any other policy of the Company that may apply to the Awards, such as anti-hedging or pledging policies, as they may be in effect from time to time. In particular, these policies and/or provisions shall include, without limitation, (i) any Company policy established to comply with Applicable Laws (including, without limitation, Section 304 of the Sarbanes-Oxley Act and Section 954 of the Dodd-Frank Wall Street Reform and Consumer Protection Act), and/or (ii) the rules and regulations of the applicable securities exchange or inter-dealer quotation system on which the Common Stock or other securities are listed or quoted, and these requirements shall be deemed incorporated by reference into all outstanding Award Agreements.

(x) No Fractional Shares. No fractional shares of Common Stock shall be issued or delivered pursuant to the Plan. The Committee shall determine whether cash, other Awards, or other property shall be issued or paid in lieu of fractional shares or whether fractional shares or any rights thereto shall be forfeited, rounded, or otherwise eliminated.

(y) Paperless Administration. If the Company establishes, for itself or using the services of a third party, an automated system for the documentation, granting or exercise of Awards, such as a system using an internet website or interactive voice response, then the paperless documentation, granting or exercise of Awards by a Participant may be permitted through the use of such an automated system.

(z) Data Privacy. As a condition for receiving any Award, each Participant explicitly and unambiguously consents to the collection, use and transfer, in electronic or other form, of personal data as described in this Section 14(z) by and among the Company and its Subsidiaries and Affiliates exclusively for implementing, administering and managing the Participant’s participation in the Plan. The Company and its Subsidiaries and Affiliates may hold certain personal information about a Participant, including the Participant’s name, address and telephone number; birthdate; social security, insurance number or other identification number; salary; nationality; job title(s); any Common Stock held in the Company or its Subsidiaries and Affiliates; and Award details, to implement, manage and administer the Plan and Awards (the “Data”). The Company and its Subsidiaries and Affiliates may transfer the Data amongst themselves as necessary to implement, administer and manage a Participant’s participation in the Plan, and the Company and its Subsidiaries and Affiliates may transfer the Data to third parties assisting the Company with Plan implementation, administration and management. These recipients may be located in the Participant’s country, or elsewhere, and the Participant’s country may have different data privacy laws and protections than the recipients’ country. By accepting an Award, each Participant authorizes the recipients to receive, possess, use, retain and transfer the Data, in electronic or other form, to implement, administer and manage the Participant’s participation in the Plan, including any required Data transfer to a broker or other third

party with whom the Company or the Participant may elect to deposit any Common Stock. The Data related to a Participant will be held only as long as necessary to implement, administer, and manage the Participant's participation in the Plan. A Participant may, at any time, view the Data that the Company holds regarding the Participant, request additional information about the storage and processing of the Data regarding the Participant, recommend any necessary corrections to the Data regarding the Participant or refuse or withdraw the consents in this Section 14(z) in writing, without cost, by contacting the local human resources representative. The Company may cancel Participant's ability to participate in the Plan and, in the Committee's discretion, the Participant may forfeit any outstanding Awards if the Participant refuses or withdraws the consents in this Section 14(z).

(aa) *Broker-Assisted Sales.* In the event of a broker-assisted sale of Common Stock in connection with the payment of amounts owed by a Participant under or with respect to the Plan or Awards: (a) any Common Stock to be sold through the broker-assisted sale will be sold on the day the payment first becomes due, or as soon thereafter as practicable; (b) the Common Stock may be sold as part of a block trade with other Participants in the Plan in which all participants receive an average price; (c) the applicable Participant will be responsible for all broker's fees and other costs of sale, and by accepting an Award, each Participant agrees to indemnify and hold the Company harmless from any losses, costs, damages, or expenses relating to any such sale; (d) to the extent the Company or its designee receives proceeds of the sale that exceed the amount owed, the Company will pay the excess in cash to the applicable Participant as soon as reasonably practicable; (e) the Company and its designees are under no obligation to arrange for the sale at any particular price; and (f) if the proceeds of the sale are insufficient to satisfy the Participant's applicable obligation, the Participant may be required to pay immediately upon demand to the Company or its designee an amount in cash sufficient to satisfy any remaining portion of the Participant's obligation.