

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

Form

10-K

(Mark One)

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

For the fiscal year ended



December 31  
, 2023

or

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

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

Commission File Number:

001-34112



(Exact Name of Registrant as Specified in its Charter)

(State or Other Jurisdiction of Incorporation)

Delaware

Energy Recovery, Inc. 01-0616867

1717 Doolittle Drive

San Leandro

,

California

94577

(Address of Principal Executive Offices) (Zip Code)

(

510

)

483-7370

(Registrant's telephone number, including area code)

Securities registered pursuant to Section 12(b) of the Securities Exchange Act of 1934:

Title of each class	Trading Symbol	Name of each exchange on which registered
---------------------	----------------	---

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

Common Stock, \$0.001 par value ERIL Nasdaq Stock Market

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

Yes

☒ No ☐

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes ☐

No



Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

Yes

☒ No ☐

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files).

Yes

☒ No ☐

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

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

☐  
Emerging growth company

☐

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new c

## TABLE OF CONTENTS

	<u>Page</u>
<b>PART I</b>	
Item 1 Business	1
Item 1A Risk Factors	13
Item 1B Unresolved Staff Comments	25
Item 1C Cybersecurity	25
Item 2 Properties	27
Item 3 Legal Proceedings	27
Item 4 Mine Safety Disclosures	27
<b>PART II</b>	
Item 5 Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities	28
Item 6 [Reserved]	29
Item 7 Management's Discussion and Analysis of Financial Condition and Results of Operations	30
Item 7A Quantitative and Qualitative Disclosures About Market Risk	40
Item 8 Financial Statements and Supplementary Data	41
Item 9 Changes in and Disagreements with Accountants on Accounting and Financial Disclosure	79
Item 9A Controls and Procedures	79
Item 9B Other Information	80
Item 9C Disclosure Regarding Foreign Jurisdictions that Prevent Inspections	80
<b>PART III</b>	
Item 10 Directors, Executive Officers and Corporate Governance	81
Item 11 Executive Compensation	81
Item 12 Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters	81
Item 13 Certain Relationships and Related Transactions and Director Independence	82
Item 14 Principal Accounting Fees and Services	82
<b>PART IV</b>	
Item 15 Exhibits and Financial Statement Schedules	83
Item 16 Form 10-K Summary	84
Signatures	85

Energy Recovery, Inc. | 2023 Form 10-K Annual Report

## Forward-Looking Information

*This Annual Report on Form 10-K for the year ended December 31, 2023, including Part II, Item 7, "Management's Discussion and Analysis of Financial Condition and Results of Operations" (the "MD&A"), contains forward-looking statements within the "safe harbor" provisions of the Private Securities Litigation Reform Act of 1995. Forward-looking statements in this report include, but are not limited to, statements about our expectations, objectives, anticipations, plans, hopes, beliefs, intentions or strategies regarding the future.*

Forward-looking statements represent our current expectations about future events, are based on assumptions, and involve risks and uncertainties. If the risks or uncertainties occur or the assumptions prove incorrect, then our results may differ materially from those set forth or implied by the forward-looking statements. Our forward-looking statements are not guarantees of future performance or events. Words such as “expects,” “anticipates,” “aims,” “projects,” “intends,” “plans,” “believes,” “estimates,” “seeks,” “continue,” “could,” “may,” “potential,” “should,” “will,” “would,” variations of such words and similar expressions are also intended to identify such forward-looking statements. These forward-looking statements are subject to risks, uncertainties and assumptions that are difficult to predict; therefore, actual results may differ materially and adversely from those expressed in any forward-looking statement. Readers are directed to risks and uncertainties identified under Part I, Item 1A, “Risk Factors,” and elsewhere in this report for factors that may cause actual results to be different from those expressed in these forward-looking statements. Except as required by law, we undertake no obligation to revise or update publicly any forward-looking statement for any reason.

Forward-looking statements in this report include, without limitation, statements about the following:

- our belief that the pressure exchanger is the industry standard for energy recovery in the seawater reverse osmosis desalination (“SWRO”) industry;
- our belief that the scalability and versatility of our PX<sup>®</sup> Pressure Exchanger<sup>®</sup> (“PX”) can help us achieve success in emerging wastewater markets;
- our belief that the Ultra PX<sup>™</sup> addresses key challenges associated with treating wastewater in a range of reverse osmosis (“RO”) applications;
- our belief that the Ultra PX addresses key challenges, such as energy intensity and environmental impacts associated with treating wastewater;
- our belief that the Ultra PX can help make RO the preferred treatment option to achieve zero and minimum liquid discharge (“ZLD” and “MLD”, respectively) requirements by enhancing RO’s affordability and efficiency compared to thermal treatment options;
- our belief that our PX has helped make SWRO an economically viable and more sustainable option in the production of potable water;
- our expectation of greater demand of our PX in the wastewater market due to expanding environmental regulations;
- our belief that our hydraulic turbochargers deliver substantial savings, operational benefits and ease of integration into desalination systems;
- our anticipation that markets not traditionally associated with desalination, such as the United States of America (the “U.S.”) and China will inevitably develop and provide further revenue growth opportunities;
- our belief that countries around the world will continue to mandate ZLD or MLD requirements for specific industries;
- our belief that, as the existing thermal technology is replaced with RO technology, demand for our products will be created;
- our belief that our PX offers market-leading value with the highest technological and economic benefit;
- our belief that ongoing operating costs and life cycle costs rather than the initial capital expenditures are the key factor in the selection of an energy recovery device solution for megaproject (“MPD”) customers;
- our belief that initial capital expenditure rather than future ongoing operating costs is more of a factor in the selection of an energy recovery device solution for original equipment manufacturer (“OEM”) projects;
- our belief that our PX has a distinct competitive advantage in the market for desalination plants and numerous wastewater market verticals, because our PX 1) has minimal unplanned and planned downtime, resulting in lower lifecycle maintenance cost, 2) is a cost-effective energy recovery solution, 3) is made with highly durable and corrosion-resistant aluminum oxide (“alumina”) ceramic parts and outperforms our competition with respect to quality, flexibility and durability, and 4) is warrantied for high efficiencies;
- our belief that leveraging our pressure exchanger technology will unlock new commercial opportunities in the future;

#### **Table of Contents**

- our belief that our PX G1300™ can contribute to help make CO<sub>2</sub>-based refrigeration economically viable in a broader range of climates;
- our belief that the PX G1300 could eventually alter the standard refrigeration system architecture by reducing costs for retail end users such as grocery stores;
- our belief that there is a significant potential market for the PX G1300 in a variety of channels, such as supermarket chains and cold storage facilities.
- our expectation that we will initially sell our PX G1300 to a variety of customers, such as to the OEMs themselves, potentially directly to end user supermarket chains or industrial sites, or to contractors who may retrofit our technology onto existing systems, and once the PX G1300 is established, our belief that our sales process will evolve to primarily selling through OEMs;
- our belief that as CO<sub>2</sub>-based refrigeration systems become more prevalent, competitive technologies to the PX G1300 could arise;
- our belief that the simplicity of installation and the ease of operations of the PX G1300 could encourage adoption of the PX G1300;
- our belief that our current facilities will be adequate for the foreseeable future;
- our belief that by investing in research and development, we will be well positioned to continue to execute on our product strategy;
- our belief that our technology helps our customer achieve environmentally sustainable operations;
- our expectation that sales outside of the U.S. will remain a significant portion of our revenue;
- our belief that the integration of sustainability principles into our corporate and risk management strategies can strengthen our existing business as well as our efforts to develop new applications of pressure exchanger technology for high-pressure fluid-flow environments;
- our belief that our sustainability goals are highly influential to our business success;
- our belief that we contribute to our customers' operational profitability while advancing environmental sustainability;
- the timing of our receipt of payment for products or services from our customers;
- our belief that our existing cash and cash equivalents, our short and/or long-term investments, and the ongoing cash generated from our operations, will be sufficient to meet our anticipated liquidity needs for the foreseeable future, with the exception of a decision to enter into an acquisition and/or fund investments in our latest technology arising from rapid market adoption that could require us to seek additional equity or debt financing;
- our belief that our cash deposit risk at uninsured or under insured financial institutions will not materially affect our current liquidity;
- our expectation that the lender under our current credit agreement, as amended, will continue to honor its commitments to us;
- our expectation that, as we expand our international sales, a portion of our revenue could be denominated in foreign currencies and the impact of changes in exchange rates on our cash and operating results;
- our expectation of increased sales and marketing expenditures for 2024 and 2025;
- our belief that we will be in compliance with the terms of the existing credit agreement, as amended, in the future;
- our expectation that we will continue to receive a tax benefit related to U.S. federal foreign-derived intangible income and California research and development tax credit;
- our expectation that we will be able to enforce our intellectual property ("IP") rights;
- our expectation that the adoption of new accounting standards will not have a material impact on our financial position or results of operations;
- the outcome of proceedings, lawsuits, disputes and claims;
- the impact of losses due to indemnification obligations;
- the impact of changes in internal control over financial reporting; and
- other factors disclosed under Part I, Item 1, "Business," Item 1A, "Risk Factors," and Item 2, "Properties," and Part II, Item 7, MD&A, and Item 7A, "Quantitative and Qualitative Disclosures about Market Risk," and elsewhere in this Form 10-K.

#### Table of Contents

Energy Recovery, Inc. | 2023 Form 10-K Annual Report | FLS 2

*You should not place undue reliance on these forward-looking statements. These forward-looking statements reflect management's opinions only as of the date of the filing of this Annual Report on Form 10-K. All forward-looking statements included in this document are subject to additional risks and uncertainties further discussed under Part I, Item 1A, "Risk Factors," and are based on information available to us as of February 21, 2024. We assume no obligation to update any such forward-looking statements. Certain risks and uncertainties could cause actual results to differ materially from those projected in the forward-looking statements. These forward-looking statements are disclosed from time to time in our Quarterly Reports on Form 10-Q and Current Reports on Form 8-K filed with, or furnished to, the Securities and Exchange Commission (the "SEC"), as well as in Part I, Item 1A, "Risk Factors," within this Annual Report on Form 10-K. It is important to note that our actual results could differ materially from the results set forth or implied by our forward-looking statements. The factors that could cause our actual results to differ from those included in such forward-looking statements are set forth under the heading Item 1A, "Risk Factors," in our Quarterly Reports on Form 10-Q, and in our Annual Reports on Form 10-K, and from time-to-time, in our results disclosed in our Current Reports on Form 8-K. We provide our Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K, Proxy Statements on Schedule 14A, Forms 3, 4 and 5 filed by or on behalf of directors, executive officers and certain large shareholders, and any amendments to those documents filed or furnished pursuant to the Securities Exchange Act of 1934, free of charge on the Investor Relations section of our website, [www.energyrecovery.com](http://www.energyrecovery.com). These filings will become available as soon as reasonably practicable after such material is*

electronically filed with or furnished to the SEC. From time to time, we may use our website as a channel of distribution of material company information.

We also make available in the Investor Relations section of our website our corporate governance documents including our code of business conduct and ethics and the charters of the audit, compensation and nominating and governance committees. These documents, as well as the information on the website, are not intended to be part of this Annual Report on Form 10-K. We use the Investor Relations section of our website as a means of complying with our disclosure obligations under Regulation FD. Accordingly, you should monitor the Investor Relations section of our website in addition to following our press releases, SEC filings and public conference calls and webcasts.

[Table of Contents](#)

---

Energy Recovery, Inc. | 2023 Form 10-K Annual Report | FLS 3

## PART I

### Item 1 — Business Overview

Energy Recovery, Inc. (the “Company”, “Energy Recovery”, “we”, “our” and “us”) is a trusted global leader in energy efficiency technology. We design and manufacture reliable, high-performance solutions that provide cost savings through improved energy efficiency in commercial and industrial processes, with applications across several industries. With a strong foundation in the desalination industry, we have delivered transformative solutions that help our customers optimize their operations and reduce their energy consumption for more than 30 years. We believe that our customers do not have to sacrifice quality and cost savings for sustainability; and we are committed to developing solutions that drive long-term value from a technical, financial, and environmental perspective.

We have been incorporated in the state of Delaware since 2001. Our corporate headquarters, principal research and development

(“R&D”), and manufacturing facility is located in San Leandro, California. In addition, we have manufacturing and warehouse space in Tracy, California and offices, warehouse space and a yard in Katy, Texas. We have a global direct sales team and on-site technical support staff to service customers in the United States of America (the “U.S.”), Europe, Latin America, the Middle East, and Asia.

#### Sustainability

Our technology harnesses the powerful combination of performance and energy efficiency to deliver operational profitability and help our customers achieve environmentally sustainable operations. As such, we are committed to measuring and managing our own operational impact, as well as producing high-quality energy recovery devices for our customers. While sustainability has always been central to our business, four years ago we embarked on our formal sustainability journey to turn the lens on ourselves and provide our stakeholders with further transparency around our company. Our integrated sustainability strategy includes a dedicated sustainability team, internal sustainability programs focused on key goals with measurable targets, and sustainability solutions for our customers.

Our sustainability goals, which we believe are highly influential to our business, were first announced in our 2020 Sustainability Report. These goals focus on four sustainability topics – Employees, Environmental & Climate Change Risks, Innovation & Opportunity, and Products. These topics were identified by our management team and our stakeholders as material to our company’s ability to create value. We believe our goals provide us with a strategic roadmap to become a more sustainable and resilient business, and hold us accountable as we strive to be a responsible corporate citizen. In accordance with our strategic roadmap, we announced our first corporate emissions reduction target in 2023 and have committed to reducing our greenhouse gas emissions as outlined in our 2022 Sustainability Report.

**Employees.** Our employees are integral to success and innovation. It is our firm commitment and responsibility to provide a safe and supportive working environment for our staff where initiative is rewarded, suggestions are valued, and ideas to enhance our company or our products are implemented. Likewise, it is our responsibility to offer ample opportunities for employees to develop their skills. For more information on our employees and programs, please see *Human Capital Resources* below.

**Environmental & Climate Change Risks.** We are engaged in a comprehensive assessment to identify our short-, medium-, and long-term climate-related risks and opportunities. As our business grows, we are vigilant in managing our climate-related risks to remain successful and competitive in an ever-changing environment.

**Innovation & Opportunity.** Innovation and a trusted relationship with our customers and industry partners is pivotal to this goal, as this allows us to understand our customers' needs and pain points. By partnering with our customers and consistently striving to improve, we are confident in our continued ability to contribute to our customers' operational profitability while advancing environmental sustainability.

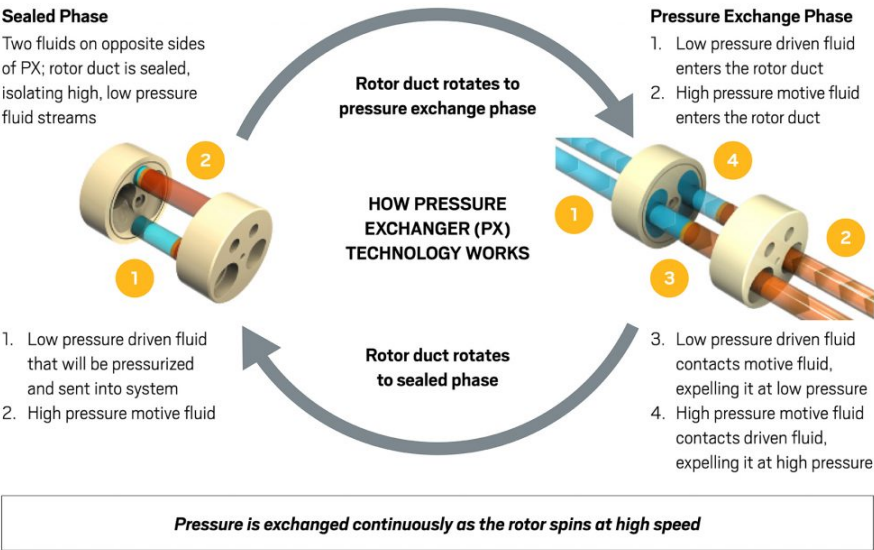
**Products.** We uphold the trust of the industries we serve by meticulously manufacturing products that not only deliver exceptional performance and generate significant value, but also demonstrate reliability and safety. At our core, we aim to design and manufacture high-quality innovative products that deliver significant value to customers and help foster environmentally sustainable operations. In 2023, we surveyed and interviewed investors, employees, and customers to ensure our sustainability strategy remains aligned with the evolution of our business. The results of this assessment process and any associated adjustments to our sustainability priorities, goals, and roadmap will be disclosed in our forthcoming 2023 Sustainability Report.

[Table of Contents](#)

Detailed disclosures on our sustainability performance can be found in our recent 2022 Sustainability Report, which is available for download on our website at: <https://energyrecovery.com/sustainability/>. We have included this website address only as an inactive textual reference and do not intend it to be an active link to our website.

**Pressure Exchanger Technology**

Our pressure exchanger technology platform is at the heart of many of our solutions. It is designed to efficiently capture and transfer pressure energy, making commercial and industrial processes more efficient and environmentally sustainable, thereby lowering costs, saving energy, and minimizing emissions. This versatile technology is applicable to a wide range of industries that utilize pressurized fluids, including liquids and gas, and is ideal for a wide range of pressure ratings. Our pressure exchanger technology acts like a fluid piston, efficiently transferring energy between high- and low-pressure liquid and/or gas through continuously rotating ducts. Key to the operation of a pressure exchanger is the micron-level clearances between the rotor and the pressure exchanger's stationary components, including the sleeve and the end covers. Fluid circulating within this clearance acts as a lubricated bearing, minimizing frictional losses and wear for an extremely efficient exchange of pressure energy.



The original product application of our pressure exchanger technology, the PX<sup>®</sup> Pressure Exchanger<sup>®</sup> ("PX") energy recovery device was a major contributor to the advancement of seawater reverse osmosis desalination ("SWRO") globally, addressing "energy intensity", which is a key pain point for the industry. The PX, which we believe is today's industry standard in energy recovery in desalination, reduces energy use by up to 60% in SWRO facilities. It is this significant savings that allowed SWRO to supplant thermal desalination as today's desalination technology of choice. Today we continue to push the boundaries of our core technology to handle different operating environments and industrial applications and deliver reliable, high-performance solutions that generate cost savings and increase energy efficiency for our customers.

[Table of Contents](#)

## Water Treatment

### Markets

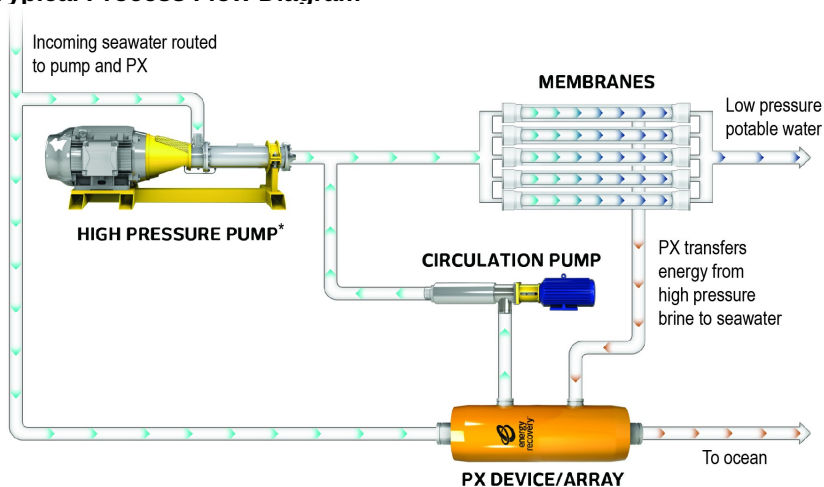
The need for clean water and energy optimization around the world is intensifying, driven by population growth, industrialization, rapid urbanization, and climate change. Apart from seasonal variations, the attainable supply of fresh water generally remains fixed and is already decreasing in some geographic areas, as we believe that the reliability of rainfall grows more erratic in many geographies, water levels drop in rivers and aquifers, and rising oceans encroach on historically fresh water sources near the coasts. These trends make the markets we serve, such as desalination and wastewater treatment, increasingly critical to meet growing global water demand. Our goal is to lower the costs and emissions associated with water production and treatment in the desalination and wastewater markets, respectively. In addition, we help the end user in their sustainability compliance goals.

Reverse osmosis ("RO") is the preferred technology in the vast majority of desalination facilities and growing in importance in wastewater applications. As an industry leader in energy recovery devices, we deliver efficient, scalable solutions for recovering otherwise wasted energy in the RO process, thereby helping our customers lower their operating costs and reduce carbon emissions.

### Desalination

Worldwide seawater desalination plants using our products produce over 30 million cubic meters of water per day ("m<sup>3</sup>/day"), enough to provide for more than 25% of U.S. population's daily water needs at home. As water scarcity grows in communities across the globe, we are proud of our impact in enabling more affordable, sustainable access to this vital resource.

### Typical Process Flow Diagram



\* Main pump size reduced by up to 60% compared to a SWRO process not using any energy recovery device.

[Table of Contents](#)



**Seawater Reverse Osmosis Desalination.** Energy intensive pumps are used to pressurize feed waters with varying concentrations of salts, minerals and contaminants, which is then pumped through a semi-permeable membrane to achieve the desired water quantity and quality. This process results in fresh water, suitable for potable, agricultural and industrial use and a highly concentrated and pressurized concentrate or brine stream. Rather than dissipating or “wasting” the pressure energy from the discharge brine, our PX, the most commonly adopted energy recovery solution, can transfer the pressure energy from the high-pressure discharge stream directly to a portion of the low-pressure filtered feed water stream, thereby reducing the amount of flow required by the main high-pressure process pumps, which are the largest consumers of power within the SWRO process. Our highly efficient technology can recycle this pressure energy at peak efficiencies up to 98%. This results in a more efficient process as the size of the high-pressure pumps are greatly reduced, no longer needed to be sized for full membrane feed flow, and are now re-sized for the permeate flow, thus reducing the energy usage by up to 60%, compared to a system without energy recovery devices. As a result, our PXs have helped make seawater desalination an economically viable and more sustainable option in the production of potable water.

**Brackish Water Reverse Osmosis Desalination.** The brackish RO process is similar to that of the SWRO process. Brackish water typically has lower salt, mineral and contaminant content than seawater, therefore, fewer solids need to be removed and less energy is expended on pressurizing the feed water. Due to the lower cost and available pressure energy involved, our low pressure PX and hydraulic turbochargers generally have characteristics more applicable to the brackish process. The salt content in the feed water will ultimately determine the system design and operating conditions which, in turn, will drive decisions related to the specification or type of energy recovery device to be employed, if any.

Seawater desalination has been our primary market for revenue generation, and brackish water applications are an emerging area of potential growth. These markets range from small, decentralized desalination plants, such as those used in cruise ships and resorts, to large-scale project (“megaproject”) desalination plants, defined as those which produce over 50 thousand m<sup>3</sup>/day. Because of the geographical location of many significant water desalination projects, geopolitical and economic events can influence the timing of expected projects. We anticipate that markets traditionally not associated with desalination, such as the U.S. and China, will inevitably develop and provide further revenue growth opportunities.

Both seawater and brackish market opportunities are represented by newly constructed (“greenfield”) and existing (“brownfield”) water treatment projects. These opportunities include retrofits, upgrades, and plant expansions, that either operate without an energy recovery device or utilize alternative energy recovery device technologies. The large-scale greenfield market has been the key market for our water business and represents projects that are typically public in nature and involve a formal tendering process; while smaller projects, may be private in nature, may or may not involve a formal tendering process. Typical brownfield facilities face higher energy consumption and reduced plant availability due to legacy technologies and aging equipment and include improvements to existing operations, equipment upgrades and potential expansions of existing capacity.

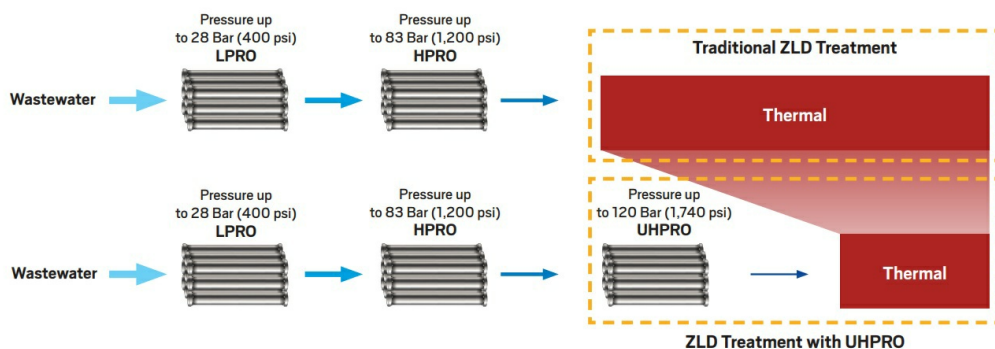
We work directly with the project bidders, generally large project developers, engineering, procurement, and construction firms (“EPC” firm), end-users, and industry consultants, to specify our products prior to the project being awarded, where possible. Once the project is awarded to an EPC firm, our normal sales process ensues. The greenfield market is highly competitive, and the tendering process pays close attention to the cost to desalinate water (i.e., dollars per cubic meter of water produced). Retrofit opportunities may or may not have a formal tendering process. We typically approach the plant owners, operators, and/or end-users of these facilities to present our leading life-cycle cost value-proposition.

### **Wastewater**

The wastewater market has more variety and covers a wide range of industries and geographies. As governments across the globe increase their focus on water conservation, reuse, recycling, and limiting the amount of pollution, they are establishing more stringent requirements for wastewater treatment to maximize water recovery, and to comply with growing freshwater withdrawal and discharge regulations. Zero or minimum liquid discharge (“ZLD” and “MLD”, respectively) applications are being observed in countries throughout the world. We expect this trend to continue to expand as we observe the implementation of regulations on the discharge of wastewater effluents as the world responds to the growing gap between water availability and demand while focusing on minimizing and/or eliminating pollution from these industries.

[Table of Contents](#)





Many municipal and industrial industries are willing to adopt more sustainable water reuse practices and to reduce their reliance on existing water resources. Sectors such as automotive, including electric vehicles, chemicals, pulp and paper, textiles, semiconductors, and other heavy industries are often large water consumers. Their water usage can compete with municipal and agricultural water resources, further straining potable water supply in areas already struggling with water scarcity.

A variety of RO technologies may be utilized in the wastewater applications where our energy recovery solutions are applicable. Such processes are typically multi-staged, with each stage increasing in pressure as the wastewater is filtered to recover clean water from a wastewater stream and concentrate pollutants to a level where they can be economically utilized or safely disposed, rather than discharged into the environment. Our energy recovery solutions, such as our hydraulic turbochargers, low-pressure PX, and our Ultra PX, can be applied to each of these stages.

### Technology Conversion

The thermal desalination process was the dominant seawater desalination technology employed throughout the 1990s. In this process, thermal energy is used to evaporate water from heated seawater and subsequently condenses the vapor to produce fresh potable water. Starting in the early 1990s, due to many factors including the introduction and greater usage of energy recovery devices, the process of choice for the desalination industry shifted from thermal- to membrane-based RO desalination.

Over the past two decades RO desalination technology has become the predominant technology, supplanting thermal desalination technology as today's desalination technology of choice. As water desalination plants that use the thermal desalination technology age, the industry expects the majority of these plant owners to replace their existing thermal technology with RO desalination technology. These conversions are driving new demand for RO desalination equipment, which in turn creates demand for our products.

We also see a similar technology conversion in the wastewater market. Thermal technologies have been the technology of choice for RO systems seeking to maximize the removal of waste from the water used in the manufacturing process, such as in "ZLD" processes, where all water is recovered and contaminants are reduced to solid waste, and MLD processes, where near-ZLD processes produce small volumes of liquid waste. Similar to seawater desalination, thermal technologies are an energy- and cost-intensive method for cleaning water in these discharge processes, with up to 50 percent of costs typically stemming from thermal treatments. Adopting ultra high-pressure reverse osmosis ("UHPRO") treatment methods to achieve ZLD and MLD objectives moves the cost of these thermal technologies further downstream. Our PX U Series pressure exchangers further reduce wasted energy of the UHPRO process by returning pressure energy to the system, ultimately reducing overall energy costs and potentially lowering capital expenditures.

[Table of Contents](#)

## Water Treatment Solutions

### Pressure Exchangers

Our line of pressure exchangers are high efficiency isobaric energy recovery devices made of a ceramic cartridge supported by a highly efficient hydrodynamic and hydrostatic bearing system. Models in this product family are designed for use in a variety of reverse osmosis systems within the water treatment industry, including seawater and brackish desalination, and wastewater treatment.

**High Pressure PX Pressure Exchanger.** Our highly efficient PX Pressure Exchanger family of energy recovery device products delivers unmatched energy savings for water treatment systems. We offer a variety of sizes defined by the flow and pressure requirements of the system ranging as low as 20 and up to 400 gallons per minute ("gpm") (as low as 4.5 and up to 90.8 cubic meters of water per hour ("m<sup>3</sup>/h")) per device at pressures between 400-1200 pounds per square inch ("psi") (28-84 kilograms per square centimeter ("bar")); however, our customers can design their energy recovery systems to achieve unlimited capacities by installing an array of PXs in parallel.

Small and large desalination projects around the world rely on our range of PXs to achieve optimal operations and maximum energy savings, and we believe the scalability and versatility of our PX can achieve similar success in the emerging wastewater markets we are targeting.

**Ultra PX.** Our Ultra PX energy recovery device which, we believe, addresses key challenges, such as energy intensity and environmental impacts associated with treating wastewater in a variety of water treatment applications. Designed with the pressure exchanger technology that powers our flagship high pressure PX, the Ultra PX, functions similarly to our PX but can withstand higher pressures. We offer a variety of sizes defined by the flow and pressure requirements of the system

ranging as low as 10 and up to 250 gpm (or as low as 2.3 and up to 56.8 m<sup>3</sup>/h) per device at pressures between 1200-1800 psi (84-126 bar); however, by installing an array of PXs in parallel, our customers can design their energy recovery system to achieve unlimited capacities.

While reverse osmosis adoption in wastewater treatment is growing, we believe our Ultra PX can help accelerate further adoption of reverse osmosis in the growing zero and minimum liquid discharge markets by enhancing RO's affordability and efficiency compared to thermal treatment options, similar to the impact of

our PX in the seawater desalination market.

**Low Pressure PX.** Products in this family are ideal for municipal and industrial potable water reuse applications that deploy low-pressure RO stages such as municipal wastewater reuse applications. We offer a variety of sizes defined by the flow and pressure requirements of the system ranging as low as 30 and up to 260 gpm (or as low as 6.8 and up to 59.0 m<sup>3</sup>/h) per device at pressures between 80-400 psi (6-28 bar); however, by installing an array of PXs in parallel, our customers can design their energy recovery system to achieve unlimited capacities.

#### **Pumps and Turbochargers**

We offer high-pressure centrifugal pumps designed to complement our energy recovery devices for a wide range of RO plant capacities and applications.

**Hydraulic turbochargers.** Our AT and LPT hydraulic turbochargers are high efficiency centrifugal energy recovery devices used in low-pressure brackish and high-pressure seawater desalination systems and wastewater treatment markets. Our turbocharger product lines are highly efficient with state-of-the-art engineering in a compact configuration. With custom-designed hydraulics that allow for optimum performance over a wide range of operating conditions, our turbocharger technology offers

solutions to capital cost constrained single-stage RO applications, inter-stage boost applications typically found in brackish water desalination and some wastewater treatment systems.

We believe our hydraulic turbochargers deliver substantial savings, operational benefits, and ease of integration into systems.

#### **[Table of Contents](#)**

---

Energy Recovery, Inc. | 2023 Form 10-K Annual Report | 6



**Pumps.** RO requires specialized high-pressure membrane feed and, in pressure exchanger applications, high-pressure circulation pumps. We manufacture and/or supply specialized high-pressure feed and circulation pumps for only a portion of the markets served by our energy recovery solutions. Our high-pressure feed pumps are designed to pressurize the membrane feed flow and overcome the osmotic pressure requirements of the feed water resulting in the production of desalinated water. Our high-pressure circulation pumps are designed to circulate and control the high-pressure flow through our PX and to compensate for small pressure losses across the membranes, PX and associated process piping in many desalination and wastewater applications.

#### **Sales and Marketing**

Our strategically located direct sales force offers our products through capital sale to our customers around the world. We maintain a sales and service footprint in strategic territories, such as in the U.S., China, India, Latin America, Spain, Saudi Arabia and the United Arab Emirates, allowing rapid response to our customers' needs. Our team is comprised of individuals with many years of desalination and wastewater treatment industry expertise. Aligned to the geographic breadth of our current and potential future customers, our product marketing approach includes a strategic presence at water industry events across various regions. In addition, we leverage our industry and market intelligence to develop new solutions and services that can be adopted by our growing customer base.

A significant portion of our revenue is from outside of the U.S. Additional segment and geographical information regarding our product revenue is included in Note 2, "Revenue," Note 9, "Segment Reporting," and Note 10, "Concentrations," of the Notes to Consolidated Financial Statements in Part II, Item 8, "Financial Statements and Supplementary Data," of this Annual Report on Form 10-K (the "Notes").

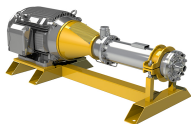
#### **Competition**

As the water industry has evolved, we faced, and continue to face, increasing worldwide competition based on product offerings and service. While our technology has been embraced for many years as the industry standard in RO desalination plants, the competition has increased over time whereby more companies are offering energy recovery devices similar to our devices. Furthermore, we expect our competition to begin offering new products that incorporate newer technology and materials that may work with existing and new RO desalination and wastewater operations. We believe our flagship PX has a competitive advantage over products offered by our competitors, because our devices (1) are made with highly durable and corrosion-resistant aluminum oxide ("alumina") ceramic parts that are designed for a life of more than 25 years; (2) are, in certain circumstances, warrantied for high efficiencies; and (3) cause minimal unplanned and planned downtime, resulting in lower lifecycle cost and cost-effective energy recovery solutions. In addition, our PX offers optimum scalability in both the desalination and growing wastewater market with a quick startup and no scheduled maintenance, as well as having been proven in the market and trusted by our customers.

#### **Project Channels**

We separate our Water segment sales into three distinct channels that are related to financial, other commercial, and technical aspects of the projects. We identify these sales channels as megaproject ("MPD"), original equipment manufacturers ("OEM") and aftermarket ("AM").

**Megaproject.** MPD customers are major firms that develop, design, build, own and/or operate large-scale desalination plants with capacities greater than 13.2 million gallons/day (50 thousand m<sup>3</sup>/day). A majority of our water treatment revenue comes from this channel. Our MPD customers have the required desalination expertise to engineer, undertake procurement for, construct, and sometimes own and operate, large-scale desalination plants. Due to the project structures and capacities of these plants, ongoing operating costs and life cycle costs, rather than the initial capital expenditures are the key factor in the customers' selection of an energy recovery device solution. As such, MPD customers most often select our PX, which we believe offers market-leading value with the highest technological and economic benefit. We work with our MPD customers to specify and optimize our PX solutions for their plant designs. The typical desalination and wastewater MPD project timeline between project tender and shipment generally ranges from 16 to 36 months; however, from time-to-time, may exceed 36 months. Each project in this channel generally represents revenue opportunities over \$1 million.



**Original Equipment Manufacturer.** OEM customers are companies that supply equipment, packaged systems, and various operating and maintenance solutions for small- to medium-sized desalination and wastewater plants utilized by commercial and industrial entities, and national, state, and local municipalities worldwide. We sell to our OEM customers a broad set of our products, including our PX, hydraulic turbochargers, high-pressure pumps, circulation booster pumps, and associated services. As it relates to desalination and wastewater OEM projects, these projects comprise of plants processing up to 13.2 million gallons/day (50 thousand m<sup>3</sup>/day), such as those located in hotels and resorts, power plants, cruise ships, agricultural sectors, local and other municipal sites, and industrial facilities. In addition, these OEM customers purchase our solutions for mobile, decentralized “quick water” or emergency water solutions. Unlike MPD projects, desalination and wastewater OEM projects are smaller in scope and the initial capital expenditure, rather than future ongoing operating costs, is often more of a factor in selection of an energy recovery device solution in desalination. Accordingly, we sell not only our PX, but also our hydraulic turbochargers, which offer a lower cost alternative to our PX. The typical desalination and wastewater OEM project timeline from project tender to shipment generally ranges from one to 16 months; however, from time-to-time, may exceed 16 months. Each project in this channel typically represents revenue opportunities up to \$1 million. Early stage revenue from these projects are dependent on the size of system or retrofit of our customers’ projects.

**Aftermarket.** Aftermarket customers are desalination or wastewater plant owners and/or operators who can utilize our technology to upgrade or keep their plant running optimally, and usually have our solutions installed and in operation. We provide spare parts, repair services, field services and various commissioning activities. We leverage our industry expertise in supporting our existing installed base to ensure that our energy recovery solutions are being operated effectively and efficiently in order to maximize plant availability and overall profitability of the facility operations, as required by our industry partners and customers.

### **Seasonality**

There is no specific seasonality to desalination or wastewater revenue. Desalination or wastewater revenue occurs throughout a calendar year. We often experience substantial fluctuations in desalination or wastewater revenue from quarter-to-quarter and from year-to-year primarily due to the timing and execution of our MPD shipments, which vary from year to year.

### **Emerging Technologies**

Today, we are leveraging our pressure exchanger technology platform to develop new product applications and diversify into new industries. We continue to push the limits of what our pressure exchanger technology can do, which we believe will unlock new commercial opportunities in the future.

### **CO<sub>2</sub>**

The global refrigeration and heating industries are major contributors to greenhouse gas emissions, of which the leakage of hydrofluorocarbon (“HFC”) refrigerants within these closed systems are the leading cause. HFCs have been recognized as a significant contributor to global warming, up to thousands of times more potent than carbon dioxide (“CO<sub>2</sub>”) used as a refrigerant. In 2016, much of the world adopted the Kigali Amendment to the Montreal Protocol with the intent of reducing HFCs by 85% in developed nations by 2036, and globally by 2047. The European Union’s consumption of HFCs was 55% below targets by end of 2022, and they plan to reduce by 80% by 2030. The U.S. first supported the reduction of HFCs in the American Innovation and Manufacturing Act in 2020, later ratified the Kigali Amendment itself in October 2022, and the U.S. Environmental Protection Agency finalized the rules in July 2023 to reduce HFC production and imports by 70% by end of 2029, and 85% by 2036.

CO<sub>2</sub> used as a refrigerant is a climate-friendly alternative to greenhouse gas-emitting HFCs and has been the natural refrigerant of choice for decades in Europe and Japan, where tens of thousands of CO<sub>2</sub> implementations have occurred to date. CO<sub>2</sub>-based refrigeration systems for commercial and industrial applications are safe, sustainable, and commercially available; however, a CO<sub>2</sub>-based refrigeration system can also consume significant amounts of electricity, especially in warm environments, making them expensive to operate. We believe our PX G1300™, which uses proven pressure exchanger technology to improve CO<sub>2</sub>-based refrigeration system performance, can contribute to solving this challenge and help make CO<sub>2</sub>-based refrigeration economically viable in a broader range of climates. When integrated into new or existing systems, the PX G1300 can reduce compressor workload to increase cooling capacity, system stability, and energy efficiency.

**PX G1300.** Our refrigeration-focused product leverages our existing ceramics, material science, and manufacturing expertise. The PX G1300 can reduce the energy consumption and operating costs of CO<sub>2</sub>-based refrigeration systems in a broad range of operating conditions. We see this as potentially a significant accelerator for adoption of CO<sub>2</sub>-based refrigeration system globally as our PX G1300 could eventually alter the standard refrigeration system architecture by reducing costs for end users, such as grocery stores.

We designed the PX G1300 to be integrated into new or existing CO<sub>2</sub>-based refrigeration systems. The PX G1300 can integrate with any existing rack controller and is easy to operate and maintain. We believe the simplicity of installation and the ease of operations could encourage adoption of this new technology.

### **Sales and Marketing**

We believe there is a significant potential market for the PX G1300 in a variety of channels, such as supermarket chains and cold storage facilities. The build of these commercial and industrial refrigeration systems is large enough and demands enough flow of CO<sub>2</sub> refrigerant to warrant the use of our device, which today implies any system 80 kilowatt in size or greater.

In understanding the market for the PX G1300, we have identified three major value propositions:

**1. Energy Savings and Emissions Reduction.** The PX G1300 recycles the high-pressure energy of a CO<sub>2</sub> system by compressing a portion of the gas flow for “free.” This “free” compression provided by the PX G1300 allows the main electrical refrigeration compressor to work less to keep the refrigeration system at the same temperature. In this way, our PX G1300 contributes to lower energy consumption and lower costs by reducing the amount of cycles the main compressor operates, and thereby lower emissions in a CO<sub>2</sub> refrigeration system.

**2. Increased Cooling Capacity.** The PX G1300 can add compression capacity to a transcritical CO<sub>2</sub>-based refrigeration system to safeguard against high discharge pressure failures, which occur during heatwaves when refrigeration systems are under stress.

**3. Initial Capital Investment.** When designed into a new CO<sub>2</sub>-based refrigeration system, the PX G1300 may offset some initial capital investment due to the extra compression capacity it provides, allowing for the reduction or removal of other components. The magnitude of each of these value propositions, or lack thereof, will greatly depend on the geographic location of a refrigeration system and temperature ranges that location experiences, the cost of energy at that location, the specific architecture of the refrigeration system itself and possibly other parameters.

### **Channels and Customers**

CO<sub>2</sub> sales are reported under our OEM sales channel. This includes direct sales to commercial or industrial customers, such as supermarket chains, cold storage facilities, and other industrial users. Also, included are sales to intermediaries, such as refrigeration system installers or refrigeration OEMs, to whom we sell the PX G1300 and associated services for inclusion in these customers’ entire new packaged or retrofit of existing systems.

The commercial refrigeration market ecosystem has multiple players who integrate the components to build a system. These players include supermarkets, which are the end users of the systems; contractors and installers that assist with the installation and maintenance of the systems; refrigeration OEMs; and design consultants that assist in designing and specifying the systems for end users and in providing the component specifications to the refrigeration OEMs.

We initially sold the PX G1300 to a variety of customers, such as directly to an end user supermarket chain and OEMs. We believe that once the PX G1300 is more established, our sales process will evolve primarily to sell through OEMs, who in turn build and install refrigeration systems at sites maintained by end users.

[Table of Contents](#)



### **Competition**

The concept of energy recovery is a new one in the refrigeration industry. Therefore, unlike in our water markets, there is no direct analogous competitor to our pressure exchanger technology. However, there are a variety of cost saving methods, as well as alternative

devices, that refrigeration manufacturers may try to introduce into their configurations to reduce energy consumption within their CO<sub>2</sub>-based refrigeration systems. These cost saving methods include utilizing novel system architectures, new and improved equipment or materials, ejectors or other energy recovery devices, and/or other technologies that could improve energy efficiency. These cost savings methods may or may not be compatible with the PX G1300. As CO<sub>2</sub>-based refrigeration systems become more prevalent, we believe competitive technologies and devices could arise.

### **Seasonality**

There is no specific CO<sub>2</sub> revenue seasonality to highlight in the early stages of this product lifecycle.

### **Manufacturing**

Our products, including our PX, hydraulic turbochargers, high-pressure pumps, and circulation booster pumps, are designed, manufactured, assembled, and tested in two facilities located in California. Our facilities include advanced ceramics manufacturing and testing equipment.

We obtain raw, processed, and certain pre-machined materials from various suppliers to support our manufacturing operations. A limited number of these suppliers are single source to maintain material consistency and support new product development. However, although we may purchase from certain single source suppliers, we have qualified redundant source(s) to ensure consistent supply for many of our critical raw materials and manufactured components. Alumina ceramic components for our PX products are manufactured in-house from high-purity alumina to the final product. We are able to leverage our ceramics manufacturing across all of our PX product lines. Through our vertically integrated ceramics precision manufacturing process, we ensure that all components meet our high standards for quality, durability, and reliability. The components for our other products undergo final precision machining to protect the proprietary nature of our manufacturing methods and product designs, and to maintain premium quality standards.

We are committed to reducing the environmental impact of our operations. We recognize that as we pursue our strategy of diversified and disciplined growth, our operations and our impact on the environment may increase. Some of the ways we currently seek to minimize our environmental impact are by reducing consumption of resources through waste management strategies, optimizing the use of renewable energy, and monitoring key environmental indicators. For example, as part of our waste management strategies, during the machining phase, when the solid components are shaped, excess high-purity alumina powder is collected, processed, and then reused. Further, we have incorporated in our testing process multiple test loops, which allows us to test products we manufacture to their operating conditions. These test loops, which are a major driver of our water usage, have been modified to allow us to recycle most of the water used in these testing cycles. Our efforts to measure and manage our impact will continue to evolve as our business grows.

### **Research, Development and Technology**

Research and development ("R&D") has been, and remains, an essential part of our history, culture and corporate strategy. Since our formation, we have developed leading technology and engineering expertise through the evolution of our pressure exchanger technology, which can enhance environmental sustainability and improve productivity by reducing energy consumption in pressurized fluid-flow systems. This versatile technology works as a platform to build product applications and is at the heart of many of our products. In addition, we have engineered and developed ancillary devices, such as our hydraulic turbochargers and circulation booster pumps that complement our energy recovery devices.

Today, we are applying our pressure exchanger technology in new and important ways, building new products to accelerate environmental sustainability across more industries. Our investments into R&D are focused on (1) advancing our solutions to better service historical markets, such as desalination; (2) applying our pressure exchanger technology to new markets, such as our recent entries into the wastewater and CO<sub>2</sub> markets; and (3) fundamental research into new applications of our pressure exchanger technology in existing and new verticals.

[Table of Contents](#)

We recognize the importance of carefully stewarding resources to support our ongoing R&D program. We maintain advanced analytical and testing capabilities to evaluate our solutions at all company sites. We have developed complex analytical tools which allow us to be less reliant on full-scale testing that is costly and often uses considerable amounts of water and consumable energy. Our advanced numerical modeling and analytical tools allow for 3-dimensional, multi-phase, multi-physics, and multi-scale, computational fluid dynamics, fluid structure interactions, thermodynamics, and system analysis. Leading-edge modeling and analytical techniques coupled with extensive state of the art experimental capabilities allow us to further refine our existing water and refrigeration technologies, as well as developing new derivatives of our pressure exchanger technology for complex systems and applications. Our highly skilled engineering team, many of whom carry accreditation from world-recognized engineering organizations, specialize in a range of technical fields critical to support our current product lines and advance our incubation initiatives, including core engineering competencies of fluid mechanics and aerodynamics, solid mechanics with expertise in computational fluid dynamics and finite element analysis, bearings design (roller-element, hydrostatic, and hydrodynamic), multi-phase flow, dynamics and controls, acoustics and vibrations, tribology, material science and coatings, pumps and turbines, turbo-machinery, and rotating equipment.

### **Intellectual Property**

We seek patent protection for new technologies, inventions, and improvements that are likely to be incorporated into our solutions.

We rely on patents, trade secret laws, and contractual safeguards to protect the proprietary tooling, processing techniques, and other know-how used in the production of our solutions. We have a robust intellectual property ("IP") portfolio consisting of U.S. and international issued



patents as well as pending patent applications.

We have registered the following trademarks with the United States Patent and Trademark office: "ERI," "PX," "PX Pressure Exchanger," "Pressure Exchanger," "Ultra PX," "PX PowerTrain," "PX G1300," and the Energy Recovery logo. We have also applied for and received registrations in international trademark offices.

### **Human Capital Resources**

Our employees are key to our Company's success. We believe we have a talented, motivated and dedicated team, and we work to create an inclusive, exciting, safe, and supportive environment, for all of our employees. Our company is built around innovation and driven by diversity of thought and background. Our employees challenge the status quo, actively partner to resolve challenges, and seek to continuously improve themselves as well as our operations.

As of December 31, 2023, we had 269 full-time employees, which is approximately 100% of our staffing, and include both permanent and leased employees. Our leased employees include sales and service agents worldwide, and IT support. Our employees are not unionized, and we consider our relations with our employees to be good.

We are proud to have built a global workforce to match our global customer base. Our employees represent a broad array of backgrounds, professionally and personally, and we believe that this diversity of experience and perspectives is a competitive advantage that allows us to better serve the needs of our customers.

Our Code of Business Conduct (our "Code") serves as a critical tool to help all of us recognize and report unethical conduct, while preserving and nurturing our culture. Our Code is reflected in our employee manual, which we provide to all of our employees, and training programs. Both our employee manual and training programs include our policies against harassment and bullying, and the elimination of bias in the workplace.

### **Recruiting, Training and Retention**

Our focus is to create an engaged employee experience, throughout the process of attracting, onboarding, developing, and retaining employees. We are committed to supporting employee development as well as providing competitive benefits and a safe workplace. We support and develop our employees through global training and development programs that build and strengthen employees' leadership and professional skills while striving to enhance our employee's financial, mental and physical wellness. To assess and improve employee retention and engagement, we survey our employees with the assistance of a third-party employee engagement survey, and take action to address areas of employees' concerns.

[Table of Contents](#)

---

Energy Recovery, Inc. | 2023 Form 10-K Annual Report | 11

Our employee engagement efforts include newsletters and all-employee town hall meetings, as well as informational meetings, which includes our executive staff meeting with small groups of employees in an informal setting, through which we aim to keep all of our employees well-informed, increase transparency and promote a culture of open communication. Our values and ethics serve as the guiding force through which we proactively maintain the highest standards of business conduct.

### **Compensation and Benefits**

We believe that compensation should be competitive and equitable, and should enable our employees to share in our company's success. In addition, we recognize our employees are most likely to thrive when they have the resources to meet their needs and the time and support to succeed in their professional and personal lives. In support of this, we offer a wide variety of benefits for our employees and we invest in tools and resources that are designed to support our employees' individual growth and development.

Our compensation and benefit programs are designed to recognize our employees' contributions to value, ingenuity and business results, including variable pay, which rewards each employee for the Company's and individual's performance. All full-time and full-time equivalent employees, where allowed, are included in our share-based equity incentive program, and are offered health and welfare benefits, mental wellness programs, development programs and training courses. In addition, all employees are afforded the opportunity to give back to our communities through donations of time and money through our company sponsored programs.

### **Workplace Health and Safety**

We are committed to providing a safe and healthy workplace. We continuously strive to meet or exceed compliance with all laws, regulations and accepted practices pertaining to workplace safety. All employees are required to comply with established safety policies, standards and procedures, and to attend and complete annual safety training based on their job function. To accomplish our safety goals, we developed and maintain company-wide policies to ensure the safety of each employee, as well as compliance with domestic and international safety standards. In addition, we foster work/life balance for our employees that provides significant flexibility surrounding work location and work schedules.

### **Additional Information**

Our website is <https://energyrecovery.com>. We also maintain an Investor Relations website as a routine channel for distribution of important information, including news releases, presentations, and financial statements (<https://ir.energyrecovery.com>). We intend to use our Investor Relations website as a means of complying with our disclosure obligations under Regulation FD. Accordingly, investors should monitor our Investor Relations website in addition to press releases, Securities and Exchange Commission ("SEC") filings, and public conference calls and webcasts. Our Annual Report on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K, all amendments to those reports, and the Proxy Statement for our Annual Meeting of Stockholders are made available, free of charge, in the Investor Relations section of our website, as soon as reasonably practicable after the reports have been filed with, or furnished to, the SEC. The information contained on our website, or any other website, is not part of this report nor is it considered to be incorporated by reference herein or with any other filing we make with the SEC. Our headquarters and primary manufacturing center is located at 1717 Doolittle Drive,

San Leandro, California 94577, and our main telephone number is (510) 483-7370. The SEC maintains an internet site that contains reports, proxy and information statements and other information regarding issuers that file electronically with the SEC. The address of the SEC website is <http://www.sec.gov>. We have included this website address only as an inactive textual reference and do not intend it to be an active link to the SEC website.

[Table of Contents](#)

---

## Item 1A — Risk Factors

The following discussion sets forth what management currently believes could be the most significant risks and uncertainties that could impact our businesses, results of operations, and financial condition. Other risks and uncertainties, including those not currently known to us or our management, could also negatively impact our businesses, results of operations, and financial conditions. Accordingly, the following should not be considered a complete discussion of all of the risks and uncertainties we may face. We may amend or supplement these risk factors from time to time in other reports we file with the SEC.

### Risks Related to our Water Segment

***Our Water segment revenues largely depend on the construction of new large-scale desalination plants and the retrofit of existing desalination plants, and as a result, our operating results have historically experienced, and may continue to experience, significant variability due to volatility in capital spending, availability of project financing, project timing, execution and other factors affecting the broader water desalination industry.***

We currently derive the majority of our Water segment revenues from sales of energy recovery products and services used in newly constructed, large-scale desalination plants and the retrofit of existing desalination plants, particularly in dry or drought-ridden regions of the world. The demand for our products used in the Water segment may decrease if the construction of these large-scale desalination plants or the retrofit of existing plants declines for any reason, including, any global or regional economic downturns, worsening global or regional political conflicts, worsening regional conditions, changing government priorities, or the impact of any global or regional conflicts. Other factors that could affect the number and capacity of large-scale desalination plants built or the timing of their completion, include the availability of required engineering and design resources; availability of credit and other forms of financing; the health of the global economy; inflation rates; changes in government regulation, permitting requirements, or priorities; and reduced capital spending for water desalination solutions. Each of these factors could result in reduced or uneven demand for our products. Pronounced variability or delays in the construction of such plants or reductions in spending for desalination in general could negatively impact our Water segment sales, which in turn could have an adverse effect on our entire business, financial condition, or results of operations, and make it difficult for us to accurately forecast our future sales.

***Our Water segment faces competition from a number of companies that offer competing energy recovery solutions. If any of these companies produce superior products or offers their products at substantially lower prices, our competitive position in the market could be harmed and our revenues may decline.***

The market for energy recovery devices for desalination and other water treatment plants is becoming increasingly competitive and we expect this competition to intensify as the desalination and wastewater markets continue to grow. Competitors have introduced products that are similar to, and directly compete with, our key energy recovery products. In addition, we expect new competitors to enter the market, and existing competitors to introduce improvements to their existing products and introduce new products that are directly competitive to our solutions. Our competitors' existing, new, and improved products may be superior to our products and/or could be offered at prices that are considerably less than the cost of our products. The performance and pricing pressure of such new products could cause us to adjust the prices of certain products to remain competitive, or we may not be able to continue to win large contracts, which could adversely affect our market share, competitive position and margins. Some of our current and potential competitors may have significantly greater financial, technical, marketing, and other resources; longer operating histories; or greater name recognition. They may also have more extensive products and product lines that would enable them to offer multi-product or packaged solutions as well as competing products at lower prices or with other more favorable terms and conditions. As a result, our ability to sustain our market share may be adversely impacted, which would affect our business, product margins, operating results, and financial condition. In addition, if one of our competitors were to merge or partner with another company, the change in the competitive landscape could adversely affect our continuing ability to compete effectively.

[Table of Contents](#)

---



***A sustained downturn in the economy or global unrest could impact the future of new, and the retrofit of existing, desalination plants, and the treatment of various wastewater verticals, which could result in decreased demand for our water products and services.***

The demand for our water products and services depends primarily on the continued construction of new large-scale desalination plants, the retrofit of existing plants, and the construction of wastewater treatment facilities, particularly in the countries that are part of the Gulf Cooperation Council, China, and India. Weak economic conditions, inflation and global uncertainty including the continuing conflicts in Ukraine and many parts of the Middle East may have a negative economic impact on these and other countries, which may impact the levels of spending on, timing of, delays to, and availability of, project financing for new desalination and retrofit plant projects. The inability of our customers to secure credit or financing for these projects, may result in the postponement or cancellation of these projects. In addition, the change in government priorities and/or their reduction in spending for water treatment projects could result in decreased demand for our products and services, which could have an adverse effect on our business, financial condition or results of operations.

***We may not be successful in developing suitable market adoption for our products in the wastewater market.***

We have introduced a number of products designed specifically for the wastewater market, including the Ultra PX family of products and the low pressure PX. The wastewater market is evolving and covers a wide range of industries and geographies, and utilizes a variety of RO technologies. While our products can be a potential solution to these different applications, there is no guarantee that we will be successful in developing market adoption of our wastewater products. While countries like China and India are beginning to mandate zero or minimum liquid discharge (“ZLD” and “MLD”, respectively) requirements for specific industries, in many parts of the world there are no regulations or minimal regulations for treating wastewater. Accordingly, end users in such areas may not be willing to implement wastewater treatment at all or, if they do plan to implement a wastewater treatment program, they may select a competitive or alternative wastewater treatment technology. Similar to the desalination market, there are many competitors and competitive products that can service wastewater industries that do not include RO technologies or utilize our products. These competitors may have existing relationships with end users, greater name recognition, and/or significantly greater financial, technical, marketing and other resources that may make it challenging for us to compete in this industry. As a result of the foregoing, we may not be able to successfully develop our wastewater business, develop any market share, or win any large contracts, which would affect our business, operating results and financial condition.

### **Risks Related to our Emerging Technologies Segment**

***We may not be able to successfully compete in the CO<sub>2</sub>-based refrigeration system market.***

For the past decade, the global commercial and industrial refrigeration industry has been shifting away from HFC-based refrigerants to natural refrigerants, such as CO<sub>2</sub>-based refrigerants in response to the global HFC-based refrigerant phase-down and subsequent environmental regulations. We introduced the PX G1300 energy recovery device for use in CO<sub>2</sub>-based refrigeration systems in 2021 and continue to work on developing market adoption of this new technology. While interest in the PX G1300 has been positive, there is no guarantee that we will be successful in generating sustained interest and, more importantly, adoption of our technology on a timeline necessary to meet our goals, or at all. The global commercial and industrial refrigeration industry can be slow to adopt new technologies and alternative technologies or new refrigerants may emerge, slowing the adoption of the PX G1300. In addition, we may encounter new technological challenges that we will need to solve in order to achieve adoption of the technology. The global commercial and industrial refrigeration industry is also saturated with very large, established companies who have greater experience and resources and may provide cost saving methods that utilize novel system architectures, new and improved equipment or materials, ejectors and/or other energy recovery devices, all or some of which could improve energy efficiency that compete against the PX G1300. If we are unable to solve any technological challenges, generate and sustain sufficient interest for our CO<sub>2</sub>-based refrigeration technology, we may not be able to successfully compete in the CO<sub>2</sub>-based refrigeration market, which could have an adverse effect on our CO<sub>2</sub> business, and our Emerging Technologies segment financial condition or results of operation.

[Table of Contents](#)

***We may not be able to develop future new technologies successfully.***

We have made a substantial investment in R&D and sales and marketing to execute on our diversification strategy into fluid flow markets, including our recent commercial refrigeration products. While we see diversification as core to our growth strategy, there is no guarantee that we will be successful in our efforts. Our model for growth is based in part on our ability to initiate and embrace disruptive technology trends, to enter new markets, both in terms of geographies and product areas, and to drive broad adoption of the products and services that we develop and market. Our competitive position and future growth depend upon a number of factors, including our ability to successfully: (i) innovate, develop and maintain competitive products, and services to address emerging trends and meet customers' needs, (ii) defend our market share against an ever-expanding number of competitors, (iii) enhance our product and service offerings by adding innovative features or disruptive technologies that differentiate them from those of our competitors and prevent commoditization, (iv) develop, manufacture and bring compelling new products and services to market quickly and cost-effectively, (v) attract, develop and retain individuals with the requisite innovation and technical expertise and understanding of customers' needs to develop new technologies, products and services, and (vi) continue to invest in manufacturing, R&D, engineering, sales and marketing, and customer support. Any inability to execute this model for growth could damage our reputation, limit our growth, and negatively affect our operation results. In addition, profitability, if any, in new industrial verticals may be lower than in our Water segment, and we may not be sufficiently successful in our diversification efforts to recoup investments. The failure of our technologies, products or services to maintain and gain market acceptance due to more attractive offerings, or customers' slower-than-expected adoption of, and investment in, our new and innovative technologies could significantly reduce our revenues or market share and adversely affect our competitive position.

**Risks Related to our General Business**

***Our operating results may fluctuate significantly, making our future operating results difficult to predict and causing our operating results to fall below expectations.***

Our quarterly and yearly operating results may fluctuate due to a variety of factors, many of which are outside of our control. We have experienced significant fluctuations in revenue from quarter-to-quarter and year-to-year, and we expect such fluctuations to continue. In addition, in the past, customer buying patterns led to a significant portion of our sales occurring in the fourth quarter. This presents the risk that delays, cancellations, or other adverse events in the fourth quarter could have a substantial negative impact on that year's annual results. As a result, comparing our operating results on a period-to-period basis may not be meaningful. Since it is difficult for us to anticipate the impact of these fluctuations on our future results, in the event our revenue or operating results fall below the expectations of investors or securities analysts, our stock price may be negatively affected.

***Our sales cycles can be long and unpredictable, and our sales efforts require considerable time and expense. As a result, our sales are difficult to predict and may vary substantially from quarter to quarter, which may cause our operating results to fluctuate.***

Our sales efforts involve substantial education of our current and prospective customers about the use and benefits of our energy recovery products. This education process can be time-consuming and typically involves a significant product evaluation process which is particularly pronounced when dealing with product introduction into new fluid flow industrial verticals. In our Water segment, the average Water segment sales cycle for our international MPD customers, which are involved with larger desalination plants, typically ranges from 16 to 36 months, and may exceed 36 months from time-to-time, and the average sales cycle for our OEM customers, which are involved with smaller desalination plants, ranges from one to 16 months, and may exceed 16 months from time-to-time. These long sales cycles make revenue predictions difficult and results in our expending significant resources well in advance of orders for our products, which may cause our operating results to fluctuate and may adversely affect our financial condition.

***Our Water contracts often contain holdback provisions of up to 10% of the contract price. If we are unable to collect unbilled receivables, which are caused in part by these holdback provisions, our operating results could be adversely affected.***

Our Water contracts with large EPC firms generally contain holdback provisions that typically delay final installment payments for our products by up to 24 months after the product has been shipped and revenue has been recognized. Generally, 10% or less of the revenue we recognize pursuant to our customer contracts is subject to such holdback provisions and is generally accounted for as contract assets. Such holdbacks may result in relatively high unbilled receivables. If we are unable to collect these performance holdbacks, our operating results and financial condition could be adversely affected.

[Table of Contents](#)

---

Energy Recovery, Inc. | 2023 Form 10-K Annual Report | 15

***We depend on a limited number of suppliers for some of our components. If our suppliers are not able to meet our demand and/or requirements, our business could be harmed.***

We rely on a limited number of suppliers for vessel housings, stainless steel ports, and alumina powder for our portfolio of energy recovery devices and stainless steel castings and components for our hydraulic turbochargers and pumps. Our reliance on a limited number of manufacturers for these supplies involves several risks, including reduced control over delivery schedules, quality assurance, manufacturing yields, production costs caused by rising inflation, and lack of guaranteed production capacity or product supply. We may qualify additional suppliers in the future, which would require time and resources. If we do not qualify additional suppliers, we may be exposed to increased risk of capacity shortages due to our dependence on current suppliers. We do not have long-term supply agreements with our suppliers but secure our supplies on a purchase order basis. Our suppliers have no obligation to supply products to us for any specific period, in any specific quantity, or at any specific price, except as set forth in a particular purchase order. Our requirements may represent a small portion of the total production capacities of these suppliers, and our

suppliers may reallocate capacity to other customers, even during periods of high demand for our products. We have in the past experienced, and may in the future experience, product quality issues and delivery delays with our suppliers due to factors such as high industry demand or the inability of our vendors to consistently meet our quality or delivery requirements. If our suppliers were to cancel or materially change their commitments to us or fail to meet quality or delivery requirements needed to satisfy customer orders for our products, we could lose time-sensitive customer orders, be unable to develop or sell our products cost-effectively or on a timely basis, if at all, and have significantly decreased revenue, which could harm our business, operating results, and financial condition.

***We are subject to manufacturing risks, particularly related to new products, which could lead to excessive scrap, quality defects, warranty claims in excess of our warranty provision or result in a significant or a large number of warranty or other claims in any given year.***

We manufacture most of our products in our facilities. In connection with new products, we may sometimes need to develop new manufacturing processes and techniques that may lead to an increase in excess scrap compared to our more mature processes, as well as an increase in quality defects. We provide warranties for most of these products and while we test our products in our manufacturing facilities through a variety of means, there can be no assurance that our testing will reveal all quality defects in our products, which may not become apparent until after the products have been sold into the market. Accordingly, there is a risk that we may incur increased expenses due to excess scrap and significant warranty claims that will result in additional cost of revenue if our warranty provisions are not sufficient to cover the actual cost of resolving issues related to defects in our products. If these additional expenses are significant, they could adversely affect our business, financial condition, and results of operations.

***Parts of our inventory may become excess or obsolete, which would increase our cost of revenues.***

Inventory of raw materials, parts, components, work in-process, or finished products may accumulate, and we may encounter losses due to a variety of factors, including technological change in the water desalination process; changes in the wastewater and refrigeration markets that result in product redesign; long delays in shipment of our products or order cancellations, and/or changes related to improvements in existing product design; our need to order raw materials that have long-lead times; our inability to estimate exact amounts and types of items needed, especially with regard to the configuration of our high-efficiency pumps; and cost reduction initiatives resulting in component changes within the products.

In addition, we may, from time-to-time, purchase more inventory than is immediately required in order to shorten our delivery time in case of an anticipated increase in demand for our products. If we are unable to forecast demand for our products with a reasonable degree of certainty and our actual orders from our customers are lower than these forecasts, we may accumulate excess inventory that we may be required to write off, and our business, financial condition, and results of operations could be adversely affected.

***We may not generate positive returns on our research and development strategy.***

Developing our products is expensive and the investment in product development may involve a long payback cycle. While we believe one of our greatest strengths lies in our innovation and our product development efforts, successfully commercializing such efforts and generating a return can be difficult. We expect that our results of operations may be impacted by the timing and size of these investments. In addition, these investments may take several years to generate positive returns, if ever.

[Table of Contents](#)

***Business interruptions may damage our facilities or those of our suppliers.***

Our operations and those of our suppliers may be vulnerable to interruption by fire, earthquake, flood, and other natural disasters, as well as power loss, telecommunications failure, and other events beyond our control. Our headquarters in California is located near major earthquake faults and has experienced earthquakes in the past. In addition, our facilities in California are located in areas that are subject to public safety power shutdowns ("PSPS"). If a natural disaster occurs or we are subject to PSPS, our ability to conduct our operations could be seriously impaired, which could harm our business, financial condition, results of operations, and cash flows. We cannot be sure that the insurance we maintain against general business interruptions will be adequate to cover all of our losses.

***We are, from time to time, involved in legal proceedings and may be subject to additional future legal proceedings that may result in material adverse outcomes.***

In addition to the IP litigation risks, we may become involved in the future in various commercial and other disputes as well as related claims and legal proceedings that arise from time to time in the course of our business. See Note 7, "Commitments and Contingencies – Litigation," of the Notes for information about certain legal proceedings in which we are involved. Our current legal proceedings and any future lawsuits to which we may become a party are, and will likely be, expensive and time consuming to investigate, defend and resolve, and will divert our management's attention. Any litigation to which we are a party may result in an onerous or unfavorable judgment that may not be reversed upon appeal or in payments of substantial monetary damages or fines, or we may decide to settle lawsuits on similarly unfavorable terms, which could have an adverse effect on our business, financial condition, or results of operations.

***Our actual operating results may differ significantly from our guidance.***

We release guidance in our quarterly earnings conference calls, quarterly earnings releases, or otherwise, regarding our future performance that represents our management's estimates as of the date of release. This guidance, which includes forward-looking statements, will be based on projections prepared by our management. These projections will not be prepared with a view toward compliance with published guidelines of the American Institute of Certified Public Accountants, and neither our registered public accountant nor any other independent expert or outside party compiles or examines the projections. Accordingly, no such person will express any opinion or any other form of assurance with respect to the projections.

Projections are based upon a number of assumptions and estimates that, while presented with numerical specificity, are inherently subject to significant business, economic and competitive uncertainties and contingencies, many of which are beyond our control and are

based upon specific assumptions with respect to future business decisions, some of which will change. We will continue to state possible outcomes as high and low ranges which are intended to provide a sensitivity analysis as variables are changed. The high and low ranges are not intended to imply that actual results could not fall outside of the suggested ranges. The principal reason that we release guidance is to provide a basis for our management to discuss our business outlook with analysts and investors. We do not accept any responsibility for any projections or reports published by any such third parties.

Guidance is necessarily speculative in nature, and it can be expected that some or all of the assumptions underlying the guidance furnished by us will not materialize or will vary significantly from actual results. Accordingly, our guidance is only an estimate of what management believes is realizable as of the date of release. Actual results may vary from our guidance and the variations may be material. In light of the foregoing, investors are urged not to rely upon our guidance in making an investment decision regarding our common stock. Any failure to successfully implement our operating strategy or the occurrence of any of the events or circumstances set forth in this "Risk Factors" section in this Annual Report on Form 10-K could result in the actual operating results being different from our guidance and the differences may be adverse and material.

***In preparing our financial statements we make certain assumptions, judgments and estimates that affect amounts reported in our consolidated financial statements, which, if not accurate, may significantly impact our financial results.***

We make assumptions, judgments and estimates for a number of items, including the fair value of financial instruments, goodwill, and long-lived assets, the realizability of deferred tax assets, the recognition of revenue and the fair value of stock awards. We also make assumptions, judgments and estimates in determining the accruals for employee-related liabilities, including commissions and variable compensation, and in determining the accruals for uncertain tax positions, valuation allowances on deferred tax assets, allowances for doubtful accounts, and legal contingencies, if any. These assumptions, judgments and estimates are drawn from historical experience and various other factors that we believe are reasonable under the circumstances as of the date of the consolidated financial statements. Actual results could differ materially from our estimates, and such differences could significantly impact our financial results.

[Table of Contents](#)

---

Energy Recovery, Inc. | 2023 Form 10-K Annual Report | 17

***Our global operations expose us to risks and challenges associated with conducting business internationally, and our results of operations may be adversely affected by our efforts to comply with the laws of other countries, as well as U.S. laws which apply to international operations, such as the U.S. Foreign Corrupt Practices Act ("FCPA") and U.S. export control laws.***

We operate on a global basis with offices or activities in North America, Middle East and Africa, Asia, Europe, Latin America, and South America. We face risks inherent in conducting business internationally, including compliance with international and U.S. laws and regulations that apply to our international operations. These laws and regulations include tax laws, anti-competition regulations, import and trade restrictions, export control laws, and laws which prohibit corrupt payments to governmental officials or certain payments or remunerations to customers, including the U.S. FCPA or other anti-corruption laws that have recently been the subject of a substantial increase in global enforcement. Many of our products are subject to U.S. export law restrictions that limit the destinations and types of customers to which our products may be sold, or require an export license in connection with sales outside the U.S. Given the high level of complexity of these laws, there is a risk that some provisions may be inadvertently or intentionally breached, for example, through fraudulent or negligent behavior of individual employees, our failure to comply with certain formal documentation requirements, or otherwise. Also, we may be held liable for actions taken by our local dealers and partners. Violations of these laws and regulations could result in fines, criminal sanctions against us, our officers or our employees, and prohibitions or conditions on the conduct of our business. Any such violations could include prohibitions or conditions on our ability to offer our products in one or more countries and could materially damage our reputation, our brand, our business, and our operating results. In addition, we operate in many parts of the world that have experienced significant governmental corruption to some degree and, in certain circumstances, strict compliance with anti-bribery laws may conflict with local customs and practices. We may be subject to competitive disadvantages to the extent that our competitors are able to secure business, licenses, or other preferential treatment by making payments to government officials and others in positions of influence or through other methods that relevant law and regulations prohibit us from using. Our success depends, in part, on our ability to anticipate these risks and manage these difficulties. These factors or any combination of these factors may adversely affect our revenue or our overall financial performance.

***Our failure to maintain appropriate sustainability practices and disclosures could result in reputational harm, a loss of customer and investor confidence, and adverse business and financial results.***

Governments, investors, customers, and employees are enhancing their focus on sustainability practices and disclosures, and expectations in this area are rapidly evolving and increasing. While we monitor the various and evolving standards and associated reporting requirements, failure to adequately maintain appropriate sustainability practices that meet diverse stakeholder expectations may result in the loss of business, reduced market valuation, an inability to attract customers, and an inability to attract and retain top talent.

***Legal or regulatory measures to address climate change, may negatively affect us.***

Concern over climate change can also result in new or additional legal or regulatory requirements designed to reduce greenhouse gas emissions and/or mitigate the effects of climate change on the environment, such as taxation of, or caps on the use of, carbon-based energy. Any such new or additional legal or regulatory requirements may increase the costs associated with, or disrupt sourcing, manufacturing and distribution of, our products which may adversely affect our business and financial statements.

***We must comply with a variety of existing and future laws and regulations, such as sustainability initiatives, that could impose substantial costs on us and may adversely affect our business.***

Increasingly regulators, customers, investors, employees and other stakeholders are focusing on sustainability matters. While we have certain sustainability initiatives, there can be no assurance that regulators, customers, investors, and employees will determine that these programs are sufficiently robust. In addition, there can be no assurance that we will be able to attain any announced goals related to our sustainability program, as statements regarding our sustainability goals reflect our current plans and aspirations and are not guarantees that we will be able to achieve them within the timelines we announce or at all. Actual or perceived shortcomings with respect to our

sustainability initiatives and reporting can impact our ability to hire and retain employees, increase our customer base, or attract and retain certain types of investors. In addition, these parties are increasingly focused on specific disclosures and frameworks related to sustainability matters. Collecting, measuring, and reporting sustainability information and metrics can be costly, difficult and time consuming, is subject to evolving reporting standards, and can present numerous operational, reputational, financial, legal and other risks, any of which could have a material impact, including on our reputation and stock price. Inadequate processes to collect and review this information prior to disclosure could be subject to potential liability related to such information.

[Table of Contents](#)

***We may seek to expand through acquisitions of and investments in other businesses, technologies, and assets. These acquisition activities may be unsuccessful or divert management's attention.***

We may consider strategic and complementary acquisitions of and investments in other businesses, technologies, and assets, and such acquisitions or investments are subject to risks that could affect our business, including risks related to:

- the necessity of coordinating geographically disparate organizations;
- implementing common systems and controls;
- integrating personnel with diverse business and cultural backgrounds;
- integrating acquired research and manufacturing facilities, technology and products;
- combining different corporate cultures and legal systems;
- unanticipated expenses related to integration, including technical and operational integration;
- increased costs and unanticipated liabilities, including with respect to registration, environmental, health and safety matters, that may affect sales and operating results;
- retaining key employees;
- obtaining required government and third-party approvals;
- legal limitations in new jurisdictions;
- installing effective internal controls and audit procedures;
- issuing common stock that could dilute the interests of our existing stockholders;
- spending cash and incurring debt;
- assuming contingent liabilities; and
- creating additional expenses.

We may not be able to identify opportunities or complete transactions on commercially reasonable terms, or at all, or actually realize any anticipated benefits from such acquisitions or investments. Similarly, we may not be able to obtain financing for acquisitions or investments on attractive terms. If we do complete acquisitions, we cannot ensure that they will ultimately strengthen our competitive or financial position or that they will not be viewed negatively by customers, financial markets, investors, or the media. In addition, the success of any acquisitions or investments also will depend, in part, on our ability to integrate the acquisition or investment with our existing operations.

The integration of businesses that we may acquire is likely to be a complex, time-consuming, and expensive process and we may not realize the anticipated revenues or other benefits associated with our acquisitions if we fail to successfully manage and operate the acquired business. If we fail in any acquisition integration efforts and are unable to efficiently operate as a combined organization utilizing common information and communication systems, operating procedures, financial controls, and human resources practices, our business, financial condition, and results of operations may be adversely affected.

In connection with certain acquisitions, we may agree to issue common stock or assume equity awards that dilute the ownership of our current stockholders, use a substantial portion of our cash resources, assume liabilities, record goodwill and amortizable intangible assets that will be subject to impairment testing on a regular basis and potential periodic impairment charges, incur amortization expenses related to certain intangible assets, and incur large and immediate write-offs and restructuring and other related expenses, all of which could harm our financial condition and results of operations.

***Our success depends, in part, on key personnel whose continued service is not guaranteed.***

Our success depends, in part, on the continued availability and service of key personnel, including executive officers and other highly qualified employees, particularly when we undergo a leadership transition. Competition for these key personnel is intense. We cannot assure that we will retain our key personnel or that we will be able to recruit and retain other highly qualified employees in the future. Losing any key personnel could, at least temporarily, have a material adverse effect on our business, financial position and results of operations.

[Table of Contents](#)



## **Risks Related to Economic Conditions and Geopolitical Conflicts**

***Uncertainty in the global geopolitical landscape and macro-economic environment may impact our operations outside the U.S., including in the Middle East where many of our water megaprojects are planned.***

We conduct our business on a global basis. Our products are sold in numerous countries worldwide, with a large percentage of our sales generated outside the U.S., specifically in the Middle East and Africa, and Asian markets which provide a significant portion of our total revenue. Therefore, we are exposed to, and impacted by, global macroeconomic factors, U.S. and foreign government policies, and foreign exchange fluctuations. There is uncertainty surrounding macroeconomic factors in the U.S. and globally characterized by the supply chain environment, inflationary pressure, rising interest rates, and labor shortages. These global macroeconomic factors, coupled with the U.S. political climate, political unrest internationally, and known conflicts in Europe and the Middle East, have created global economic and political uncertainty, and have impacted demand for certain of our products. While the impact and longevity of these factors remains uncertain, we are constantly evaluating the extent to which these factors will impact our business, financial condition, or results of operations. Over the long-term, demand for our energy recovery devices could correlate to global macroeconomic and geopolitical factors. Any disruption to the economic factors and regulations in these regions, which remain uncertain, may adversely affect our results of operations and financial condition.

In addition, there is uncertainty as to the position the U.S. will take with respect to world affairs. This uncertainty may include such issues as the U.S. support for existing treaty and trade relationships with other countries, including, notably, China. This uncertainty, together with other recent key global events, such as recently enacted currency control regulations and tariff regimes in or against China, ongoing terrorist activity, and hostilities in the Middle East, may adversely impact (i) the ability or willingness of non-U.S. companies to transact business with U.S. companies, including with us; (ii) our ability to transact business in other countries, including the Middle East, where many of the water megaprojects are planned; (iii) regulation and trade agreements affecting U.S. companies; (iv) global stock markets (including The NASDAQ Global Select Market Composite on which our common shares are traded); and (v) general global economic conditions. Furthermore, the conflicts in Europe and the Middle East have resulted in worldwide geopolitical and macroeconomic uncertainty, and we cannot predict how these conflicts will evolve or their timing. If these conflicts continue for a significant time or further expand to other countries or regions, they could have additional adverse effects on macroeconomic conditions that may have a direct adverse impact on our business and/or our supply chain, business partners or customers in the broader region. All of these factors are outside of our control, but may nonetheless cause us to adjust our strategy in order to compete effectively in global markets.

## **Risks Related to Information Technology**

***We may have risks associated with security of our information technology systems.***

We make significant efforts to maintain the security and integrity of our information technology systems and data. Despite significant efforts to create security barriers to such systems, it is virtually impossible for us to entirely mitigate this risk. Although we have sufficient controls in place, we have implemented additional enhanced security features and monitoring procedures. There is a risk of industrial espionage, cyberattacks, such as LOG4J, misuse or theft of information or assets, or damage to assets by people who may gain unauthorized access to our facilities, systems, or information. Such cybersecurity breaches, misuse, or other disruptions could lead to the disclosure of confidential information, improper usage and distribution of our IP, theft, manipulation and destruction of private and proprietary data, and production downtimes. Although we actively employ measures to prevent unauthorized access to our information systems, preventing unauthorized use or infringement of our rights is inherently difficult. These events could adversely affect our financial results and any legal action in connection with any such cybersecurity breach could be costly and time-consuming and may divert management's attention and adversely affect the market's perception of us and our products. In addition, we must frequently expand our internal information system to meet increasing demand in storage, computing and communication, which may result in increased costs. Our internal information system is expensive to expand and must be highly secure due to the sensitive nature of our customers' information that we transmit. Building and managing the support necessary for our growth places significant demands on our management and resources. These demands may divert these resources from the continued growth of our business and implementation of our business strategy.

[Table of Contents](#)

***Our actual or perceived failure to adequately protect personal data could adversely affect our business, financial condition and results of operations.***

A wide variety of provincial, state, national, foreign, and international laws and regulations apply to the collection, use, retention, protection, disclosure, transfer, and other processing of personal data. These privacy and data protection-related laws and regulations are evolving, with new or modified laws and regulations proposed and implemented frequently and existing laws and regulations subject to new or different interpretations. Further, our legal and regulatory obligations in foreign jurisdictions are subject to unexpected changes, including

the potential for regulatory or other governmental entities to enact new or additional laws or regulations, to issue rulings that invalidate prior laws or regulations, or to increase penalties significantly. Compliance with these laws and regulations can be costly and can delay or impede the development and offering of new products and services.

For example, the General Data Protection Regulation, which became effective in May 2018, imposes more stringent data protection requirements, and provides for significantly greater penalties for noncompliance, than the European Union laws that previously applied. Additionally, California recently enacted legislation, the California Privacy Rights Act ("CPRA"), which amends the California Consumer Privacy Act. The CPRA took effect on January 1, 2023, and enforcement began on July 1, 2023. We may be subject to additional obligations relating to personal data by contract that industry standards apply to our practices. Our actual or perceived failure to comply with applicable laws and regulations or other obligations to which we may be subject relating to personal data, or to protect personal data from unauthorized access, use, or other processing, could result in enforcement actions and regulatory investigations against us, claims for damages by customers and other affected individuals, fines, damage to our reputation, and loss of goodwill, any of which could have a material adverse effect on our operations, financial performance, and business. Further, evolving and changing definitions of personal data and information, including the classification of internet protocol addresses, machine identification information, location data, and other information, may limit or inhibit our ability to operate or expand our business, including limiting business relationships and partnerships that may involve the sharing or uses of data, and may require significant costs, resources, and efforts in order to comply.

### **Risks Related to Intellectual Property**

***If we are unable to protect our technology or enforce our intellectual property rights, our competitive position could be harmed, and we could be required to incur significant expenses to enforce our rights.***

Our competitive position depends on our ability to establish and maintain proprietary rights in our technology and to protect our technology from copying by others. We rely on trade secret, patent, copyright, and trademark laws, as well as confidentiality agreements with employees and third parties, all of which may offer only limited protection. We hold a number of U.S. and counterpart international patents, and when their terms expire, we could become more vulnerable to increased competition. The protection of our IP in some countries may be limited. While we have expanded our portfolio of patent applications, we do not know whether any of our pending patent applications will result in the issuance of patents or whether the examination process will require us to narrow our claims, and even if patents are issued, they may be contested, circumvented, or invalidated. Moreover, while we believe our issued patents and patent pending applications are essential to the protection of our technology, the rights granted under any of our issued patents or patents that may be issued in the future may not provide us with proprietary protection or competitive advantages, and as with any technology, competitors may be able to develop similar or superior technologies now or in the future. In addition, our granted patents may not prevent misappropriation of our technology, particularly in foreign countries where IP laws may not protect our proprietary rights as fully as those in the U.S. This may render our patents impaired or useless and ultimately expose us to currently unanticipated competition. Protecting against the unauthorized use of our products, trademarks, and other proprietary rights is expensive, difficult, and in some cases, impossible. Litigation may be necessary in the future to enforce or defend our IP rights or to determine the validity and scope of the proprietary rights of others. IP litigation could result in substantial costs and diversion of management resources, either of which could harm our business.

#### [Table of Contents](#)

### ***Claims by others that we infringe their proprietary rights could harm our business.***

Third parties could claim that our technology infringes their IP rights. In addition, we or our customers may be contacted by third parties suggesting that we obtain a license to certain of their IP rights that they may believe we are infringing. We expect that infringement claims against us may increase as the number of products and competitors in our market increases and overlaps occur. In addition, to the extent that we gain greater visibility, we believe that we will face a higher risk of being the subject of IP infringement claims. Any claim of infringement by a third party, even those without merit, could cause us to incur substantial costs defending against the claim and could distract management from our business. Furthermore, a party making such a claim, if successful, could secure a judgment that requires us to pay substantial damages. A judgment against us could also include an injunction or other court order that could prevent us from offering our products. In addition, we might be required to seek a license for the use of such IP, which may not be available on commercially reasonable terms, or at all. Alternatively, we may be required to develop non-infringing technology, which could require significant effort and expense and may ultimately not be successful. Any of these events could seriously harm our business. Third parties may also assert infringement claims against our customers. Because we generally indemnify our customers if our products infringe the proprietary rights of third parties, any such claims would require us to initiate or defend protracted and costly litigation on their behalf in one or more jurisdictions, regardless of the merits of these claims. If any of these claims succeed, we may be forced to pay damages on behalf of our customers.

### **Risks Related to Tax and Governmental Regulations**

***The enactment of legislation implementing changes in taxation of international business activities, the adoption of other corporate tax reform policies, or changes in tax legislation or policies could materially impact our financial position and results of operations.***

Our future effective tax rates could be subject to volatility or adversely affected by changes in tax laws, regulations, accounting principles, or interpretations thereof. In addition, the U.S. Tax Cuts and Jobs Act ("Tax Act") enacted in 2017, made significant changes to



the taxation of U.S. business entities that may have a meaningful impact to our provision for income taxes. These changes included a reduction to the federal corporate income tax rate, the current taxation of certain foreign earnings, the imposition of base-erosion prevention measures which may limit the deduction of certain transfer pricing payments, foreign derived intangible income deductions, capitalization of R&D expenses beginning in the 2022 tax year, and possible limitations on the deductibility of net interest expense or corporate debt obligations. The U.S. Department of the Treasury continues to issue regulations that affect various components of the Tax Act. Our future effective tax rate may be impacted by changes in interpretation of the regulations, as well as additional legislation and guidance regarding the Tax Act.

In addition, many countries are beginning to implement legislation and other guidance to align their international tax rules with the Organisation for Economic Co-operation's Base Erosion and Profit Shifting recommendations and action plan that aim to standardize and modernize global corporate tax policy, including changes to cross-border tax, transfer-pricing documentation rules, and nexus-based tax incentive practices. As a result of the heightened scrutiny of corporate taxation policies, prior decisions by tax authorities regarding treatments and positions of corporate income taxes could be subject to enforcement activities, and legislative investigation and inquiry, which could also result in changes in tax policies or prior tax rulings. Any such changes in policies or rulings may also result in the taxes we previously paid being subject to change.

Due to the scale of our international business activities any substantial changes in international corporate tax policies, enforcement activities or legislative initiatives may materially and adversely affect our business, the amount of taxes we are required to pay and our financial condition and results of operations generally.

[Table of Contents](#)

---

Energy Recovery, Inc. | 2023 Form 10-K Annual Report | 22

***Changes in tax laws or regulations that are applied adversely to us or our customers may have a material adverse effect on our business, cash flow, financial condition or results of operations.***

New income, sales, use or other tax laws, statutes, rules, regulations or ordinances could be enacted at any time, which could adversely affect our business operations and financial performance. Further, existing tax laws, statutes, rules, regulations or ordinances could be interpreted, changed, modified or applied adversely to us. For example, the Tax Act, the Coronavirus Aid, Relief, and Economic Security Act, and the Inflation Reduction Act, enacted many significant changes to the U.S. tax laws. Future guidance from the U.S. Internal Revenue Service and other tax authorities with respect to such legislation may affect us, and certain aspects thereof could be repealed or modified in future legislation. The current administration and Congress periodically make and propose tax law changes, some of which could have an adverse effect on our operations, cash flows, and results of operations, and contribute to overall market volatility. In addition, it is uncertain if and to what extent various states will conform to federal tax legislation. Changes in corporate tax rates, the realization of net deferred tax assets relating to our operations, the taxation of foreign earnings, and the deductibility of expenses under the Tax Act or future reform legislation could have a material impact on the value of our deferred tax assets, could result in significant one-time charges, and could increase our future U.S. tax expense.

***The U.S. Congress may make substantial changes to fiscal, regulation and other federal policies that may adversely affect our business, financial condition, operating results and cash flows.***

Changes in general economic conditions in the U.S. or other regions could adversely affect our business. There have been, and there may be, significant changes in, and uncertainty with respect to, legislation, regulation and government policy. While it is not possible to predict whether and when any such changes will occur, changes at the local, state or federal level could impact our business. Specific legislative and regulatory proposals that could have a material impact on us include, but are not limited to, modifications to international trade policy; public company reporting requirements; and environmental regulation.

We cannot predict what actions may ultimately be taken with respect to tariffs or trade relations between the U.S. and other countries, what products may be subject to such actions, or what actions may be taken by the other countries in retaliation. Accordingly, it is difficult to predict how such actions may impact our business, or the business of our customers. Our business operations, as well as the businesses of our customers on which we are substantially dependent, are located in various countries at risk for escalating trade disputes, including the U.S. and China. Any resulting trade wars could have a significant adverse effect on world trade and could adversely impact our revenues, gross margins and business operations.

**Risks Related to our Internal Controls**

***Changes in the U.S. generally accepted accounting principles could adversely affect our financial results and may require significant changes to our internal accounting systems and processes.***

We prepare our consolidated financial statements in conformity with U.S. generally accepted accounting principles ("GAAP"). These principles are subject to interpretation by the Financial Accounting Standards Board ("FASB"), the SEC and various bodies formed to interpret and create appropriate accounting principles and guidance. The FASB periodically issues new accounting standards on a variety of topics. These and other such standards generally result in different accounting principles, which may significantly impact our reported results or could result in variability of our financial results.

***We are required to evaluate the effectiveness of our internal control over financial reporting and publicly disclose material weaknesses in our controls. Any adverse results from such evaluation may adversely affect investor perception, and our stock price.***

Section 404 of the Sarbanes-Oxley Act of 2002 requires our management to assess the effectiveness of our internal controls over financial reporting and to disclose in our filing if such controls were unable to provide assurance that a material error would be prevented or detected in a timely manner. We have an ongoing program to review the design of our internal controls framework in keeping with changes in business needs, implement necessary changes to our controls design and test the system and process controls necessary to comply with these requirements. If in the future, our internal controls over financial reporting are determined to be not effective resulting in a material weakness or significant deficiency, investor perceptions regarding the reliability of our financial statements may be adversely affected which could cause a decline in the market price of our stock and otherwise negatively affect our liquidity and financial condition.

[Table of Contents](#)

---

Energy Recovery, Inc. | 2023 Form 10-K Annual Report | 23

## **Risks Related to our Common Stock**

***Insiders and principal stockholders will likely have significant influence over matters requiring stockholder approval.***

Our directors, executive officers, and other principal stockholders beneficially own, in the aggregate, a substantial amount of our outstanding common stock. These stockholders could likely have significant influence over all matters requiring stockholder approval, including the election of directors and approval of significant corporate transactions such as a merger or other sale of our company, or our company's assets.

***The market price of our common stock may continue to be volatile.***

The market price of our common stock has been, and is likely to continue to be, volatile and subject to fluctuations. Changes in the stock market generally, as it concerns our industry, as well as geopolitical, economic, and business factors unrelated to us, may also affect our stock price. Significant declines in the market price of our common stock or failure of the market price to increase could harm our ability to recruit and retain key employees, reduce our access to debt or equity capital, and otherwise harm our business or financial condition. In addition, we may not be able to use our common stock effectively as consideration in connection with any future acquisitions.

***Anti-takeover provisions in our charter documents and under Delaware law could discourage, delay, or prevent a change in control of our company and may affect the trading price of our common stock.***

Provisions in our amended and restated certificate of incorporation and bylaws may have the effect of delaying or preventing a change of control or changes in our management. Our amended and restated certificate of incorporation and amended and restated bylaws include provisions that:

- authorize our Board of Directors to issue, without further action by the stockholders, up to 10,000,000 shares of undesignated preferred stock;
- require that any action to be taken by our stockholders be effected at a duly called annual or special meeting and not by written consent;
- specify that special meetings of our stockholders can be called only by our Board of Directors, the chairman of the board, the chief executive officer, or the president;
- establish an advance notice procedure for stockholder approvals to be brought before an annual meeting of our stockholders, including proposed nominations of persons for election to our Board of Directors;
- provide that our directors may be removed only for cause;
- provide that vacancies on our Board of Directors may be filled only by a majority vote of directors then in office, even though less than a quorum;
- specify that no stockholder is permitted to cumulate votes at any election of directors; and
- require a super-majority of votes to amend certain of the above-mentioned provisions.

In addition, we are subject to the provisions of Section 203 of the Delaware General Corporation Law regulating corporate takeovers.

Section 203 generally prohibits us from engaging in a business combination with an interested stockholder subject to certain exceptions.

***Our business could be negatively affected as a result of actions of activist shareholders, and such activism could impact the trading value of our securities.***

In recent years, shareholder activists have become involved in numerous public companies. Shareholder activists frequently propose to involve themselves in the governance, strategic direction and operations of the company. Such proposals may disrupt our business and divert the attention of our Board of Directors, management and employees, and any perceived uncertainties as to our future direction resulting from such a situation could result in the loss of potential business opportunities, interfere with our ability to execute our strategic plan, be exploited by our competitors, cause concern to our current or potential customers, and make it more difficult to attract and retain qualified personnel and business partners, all of which could adversely affect our business. A proxy contest for the election of directors at our annual meeting could also require us to incur significant legal fees and proxy solicitation expenses. In addition, actions of activist shareholders may cause significant fluctuations in our stock price based on temporary or speculative market perceptions or other factors that do not necessarily reflect the underlying fundamentals and prospects of our business.

[Table of Contents](#)

---

Energy Recovery, Inc. | 2023 Form 10-K Annual Report | 24

***Our shareholders may experience future dilution as a result of future equity offerings.***

In the future, we may offer additional shares of our common stock or other securities convertible into, or exchangeable for, our common stock in order to raise additional capital. We cannot assure our shareholders that we will be able to sell shares or other securities in any other offering at a price per share that is equal to or greater than the price per share our shareholders paid for our shares. Investors purchasing shares or other securities in the future could have rights, preferences or privileges senior to those of our shareholders and our shareholders may experience dilution. Our shareholders may incur additional dilution upon the exercise of any outstanding stock options or warrants, the issuance of shares of restricted stock, the vesting of restricted stock units, or the issuance, vesting or exercise of other equity awards.

**Item 1B — Unresolved Staff Comments**

None.

**Item 1C — Cybersecurity**

***Managing Material Risks & Integrated Overall Risk Management***

We have strategically integrated cybersecurity risk management into our broader risk management framework to promote a company-wide culture of cybersecurity risk management. This integration ensures that cybersecurity considerations are an integral part of our decision-making processes at every level. Our Risk Management Team (see “Management’s Role Managing Risk” below for details regarding the team members and scope) works closely with our Information Technology (“IT”) team to continuously evaluate and address cybersecurity risks in alignment with our business objectives and operational needs.

***Engage Third-parties on Risk Management***

Recognizing the complexity and evolving nature of cybersecurity threats, we engage with a range of external experts, including cybersecurity consultants in evaluating and testing our risk management systems. These partnerships enable us to leverage specialized knowledge and insights, ensuring our cybersecurity strategies and processes remain at the forefront of industry best practices. Our collaboration with these third-parties includes regular audits, threat assessments, and consultation on security enhancements.

***Oversee Third-party Risk***

Because we are aware of the risks associated with third-party service providers, we have implemented stringent processes to oversee and manage these risks. We conduct thorough security assessments of all third-party providers before engagement and maintain ongoing monitoring to ensure compliance with our cybersecurity standards. The monitoring includes an initial assessment by our Director, Information Technology and IT team, and on an ongoing basis of a few key high-risk third-party systems by our security engineers. We also rely upon certain third-party system providers, including cloud and non-cloud programs provided by software developers such as Microsoft Corporation, Blackline Systems, Inc., Workiva, Inc., and others, to review and notify their customers of any data breach. This approach, both internal and reliance on external review notification, is designed to mitigate risks related to data breaches or other security incidents originating from third-parties.

***Risks from Cybersecurity Threats***

While we have a cybersecurity program designed to protect and preserve the integrity of our information systems, we also maintain cybersecurity insurance to manage potential liabilities resulting from specific cyber-attacks. However, it’s important to note that although we maintain cybersecurity insurance, there can be no guarantee that our insurance coverage limits will protect against any future claims or that such insurance proceeds will be paid to us in a timely manner. As of December 31, 2023, no risks from cybersecurity threats, including as a result of any previous cybersecurity incidents, have materially affected, or are reasonably likely to materially affect, us, including our business strategy, results of operations, or financial condition.

***[Table of Contents](#)***

Governance

The Board of Directors (the “Board”) is acutely aware of the critical nature of managing risks associated with cybersecurity threats. The Board has established oversight mechanisms to ensure effective governance in managing risks associated with cybersecurity threats because we recognize the significance of these threats to our operational integrity and stakeholder confidence.

Board of Directors Oversight

The Audit Committee of the Board (the “Audit Committee”) is central to the Board’s oversight of cybersecurity risks and bears the primary responsibility for this domain. The Audit Committee is composed of independent board members with diverse expertise and experience which allows them to oversee cybersecurity risks effectively.

Management’s Role Managing Risk

We have an internal management team comprising of our Chief Financial Officer (“CFO”), Chief Legal Officer (“CLO”), VP, Corporate Controller, Sr. Director, SEC Reporting, and Director, Information Technology (the “Risk Management Team”), that plays a pivotal role in informing the Audit Committee on cybersecurity risks. The Director, Information Technology and IT team monitor cybersecurity risks and perform continual risk exercises and assessments. The Risk Management Team meets quarterly to discuss current security breaches and threats, if any, and discuss new controls and results of the cybersecurity risk monitoring, exercises, and assessments. The Risk Management Team provides comprehensive briefings to the Audit Committee on a regular basis, with a minimum frequency of once per year. These briefings encompass a broad range of topics, including:

- Current cybersecurity landscape and emerging threats;
- Status of ongoing cybersecurity initiatives and strategies;
- Incident reports and learnings from any cybersecurity events; and
- Compliance with regulatory requirements and industry standards.

In addition to our scheduled meetings, the Audit Committee and the Risk Management Team maintain an ongoing dialogue regarding emerging or potential cybersecurity risks. Together, the Board receives updates on any significant developments in the cybersecurity domain, ensuring the Board’s oversight is proactive and responsive. The Audit Committee actively participates in strategic decisions related to cybersecurity, offering guidance and approval for major initiatives. This involvement ensures that cybersecurity considerations are integrated into our broader strategic objectives.

Risk Management Personnel

Our Director, Information Technology (our “IT Director”), who has a career of 23 years in IT, has in-depth working knowledge on IT systems and data security, and his experience is instrumental in developing and executing our cybersecurity strategies. Our IT Director along with the IT team, oversees our governance programs, tests our compliance with standards, remediates known risks, and leads our employee cybersecurity risk training program. However, the primary responsibility for assessing, monitoring and managing our cybersecurity risks rests with the Risk Management Team. The diverse background and experience of our Risk Management Team members are instrumental in developing and executing our cybersecurity strategies and supplement the expertise of our IT Director with their understanding of the needs of our business.

Monitor Cybersecurity Incidents

Our IT Director and the IT team are continually informed about the latest developments in cybersecurity, including potential threats and innovative risk management techniques. This ongoing knowledge acquisition is crucial for the effective prevention, detection, mitigation, and remediation of cybersecurity incidents. Our IT Director and the IT team implement and oversee processes for the regular monitoring of our information systems. This includes the deployment of advanced security measures and regular system audits to identify potential vulnerabilities. In the event of a cybersecurity incident, our IT Director is equipped with a well-defined incident response plan. This plan includes immediate actions to mitigate the impact and long-term strategies for remediation and prevention of future incidents.

[Table of Contents](#)

Reporting to Board of Directors

Our IT Director, in his capacity, regularly informs the other Risk Management Team members of all aspects related to cybersecurity risks and incidents. This ensures that various levels management are kept abreast of the cybersecurity posture and potential risks facing Energy Recovery, Inc. Furthermore, significant cybersecurity matters, and strategic risk management decisions are escalated to the Audit Committee, ensuring that the Audit Committee has comprehensive oversight and can provide guidance on critical cybersecurity issues.

Item 2 — Properties

The table below presents details for each of our principal properties. Each of these principal properties are located in the U.S.

Facility	Location	Status	Approximate Square Footage	Lease Expiration
Headquarters, R&D and manufacturing	San Leandro, California	Lease	171,000	Dec- 2028
Manufacturing and warehouse	Tracy, California	Lease	54,429	Apr- 2030
Office, R&D, warehouse, and yard	Katy, Texas	Lease	221,220	Jun- 2029

Additionally, we lease offices located in Dubai, United Arab Emirates; and Shanghai, Peoples Republic of China. We believe that

these facilities will be adequate for our purposes for the foreseeable future.

### **Item 3 — Legal Proceedings**

See Note 7, "Commitments and Contingencies – Litigation" of the Notes which is incorporated by reference into this Item 3, for a description of the lawsuits pending, if any, against us.

### **Item 4 — Mine Safety Disclosures**

Not applicable.

[Table of Contents](#)

---

Energy Recovery, Inc. | 2023 Form 10-K Annual Report | 27

## **PART II**

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

#### **Market Information**

Our common stock is listed on the Nasdaq Stock Market – The NASDAQ Global Select Market Composite under the symbol "ERII."

#### **Stockholders**

As of December 31, 2023, there were approximately 15 stockholders of record of our common stock as reported by our transfer agent, one of which is Cede & Co., a nominee for Depository Trust Company ("DTC"). All of the shares of common stock held by brokerage firms, banks, and other financial institutions as nominees for beneficial owners are deposited into participant accounts at DTC and are therefore considered to be held of record by Cede & Co., as one stockholder.

#### **Dividend Policy**

We have never declared or paid any dividends on our common stock, and we do not currently intend to pay any dividends on our common stock for the foreseeable future. Any future determination to pay dividends on our common stock will be, subject to applicable law, at the discretion of our Board of Directors, and will depend upon, among other factors, our results of operations, financial condition, capital requirements, and contractual restrictions in loan or other agreements.

#### **Securities Authorized for Issuance Under Equity Compensation Plans**

Information regarding our equity compensation plans and the securities authorized for issuance thereunder is set forth herein under Part III, Item 12, "Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters" included in this Annual Report on Form 10-K.

#### **Sales of Unregistered Securities**

None.

[Table of Contents](#)

---

Energy Recovery, Inc. | 2023 Form 10-K Annual Report | 28

### Stock Performance Graph

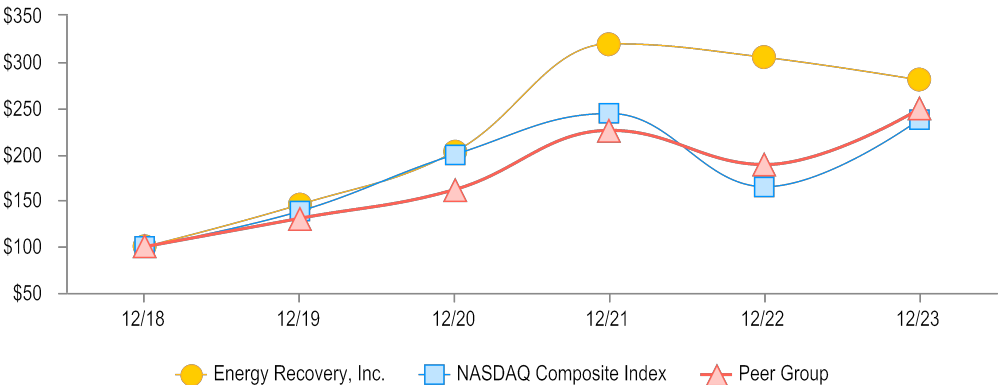
The following graph shows the cumulative total stockholder return of an investment of \$100 on December 31, 2018 in (i) our common stock, (ii) the NASDAQ Composite Index, (iii) and a peer group for the current fiscal year ("Peer Group"). Cumulative total return assumes the reinvestment of dividends, although dividends have never been declared on our stock, and is based on the returns of the component companies weighted according to their capitalization as of the end of each annual period. For each reported year, the reported dates are the last trading dates of our annual year.

The NASDAQ Composite Index tracks the aggregate total return performance of equity securities traded on the Nasdaq Stock Market. The Peer Group tracks the weighted average total return performance of equity securities of nine companies that management believes Energy Recovery, Inc. is closely aligned during the years presented. As we evolve and grow into new industries, management expects to expand or rebalance the companies within this peer group. The companies within the Peer Group are: Badger Meter, Inc.; Evoqua Water Technologies Corp. (through May 2023); Flowserve Corp; Franklin Electronic Co., Inc.; The Gorman-Rupp Company; Itron, Inc.; Kurita Water Industries Ltd.; Pentair plc; and Primo Water Corp. The return of each component issuer of the Peer Group is weighted according to the respective issuer's stock market capitalization at the end of each period for which a return is indicated. Our stock price performance shown in the graph below is not indicative of future stock price performance.

The following graph and its related information is not "soliciting material," is not deemed "filed" with the Securities and Exchange Commission, and is not to be incorporated by reference into any filing of the Company under the Securities Act of 1933, as amended or the Securities Exchange Act of 1934, as amended, whether made before or after the date hereof and irrespective of any general incorporation language contained in such filing.

### COMPARISON OF FIVE-YEAR CUMULATIVE TOTAL RETURN

Among Energy Recovery, Inc., The NASDAQ Composite Index, and Peer Group



	As of December 31,					
	2018	2019	2020	2021	2022	2023
Energy Recovery, Inc.	\$ 100.00	\$ 145.47	\$ 202.67	\$ 319.32	\$ 304.46	\$ 279.94
NASDAQ Composite Index	100.00	138.27	199.64	243.92	164.56	238.01
Peer Group	100.00	130.56	161.69	225.56	188.67	249.19

## Item 6 — [Reserved]

[Table of Contents](#)

Energy Recovery, Inc. | 2023 Form 10-K Annual Report | 29

## Item 7 — Management’s Discussion and Analysis of Financial Condition and Results of Operations

The following Management Discussion and Analysis of Financial Condition and Results of Operations is intended to help the reader understand our results of operations and financial condition. It should be read in conjunction with the Consolidated Financial Statements and related Notes included in Part II, Item 8, “Financial Statements and Supplementary Data,” in this Annual Report on Form 10-K.

### Overview

Our reportable operating segments consist of the Water and Emerging Technologies segments. These segments are based on the industries in which the technology solutions are sold, the type of energy recovery device or other technology sold and the related solution and service or, in the case of emerging technologies, where revenues from new and/or potential devices utilizing our pressure exchanger technology can be brought to market. Other factors for determining the reportable operating segments include the manner in which management evaluates the performance of the Company combined with the nature of the individual business activities. In addition, our corporate operating expenses include expenditures in support of the water and emerging technologies segments, as well as R&D expenditures applicable to potential future industry verticals, or enabling technologies that could benefit either or both existing business units.

### Highlights, Economic Conditions, Challenges, and Risks

We released our fourth annual Sustainability Report (formally referred to as our Environmental, Social, and Governance (“ESG”) report), which details our efforts to accelerate the environmental sustainability of our customers’ operations and enhance the management of sustainability issues in our own operations. Our Sustainability Report reports provide examples and data illustrating our products’ positive environmental impacts across the industries where we operate. We understand the importance of being a responsible corporate citizen and believe our sustainability objectives provide us with a strategic roadmap to become a more resilient business, as well as a way to maintain our competitive advantage. Our 2022 Sustainability Report (issued in September 2023) outlines our progress on those objectives and aligns to leading sustainability frameworks and reporting standards, including the United Nations Sustainable Development Goals and the Sustainability Accounting Standards Board, as well as select disclosures from the Global Reporting Initiative and the Task Force on Climate-related Financial Disclosures.

As a result of our sustainability efforts and reporting, in 2023, MSCI ESG Research LLC (“MSCI”) upgraded the company from an ESG rating of AA to its highest rating of AAA. MSCI’s evaluation recognizes Energy Recovery as one of the highest performing companies within the Industrial Machinery industry in MSCI’s All Company World Index, reflecting robust corporate governance and labor management practices and significant opportunities in clean technology.

Our complete 2022 Sustainability Report can be found on our website at: <https://energyrecovery.com/sustainability/>. The foregoing link to our 2022 Sustainability Report is an inactive textual reference, and our 2022 Sustainability Report is not incorporated by reference into, and is not a part of, this Annual Report.

During the year, we announced:

- Additions to our PX U Series product line, tailored for ultra high-pressure reverse osmosis (“UHPRO”) applications. The expanded PX U Series product line includes the U20, U40, U80, and U250 models.
- The appointment of Fieuw Koeltechniek (“Fieuw”), a leading refrigeration cooling rack and service provider in Belgium, the Netherlands, and Luxembourg (these countries are commonly referred to as the “Benelux region”), as our exclusive distribution agent in the Benelux region for two years and requires set volume purchase commitments over the life of the contract. Under the agreement, Fieuw, is granted the exclusive right to sell our PX G1300 within the Benelux region.
- The successful installation and commissioning of our PX G1300 in a major supermarket chain in the Benelux region and the second installation and commissioning of our PX G1300 with Vallarta Supermarkets in the U.S.

[Table of Contents](#)

Energy Recovery, Inc. | 2023 Form 10-K Annual Report | 30



•Received the prestigious “Refrigeration Innovation of the Year Award” for the PX G1300 at the ATMO Awards Ceremony of the Atmosphere America Summit 2023. The award for Refrigeration Innovation of the Year recognizes systems, products, or processes that utilize new technology to provide definitive innovations to refrigeration.

•Received the Refrigeration & Air Conditioning (“RAC”) Magazine “Innovation of the Year” award together with our partner, the Epta Group. The RAC Magazine award was recognized for work on implementing a new approach to further scale up the efficiency of CO<sub>2</sub> refrigeration.

### Global Economic and Political Environment Considerations

The markets for our products are dynamic and constantly evolving. Our products are sold in numerous countries worldwide, with a large percentage of our sales generated outside the U.S., specifically in the Middle East and Asia markets which provide a significant portion of our total revenue. Therefore, we are exposed to and impacted by global macroeconomic factors, U.S. and foreign government policies and foreign exchange fluctuations. There is uncertainty surrounding macroeconomic factors in the U.S. and globally characterized by the supply chain environment, inflationary pressure, rising interest rates, and labor shortages. These global macroeconomic factors, coupled with the U.S. political climate, political unrest internationally, and known conflicts in Europe and the Middle East, have created global economic and political uncertainty, and have impacted demand for certain of our products. While the impact and longevity of these factors remains uncertain, we are constantly evaluating the extent to which these factors will impact our business, financial condition or results of operations.

Over the long-term, demand for our energy recovery devices could correlate to global macroeconomic and geopolitical factors. Any disruption to the economic factors and regulations in these regions, which remain uncertain, may adversely affect our results of operations and financial condition.

Refer to Part I, Item 1, “Business,” and Part I, Item 1A, “Risk Factors,” of this Form 10-K for further discussion of these trends and other risks.

### Results of Operations

A discussion regarding our financial condition and results of operations for the year ended December 31, 2022, compared to the year ended December 31, 2021, can be found under Item 7 in our Annual Report on Form 10-K for the year ended December 31, 2022, filed with the SEC on February 23, 2023, which is available free of charge on the SEC’s website at <http://www.sec.gov> and at our investor relations website (<https://ir.energyrecovery.com>).

#### Revenue

There is no specific seasonality in our revenues to highlight that occurs throughout a calendar year.

#### Revenue by Channel Customers

	Years Ended December 31,						Change
	2023			2022			
	\$	% of Revenue		\$	% of Revenue		
(In thousands, except percentages)							
Megaproject	\$	83,665	65%	\$	81,888	65%	\$ 1,777 2%
Original equipment manufacturer		25,995	20%		28,858	23%	(2,863) (10%)
Aftermarket		18,689	15%		14,845	12%	3,844 26%
Total revenue	\$	128,349	100%	\$	125,591	100%	\$ 2,758 2%

#### [Table of Contents](#)

Years Ended December 31,						
2023			2022			
Water	Emerging Technologies	Total	Water	Emerging Technologies	Total	
Middle East and Africa	\$ 76,437	\$ 177	\$ 76,614	\$ 86,227	\$ 94	\$ 86,321
Asia	30,500	—	30,500	24,777	—	24,777
Americas	15,048	153	15,201	8,544	34	8,578
Europe	5,740	294	6,034	5,880	35	5,915
Total revenue	\$ 127,725	\$ 624	\$ 128,349	\$ 125,428	\$ 163	\$ 125,591

The Megaproject ("MPD") channel has been the main driver of our long-term growth as revenue from this channel benefits from a growing number of projects as well as an increase in the capacity of these projects in some cases. The change in revenue for the year ended December 31, 2023, as compared to the prior year, was due primarily to customers' project timing, and execution of these projects, specifically in the Middle East and Africa ("MEA") markets.

The Original Equipment Manufacturer ("OEM") channel, where we sell into a wide variety of industries in the desalination, wastewater, and the refrigeration markets, contains projects smaller in size and of shorter duration compared to those projects in the MPD channel.

•**Desalination:** The decrease in revenue in the year ended December 31, 2023, as compared to the prior year, by \$6.3 million was due primarily to timing of project shipments. Revenue was lower in the MEA channel, partially offset by an increase in revenue in the Americas market.

•**Wastewater:** The increase in revenue in the year ended December 31, 2023, as compared to the prior year, by \$3.0 million, was due primarily to growth within the Asian, European, and the Americas markets.

•**Emerging Technology:** The increase in revenue in the year ended December 31, 2023, as compared to the prior year, by \$0.6 million was due primarily to CO<sub>2</sub> growth in the European and Americas markets.

The Aftermarket ("AM") channel revenue generally fluctuates from year-to-year depending on support and services rendered to our installed customer base. AM revenue is also dependent on our customers' timing of product upgrades, and replenishment of spare parts and supplies. Generally, the AM channel revenue trend has been increasing over time. The increase in revenue in the year ended December 31, 2023, as compared to the prior year, by \$3.8 million was due primarily to shipments to customers in the MEA, the Americas and the European markets.

### Concentration of Revenue

Revenues attributable to domestic and international sales as a percentage of total revenue are presented in the following table. See Note 10, "Concentrations – Revenue by Geographic Location and Country," of the Notes for information about for further discussion regarding our concentration of revenue by geographic location.

	Years Ended December 31,	
	2023	2022
United States	2%	1%
International	98%	99%
Total revenue	100%	100%

[Table of Contents](#)

The following table presents all customers accounting for 10% or more of our revenues. Although certain customers might account for greater than 10% of our revenues at any one point in time, the concentration of revenues between a limited number of large customers shifts regularly, depending on timing of shipments. The percentages by customer reflect specific relationships or contracts that would concentrate our revenue for the periods presented and does not indicate a trend specific to any one customer. See Note 10, "Concentrations – Customer Revenue Concentration," of the Notes for further discussion on customer concentration.

	Segment	Years Ended December 31,	
		2023	2022
Customer B	Water	**	18%
Customer D	Water	**	15%
Customer E	Water	13%	**
Customer F	Water	**	11%

\*\* Zero or less than 10%.

### Gross Profit and Gross Margin

Gross profit represents our revenue less our cost of revenue. Our cost of revenue consists primarily of raw materials, personnel costs (including share-based compensation), manufacturing overhead, warranty costs, depreciation expense and other manufactured components.

	Years Ended December 31,				Change in Product Gross Profit
	2023		2022		
	\$	Gross Margin %	\$	Gross Margin %	
(In thousands, except percentages)					
Gross profit and gross margin	\$ 87,079	67.8%	\$ 87,356	69.6%	\$ (277) (0.3%)

The decrease in gross profit for the year ended December 31, 2023, as compared to the prior year, was due primarily to lower gross margin, partially offset by an increase in revenue. The decrease in gross margin during the year ended December 31, 2023, as compared to the prior year, was due primarily to higher manufacturing costs, partially offset by changes in product mix, and lower freight and tariffs.

[Table of Contents](#)

## Operating Expenses

The total material changes of general and administrative (“G&A”), sales and marketing (“S&M”) and research and development (“R&D”) operating expenses for the year ended December 31, 2023, as compared the prior year, are discussed within the following segment and corporate operating expense discussions below.

	Year Ended December 31, 2023				Year Ended December 31, 2022			
	Water	Emerging Technologies	Corporate	Total	Water	Emerging Technologies	Corporate	Total
<i>(In thousands)</i>								
General and administrative	\$ 7,751	\$ 3,927	\$ 17,186	\$ 28,864	\$ 6,936	\$ 4,104	\$ 17,301	\$ 28,341
Sales and marketing	13,691	6,053	2,420	22,164	11,065	3,047	2,165	16,277
Research and development	4,251	12,750	—	17,001	4,151	13,758	—	17,909
Total operating expenses	\$ 25,693	\$ 22,730	\$ 19,606	\$ 68,029	\$ 22,152	\$ 20,909	\$ 19,466	\$ 62,527

Overall operating expenditures increased by \$5.5 million, or 8.8%, in the year ended December 31, 2023, as compared to the prior year. This increase was due primarily to higher employee costs and share-based compensation expense related to additional headcount, and increased wages and benefit costs in G&A, S&M and R&D. Other non-employee costs included:

- G&A: higher consultant costs, professional fees related to management projects, and CEO and board member search fees;
- S&M: higher marketing expenses to further develop the CO<sub>2</sub> market, an increase in outside commission costs and higher software licensing and support costs, partially offset by lower consultant costs, and a litigation settlement cost that occurred in 2022 with no comparable cost in the current year;
- R&D: an increase in CO<sub>2</sub> product development costs, offset by expenses incurred in 2022 with no comparable costs in the current year, such as VorTeq-related accelerated depreciation expense of certain assets and employee severance costs.

**Water Segment.** Water segment operating expenses increased by \$3.5 million, or 16.0%, in the year ended December 31, 2023, as compared to the prior year. This increase was due primarily to higher employee costs, including share-based compensation expense, in G&A, S&M and R&D to support our existing desalination operations and our growth in wastewater, and an increase in marketing costs, partially offset by lower product development costs. The increase in employee costs was due primarily to an increase in headcount, and higher wage and benefit costs. In addition, in 2022, we incurred a litigation settlement cost with no comparable cost in the current year.

**Emerging Technologies Segment.** Emerging Technologies operating expenses increased by \$1.8 million, or 8.7%, in the year ended December 31, 2023, as compared to the prior year. This increase was due primarily to higher employee costs, and share-based compensation expense, related to an increase in headcount in G&A, S&M and R&D, an increase in travel and marketing costs to further develop the CO<sub>2</sub> market, and an increase in R&D costs to further develop our CO<sub>2</sub> product. This increase was partially offset by VorTeq-related accelerated depreciation expense of certain assets and employee severance costs incurred in 2022 with no comparable amounts in the current year.

**Corporate Operating Expenses.** Corporate operating expenses increased by \$0.1 million, or 0.7%, in the year ended December 31, 2023, as compared to the prior year. This increase was due primarily to higher consultant costs, an increase in CEO and board member search fees, and higher share-based compensation expense, partially offset by lower employee compensation costs, and a decrease in software and licensing costs.

[Table of Contents](#)

**Other Income, Net**

	Years Ended December 31,	
	2023	2022
<i>(In thousands)</i>		
Interest income	\$ 3,756	\$ 908
Other non-operating (expense) income, net	(101)	334
Total other income, net	\$ 3,655	\$ 1,242

The increase in Total other income, net in the year ended December 31, 2023, as compared to the prior year, was due primarily to an increase in interest yields on our investments as well as an increase in investments in investment-grade marketable debt instruments.

**Income Taxes**

	Years Ended December 31,		
	2023	2022	Change
<i>(In thousands, except percentages)</i>			
Provision for income taxes	\$ 1,201	\$ 2,022	\$ (821)
Effective tax rate	5%	8%	

The lower provision for income taxes in 2023, as compared to the prior year, was due primarily to a decrease in income from operations, an increase in tax benefit of \$0.6 million related to Foreign Derived Intangible Income ("FDII"), and an increase of \$0.3 million in R&D tax credits, partially offset by lower share-based compensation related windfalls of \$0.7 million.

The fiscal year 2023 effective tax rate included a benefit of \$2.4 million related to FDII, a benefit of \$1.3 million related to R&D tax credits, and a benefit of \$0.7 million related to tax deductions from stock-based compensation related windfalls.

The fiscal year 2022 effective tax rate included a benefit of \$1.8 million related to related to FDII, a benefit of \$1.3 million related to tax deductions from stock-based compensation related windfalls, and a benefit of \$1.0 million related to R&D tax credits.

See Note 8, "Income Taxes," of the Notes for further discussion regarding further information related to our tax rate reconciliation.

[Table of Contents](#)

## Liquidity and Capital Resources

### Overview

From time-to-time, management and our Board of Directors review our liquidity and future cash needs and may make a decision to (1) return capital to our shareholders through a share repurchase program or dividend payout; or (2) seek additional debt or equity financing.

As of December 31, 2023, our principal sources of liquidity consisted of (i) unrestricted cash and cash equivalents of \$68.1 million; (ii) investment-grade short-term and long-term marketable debt instruments of \$54.3 million that are primarily invested in U.S. treasury securities, corporate notes and bonds, and municipal and agency notes and bonds; and (iii) accounts receivable, net of allowances, of \$46.9 million. As of December 31, 2023, there was unrestricted cash of \$1.2 million held outside the U.S. We invest cash not needed for current operations predominantly in investment-grade, marketable debt instruments with the intent to make such funds available for future operating purposes, as needed. Although these securities are available for sale, we generally hold these securities to maturity, and therefore, do not currently see a need to trade these securities in order to support our liquidity needs in the foreseeable future. We believe the risk of this portfolio to us is in the ability of the underlying companies to cover their obligations at maturity, not in our ability to trade these securities at a profit. Based on current projections, we believe existing cash balances and future cash inflows from this portfolio will meet our liquidity needs for at least the next 12 months.

### Short-term Contract Assets

As of December 31, 2023, we had \$0.6 million of short-term contract assets which represents unbilled trade receivables from certain Water segment contract sales which include contractual holdback provisions, pursuant to which we will invoice the final retention payment due within the next 12 months. The customer holdbacks represent amounts intended to provide a form of security for the customer; and accordingly, these contract assets have not been discounted to present value.

### Credit Agreement

We entered into a credit agreement with JPMorgan Chase Bank, N.A. ("JPMC") on December 22, 2021 ("Credit Agreement") to provide us with additional capital to fuel our growth and expansion into emerging markets utilizing our pressure exchanger technology. The Credit Agreement, which will expire on December 21, 2026, provides a committed revolving credit line of \$50.0 million and includes both a revolving loan and a letters of credit ("LCs") component. During September 2023, the Company and JPMC amended the Credit Agreement (the "Second Amendment") to only increase the maximum allowable LCs credit line component from \$25.0 million to \$30.0 million. No other components or features under the Credit Agreement (including the First Amendment dated July 15, 2022) were amended. As of December 31, 2023, we were in compliance with all covenants under the Credit Agreement.

Under the Credit Agreement, as of December 31, 2023, there were no revolving loans outstanding. In addition, as of December 31, 2023, under the LCs component, we utilized \$21.8 million of the maximum allowable credit line of \$30.0 million, which included newly issued LCs, and previously issued and unexpired stand-by letters of credits ("SBLCs") and certain non-expired commitments under the previous Loan and Pledge Agreement with Citibank, N.A., which are guaranteed under the Credit Agreement. As of December 31, 2023, there was \$19.9 million of outstanding LCs. These LCs had a weighted average remaining life of approximately 14 months. See Note 6, "Lines of Credit," of the Notes for further discussion related to the Credit Agreement.

[Table of Contents](#)

## Cash Flows

	Years Ended December 31,		
	2023	2022	Change
(In thousands)			
Net cash provided by operating activities	\$ 26,054	\$ 12,631	\$ 13,423
Net cash used in investing activities	(19,114)	(6,946)	(12,168)
Net cash provided by (used in) financing activities	4,794	(23,668)	28,462
Effect of exchange rate differences on cash and cash equivalents	33	(20)	53
Net change in cash, cash equivalents and restricted cash	\$ 11,767	\$ (18,003)	\$ 29,770

### Cash Flows from Operating Activities

Net cash provided by operating activities is subject to the project driven, non-cyclical nature of our business. Operating cash flow can fluctuate significantly from year to year, due to the timing of receipts of large project orders. Operating cash flow may be negative in one year and significantly positive in the next, consequently individual quarterly results and comparisons may not necessarily indicate a significant trend, either positive or negative.

The lower net cash used for operating assets and liabilities for the year ended December 31, 2023, as compared to the prior year, was due primarily to the following factors:

- an increase in cash related to an increase in revenues and the timing of collections on accounts receivable balances in 2023;
- lower cash used for inventory builds. In 2022, cash used for inventory builds was higher due to the additional purchases of raw material to mitigate supply risk and building of finished goods inventory to satisfy future projects; and
- an increase in accounts payables related to the timing of vendor payments.

### Cash Flows from Investing Activities

Net cash used in investing activities primarily relates to sales, maturities and purchases of investment-grade marketable debt instruments, such as corporate notes and bonds, and capital expenditures supporting our growth. We believe our investments in marketable debt instruments are structured to preserve principal and liquidity while at the same time maximizing yields without significantly increasing risk. The higher \$12.2 million in net cash used in investing activities in the year ended December 31, 2023, as compared to the prior year, was driven by a \$12.8 million increase in net cash used for investments in marketable debt instruments, partially offset by lower cash used for capital expenditures.

### Cash Flows from Financing Activities

Net cash provided by (used in) financing activities primarily relates to the share repurchases under our board authorized share repurchase program, which was completed in 2022, and by issuance of equity from our equity incentive plans. The cash provided by financing activities for the year ended December 31, 2023, as compared to the cash used in financing activities in the prior year, was due primarily to higher cash from issuance of equity from our equity incentive plans, offset by share repurchases of \$26.7 million in 2022 under the March 2021 Authorization, as discussed in Note 11, "Stockholders' Equity – Share Repurchase Program," of the Notes.

[Table of Contents](#)

## Liquidity and Capital Resource Requirements

We believe that our existing resources and cash generated from our operations will be sufficient to meet our anticipated capital requirements for at least the next 12 months. However, we may need to raise additional capital or incur additional indebtedness to continue to fund our operations or to support acquisitions in the future and/or to fund investments in our latest technology arising from rapid market adoption. These needs could require us to seek additional equity or debt financing. Our future capital requirements will depend on many factors including the continuing market acceptance of our products, our rate of revenue growth, the timing of new product introductions, the expansion of our R&D, manufacturing and S&M activities, and the timing and extent of our expansion into new geographic territories. In addition, we may enter into potential material investments in, or acquisitions of, complementary businesses, services or technologies in the future which could also require us to seek additional equity or debt financing. Should we need additional liquidity or capital funds, these funds may not be available to us on favorable terms, or at all.

**Facility and Equipment Leases.** We lease facilities and equipment under fixed noncancelable operating leases that expire on various dates through fiscal year 2030. See Note 7, "Commitments and Contingencies – Operating Lease Obligations," of the Notes for additional information related to our fixed noncancelable operating leases.

**Purchase Order Arrangements.** We have purchase order arrangements with our vendors for which we have not received the related goods or services. These arrangements are subject to change based on our sales demand forecasts. We have the right to cancel the arrangements prior to the date of delivery. The purchase order arrangements are related to various raw materials and component parts, as well as capital equipment. See Note 7, "Commitments and Contingencies – Purchase Obligations," of the Notes for additional information.

related to our purchase order arrangements.

**Off-balance Sheet Arrangements.** During the periods presented, we did not have any relationships with unconsolidated entities or financial partnerships such as entities often referred to as structured finance or special purpose entities which would have been established for the purpose of facilitating off-balance sheet arrangements or other contractually narrow or limited purposes.

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

Our Consolidated Financial Statements are prepared in accordance with U.S. GAAP. These accounting principles require us to make estimates and judgments that can affect the reported amounts of assets and liabilities as of the date of the Consolidated Financial Statements as well as the reported amounts of revenue and expense during the periods presented. We believe that the estimates and judgments upon which we rely are reasonable based upon information available to us at the time that we make these estimates and judgments. To the extent that there are material differences between these estimates and actual results, our consolidated financial results will be affected. The accounting policies that reflect our more significant estimates and judgments and which we believe are the most critical to aid in fully understanding and evaluating our reported financial results are revenue recognition; valuation of stock options; valuation and impairment of goodwill; inventory; and deferred taxes and valuation allowances on deferred tax assets.

The following is not intended to be a comprehensive list of all of our accounting policies or estimates. See Note 1, "Description of Business and Significant Accounting Policies," of the Notes for further detailed discussion regarding our accounting policies and estimates.

#### **Revenue Recognition**

Revenues are recognized when control of the promised goods or services is transferred to our customers in an amount that reflects the consideration we expect to be entitled to in exchange for those goods or services. At the inception of each contract, performance obligations are identified and the total transaction price is allocated to the performance obligations. Our contracts with customers may include multiple performance obligations. For such arrangements, we allocate revenue to each performance obligation based on its relative stand-alone selling price. We generally determine standalone selling prices based on the prices charged to customers. With respect to termination, we do not have the ability to cancel a contract for convenience. In general, customers can cancel for convenience upon the payment of a termination fee that covers costs and profit. It is rare for customers to cancel contracts. See Note 1, "Description of Business and Significant Accounting Policies – Significant Accounting Policies – Revenue Recognition (Product and Service Revenue Recognition)," of the Notes for more detail on product and service revenue recognition.

[Table of Contents](#)

---

Energy Recovery, Inc. | 2023 Form 10-K Annual Report | 38

#### **Stock-based Compensation**

We account for share-based compensation according to U.S. GAAP relating to share-based payments, which requires the measurement and recognition of compensation expense for all share-based awards made to employees and directors based on estimated fair values on the grant date. The fair value of stock options is calculated on the date of grant using a Black-Scholes (also referred to as the "Black-Scholes-Merton") model, which requires a number of complex assumptions including the expected life to exercise a vested award based upon the Company's exercise history, expected volatility based upon the Company's historical stock prices, risk-free interest rate based upon the U.S. Treasury rates, and the Company's dividend yield. See Note 1, "Description of Business and Significant Accounting Policies – Significant Accounting Policies – Stock-based Compensation" and Note 12, "Stock-based Compensation," of the Notes for further discussion of our accounting policy and stock-based compensation activities, respectively.

#### **Goodwill**

Our goodwill represents the excess of the purchase price of a business combination over the fair value of the net assets acquired. Goodwill impairment testing requires significant judgment and management estimates, including, but not limited to, the determination of (i) the number of reporting units, (ii) the goodwill and other assets and liabilities to be allocated to the reporting units and (iii) the fair values of the reporting units. The estimates and assumptions described above, along with other factors such as discount rates, will significantly affect the outcome of the impairment tests and the amounts of any resulting impairment losses. We perform a quantitative assessment of goodwill for impairment on an annual basis during the third quarter of each year, and between annual tests, a qualitative assessment whenever events or changes in circumstances indicate that the carrying amount may not be recoverable. If these interim qualitative factors were to indicate that it is more-likely-than-not that the fair value of the reporting unit is less than its carrying value, we would then perform a quantitative assessment, which would consist primarily of a discounted cash flow ("DCF") analysis to determine the fair value of the reporting unit's goodwill. To the extent the carrying amount of the reporting unit's allocated goodwill exceeds the unit's fair value, we recognize an impairment of goodwill for the excess up to the amount of goodwill of that reporting unit. See Note 1, "Description of Business and Significant Accounting Policies – Significant Accounting Policies – Goodwill" and Note 4, "Other Financial Information – Goodwill," of the Notes for further discussion of our accounting policy and goodwill activities, respectively.

#### **Inventories**

We determine at each balance sheet date how much, if any, of our inventory may ultimately prove to be either unsalable or unsalable at its carrying cost. Reserves are established to effectively adjust the carrying value of such inventory to lower of cost (first-in, first-out method) or net realizable value. See Note 1, "Description of Business and Significant Accounting Policies – Significant Accounting Policies – Inventories" and Note 4, "Other Financial Information – Inventories, net," of the Notes for further discussion of our accounting policy and estimates, and inventory activities, respectively.

#### **Income Taxes**

Our annual tax rate is determined based on our income and the jurisdictions where it is earned, statutory tax rates, and the tax



impacts of items treated differently for tax purposes than for financial reporting purposes. Also inherent in determining our annual tax rate are judgments and assumptions regarding the recoverability of certain deferred tax balances, and our ability to uphold certain tax positions. We are subject to complex tax laws, in the U.S. and numerous foreign jurisdictions, and the manner in which they apply can be open to interpretation. Realization of deferred tax assets is dependent upon generating sufficient taxable income in the appropriate jurisdiction in future periods, which involves business plans, planning opportunities, and expectations about future outcomes. Our assessment relies on estimates and assumptions, and may involve a series of complex judgments about future events. We use an estimate of our annual effective tax rate at each interim period based on the facts and circumstances available at that time, while the actual effective tax rate is calculated at year-end. See Note 1, "Description of Business and Significant Accounting Policies – Significant Accounting Policies – Income Taxes" and Note 8, "Income Taxes," of the Notes for further discussion of our income tax policy and our tax valuation allowance, respectively.

### **Recent Accounting Pronouncements**

Refer to Note 1, "Description of Business and Significant Accounting Policies – Recently Issued Accounting Pronouncement Not Yet Adopted," of the Notes.

[Table of Contents](#)

## **Item 7A — Quantitative and Qualitative Disclosures About Market Risk**

Our exposure to market risk may be found primarily in two areas, foreign currency and interest rates.

### **Foreign Currency Risk**

Our foreign currency exposures are due to fluctuations in exchange rates for the U.S. dollar ("USD") versus the British pound, Saudi riyal, Emirati dirham, European euro, Chinese yuan, Indian rupee and Canadian dollar. Changes in currency exchange rates could adversely affect our consolidated operating results or financial position.

Our revenue contracts have been denominated in the USD. At times, our international customers may have difficulty in obtaining the USD to pay our receivables, thus increasing collection risk and potential bad debt expense. To the extent we expand our international sales, a larger portion of our revenue could be denominated in foreign currencies. As a result, our cash and operating results could be increasingly affected by changes in exchange rates.

In addition, we pay many vendors in foreign currency and, therefore, are subject to changes in foreign currency exchange rates. Our international sales and service operations incur expense that is denominated in foreign currencies. This expense could be materially affected by currency fluctuations. Our international sales and services operations also maintain cash balances denominated in foreign currencies. To decrease the inherent risk associated with translation of foreign cash balances into our reporting currency, we do not maintain excess cash balances in foreign currencies.

We have not hedged our exposure to changes in foreign currency exchange rates because expenses in foreign currencies have been insignificant to date and exchange rate fluctuations have had little impact on our operating results and cash flows. In addition, we do not have any exposure to the Russian ruble.

### **Interest Rate and Credit Risks**

The primary objective of our investment activities is to preserve principal and liquidity while at the same time maximizing yields without significantly increasing risk. We invest primarily in investment-grade short-term and long-term marketable debt instruments that are subject to counter-party credit risk. To minimize this risk, we invest pursuant to an investment policy approved by our board of directors. The policy mandates high credit rating requirements and restricts our exposure to any single corporate issuer by imposing concentration limits.

As of December 31, 2023, our investment portfolio of \$54.3 million, in investment-grade marketable debt instruments, such as U.S. treasury securities, corporate notes and bonds, and municipal and agency notes and bonds, are classified as either short-term and/or long-term investments on our Consolidated Balance Sheets. These investments are subject to interest rate fluctuations and decrease in market value to the extent interest rates increase, which occurred during the year ended December 31, 2023. To minimize the exposure due to adverse shifts in interest rates, we maintain investments with a weighted average maturity of approximately nine months. As of December 31, 2023, a hypothetical 1% increase in interest rates would have resulted in a less than \$0.3 million decrease in the fair value of our investments in marketable debt instruments as of such date.

[Table of Contents](#)

## Item 8 — Financial Statements and Supplementary Data

	Page No.
Reports of Independent Registered Public Accounting Firm (PCAOB ID No. 34)	42
Consolidated Financial Statements:	
Consolidated Balance Sheets — December 31, 2023 and 2022	45
Consolidated Statements of Operations — Years ended December 31, 2023, 2022 and 2021	46
Consolidated Statements of Comprehensive Income — Years ended December 31, 2023, 2022 and 2021	47
Consolidated Statements of Stockholders' Equity — Years ended December 31, 2023, 2022 and 2021	48
Consolidated Statements of Cash Flows — Years ended December 31, 2023, 2022 and 2021	49
Notes to Consolidated Financial Statements	50

[Table of Contents](#)

## REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the stockholders and the Board of Directors of Energy Recovery, Inc.

### Opinion on the Financial Statements

We have audited the accompanying consolidated balance sheets of Energy Recovery, Inc. and subsidiaries (the "Company") as of December 31, 2023 and 2022, the related consolidated statements of operations, comprehensive income, stockholders' equity, and cash flows, for each of the three years in the period ended December 31, 2023, and the related notes (collectively referred to as the "financial statements"). In our opinion, the financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2023 and 2022, and the results of its operations and its cash flows for each of the three years in the period ended December 31, 2023, in conformity with accounting principles generally accepted in the United States of America. We have also audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB), the Company's internal control over financial reporting as of December 31, 2023, based on criteria established in *Internal Control — Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission and our report dated February 21, 2024, expressed an unqualified opinion on the Company's internal control over financial reporting.

### Basis for Opinion

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

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether due to error or fraud. Our audits included performing procedures to assess the risks of material misstatement of the financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the financial statements. We believe that our audits provide a reasonable basis for our opinion.

### Critical Audit Matter

The critical audit matter communicated below is a matter arising from the current-period audit of the financial statements that was communicated or required to be communicated to the audit committee and that (1) relates to accounts or disclosures that are material to the financial statements and (2) involved our especially challenging, subjective, or complex judgments. The communication of critical audit matters does not alter in any way our opinion on the financial statements, taken as a whole, and we are not, by communicating the critical audit matter below, providing separate opinions on the critical audit matter or on the accounts or disclosures to which it relates.

#### Revenue Recognition — Refer to Notes 1, 2 and 10 to the financial statements

##### Critical Audit Matter Description

Revenue is recognized upon transfer of control of products which typically follows transfer of title upon shipment or delivery in accordance with International Commercial Terms. The processing and recording of the Company's revenue transactions is a combination of automated and manual processes (i.e., the revenue transactions are recorded automatically upon invoice generation at the time of shipment, whereas the review process remains relatively manual to ensure control has properly transferred to recognize revenue) and therefore, the Company uses a precise set of procedures to ensure revenue is accurate for each transaction.

##### [Table of Contents](#)

---

Energy Recovery, Inc. | 2023 Form 10-K Annual Report | 42

We identified the Company's revenue recognition processes as a critical audit matter as the Company has a significant volume of product revenue transactions throughout the year and a manual process to generate accurate data to process and record revenue in line with when risk is transferred to the customers. This required an increased extent of effort to audit these revenue transactions.

##### How the Critical Audit Matter Was Addressed in the Audit

Our audit procedures related to revenue recognition included the following, among others:

- We tested the effectiveness of controls over the recognition of revenue.
- We obtained an understanding of the nature of the revenue recognition process through inquiry with the Company personnel responsible for the invoices as well as review of the contract with the customers.
- For a sample of processed revenue transactions, we traced and agreed the calculation of the Company's recorded revenue and the timing of revenue recognition to source documents such as the agreed upon terms with the customer and shipping records,

as well as the related invoices generated within the system and evaluated any differences.

/s/

Deloitte & Touche LLP

San Francisco, California

February 21, 2024

We have served as the Company's auditor since 2018.

[Table of Contents](#)

---

Energy Recovery, Inc. | 2023 Form 10-K Annual Report | 43

## REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the stockholders and the Board of Directors of Energy Recovery, Inc.

### Opinion on Internal Control over Financial Reporting

We have audited the internal control over financial reporting of Energy Recovery, Inc. and subsidiaries (the "Company") as of December 31, 2023, based on criteria established in *Internal Control — Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). In our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of December 31, 2023, based on criteria established in *Internal Control — Integrated Framework (2013)* issued by COSO.

We have also audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB), the consolidated financial statements as of and for the year ended December 31, 2023, of the Company and our report dated February 21, 2024, expressed an unqualified opinion on those financial statements.

### Basis for Opinion

The Company's management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting, included in the accompanying "Management's Report on Internal Control Over Financial Reporting." Our responsibility is to express an opinion on the Company's internal control over financial reporting based on our audit. We are a public accounting firm registered with the PCAOB and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB. We conducted our audit in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, testing and evaluating the design and operating effectiveness of internal control based on the assessed risk, and performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

### Definition and Limitations of Internal Control over Financial Reporting

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of

financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements. Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

/s/ Deloitte & Touche LLP  
San Francisco, California  
February 21, 2024  
[Table of Contents](#)

---

Energy Recovery, Inc. | 2023 Form 10-K Annual Report | 44

## **ENERGY RECOVERY, INC.**

### **CONSOLIDATED BALANCE SHEETS**

December 31,

2023 2022

(In thousands, except shares and per share data)

## ASSETS

Current assets:

Cash and cash equivalents	\$	\$	
Short-term investments			
Accounts receivable, net		68,098	56,354
Inventories, net		40,445	33,479
Prepaid expenses and other assets		46,937	34,062
Total current assets		26,149	20,366
Long-term investments		3,843	5,606
Deferred tax assets, net		185,472	157,867
Property and equipment, net		13,832	3,058
Operating lease, right of use asset		10,324	10,263
Goodwill		18,699	19,580
Other assets, non-current		11,469	13,115
Total assets	\$	12,790	\$ 12,790
		388	366

## LIABILITIES AND STOCKHOLDERS' EQUITY

Current liabilities:		252,974	217,039
----------------------	--	---------	---------

## ENERGY RECOVERY, INC.

### CONSOLIDATED STATEMENTS OF OPERATIONS

Years Ended December 31,

2023 2022 2021

(In thousands, except per share data)

Revenue	\$	\$	\$
Cost of revenue			
Gross profit		128,349	125,591
		41,270	38,235
		87,079	87,356
Operating expenses:			
General and administrative			
Sales and marketing			
Research and development		28,864	28,341
Total operating expenses		22,164	16,277
Income from operations		17,001	17,909
		68,020	62,527
Other income (expense):		19,050	24,829
Interest income			
Other non-operating income (expense), net		(	(
Total other income, net		3,756	900
Income before income taxes		101	334
Provision for (benefit from) income taxes		)3,655	1,242
Net income	\$	22,705	\$ 26,071
		1,201	2,022
Net income per share:		21,504	24,049
Basic	\$	\$	\$
Diluted	\$	\$	\$
		0.38	0.43
Number of shares used in per share calculations:		0.37	0.42
Basic			
Diluted			
See Accompanying Notes to Consolidated Financial Statements		56,444	56,221
Table of Contents		57,740	57,641



**ENERGY RECOVERY, INC.****CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME**

	Year Ended December 31,		
	2023	2022	2021
<i>(In thousands)</i>			
Net income	\$	\$	\$
Other comprehensive income (loss), net of tax			
Foreign currency translation adjustments		21,504	24,049
Unrealized gain (loss) on investments		(	(
Total other comprehensive income (loss), net of tax		51	15
Comprehensive income	\$	254	215
		305	200
		21,809	23,849
			14,067

See Accompanying Notes to Consolidated Financial Statements  
[Table of Contents](#)

Energy Recovery, Inc. | 2023 Form 10-K Annual Report | 47

**ENERGY RECOVERY, INC.****CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY**

Years Ended December 31,

2023	2022	2021
------	------	------

(In thousands, except shares)

<b>Common stock</b>			
Beginning balance	\$	\$	\$
Issuance of common stock, net	64	64	62
Ending balance	1	2	
<b>Additional paid-in capital</b>			
Beginning balance	65	64	64
Issuance of common stock, net			
Stock-based compensation	204,957	195,593	179,161
Ending balance	4,793	2,986	10,552
	7,867	6,378	5,880
<b>Accumulated other comprehensive loss</b>			
Beginning balance	(	(	
Other comprehensive income (loss)	349	149	53
Foreign currency translation adjustments	)	)	(
Unrealized gain (loss) on investments	51	15	68
Total other comprehensive income (loss), net	254	215	134
Ending balance	305	200	202
<b>Treasury stock</b>			
Beginning balance	(	(	(
Common stock repurchased	—	(	(
Ending balance	80,486	53,832	30,486
	)	)	)
	26,654	23,346	
<b>Retained earnings</b>			
Beginning balance	80,486	80,486	53,832
Net income			
Ending balance	61,152	37,103	22,834
	21,504	24,049	14,269
<b>Total stockholders' equity</b>			
	\$ 82,656	\$ 61,152	\$ 37,103
<b>Common stock issued (shares)</b>			
Beginning balance	219,808	185,338	178,779
Issuance of common stock, net			
Ending balance	64,225,391	63,544,419	61,798,004
	804,068	680,972	1,746,415
<b>Treasury stock (shares)</b>			
Beginning balance	65,029,459	64,225,391	63,544,419
Common stock repurchased	—		
Ending balance	8,148,512	6,721,153	5,455,935
		1,427,350	1,265,218
<b>Total common stock outstanding (shares)</b>			
	8,148,512	8,148,512	6,721,153
<i>See Accompanying Notes to Consolidated Financial Statements</i>			
<a href="#">Table of Contents</a>	56,880,947	56,076,879	56,823,266

Energy Recovery, Inc. | 2023 Form 10-K Annual Report | 48

## ENERGY RECOVERY, INC.

### CONSOLIDATED STATEMENTS OF CASH FLOWS

	Years Ended December 31,		
	2023	2022	2021
(In thousands)			
Cash flows from operating activities:			
Net income	\$	\$	\$
Adjustments to reconcile net income to cash provided by operating activities			
Stock-based compensation	21,504	24,049	14,269
Depreciation and amortization			
Right of use asset amortization	8,038	6,508	6,053
(Accretion) amortization of premiums and discounts on investments	4,102	4,764	4,502
Deferred income taxes	1,646	1,538	1,437
Other non-cash adjustments	862	680	570
Changes in operating assets and liabilities:			
Accounts receivable, net	(1,026)	(201)	(955)
Contract assets			
Inventories, net	12,873	13,480	8,823
Prepaid and other assets	(1,128)	(1,227)	(1,399)
Accounts payable	1,354	(8,282)	8,766
Accrued expenses and other liabilities	(96)	(138)	(314)
Contract liabilities	(2,629)	(138)	155
Net cash provided by operating activities	1,352	1,062	396
	(129)	(2,090)	1,766
Cash flows from investing activities:	(26,054)	(12,631)	13,526
Sales of marketable securities			
Maturities of marketable securities			
Purchases of marketable securities	(2,966)	(—)	(—)
Capital expenditures	(64,955)	(39,756)	(35,019)
Proceeds from sales of fixed assets	84,555	43,572	48,903
Net cash used in investing activities	(2,567)	(4,232)	(6,684)
	(87)	(1,102)	(5)
Cash flows from financing activities:	19,114	6,946	20,563
Net proceeds from issuance of common stock	( )	( )	( )
Repurchase of common stock		( )	( )
Net cash provided by (used in) financing activities	4,794	(2,986)	10,554
		26,654	23,346
Effect of exchange rate differences on cash and cash equivalents	4,794	(24,668)	(14,792)
Net change in cash, cash equivalents and restricted cash		( )	( )
	33	20	68
Cash, cash equivalents and restricted cash, beginning of year	11,767	(18,003)	(19,897)
Cash, cash equivalents and restricted cash, end of year	\$	\$	\$

## Note 1 — Description of Business and Significant Accounting Policies

Energy Recovery, Inc. and its wholly-owned subsidiaries (the “Company” or “Energy Recovery”) designs and manufactures reliable, high-performance solutions that provide cost savings through improved energy efficiency in commercial and industrial processes, with applications across several industries. Leveraging the Company’s pressure exchanger technology, which generates little to no emissions when operating, the Company’s solutions lowers costs, saves energy, reduces waste, and minimizes emissions for companies across a variety of industrial processes. As the world coalesces around the urgent need to address climate change and its impacts, the Company is helping companies reduce their energy consumption in their industrial processes, which in turn, reduces their carbon footprint. The Company believes that its customers do not have to sacrifice quality and cost savings for sustainability and is committed to developing solutions that drive long-term value – both financial and environmental. The Company’s solutions are marketed, sold in, or developed for, the fluid-flow and gas markets, such as seawater and wastewater desalination, natural gas, chemical processing and CO<sub>2</sub>-based refrigeration systems, under the trademarks ERI®, PX®, Pressure Exchanger®, PX® Pressure Exchanger® (“PX”), Ultra PX™, PX G™, PX G1300™, PX PowerTrain™, AT™, and Aquabold™. The Company owns, manufactures and/or develops its solutions, in whole or in part, in the United States of America (the “U.S.”).

### Basis of Presentation

The Consolidated Financial Statements include the accounts of Energy Recovery, Inc. and its wholly-owned subsidiaries. All intercompany accounts and transactions have been eliminated in consolidation.

### Reclassifications

Certain prior period amounts have been reclassified in certain notes to the Consolidated Financial Statements to conform to the current period presentation.

### Use of Estimates

The preparation of Consolidated Financial Statements, in conformity with U.S. generally accepted accounting principles (“GAAP”), requires the Company’s management to make judgments, assumptions and estimates that affect the amounts reported in the Consolidated Financial Statements and accompanying notes.

The accounting policies that reflect the Company’s significant estimates and judgments and that the Company believes are the most critical to aid in fully understanding and evaluating its reported financial results are revenue recognition; valuation of stock options; useful life and valuation of equipment; valuation and impairment of goodwill; deferred taxes and valuation allowances on deferred tax assets; and evaluation and measurement of contingencies. Those estimates could change, and as a result, actual results could differ materially from those estimates.

The Company is not aware of any specific event or circumstance that would require an update to its estimates or judgments or a revision of the carrying value of its assets or liabilities as of February 21, 2024, the date of issuance of this Annual Report on Form 10-K. These estimates may change, as new events occur and additional information is obtained. Actual results could differ materially from these estimates under different assumptions or conditions. The Company undertakes no obligation to update publicly these estimates for any reason after the date of this Annual Report on Form 10-K, except as required by law.

[Table of Contents](#)

## ENERGY RECOVERY, INC.

### NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

## Significant Accounting Policies

### Cash and Cash Equivalents

The Company considers all highly liquid investments with an original or remaining contractual maturity on date of purchase of less than or equal to three months to be classified and presented as cash equivalents on the Consolidated Balance Sheets. Cash equivalents are stated at cost, which approximates fair value. The Company's cash and cash equivalents may include demand deposit accounts with large financial institutions, institutional money market funds, U.S. treasury securities, corporate notes and bonds, and municipal and agency notes and bonds. The Company monitors the creditworthiness of the financial institutions, institutional money market funds, and corporations in which the Company invests its surplus funds. The Company has experienced no credit losses from its cash investments.

### Short-term and Long-term Investments

The Company's short-term and long-term investments consist primarily of investment-grade debt securities, such as U.S. treasury securities, corporate notes and bonds, and municipal and agency notes and bonds, all of which are classified as available-for-sale. Available-for-sale securities are carried at fair value. Amortization or accretion of premium or discount is included in other income (expense) on the Consolidated Statements of Operations. Changes in the fair value of available-for-sale securities are reported as a component of accumulated other comprehensive loss within stockholders' equity on the Consolidated Balance Sheets. Realized gains and losses on the sale of available-for-sale securities are determined by specific identification of the cost basis of each security.

The Company categorizes and classifies short-term and long-term available-for-sale investments on the Company's Consolidated Balance Sheets as follows:

- *Short-term investments:* Investments purchased with an original or remaining maturity at time of purchase greater than three months and that are expected to mature within 12 months from the balance sheet date are classified as short-term investments and are presented in current assets.
- *Long-term investments:* Investments purchased with an original or remaining maturity at time of purchase greater than three months and that are expected to mature more than 12 months from the balance sheet date are classified as long-term investments and are presented in non-current assets.

### Allowance for Doubtful Accounts

The Company records a provision for doubtful accounts based on historical experience and an estimate of the expected credit losses. In estimating the allowance for doubtful accounts, the Company considers, among other factors, the aging of the accounts receivable, its historical write-offs, the credit worthiness of each customer, and general economic conditions. Account balances are charged off against the allowance when the Company believes that it is probable that the receivable will not be recovered. Actual write-offs may be in excess of the Company's estimated allowance.

### Inventories

Inventories are stated at the lower of cost (using the first-in, first-out "FIFO" method) or net realizable value. The Company calculates inventory valuation adjustments for excess and obsolete inventory based on current inventory levels, movement, expected useful lives, and estimated future demand of the products and spare parts.

[Table of Contents](#)

## ENERGY RECOVERY, INC.

### NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

Property and Equipment

Property and equipment is recorded at cost and reduced by accumulated depreciation. Depreciation expense is recognized over the estimated useful lives of the assets using the straight-line method. The following table presents the estimated useful life, or range of useful lives, of the Company's property and equipment. Maintenance and repairs are charged directly to expense as incurred.

	Minimum	Maximum
Machinery and equipment (excluding equipment used for manufacturing of ceramic components)		
Machinery and equipment used for manufacturing of ceramic components		
Leasehold improvements (1)	3 years	7 years
Software (2)	years	years
Office equipment, furniture, and fixtures	years	years
Automobiles	year	years
	years	years

(1) Leasehold improvements represent remodeling and retrofitting costs for leased office and manufacturing space and are depreciated over the shorter of either the estimated useful lives or the term of the lease. See Note 7, Commitments and Contingencies-Operating Lease Obligations, for further discussion of lease terms.

(2) Software purchased for internal use consists primarily of amounts paid for perpetual licenses to third-party software providers and implementation costs.

Estimated useful lives are periodically reviewed, and when appropriate, changes are made prospectively. When certain events or changes in operating conditions occur, asset lives may be adjusted and an impairment assessment may be performed on the recoverability of the carrying amounts. The Company evaluates the recoverability of long-lived assets by comparing the carrying amount of an asset to estimated future net undiscounted cash flows generated by the asset (asset group). If such assets are considered to be impaired, the impairment recognized is measured as the amount by which the carrying amount of the assets exceeds the fair value of the assets. The evaluation of recoverability involves estimates of future operating cash flows based upon certain forecasted assumptions, including, but not limited to, revenue growth rates, gross profit margins, and operating expenses.

Leases

The Company determines if an arrangement is a lease, or contains a lease, at the inception of the arrangement and evaluates whether the lease is an operating or a finance lease at the commencement date. The Company recognizes right-of-use ("ROU") assets and lease liabilities for operating leases with terms greater than

1

year. ROU assets represent the Company's right to use an asset for the lease term, while lease liabilities represent the Company's obligation to make lease payments. Operating lease ROU assets and liabilities are recognized based on the present value of lease payments over the lease term at the lease commencement date. The Company uses the implicit interest rate or, if not readily determinable, its incremental borrowing rate as of the lease commencement date to determine the present value of lease payments. The incremental borrowing rate is based on the Company's unsecured borrowing rate, adjusted for the effects of collateral. Operating lease ROU assets are recognized net of any lease prepayments and incentives. Based on materiality, the Company accounts for both the non-lease components and related lease components as a single lease component. Lease terms may include options to extend or terminate the lease when it is reasonably certain that the Company will exercise that option. Operating lease expense is recognized on a straight-line basis over the lease term.

The Company applies lease modifications that change the contractual terms and conditions of a lease, that were not part of the original lease, and grants additional right of use with a price consistent with the market, as a new lease. These modifications will be assessed in compliance with the above parameters. For other types of lease modification, the modified lease is reassessed and all new assumptions are applied in the calculation of the updated lease liability and the ROU asset.

Table of Contents

ENERGY RECOVERY, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

## Goodwill

Our goodwill represents the excess of the purchase price of a business combination over the fair value of the net assets acquired. Goodwill is not amortized but is evaluated annually (July 1) for impairment at the reporting unit level or when indicators of a potential impairment are present. Goodwill impairment testing requires significant judgment and management estimates, including, but not limited to, the determination of (i) the number of reporting units, (ii) the goodwill and other assets and liabilities to be allocated to the reporting units and (iii) the fair values of the reporting units. The estimates and assumptions described above, along with other factors such as discount rates, will significantly affect the outcome of the impairment tests and the amounts of any resulting impairment losses. We perform a quantitative assessment of goodwill for impairment on an annual basis during the third quarter of each year, which would consist primarily of a discounted cash flow ("DCF") analysis to determine the fair value of the reporting unit's goodwill. The forecast of future cash flows, which is based on the Company's best estimate of future net sales and operating expenses, is based primarily on expected category expansion, pricing, market segment, and general economic conditions. In addition, the Company incorporates other significant inputs to its fair value calculations, including discount rate and market multiples, to reflect current market conditions. Between annual tests, a qualitative assessment whenever events or changes in circumstances indicate that the carrying amount may not be recoverable. If these interim qualitative factors were to indicate that it is more-likely-than-not that the fair value of the reporting unit is less than its carrying value, we would then perform a quantitative assessment. To the extent the carrying amount of the reporting unit's allocated goodwill exceeds the unit's fair value, we recognize an impairment of goodwill for the excess up to the amount of goodwill of that reporting unit.

## Fair Value of Financial Instruments

The Company's financial instruments include cash and cash equivalents, restricted cash, investments in marketable securities, accounts receivable, and accounts payable. The carrying amounts for these financial instruments reported in the Consolidated Balance Sheets approximate their fair values. See Note 5, "Investments and Fair Value Measurements," for further discussion related to fair value.

## Revenue Recognition

Revenues are recognized when control of the promised goods or services is transferred to the Company's customers, in an amount that reflects the consideration the Company expects to be entitled to in exchange for those goods or services. Performance obligations are identified and the total transaction price is allocated to the performance obligations at execution of the contract. The Company's payment terms vary based on the credit risk of its customer. For certain customer types, the Company requires payment before the products or services are delivered to the customer. The Company performs an evaluation of customer credit worthiness on an individual contract basis to assess whether collectability is reasonably assured at the inception of the contract. As part of this evaluation, the Company considers many factors about the individual customer, including the underlying financial strength of the customer and/or partnership consortium and the Company's prior history or industry-specific knowledge about the customer and its supplier relationships. For smaller projects, the Company requires the customer to remit payment generally within

30  
to

60  
days after product

delivery. In some cases, if credit worthiness cannot be determined, prepayment or other security is required.

Sales commissions are expensed as incurred when product revenue is earned. These costs are recorded within sales and marketing expenses.

## Arrangements with Multiple Performance Obligations and Termination for Convenience

The Company's contracts with customers may include multiple performance obligations. For such arrangements, the Company allocates revenue to each performance obligation based on its relative stand-alone selling price. The Company generally determines stand-alone selling prices based on stand-alone observable sales to customers.

With respect to termination, the Company does not have the ability to cancel the contract for convenience. In general, customers can cancel for convenience upon the payment of a termination fee that covers costs and profit.

## Practical Expedients and Exemptions

The time period between when the Company transfers control of products to the customer and the payment for the products is, in general, less than one year and, therefore, the practical expedient with respect to a financing component has been adopted by the Company.

[Table of Contents](#)

# ENERGY RECOVERY, INC.

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

With respect to taxes, the Company has made the policy election to exclude taxes from the measurement of the transaction price. The Company does not disclose the value of unsatisfied performance obligations for (i) contracts with an original expected length of one year or less; and (ii) contracts for which the Company recognizes revenue at the amount to which the Company has the right to invoice for services performed.

## Contract Costs

The Company recognizes the incremental cost of obtaining contracts as an expense when incurred if the amortization period of the assets that the Company otherwise would have recognized is one year or less. The costs of obtaining contracts are included in sales and marketing expenses.

## Product and Service Revenue Recognition

A contract is established by a written agreement (executed sales order, executed purchase order or stand-alone contract) with the customer with fixed pricing, and a credit risk assessment is completed prior to the signing of the agreement to ensure that collectability is reasonably assured.

The Company adheres to consistent pricing in the stand-alone sale of products and services. Performance obligations consist of delivery of products, such as the Company's PXs, hydraulic turbochargers, pumps and spare parts. Service obligations, such as commissioning, which are not material, are deferred as contract liabilities until the services are performed.

The transfer of control for the Company's products follows transfer of title which typically occurs upon shipment or delivery of the equipment in accordance with International Commercial Terms (commonly referred to as "incoterms"). The specified product performance



criteria for the Company's products pertain to the ability of the Company's product to meet its published performance specifications and warranty provisions, which the Company's products have demonstrated on a consistent basis. This factor, combined with historical performance metrics, provides the Company's management with a reasonable basis to conclude that the products will perform satisfactorily upon commissioning of the plant. Installation is relatively simple, requires no customization, and is performed by the customer under the supervision of the Company's personnel. Based on these factors, the Company concluded that performance has been completed upon shipment or delivery when title transfers based on the shipping terms, and that product revenue is recognized at a point in time. The Company does not provide its customers with a right of product return; however, the Company will accept returns of products that are deemed to be damaged or defective when delivered that are covered by the terms and conditions of the product warranty. Product warranty is provided consistent with the industry and is considered to be an assurance warranty, not a separate performance obligation. Product returns and warranty charges have not been material.

For large projects, stand-alone contracts are utilized. For these contracts, consistent with industry practice, the Company's customers typically require their suppliers, including the Company, to accept contractual holdback provisions (also referred to as a retention payment) whereby the final amounts due under the sales contract are remitted over extended periods of time or alternatively, stand-by letters of credit are issued. These retention payments are generally

10

% or less of the total contract amount and are due and payable based upon the contractual milestone billing, generally between

24  
to

36

months from the date of product delivery. These retention payments with performance conditions are recorded as contract assets and align with the product warranty period. Given that they are not material in the context of the contract, they are not considered to be a financing component. Shipping and handling charges billed to customers are pass-through from the freight forwarder to the customer and are included in product revenue. The cost of shipping to customers is included in product cost of revenue. Contracts are sometimes modified for a change in scope or other requirements. The Company considers contract modifications to exist when the modification either creates new or changes the existing enforceable rights and obligations. Any subsequent contract modifications are analyzed to determine the treatment of the contract modification as a separate contract, prospectively or through a cumulative catch-up adjustment.

[Table of Contents](#)

## ENERGY RECOVERY, INC.

### NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

Energy Recovery, Inc. | 2023 Form 10-K Annual Report | 54

#### Warranty Costs

The Company sells products with a limited warranty for a period ranging from

18

months to

five years

. The Company accrues for warranty costs based on estimated product failure rates, historical activity, and expectations of future costs. Periodically, the Company evaluates and adjusts the warranty costs to the extent that actual warranty costs vary from the original estimates.

#### Stock-based Compensation

The Company measures and recognizes stock-based compensation expense based on the fair value measurement for all stock-based awards made to its employees, non-employee consultants and directors, including restricted stock units ("RSUs"), and incentive stock options over the requisite service period (typically the vesting period of the awards). The fair value of RSUs is based on the Company's common stock price on the date of grant. The fair value of stock options is calculated on the date of grant using a Black-Scholes (also referred to as the "Black-Scholes-Merton") model, which requires a number of complex assumptions including the expected life to exercise a vested award based upon the Company's exercise history, expected volatility based upon the Company's historical stock prices, risk-free interest rate based upon the U.S. Treasury rates, and the Company's dividend yield. The estimation of awards that will ultimately vest requires judgment, and to the extent that actual results or updated estimates differ from the Company's current estimates, such amounts are recorded as a cumulative adjustment in the period in which the estimates are revised. See Note 12, "Stock-based Compensation," for further discussion of stock-based compensation.

#### Foreign Currency

The Company's reporting currency is the U.S. dollar. The functional currency of the Company's foreign subsidiaries is their respective local currencies. The asset and liability accounts of the Company's foreign subsidiaries are translated from their local currencies at the rates in effect on the balance sheet date. Revenue and expenses are translated at average rates of exchange prevailing during the period. Gains and losses resulting from the translation of the Company's subsidiary balance sheets are recorded as a component of accumulated other comprehensive income (loss). Gains and losses from foreign currency transactions are recorded in other income (expense) in the Consolidated Statements of Operations.

#### Income Taxes

Current and non-current tax assets and liabilities are based upon an estimate of taxes refundable or payable for each of the jurisdictions in which the Company is subject to tax. In the ordinary course of business, there is inherent uncertainty in quantifying income tax positions. The Company assesses income tax positions and records tax benefits for all years subject to examination based upon the

Company's evaluation of the facts, circumstances, and information available at the reporting dates. For those tax positions where it is more likely than not that a tax benefit will be sustained, the Company records the largest amount of tax benefit with a greater than 50% likelihood of being realized upon ultimate settlement with a taxing authority that has full knowledge of all relevant information. For those income tax positions where it is not more likely than not that a tax benefit will be sustained, no tax benefit is recognized in the financial statements. When applicable, associated interest and penalties are recognized as a component of income tax expense. Accrued interest and penalties are included within the related tax asset or liability on the Consolidated Balance Sheets.

Deferred income taxes are provided for temporary differences arising from differences in bases of assets and liabilities for tax and financial reporting purposes. Deferred income taxes are recorded on temporary differences using enacted tax rates in effect for the year in which the temporary differences are expected to reverse. The effect of a change in tax rates on deferred tax assets and liabilities is recognized in income in the period that includes the enactment date. Deferred tax assets are reduced by a valuation allowance when, in the opinion of management, it is more likely than not that some portion or all of the deferred tax assets will not be realized. Significant judgment is required in determining whether and to what extent any valuation allowance is needed on the Company's deferred tax assets. In making such a determination, the Company considers all available positive and negative evidence including recent results of operations, scheduled reversals of deferred tax liabilities, projected future income, and available tax planning strategies. See Note 8, "Income Taxes," for further discussion of tax valuation allowances.

The Company's operations are subject to income and transaction taxes in the U.S. and in foreign jurisdictions. Significant estimates and judgments are required in determining the Company's worldwide provision for income taxes. Some of these estimates are based on interpretations of existing tax laws or regulations. The ultimate amount of tax liability may be uncertain as a result.

[Table of Contents](#)

## ENERGY RECOVERY, INC.

### NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

Energy Recovery, Inc. | 2023 Form 10-K Annual Report | 55

#### Recently Issued Accounting Pronouncement Not Yet Adopted

In October 2023, the Financial Accounting Standards Board (the "FASB") issued Accounting Standards Update ("ASU") 2023-06, *Disclosure Agreements - Codification Amendments in Response to the SEC's Disclosure Update and Simplification Initiative* ("ASU 2023-06"). The amendments in ASU 2023-06 will impact various disclosure areas, including the statement of cash flows, accounting changes and error corrections, earnings per share, debt, equity, derivatives, and transfers of financial assets. The amendments in ASU 2023-06 will be effective on the date the related disclosures are removed from Regulation S-X or Regulation S-K by the Securities and Exchange Commission (the "SEC"), and will no longer be effective if the SEC has not removed the applicable disclosure requirement by June 30, 2027. Early adoption is prohibited. The Company does not believe the amendments in ASU 2023-06 will materially impact any of the Company's current disclosures.

In November 2023, the FASB issued ASU 2023-07, *Segment Reporting (Topic 280): Improvements to Reportable Segment Disclosures* ("ASU 2023-07"). ASU 2023-07 expands public entities' segment disclosures by requiring disclosure of significant segment expenses that are regularly provided to the Chief Operating Decision-Maker ("CODM") and included within each reported measure of segment profit or loss, an amount and description of its composition for other segment items, and interim disclosures of a reportable segment's profit or loss and assets. ASU 2023-07 is effective for fiscal years beginning after December 15, 2023 (i.e., the Company's 2024 Annual Report) and interim periods within fiscal years beginning after December 15, 2024 (i.e., the Company's first quarter of fiscal 2025). Early adoption is permitted. The Company is currently evaluating the impact of the adoption of ASU 2023-07 on its consolidated financial statements and disclosures.

In December 2023, the FASB issued ASU 2023-09, *Income Taxes (Topic 740): Improvement to Income Tax Disclosures* ("ASU 2023-09"). ASU 2023-09 was issued to enhance the transparency and decision usefulness of income tax disclosures. ASU 2023-09 is effective for annual periods beginning after December 15, 2024 (i.e., the Company's 2025 Annual Report) on a prospective basis; however, retrospective application is permitted. In addition, early adoption is permitted. The Company is currently evaluating the impact of the adoption of ASU 2023-09 on its consolidated financial statements and disclosures.

#### Note 2 — Revenue Disaggregation of Revenue

The Company classifies its channel customers as follows:

• *Megaproject ("MPD")*. MPD customers are major firms that develop, design, build, own and/or operate large-scale desalination plants or projects. Revenues from projects generally exceed \$

1.0  
million and the MPD project timeline between project tender  
and shipment generally ranges from

16  
to

36  
months; however, from time-to-time, may exceed

36  
months.

• *Original Equipment Manufacturer ("OEM")*. In addition to the type of customers listed below, revenues from projects generally are \$

1.0  
million or less and the OEM project timeline from project tender to shipment generally ranges from one to

16  
months;  
however, from time-to-time, may exceed

•**Water:** OEM customers are companies that supply equipment, packaged systems, and various operating and maintenance solutions for small to medium-sized desalination plants, utilized by commercial and industrial entities, as well as national, state and local municipalities worldwide.

•**Emerging Technologies:** OEM customers include direct sales to commercial or industrial customers, such as supermarket chains, cold storage facilities, and other industrial users. Also, included are sales to intermediaries, such as refrigeration system installers or refrigeration original equipment manufacturers.

•**Aftermarket ("AM").** AM customers are desalination plant owners and/or operators who can utilize our technology to upgrade or keep their plant running. AM revenue includes sales of spare parts, repair services, field services and various commissioning activities.

[Table of Contents](#)

## ENERGY RECOVERY, INC.

### NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

Energy Recovery, Inc. | 2023 Form 10-K Annual Report | 56

#### Disaggregation of Revenue

The following table presents the disaggregated revenues by segment, and within each segment, by geographical market based on the customer "shipped to" address, and by channel customers. Sales and usage-based taxes are excluded from revenues. See Note 9, "Segment Reporting," for further discussion related to the Company's segments.

	Years Ended December 31,		
	2023		
	Water	Emerging Technologies	Total
<i>(In thousands)</i>			
<b>Geographical market</b>			
Middle East and Africa	\$	\$	\$
Asia		76,437	177
Americas		30,500	—
Europe		15,048	153
Total revenue	\$	5,740	294
		127,725	624
<b>Channel</b>			
Megaproject	\$	\$	\$
Original equipment manufacturer		83,665	—
Aftermarket		25,548	447
Total revenue	\$	18,512	177
		127,725	624

#### Contract Balances

The following table presents contract balances by category.

	December 31,	
	2023	2022
	<i>(In thousands)</i>	
Accounts receivable, net	\$	\$
Contract assets, current (included in prepaid expenses and other assets)	46,937	34,062
Contract liabilities:	592	1,720
Contract liabilities, current	\$	\$
Contract liabilities, non-current (included in other liabilities, non-current)	1,097	1,195
Total contract liabilities	\$	\$
	1,187	1,316

[Table of Contents](#)

## ENERGY RECOVERY, INC.

### NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

Energy Recovery, Inc. | 2023 Form 10-K Annual Report | 57

## Contract Liabilities

The Company records contract liabilities, which consist of customer deposits and deferred revenue, when cash payments are received in advance of the Company's performance. The following table presents significant changes in contract liabilities during the period.

	Years Ended December 31,		
	2023	2022	2021
(In thousands)			
Contract liabilities, beginning of year	\$	\$	\$
Revenue recognized	(	(	(
Cash received, excluding amounts recognized as revenue during the period	1,316	3,406	1,640
Contract liabilities, end of year	<u>\$ 1,254</u>	<u>\$ 3,123</u>	<u>\$ 1,415</u>
	<u>1,125</u>	<u>1,033</u>	<u>3,181</u>

## Future Performance Obligations

As of December 31, 2023, the following table presents the future estimated revenue by year expected to be recognized related to performance obligations that are unsatisfied or partially unsatisfied.

Year	Future Performance Obligations		
	2023	2022	2021
(In thousands)			

2025

## Note 3 — Net Income Per Share

Net income for the reported period is divided by the weighted average number of common shares outstanding during the reported period to calculate basic net income per common share.

• *Basic net income per common share* excludes any dilutive effect of stock options and RSUs.

• *Diluted net income per common share* reflects the potential dilution that would occur if outstanding stock options to purchase common stock were exercised for shares of common stock, using the treasury stock method, and if the shares of common stock underlying each unvested RSU were issued.

Outstanding stock options to purchase common stock and unvested RSUs are collectively referred to as "stock awards."

The following table presents the computation of basic and diluted net income per common share.

	Years Ended December 31,		
	2023	2022	2021
(In thousands, except per share amounts)			
Numerator			
Net income	\$	\$	\$
Denominator (weighted average shares)	21,504	24,049	14,269
Basic common shares outstanding			
Dilutive stock awards			
Diluted common shares outstanding	<u>56,444</u>	<u>56,221</u>	<u>56,993</u>
	<u>1,296</u>	<u>1,420</u>	<u>1,730</u>
Net income per share	57,740	57,641	58,723
Basic	\$	\$	\$
Diluted	\$	\$	\$
<a href="#">Table of Contents</a>	0.38	0.43	0.25
<b>ENERGY RECOVERY, INC.</b>	0.37	0.42	0.24

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

Certain shares of common stock issuable under stock awards have been omitted from the diluted net income per common share calculations because their inclusion is considered anti-dilutive. The following table presents the weighted potential common shares issuable under stock awards that were excluded from the computation of diluted net income per common share.

	Years Ended December 31,		
	2023	2022	2021
(In thousands)			
Anti-dilutive stock award shares			
	399	374	17

## Note 4 — Other Financial Information

### Cash, Cash Equivalents and Restricted Cash

The Consolidated Statements of Cash Flows explain the changes in the total of cash, cash equivalents and restricted cash, such as cash amounts deposited in restricted cash accounts in connection with the Company's credit cards. The following table presents a reconciliation of cash, cash equivalents and restricted cash, reported within the Consolidated Balance Sheets that sum to the total of such amounts presented for each period presented on the Consolidated Statements of Cash Flows.

	December 31,		
	2023	2022	2021
(In thousands)			
Cash and cash equivalents	\$	\$	\$
Restricted cash, non-current (included in other assets, non-current)			
Total cash, cash equivalents and restricted cash	\$ 68,098	\$ 56,354	\$ 74,358
	127	104	103
	68,225	56,458	74,461

### Accounts Receivable, net

	December 31,		
	2023	2022	2021
(In thousands)			
Accounts receivable, gross	\$	\$	
Allowance for doubtful accounts		(	(
Accounts receivable, net	\$ 47,075	\$ 34,210	
	138	148	
	46,937	34,062	

### Allowance for Doubtful Accounts

The following table presents the allowance for doubtful accounts activities.

	Years Ended December 31,		
	2023	2022	2021
(In thousands)			
Balance, beginning of year	\$	\$	\$
Changes to reserves <sup>(1)</sup>			
Collection of specific reserves and uncollectible accounts written off, net of recoveries	148	117	397
Balance, end of year	\$ 73	\$ 36	\$
	83	5	280
	138	148	117

<sup>(1)</sup> General and specific reserves charged to expense.

[Table of Contents](#)

## ENERGY RECOVERY, INC.

### NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

Energy Recovery, Inc. | 2023 Form 10-K Annual Report | 59

### Inventories, net

	December 31,	
	2023	2022
(In thousands)		
Raw materials	\$	\$
Work in process		
Finished goods	8,752	11,178
Inventories, gross	5,234	2,628
Valuation adjustments for excess and obsolete inventory	( 13,319	( 15,062
Inventories, net	\$ 27,305	\$ 28,868
	1,156	602
	26,149	28,366

### Prepaid Expenses and Other Assets

	December 31,	
	2023	2022
	(In thousands)	
Contract assets	\$	\$
Cloud computing arrangement implementation costs		
Supplier advances	592	1,720
Insurance	474	784
Interest receivable	487	1,308
Other prepaid expenses and other assets	754	637
Total prepaid expenses and other assets	581	319
	955	938
Restricted cash, non-current	3,843	5,606
Security deposits, non-current		
Total other assets, non-current	127	104
Total prepaid and other assets, and other assets, non-current	261	262
	\$	\$
	388	366
Property and Equipment	4,231	5,972

	December 31,	
	2023	2022
	(In thousands)	
Machinery and equipment	\$	\$
Leasehold improvements		
Software	30,962	28,545

### Goodwill

Goodwill is tested for impairment annually in the third quarter of the Company's fiscal year or more frequently if indicators of potential impairment exist. The Company monitors the industries in which it operates, and reviews its business performance for indicators of potential impairment. The recoverability of goodwill is measured at the reporting unit level, which represents the operating segment. The carrying amount of goodwill as of December 31, 2023 and December 31, 2022 was \$

12.8

million.

On July 1, 2023, the Company estimated the fair value of its reporting units using both the discounted cash flow and market approaches. The forecast of future cash flows, which is based on the Company's best estimate of future net sales and operating expenses, is based primarily on expected category expansion, pricing, market segment, and general economic conditions. The Company incorporates other significant inputs to its fair value calculations, including discount rate and market multiples, to reflect current market conditions. The analysis performed indicated that the fair value of each reporting unit that is allocated goodwill significantly exceeds its carrying value. There was

no

impairment charge recorded for the year ended December 31, 2023.

### Accrued Expenses and Other Liabilities

	December 31,	
	2023	2022
	(In thousands)	
Current		
Payroll, incentives and commissions payable	\$	\$
Warranty reserve		
Income taxes payable	11,037	10,479
Other accrued expenses and other liabilities	1,057	968
Total accrued expenses and other liabilities	1,077	268
	2,412	2,978
Other liabilities, non-current	15,583	14,693
Total accrued expenses, and current and non-current other liabilities	\$	\$
	207	121

### Accumulated Other Comprehensive Loss

For the year ended December 31, 2023, there was \$	15,790	14,814
--	--------	--------

3.0

million of securities sold and the reclassification to other comprehensive income (loss) was immaterial. There were no reclassifications of amounts out of accumulated other comprehensive loss for the years ended December 31, 2022 and 2021, as there have been no sales of securities or translation adjustments that impacted other comprehensive



income (loss) during these periods.

The tax impact of the changes in accumulated other comprehensive loss for the years ended December 31, 2023, 2022 and 2021, was not material.

### **Advertising Expense**

Advertising expense is charged to operations during the year in which it is incurred. Total advertising expense was not material for the years ended December 31, 2023, 2022 and 2021.

[Table of Contents](#)

## **ENERGY RECOVERY, INC.**

### **NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

---

Energy Recovery, Inc. | 2023 Form 10-K Annual Report | 61

## **Note 5 — Investments and Fair Value Measurements**

### **Available-for-Sale Investments**

The Company's investments in investment-grade short-term and long-term marketable debt instruments, such as U.S. treasury securities, corporate notes and bonds, and municipal and agency notes and bonds, are classified as available-for-sale. Available-for-sale investments are classified on the Consolidated Balance Sheets as either short-term and/or long-term investments.

The classification of available-for-sale investments on the Consolidated Balance Sheets and definition of each of these classifications are presented in Note 1, "Description of Business and Significant Accounting Policies - Significant Accounting Policies," subsections "Cash and Cash Equivalents" and "Short-term and Long-term Investments."

Expected maturities can differ from contractual maturities because borrowers may have the right to prepay obligations without prepayment penalties. The Company generally holds available-for-sale investments until maturity; however, from time-to-time, the Company may elect to sell certain available-for-sale investments prior to contractual maturity.

### **Fair Value of Financial Instruments**

The Company follows the authoritative guidance for fair value measurements and disclosures that, among other things, defines fair value, establishes a consistent framework for measuring fair value, and expands disclosure for each major asset and liability category measured at fair value on either a recurring or nonrecurring basis. Fair value is defined as an exit price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants. As such, fair value is a market-based measurement that should be determined based on assumptions that market participants would use in pricing an asset or liability.

All of the Company's financial assets and liabilities are remeasured and reported at fair value at each reporting period, and are classified and disclosed in one of the following three pricing category levels:

Level 1 — Quoted prices (unadjusted) in active markets for identical assets or liabilities;

Level 2 — Inputs other than quoted prices included within Level 1 that are either directly or indirectly observable; and

Level 3 — Unobservable inputs in which little or no market activity exists, thereby requiring an entity to develop its own assumptions that market participants would use in pricing.

[Table of Contents](#)

## **ENERGY RECOVERY, INC.**

### **NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

---

Energy Recovery, Inc. | 2023 Form 10-K Annual Report | 62

The following table presents the Company's financial assets measured on a recurring basis by contractual maturity, including pricing category, amortized cost, gross unrealized gains and losses, and fair value. As of the dates reported in the table, the Company had

no

financial liabilities and

no

Level 3 financial assets.

		December 31, 2023				December 31, 2022				
Pricing Category		Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Fair Value	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Fair Value	
(In thousands)										
<b>Cash equivalents</b>										
Money market securities	Level 1	\$	\$	\$	\$	\$	\$	\$	\$	
			18,767	—	—	18,767	33,268	—	—	33,268
<b>Short-term investments</b>										
U.S. treasury securities	Level 2				(					
Corporate notes and bonds	Level 2		4,900	1	( 1	4,900	3,629	1	( —	3,630
Municipal and agency notes and bonds	Level 2		25,674	11	( 18	25,667	26,060	—	208	25,852
Total short-term investments			9,887	—	( 9	9,878	3,992	5	( —	3,997
<b>Long-term investments</b>										
Corporate notes and bonds	Level 2		40,461	12	28	40,445	33,681	6	208	33,479
Municipal and agency notes and bonds	Level 2		9,229	28	( 3	9,254	3,178	—	120	3,058
Total long-term investments			4,585	—	( 7	4,578	—	—	( —	—
Total short and long-term investments			13,814	28	10	13,832	3,178	—	120	3,058
Total		\$	\$4,275	40	( )38	\$4,277	\$6,859	\$6	( )328	36,537

The Company monitors its investments for impairment. It was determined that unrealized gains and losses included in accumulated other comprehensive loss at December 31, 2023 and 2022, were temporary in nature, because the changes in market value for these securities resulted from fluctuating interest rates, rather than a deterioration of the credit worthiness of the issuers.

The following table presents a summary of the fair value and gross unrealized losses on the available-for-sale securities that have been in a continuous unrealized loss position, aggregated by type of investment instrument. The available-for-sale securities that were in an unrealized gain position have been excluded from the table.

		December 31, 2023		December 31, 2022	
		Fair Value	Gross Unrealized Losses	Fair Value	Gross Unrealized Losses
(In thousands)					
U.S. treasury securities		\$	\$	(	\$
Corporate notes and bonds				(	(
Municipal and agency notes and bonds		2,931	1	—	—
Total available-for-sale investments with unrealized loss positions		15,276	21	28,911	328
		12,956	16		(
		31,163	38	28,911	328

[Table of Contents](#)

## ENERGY RECOVERY, INC.

### NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

### Sales of Available-for-Sale Investments

The following table presents the sales of available-for-sale investments.

(In thousands)

	Years Ended December 31,		
	2023	2022	2021
Corporate notes and bonds	\$	\$	\$
Realized losses on sales of securities were immaterial during the year ended December 31, 2023.	2,966	—	—

## Note 6 — Lines of Credit

### Credit Agreement

The Company entered into a credit agreement with JPMorgan Chase Bank, N.A. ("JPMC") on December 22, 2021 ("Credit Agreement"). The Credit Agreement, which will expire on December 21, 2026, provides a committed revolving credit line of \$

50.0  
million.

The Credit Agreement requires the Company to comply with various covenants, including among other things, financial covenants to 1) maintain a leverage ratio of consolidated net debt to adjusted EBITDA, not to exceed

3.0  
to 1; and 2) limit annual capital expenditures.

The Credit Agreement allows the Company to, among other things, make distributions to shareholders, repurchase its stock, incur other debt or liens, or acquire or dispose of assets provided that the Company complies with certain requirements and limitations set forth in the Credit Agreement. The unused portion of the credit line is subject to a fee equal to

0.20  
% per annum multiplied by the amount of such unused

portion.

On July 15, 2022, the Company and JPMC agreed to a modification of the Credit Agreement ("First Amendment") to change the indicated reference rate from LIBOR to SOFR. Changes in the Credit Agreement reference rate to SOFR did not materially change the provisions defined in the original Credit Agreement nor did this change materially affect the Company's financial statements. During September 2023, the Company and JPMC amended the Credit Agreement (the "Second Amendment") to only increase the maximum allowable letters of credit ("LCs") credit line component from \$

25.0  
million to \$

30.0  
million. No other components or features under the Credit

Agreement (including the First Amendment dated July 15, 2022) were amended.

### Revolving Loans

Revolving loans under the Credit Agreement may be in the form of 1) a base rate loan that bears interest equal to (a) the greater of the Wall Street Journal prime rate and (b) the sum of (i) one-month reserve adjusted Secured Overnight Financing Rate ("SOFR") and (ii)

2.50  
%, plus an applicable margin of

0.25  
% or

0.50  
%, subject to the Company's total leverage ratio, or 2) a Eurodollar loan that bears

interest equal to the sum of the reserved adjusted SOFR rate for an interest period elected by the Company, plus an applicable margin of

1.25  
% or

1.50  
%, based upon the Company's total leverage ratio. The Company may request loans up to the lower of a maximum exposure

of \$

50.0  
million or the amounts of unused credit under the Credit Agreement. The unused portion of the credit facility is subject to a facility fee in an amount equal to

0.20  
% per annum of the average unused portion of the revolving line. At the election of the lender following an event of default, the loans shall bear the aforementioned interest rate plus an additional

2  
%. As of December 31, 2023, there were

### Letters of Credit

Under the Credit Agreement, the Company is allowed to request LCs up to the lower of a maximum exposure of \$

30.0  
million or the

amounts of unused credit under the Credit Agreement. The Credit Agreement does not require any cash collateral when LCs are issued; however, at the election of the lender following a default, the lender may require the Company to deposit cash in an amount equal to

103  
% of

the LCs exposure. LCs are subject to customary fees and expenses for issuance or renewal, and all disbursements are subject to the same interest rate provision as noted directly above under Revolving Loans. LCs are limited to a term of

one year  
, unless extended. Under the

LCs component, the Company utilized \$

21.8  
million of the maximum allowable credit line of \$

30.0

million, which includes newly issued LCs, and previously issued and unexpired stand-by letters of credits ("SBLCs") and certain non-expired commitments under the Company's previous Loan and Pledge Agreement with Citibank, N.A. which are guaranteed under the Credit Agreement.

The following table presents the total outstanding LCs and SBLCs issued by the Company to our customers related to product warranty and performance guarantees.

	December 31,	
	2023	2022
(In thousands)		
Outstanding letters of credit	\$ 19,945	\$ 15,487

See Note 7, "Commitments and Contingencies – Guarantees," for further discussion on product warranty and performance guarantees.

## Note 7 — Commitments and Contingencies

### Operating Lease Obligations

The Company leases office, warehouse and manufacturing facilities under operating leases in San Leandro, CA, Tracy, CA and Katy, TX that expire on various dates through fiscal year 2030. The following table presents a summary of operating lease, right of use assets and

lease liabilities.

	December 31,	
	2023	2022
(In thousands)		
Operating lease, right of use asset	\$ 11,469	\$ 13,115
Lease liabilities, current	\$ 1,791	\$ 1,600
Lease liabilities, non-current	\$ 11,488	\$ 13,278
Total lease liability	\$ 13,279	\$ 14,878

The following table presents certain facts regarding the Company's material property leases.

Location	Purpose	Square Footage	Expiration (1)	Option to Extend (2)
San Leandro, California	Headquarters, R&D and manufacturing		December-2028	
Tracy, California	Manufacturing and warehouse	171,000	April-2030	
Katy, Texas	Office, R&D, warehouse, and yard	54,429	June-2029	1
		221,220		6 years

(1) Month-Year of original lease expiration

(2) Number of renewal option(s) / Number of year(s) per renewal option

[Table of Contents](#)

## ENERGY RECOVERY, INC.

### NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

Energy Recovery, Inc. | 2023 Form 10-K Annual Report | 65

The following table presents operating lease activities related to all leased properties.

	Years Ended December 31,		
	2023	2022	2021
(In thousands)			
Operating lease expense	\$ 2,571	\$ 2,571	\$ 2,571
Cash payments			

The following table presents other information related to outstanding operating leases as of December 31, 2023.

Weighted average remaining lease term	5.5 years
Weighted average discount rate	5.5%

As of December 31, 2023, the following table presents the minimum lease payments by year under noncancelable operating leases, exclusive of execution costs.

Year	Lease Liabilities
(In thousands)	
2024	\$ 1,243
2025	
2026	2,812
2027	2,736
2028	2,982
2029 and thereafter	3,072
Total future minimum lease payments	3,165
Less imputed lease interest	(1,243)
Total lease liabilities	\$ 16,010

### Warranty

The following table presents the changes in the Company's accrued product warranty reserve.

13,279

	Years Ended December 31,		
	2023	2022	2021
(In thousands)			
Warranty reserve balance, beginning of year	\$	\$	\$
Warranty costs charged to cost of revenue			
Utilization charges against reserve		968	879
Release of accrual related to expired warranties		(515)	(483)
Warranty reserve balance, end of year	\$	\$	\$
	324	320	310

### Purchase Obligations

The Company has purchase order arrangements with its vendors for which the Company has not received the related goods or services as of December 31, 2023. These arrangements are subject to change based on the Company's sales demand forecasts. The Company has the right to cancel the arrangements prior to the date of delivery. The purchase order arrangements are related to various raw materials and component parts, as well as capital equipment. As of December 31, 2023, the Company had approximately \$

1.5  
million of  
such open cancellable purchase order arrangements.

[Table of Contents](#)

## ENERGY RECOVERY, INC.

### NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

Energy Recovery, Inc. | 2023 Form 10-K Annual Report | 66

### Guarantees

The Company enters into indemnification provisions under its agreements with other companies in the ordinary course of business, typically with its customers. Under these provisions, the Company generally indemnifies and holds harmless the indemnified party for losses suffered or incurred by the indemnified party as a result of the Company's activities, generally limited to personal injury and property damage caused by the Company's employees at a customer's plant, and in proportion to the employee's percentage of fault for the accident. Damages incurred for these indemnifications would be covered by the Company's general liability insurance to the extent provided by the policy limitations. The Company has not incurred material costs to defend lawsuits or settle claims related to these indemnification agreements. As a result, the estimated valuation of the potential liability arising from these agreements is not material. Accordingly, the Company recorded

no

liabilities for these agreements as of December 31, 2023 and 2022.

In certain cases, the Company issues product warranty and performance guarantees to its customers for amounts generally equal to

10

% or less of the total sales agreement to endorse the execution of product delivery and to the warranty of design work, fabrication and operating performance of our devices. These guarantees are generally LCs that have a weighted average life at inception of

33

months.

See Note 6, "Lines of Credit – Letters of Credit," for information related to LCs.

### Litigation

From time-to-time, the Company has been named in and subject to various proceedings and claims in connection with its business. The Company may in the future become involved in litigation in the ordinary course of business, including litigation that could be material to its business. The Company considers all claims, if any, on a quarterly basis and, based on known facts, assesses whether potential losses are considered reasonably possible, probable and estimable. Based upon this assessment, the Company then evaluates disclosure requirements and whether to accrue for such claims in its consolidated financial statements. The Company records a provision for a liability when it is both probable that a liability has been incurred and the amount of the loss can be reasonably estimated. These provisions are reviewed at least quarterly and are adjusted to reflect the impacts of negotiations, settlements, rulings, advice of legal counsel and other information and events pertaining to a particular case. As of December 31, 2023, the Company was not involved in any lawsuits, legal proceedings or claims that would have a material effect on the Company's financial position, results of operations, or cash flows. Therefore, there were no material losses which were probable or reasonably possible.

[Table of Contents](#)

## ENERGY RECOVERY, INC.

### NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

Energy Recovery, Inc. | 2023 Form 10-K Annual Report | 67

## Note 8 — Income Taxes

The following table presents the Company's U.S. and foreign components of consolidated income before income taxes and the provision for (benefit from) income taxes.

	Years Ended December 31,		
	2023	2022	2021
	(In thousands)		
Income before income taxes:			
U.S.	\$	\$	\$
Foreign			
Total income before income taxes	\$ 22,592	\$ 25,919	\$ 13,913
	113	153	91
Current tax provision:	22,705	26,071	14,004
Federal	\$	\$	\$
State			
Foreign	1,268	698	—
Current tax provision	13	22	10
	51	84	80
Deferred tax provision (benefit):	1,332	804	90
Federal	(	(	(
State			
Total deferred tax provision (benefit)	(262)	(1,104)	(362)
Total provision for (benefit from) income taxes	\$ 131	\$ 114	\$ 27
	131	1,218	355

The following table presents a reconciliation of income taxes computed at the statutory federal income tax rate to the effective tax rate implied by the accompanying Consolidated Statements of Operations.

	Years Ended December 31,		
	2023	2022	2021
U.S. federal taxes at statutory rate			
State income tax, net of federal benefit			
Foreign rate differential	21	21	21
Stock-based compensation	(	(	(
Non-deductible expenses	—	—	1
Federal research credits	(	(	(
Foreign derived intangible income	(	(	(
Effective tax rate	6	4	7
	10	7	10
	5	8	2
	%	%	%)

[Table of Contents](#)

**ENERGY RECOVERY, INC.**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**



The following table presents the components of the Company's net deferred tax asset, which is presented in other assets, non-current on the Consolidated Balance Sheets.

	December 31,	
	2023	2022
	(In thousands)	
Deferred tax assets:		
Net operating loss carry forwards	\$	\$
Amortization of research and experimental expenditures		
Accruals and reserves	547	702
Operating lease liabilities	6,079	3,605
Research and development, and foreign tax credit carry forwards	4,857	4,320
Acquired intangibles	2,870	3,199
Other	7,609	9,642
Total deferred tax assets	157	321
Valuation allowance	(	(
Total deferred tax assets, net of valuation allowance	22,119	21,855
	4,600	4,185
	17,519	17,670
Deferred tax liabilities:		
Depreciation on property and equipment	(	(
Right of use asset	(	(
Other	2,545	2,646
Goodwill	(	(
Total deferred tax liabilities	10	(
Net deferred tax asset	\$	\$
	7,195	7,407

In asserting the recoverability of deferred tax assets, the Company considers whether it is more likely than not that the assets will be realized. The ultimate realization of deferred tax assets is dependent upon the generation of future taxable income during the periods in which those temporary differences become deductible.

The Company assesses the available positive and negative evidence to estimate if sufficient future taxable income will be generated to use the existing deferred tax assets. In making such a determination, the Company considers all available positive and negative evidence, including recent results of operations, scheduled reversals of deferred tax liabilities, projected future income, and available tax planning strategies. A significant piece of objective positive evidence evaluated was the cumulative profit incurred in the U.S.

On the basis of this evaluation, as of December 31, 2023, the Company recognized all of its U.S. federal and state deferred tax assets with the exception that the Company continues to maintain a valuation allowance on its California research and development ("R&D") credit carryovers of \$

4.6

million. The Company will maintain a valuation allowance on its California R&D credit carryovers because it is more likely than not that the Company will continue to annually generate more California R&D tax credits than it utilizes, resulting in no net reduction of credits. The Company's policy with respect to California R&D credits is that they are utilized on a last-in, first-out basis. The Company continues to assert that the accumulated foreign earnings of its subsidiaries in Spain and Canada are permanently reinvested. Due to the U.S. Tax Cuts and Jobs Act ("Tax Act") enacted in 2017, any future repatriation of the earnings of its subsidiaries in Spain and Canada would not be subject to U.S. federal income tax. The Company has estimated that the foreign withholding taxes and U.S. state income taxes related to a potential future repatriation of these earnings would be immaterial. The Company has evaluated the impact of the global intangible low taxed income ("GILTI") and has concluded that the impact to the Company is immaterial.

[Table of Contents](#)

## ENERGY RECOVERY, INC.

### NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

Energy Recovery, Inc. | 2023 Form 10-K Annual Report | 69

The following table presents the Company's California net operating loss carryforward.

	Expiration Year	December 31,	
		2023	2022
		(In thousands)	
California	2031		

Utilization of the California net operating loss carryforward may be subject to a substantial annual limitation due to the ownership change limitations provided by the California Revenue and Taxation Code which could result in the expiration of the net operating loss carryforward before utilization. As of December 31, 2023, there are no ownership change limits on the utilization of the California net operating loss carryforward.

The following table presents the Company's R&D credit by taxing authority, minimum tax credit and foreign tax credit carryforwards.

	Expiration Year	December 31,	
		2023	2022
		(In thousands)	
Federal	2040	\$	\$
California	No Expiration Date		
Total credit carryforwards		\$	\$
		5,855	5,218

Utilization of the credit carryforwards may be subject to a substantial annual limitation due to the ownership change limitations provided by the IRC and similar California provisions. As of December 31, 2023, there are no ownership change limits on the utilization of these net tax credit carryforwards.

Accounting for uncertain tax positions is based on judgment regarding the largest amount that is greater than 50% likely of being realized upon the ultimate settlement with a taxing authority. The following table presents the aggregate changes in the balance of the gross

unrecognized tax benefits.

	Years Ended December 31,		
	2023	2022	2021
(In thousands)			
Gross unrecognized tax benefits, beginning of year	\$	\$	\$
Additions of current and prior year tax positions			
Reductions of prior year tax positions		1,505	1,321
Gross unrecognized tax benefits, end of year	\$	\$ 206	\$ 184
			\$ 193
			\$ 6

As of December 31, 2023, the Company had unrecognized tax benefits of \$ 1,705, 1,505, and 1,321

1.7 million, of which \$

1.0 million, if recognized, would

affect the Company's effective tax rate.

The Company adopted the accounting policy that interest and penalties are classified as part of its income taxes. As of December 31, 2023, there was

no accrued interest or penalties associated with any unrecognized tax benefits.

There are currently no examinations by Federal, state and foreign tax authorities. The Company believes that, as of December 31, 2023, the gross unrecognized tax benefits will not materially change in the next twelve months. The Company believes that it has adequately provided for any reasonably foreseeable outcomes related to any tax audits and that any settlement will not have a material adverse effect on the consolidated financial position or results of operations. However, there can be no assurances as to the possible outcomes.

[Table of Contents](#)

## ENERGY RECOVERY, INC.

### NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

## Note 9 — Segment Reporting

The Company's Chief Operating Decision-Maker ("CODM") is its chief executive officer. The Company continues to monitor and review its segment reporting structure in accordance with authoritative guidance to determine whether any changes have occurred that would impact its reportable segments.

Income and type of expense activities that are included in the Water and Emerging Technologies segments and corporate operating expenses are as follows:

**Water segment:** The continued development, sales and support of the PX, hydraulic turbochargers and pumps used in seawater desalination and wastewater treatment activities.

**Emerging Technologies segment:** The continued development, sales and support of activities related to emerging technologies, such as the PX G1300 used in industrial and commercial refrigeration applications.

**Corporate operating expenses:** Corporate activities outside of the operating segments, such as audit and accounting expenses, general legal costs, board of director fees and expenses, and other separately managed general expenses not related to the identified segments.

### Segment Financial Information

For each of the periods presented, operating income (loss) for each segment excludes other income and expenses, and corporate operating expenses not included in how the CODM assesses the performance of the operating segments, such as income taxes and other separately managed expenses not attributed to the operating segments. Assets and liabilities are reviewed at the consolidated level by the CODM and are not attributed to the segments. The CODM allocates resources to, and assesses the performance of, each operating segment using information about its revenue and operating income.

The following table presents a summary of the Company's financial information by segment and corporate operating expenses.

	Year Ended December 31, 2023			Year Ended
	Water	Emerging Technologies	Total	Water
(In thousands)				
Revenue	\$	\$	\$	\$
Cost of revenue				
Gross profit (loss)		127,725	624	128,349
		40,290	980	41,270
Operating expenses		87,435	356	87,079
General and administrative			)	
Sales and marketing		7,751	3,927	11,678
Research and development		13,691	6,053	19,744
Total operating expenses		4,251	12,750	17,001
		25,693	22,730	48,423
Operating income (loss)	\$	\$ (		\$
		61,742	23,086	38,656
Less: Corporate operating expenses			)	
Income from operations			\$	19,606
				19,050

[Table of Contents](#)

## ENERGY RECOVERY, INC.

### NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

Energy Recovery, Inc. | 2023 Form 10-K Annual Report | 71

The following table presents a summary of the Company's depreciation and amortization by segment and corporate operating expenses.

	Years Ended December 31,		
	2023	2022	2021
(In thousands)			
Water	\$	\$	\$
Emerging Technologies			
Corporate		2,779	2,141
			1,823
Total depreciation and amortization	\$	521	\$ 1,864
		802	759
		4,102	4,764
			4,502

## Note 10 — Concentrations

### Revenue by Geographic Location and Country

The following table presents the Company's product revenue by geographic locations. The geographic information includes product revenue from our domestic and international customers based on the customers' requested delivery locations, except for certain cases in which the customer directed the Company to deliver its products to a location that differs from the known ultimate location of use. In such cases, the ultimate location of use rather than the delivery location is reflected in the table.

	Years Ended December 31,		
	2023	2022	2021
Revenue by geographic location:			
United States			
International			
Total revenue	2	1	1
	%	%	%
	100	100	100
Product revenue by country:(1)	%	%	%
Saudi Arabia			
Algeria		**	**
United Arab Emirates	15	**	47
	18	%	36
China	10	**	%
Israel	**	15	17
Others(2)	%		%
Total	42	53	14
	%	%	%
	100	100	100

\*\* Zero or less than 10%.

(1) Countries representing more than 10% of product revenues for the periods presented%

(2) Countries in the aggregate, individually representing less than 10% of product revenues for the periods presented.

[Table of Contents](#)

## ENERGY RECOVERY, INC.

### NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

Customer Revenue Concentration

The following table presents the customers that account for 10% or more of the Company's revenue and their related segment for each of the periods presented. Although certain customers might account for greater than 10% of the Company's revenue at any one point in time, the concentration of revenue between a limited number of customers shifts regularly, depending on when revenue is recognized. The percentages by customer reflect specific relationships or contracts that would concentrate revenue for the periods presented and do not indicate a trend specific to any one customer.

	Segment	Years Ended December 31,		
		2023	2022	2021
Customer A	Water	**	**	
Customer B	Water	**		
Customer C	Water	**	**	21
Customer D	Water	**	18	%11
Customer E	Water		**	%16
Customer F	Water	**	15	**%10
			13	%
**			11	%

Zero or less than 10%.

Long-lived Assets

All of the Company's long-lived assets were located in the United States at December 31, 2023 and 2022.

Major Supply Vendors

The following table presents the major supply vendors accounting for 10% or more of the Company's consolidated supply and manufacturing costs purchases.

	Years Ended December 31,		
	2023	2022	2021
Vendor A			
Vendor B			
Vendor C	21	21	**24
Vendor D	**%19	**%19	%16
	%13	%13	%
**	%	%	12
			%

Zero or less than 10%.

Note 11 — Stockholders' Equity Preferred Stock

The Company has the authority to issue

10,000,000

shares of preferred stock with a par value of \$

0.001

per share. The Board of

Directors has the authority, without action by the Company's stockholders, to designate and issue shares of preferred stock in one or more series. The Board of Directors is also authorized to designate the rights, preferences, and voting powers of each series of preferred stock, any or all of which may be greater than the rights of the common stock including restrictions of dividends on the common stock, dilution of the voting power of the common stock, reduction of the liquidation rights of the common stock, and delaying or preventing a change in control of the Company without further action by the Company's stockholders. To date, the Board of Directors has not designated any rights, preferences, or powers of any preferred stock, and as of December 31, 2023 and 2022,

no

shares of preferred stock were issued or outstanding.

[Table of Contents](#)

# ENERGY RECOVERY, INC.

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

Energy Recovery, Inc. | 2023 Form 10-K Annual Report | 73

### Common Stock

The Company has the authority to issue

200,000,000

shares of common stock with a par value of \$

0.001

per share. Subject to the

preferred rights of the holders of shares of any class or series of preferred stock as provided by the Board of Directors with respect to any such class or series of preferred stock, the holders of the common stock shall be entitled to receive dividends, as and when declared by the Board of Directors. In the event of any liquidation, dissolution, or winding up of the Company, whether voluntary or involuntary, after the distribution or payment to the holders of shares of any class or series of preferred stock as provided by the Board of Directors with respect to any such class or series of preferred stock, the remaining assets of the Company available for distribution to stockholders shall be distributed among and paid to the holders of common stock ratably in proportion to the number of shares of common stock held by them.

### Share Repurchase Program

The Company's Board of Directors (the "Board"), from time-to-time, has authorized a share repurchase program under which the Company may, at the discretion of management, repurchase its outstanding common stock in the open market, or in privately negotiated transactions, in compliance with applicable state and federal securities laws. The timing and amounts of any purchase under the Company's share repurchase program is based on market conditions and other factors including price, regulatory requirements, and capital availability. The Company accounts for stock repurchases under these programs using the cost method.

On March 9, 2021, the Board authorized a share repurchase program under which the Company may repurchase its outstanding common stock, at the discretion of management, up to \$

50.0

million in aggregate cost, which includes both the share value of the acquired common stock and the fees charged in connection with acquiring the common stock (the "March 2021 Authorization"). On July 1, 2022, the Company concluded all share repurchases under the March 2021 Authorization. As of December 31, 2023, the Company has repurchased

8.1

million shares of its common stock at an aggregate cost of \$

80.5

million

under the March 2021 Authorization and all previous share repurchase programs.

### Note 12 — Stock-based Compensation

#### Stock Option Plans

In July 2020, the stockholders approved the 2020 Incentive Plan (the "2020 Plan"), that permits the grant of stock options, restricted stock units ("RSU"), stock appreciation rights, restricted stock, restricted stock awards ("RSA"), performance units, performance shares, and other stock-based awards to employees, officers, directors, and consultants. Prior to the approval of the 2020 Plan, the Company maintained the 2016 Incentive Plan and the Amended and Restated 2008 Equity Incentive Plan (hereinafter referred to as the "Predecessor Plans"). Subject to adjustments, as provided in the 2020 Plan, the number of shares of common stock initially authorized for issuance under the 2020 Plan was

5,894,727

shares (which consist of

4,500,000

new share awards plus

1,394,727

share awards that were authorized and unissued

under the Predecessor Plans) plus up to

4,850,630

shares that were set aside for awards granted under the Predecessor Plans that are

subsequently forfeited. The 2020 Plan supersedes all previously issued stock incentive plans (including the Predecessor Plans) and is currently the only available plan from which awards may be granted. The Company's 2020 Plan and Predecessor Plans are hereinafter referred to as "Equity Incentive Plans."

Shares available for grant under the 2020 Plan at December 31, 2023 were

4,098,928

shares. There were

no

shares available for

grant under the Predecessor Plans after July 15, 2020.

### Stock Options and Stock Appreciation Rights

Employee stock options and stock appreciation rights outstanding at December 31, 2023 and to be granted subsequently after

### Restricted Stock Units

RSUs outstanding at, and to be awarded subsequently after, December 31, 2023, generally vest

25

% annually over the

four years

from date of grant and are dependent upon continued employment. Non-employee board of director grants generally vest one year after the date of grant or on the date of the annual stockholders' meeting following the date of grant, whichever date occurs first. As RSUs vest, the units will be settled in shares of common stock based on a

one

-to-one ratio. The units are valued based on the market price on the date of grant.

### Restricted Stock Awards

There were

no

RSAs outstanding as of December 31, 2023.

### Fair Value Assumptions

#### Stock Options and Stock Appreciation Rights

The fair value of stock options granted to employees is based on the Black-Scholes option pricing model. To determine the inputs for the Black-Scholes option pricing model, the Company is required to develop several assumptions, which are highly subjective. The Company determines these inputs as follows:

•*Expected Term:*

•*Employees:* Based on historical exercise data.

•*Board of Directors:* Based on the simplified method.

•*Stock Appreciation Rights:* Based upon the remaining grant life at each remeasurement date.

•*Expected Volatility:* Based on the Company's historical data and the corresponding expected term.

•*Risk-Free Interest Rate:* Based on U.S. Treasury issues with terms similar to the expected term.

•*Dividend Yield:* Based on an expected dividend yield of zero.

The following table presents assumptions used in the Black-Scholes option pricing model to determine the estimated grant date fair values of stock options and stock appreciation rights granted to employees.

	Years Ended December 31,		
	2023	2022	2021
Weighted average expected life (years)			
Weighted average expected volatility			
Risk-free interest rate	9.1	4.1	4.0
Weighted average dividend yield	60.4	48.7	49.3
	3.87	3.44	3.30
	% —	% —	% —
	3.87	3.90	1.51
	%	%	%

### Restricted Stock Units

The fair value of RSUs granted to employees is based on the Company's common stock price on the date of grant.

[Table of Contents](#)

## ENERGY RECOVERY, INC.

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

Energy Recovery, Inc. | 2023 Form 10-K Annual Report | 75

### Forfeitures

The Company estimates forfeitures at the time of grant and revises those estimates periodically in subsequent periods if actual forfeitures differ from those estimates. The Company uses historical data to estimate pre-vesting option forfeitures and records stock-based compensation expense only for those awards that are expected to vest. If the Company's actual forfeiture rate is materially different from its estimate, the stock-based compensation expense could be significantly different from what the Company has recorded in the current period. The following table presents the estimated weighted average forfeiture rates for all employees used in determining the expense in the stock-based compensation expense table above.

	Years Ended December 31,		
	2023	2022	2021
Stock options, stock appreciation rights and RSUs			

### Stock-based Compensation Expense

The following table presents the stock-based compensation expense related to the fair value measurement of awards granted to employees by expense category and by type of award. All stock-based payment awards are amortized on a straight-line basis over the requisite service periods of the awards, generally the vesting periods.

	Years Ended December 31,		
	2023	2022	2021
(In thousands)			
Stock-based compensation expense charged to:			
Cost of revenue	\$	\$	\$
General and administrative			
Sales and marketing		719	506
Research and development		3,661	3,436
Total stock-based compensation expense	\$	\$	\$
	2,333	1,592	1,483
	<u>1,325</u>	<u>977</u>	<u>1,242</u>
	8,038	6,511	6,056
Stock-based compensation expense by type of award:			
Stock options and stock appreciation rights	\$	\$	\$
RSUs			
Total stock-based compensation expense	\$	\$	\$
	1,985	2,837	3,161
	<u>6,053</u>	<u>3,674</u>	<u>2,895</u>
	8,038	6,511	6,056

[Table of Contents](#)

## ENERGY RECOVERY, INC.

### NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

Energy Recovery, Inc. | 2023 Form 10-K Annual Report | 76

#### Stock Option and Stock Appreciation Rights Activities

The following table presents stock option activities under the Equity Incentive Plans.

	Number of Shares	Weighted Average Exercise Price	Weighted Average Remaining Contractual Life	Aggregate Intrinsic Value <sup>(1)</sup>
	(In thousands)	(Per share)	(In years)	(In thousands)
Balance, December 31, 2020	\$			
Granted				
Exercised	( 3,620	7.48		\$
Forfeited	( 613	14.39		
Balance, December 31, 2021	<u>1,518</u>	6.96		16,952
Granted	)171	11.26		
Exercised	( 2,544	9.21		
Forfeited	( 403	19.13		
Balance, December 31, 2022	<u>429</u>	7.32		6,387
Granted	)97	13.66		
Exercised	( 2,421	11.02		
Forfeited	14	22.13		
Balance, December 31, 2023	<u>511</u>	9.38		\$ 5,619
Vested and exercisable as of December 31, 2023	<u>1,924</u>	11.54	5.5	\$ 14,264
Vested and exercisable as of December 31, 2023 and expected to vest thereafter	<u>1,537</u>	10.28	5.0	\$ 13,246

<sup>(1)</sup> The aggregate intrinsic value of an exercised option is calculated as the difference between the exercise price of the underlying option and the fair value of the Company's common stock at the time of exercise. The aggregate intrinsic value at December 31, 2023 is calculated as the difference between the exercise price of the underlying outstanding options and the fair value of the Company's common stock as of December 31, 2023 or the last trading day prior to December 31, 2023.

#### Restricted Stock Unit Activities

The following table presents RSU activities under the Equity Incentive Plans.



	Number of Shares	Weighted Average Grant Date Fair Value
	(In thousands)	(Per share)
Balance, December 31, 2020		\$
Awarded		
Vested	( 687	9.10
Forfeited	( 387	15.44
Balance, December 31, 2021	230	8.98
Awarded	)150	11.14
Vested	( )694	12.23
Forfeited	( 322	19.61
Balance, December 31, 2022	268	12.03
Awarded	)60	15.16
Vested	( )688	15.51
Forfeited	( 546	23.97
Balance, December 31, 2023	294	14.02
	)21	19.91
<a href="#">Table of Contents</a>	)919	20.91

## ENERGY RECOVERY, INC.

### NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

Energy Recovery, Inc. | 2023 Form 10-K Annual Report | 77

#### Vested Stock Options and RSUs

The following table presents the total grant date fair value of stock options and RSUs vested during the period.

	Years Ended December 31,		
	2023	2022	2021
(In thousands)			
Stock options	\$	\$	\$
RSUs			
Total grant date fair value of stock options and RSUs vested during the period	\$ 2,724	\$ 2,683	\$ 3,298
	4,112	3,226	2,060

#### Unamortized Stock-Based Compensation Costs

Stock-based compensation costs related to unvested stock options and RSUs will generally be amortized on a straight-line basis over the remaining average service period of each award. The following table presents the unamortized compensation costs and weighted average service period of all unvested outstanding awards as of December 31, 2023.

	Unamortized Compensation Costs	Weighted Average Service Period
	(In thousands)	(In years)
Stock options	\$	
RSUs		
Total unamortized compensation costs, net of adjusted forfeitures	\$ 5,267	0.8
	14,769	2.3
	20,036	

[Table of Contents](#)

## ENERGY RECOVERY, INC.

### NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

Energy Recovery, Inc. | 2023 Form 10-K Annual Report | 78

## Item 9 — Changes in and Disagreements with Accountants on Accounting and Financial Disclosure

None.

## Item 9A — Controls and Procedures

### Evaluation of Disclosure Controls and Procedures

Our management has evaluated, with the participation of our Chief Executive Officer and Chief Financial Officer, the effectiveness of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, or “Exchange Act”) as of the end of the period covered by this Annual Report on Form 10-K. Based on that evaluation, our Chief Executive Officer and Chief Financial Officer have concluded that, as of such date, our disclosure controls and procedures were effective to ensure that information we are required to disclose in reports that we file or submit under the Exchange Act is recorded, processed, summarized, and reported within the time periods specified in Securities and Exchange Commission rules and forms and that such information is accumulated and communicated to management as appropriate to allow for timely decisions regarding required disclosure.

Our disclosure controls and procedures are designed to provide reasonable assurance of achieving their objectives, and our Chief Executive Officer and Chief Financial Officer have concluded that these controls and procedures are effective at the “reasonable assurance” level. Our management, including the Chief Executive Officer and Chief Financial Officer, believes that a control system, no matter how well designed and operated, cannot provide absolute assurance that the objectives of the control system are met, and that no evaluation of controls can provide absolute assurance that all control issues and instances of fraud, if any, within a company have been detected.

### Management’s Annual Report on Internal Control Over Financial Reporting and Attestation Report of the Registered Public Accounting Firm

#### Management’s Report on Internal Control Over Financial Reporting

Management is responsible for establishing and maintaining adequate internal control over the Company’s financial reporting.

Management assessed the effectiveness of the Company’s internal control over financial reporting as of December 31, 2023. In making this assessment, management used the criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) in *Internal Control — Integrated Framework (2013)*. Based on the assessment using those criteria, management concluded that, as of December 31, 2023, our internal control over financial reporting was effective.

#### Attestation Report of the Registered Public Accounting Firm

The Company’s independent registered public accountants, Deloitte & Touche, LLP, audited the Consolidated Financial Statements included in this Annual Report on Form 10-K and have issued an audit report on the Company’s internal control over financial reporting. The report on the audit of internal control over financial reporting appears in Part II, Item 8, “Financial Statements and Supplementary Data,” in this Annual Report on Form 10-K.

#### Changes in Internal Control Over Financial Reporting

There were no changes in our internal control over financial reporting that occurred during our most recent fiscal quarter that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

[Table of Contents](#)

Item 9B — Other Information

(b) As set forth below, during the three months ended December 31, 2023, one officer (within the meaning of Rule 16a-1(f) under the Securities Exchange Act of 1934, as amended) has adopted or terminated any Rule 10b5-1 trading arrangement and/or any non-Rule 10b5-1 trading arrangement (as defined in Item 408 of Regulation S-K).

Name	Title	Date of Adoption or Termination <sup>(1)</sup>	Status <sup>(2)</sup>	Plan Type
				Rule 10b5-1 trading arrangement <sup>(3)</sup>

<sup>(1)</sup> Effective (a) date of adoption; or (b) date of termination, of registrant's Rule 10b5-1 trading arrangement.

<sup>(2)</sup> Activity related to registrant's Rule 10b5-1 trading arrangement.

<sup>(3)</sup> This Rule 10b5-1 trading arrangement had a term beginning on February 27, 2024 and ending on November 27, 2024. Under the trading arrangement,

28,985 shares of Energy Recovery's common stock may be sold when the market value of the vested shares equals or exceeds \$ 20.00 .

Item 9C — Disclosure Regarding Foreign Jurisdictions that Prevent Inspections

Not applicable.

[Table of Contents](#)

PART III

Certain information required by Part III is omitted from this report because we will file with the SEC a definitive proxy statement pursuant to Regulation 14A, or the 2024 Proxy Statement ("Proxy Statement"), no later than 120 days after the end of fiscal year 2023, and certain information included therein is incorporated herein by reference.

Item 10 — Directors, Executive Officers and Corporate Governance

The information required by this Item is included in and incorporated by reference from the Proxy Statement.

Item 11 — Executive Compensation

The information required by this Item is included in and incorporated by reference from the Proxy Statement under the captions "Director Compensation," "Executive Compensation," "Compensation Committee Interlocks and Insider Participation," "Compensation Discussion and Analysis," "Report of the Compensation Committee" and "Compensation Policies and Practices as They Relate to Risk Management."

Item 12 — Security Ownership of Certain Beneficial Owners and Management and Related

## Stockholder Matters

The following table sets forth equity compensation plan information as of December 31, 2023.

Plan Category	Number of Securities to be Issued Upon Exercise of Outstanding Options, Warrants and Rights	Weighted- Average Exercise Price of Outstanding Options, Warrants and Rights	Number of Securities Remaining Available for Future Issuance Under Equity Compensation Plans (Excluding Securities Reflected in the First Column)
Equity compensation plans approved by security holders	2,800,543	\$11.54	4,098,928
Equity compensation plans not approved by security holders	None	Not applicable	Not applicable

<sup>(1)</sup> Represents shares of our common stock issuable upon exercise of options outstanding under the following equity compensation plans: the 2020 Incentive Plan, the 2016 Incentive Plan, and the Amended and Restated 2008 Equity Incentive Plan.

The information required by this Item is included in and incorporated by reference from the Proxy Statement under the captions “Security Ownership of Certain Beneficial Owners and Management,” “Equity-Based Incentive Compensation” and “Additional Information Regarding Executive Compensation.”

[Table of Contents](#)

## Item 13 — Certain Relationships and Related Transactions and Director Independence

The information required by this Item is included in and incorporated by reference from the Proxy Statement under the captions “Related Person Policies and Transactions” and “Information About the Board of Directors and Corporate Governance Matters.”

## Item 14 — Principal Accounting Fees and Services

The information required by this item is included in and incorporated by reference from the Proxy Statement under the caption “Principal Accountant Fees and Services.”

With the exception of the information specifically incorporated by reference in Part III to this Annual Report on Form 10-K from the Proxy Statement, the Proxy Statement shall not be deemed to be filed as part of this report.

[Table of Contents](#)

## **PART IV**

### **Item 15 — Exhibits and Financial Statement Schedules**

#### **Financial Statements**

(a)The following documents are included as part of this Annual Report on Form 10-K:

(1)Financial Statements. The financial statements included in Part II, Item 8, "Financial Statements and Supplementary Data," of this Annual Report on Form 10-K.

(2)Financial Statement Schedule. See Note 4, "Other Financial Information – Allowance for Doubtful Accounts," of the Notes. Schedules not listed have been omitted because information required to be set forth therein is not applicable or is shown in the financial statements or notes thereto.

(b)*Financial Statement Schedules*. All financial statement schedules are omitted because they are not applicable, not required, or because the required information is included in the Consolidated Financial Statements, the Notes thereto, or in the Exhibits listed under Item 15(a)(2).

(c)Exhibits required by Item 601 of Regulation S-K.

Exhibit Number	Exhibit Description	Incorporated by Reference			Filed Herewith
		Form	File No.	Exhibit	Filing Date
3.1	Amended and Restated Certificate of Incorporation, dated June 25, 2008, and Certificate of Amendment thereto, dated June 10, 2021.	8-K	001-34112	3.1	8/6/2021
3.2	Amended and Restated Bylaws, effective as of April 14, 2021.	8-K	001-34112	3.1	4/16/2021
4.1	Description of Securities.	10-K	001-34112	4.1	2/24/2022
10.1*	Form of Indemnification Agreement between the Company and its directors and officers.	8-K	333-150007	10.1	5/12/2008
10.2*	Energy Recovery Inc. Amended and Restated 2008 Equity Incentive Plan.	DEF14A	001-34112	Appendix A	4/27/2012
10.3*	Energy Recovery, Inc. Change in Control Severance Plan dated March 5, 2012.	8-K	001-34112	10.1	3/9/2012
10.4*	Energy Recovery, Inc. Annual Incentive Plan effective as of January 1, 2016.	8-K	001-34112	10.1	3/2/2016
10.5*	Energy Recovery, Inc. 2016 Incentive Plan.	DEF14A	001-34112	Appendix A	4/27/2016
10.6	Offer Letter to Mr. William Yeung, dated May 27, 2016.	8-K	001-34112	99.1	6/22/2016
10.7	Lease Agreement, dated as of April 2, 2018, by and between Energy Recovery, Inc. and D/C Doolittle Sub LLC.	8-K	001-34112	10.1	4/18/2018
10.8	Offer Letter to Mr. Joshua Ballard, as Chief Financial Officer.	8-K	001-34112	2.2	8/15/2018
10.9	Employment Agreement with Mr. Rodney Clemente.	8-K	001-34112	10.3	8/27/2018
10.10	Lease Agreement, dated as of January 10, 2019, by and between Energy Recovery, Inc. and D/C Doolittle Sub LLC.	8-K	001-34112	10.1	1/16/2019

Exhibit Number	Exhibit Description	Incorporated by Reference			Filed Herewith
		Form	File No.	Exhibit	Filing Date
21.1	List of subsidiaries of the Company.				X
23.1	Consent of Deloitte & Touche LLP, Independent Registered Public Accounting Firm.				X
31.1	Certification of Principal Executive Officer, pursuant to Exchange Act Rule 13a-14(a) or 15d-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.				X
31.2	Certification of Principal Financial Officer, pursuant to Exchange Act Rule 13a-14(a) or 15d-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.				X
32.1**	Certification of Principal Executive Officer and Principal Financial Officer, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.				X
97.1	Energy Recovery, Inc. Compensation Recovery ("Clawback") Policy dated July 25, 2023.				X
101	Inline XBRL Document Set for the consolidated financial statements and accompanying notes in Part II, Item 8, "Financial Statements and Supplementary Data" of this Annual Report on Form 10-K.				X
104	Inline XBRL for the cover page of this Annual Report on Form 10-K, included in the Exhibit 101 Inline XBRL Document Set.				X

\* Indicates management compensatory plan, contract or arrangement.

\*\* The certifications furnished in Exhibits 32.1 are deemed to accompany this Form 10-K and are not deemed "filed" for purposes of Section 18 of the Exchange Act, or otherwise subject to the liability of that section, nor shall they be deemed incorporated by reference into any filing under the Securities Act or the Exchange Act.

## Item 16 — Form 10-K Summary

None.

[Table of Contents](#)

# SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the Registrant has duly caused this Report to be signed on its behalf by the undersigned, thereunto duly authorized, as of the 21<sup>st</sup> day of February, 2024.  
ENERGY RECOVERY, INC.

/s/ DAVID W. MOON  
\_\_\_\_\_  
David W. Moon  
President and Chief Executive Officer

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

Signature	Title	Date
<u>/s/ DAVID W. MOON</u> David W. Moon	Director, and President and Chief Executive Officer (Principal Executive Officer)	February 21, 2024
<u>/s/ JOSHUA BALLARD</u> Joshua Ballard	Chief Financial Officer (Principal Financial and Accounting Officer)	February 21, 2024
<u>/s/ PAMELA TONDREAU</u> Pamela Tondreau	Chairperson of the Board, Director	February 21, 2024
<u>/s/ ALEXANDER J. BUEHLER</u> Alexander J. Buehler	Director	February 21, 2024
<u>/s/ JOAN K. CHOW</u> Joan K. Chow	Director	February 21, 2024
<u>/s/ ARVE HANSTVEIT</u> Arve Hanstveit	Director	February 21, 2024
<u>/s/ ROBERT YU LANG MAO</u> Robert Yu Lang Mao	Director	February 21, 2024
<u>/s/ COLIN R. SABOL</u> Colin R. Sabol	Director	February 21, 2024
<a href="#">Table of Contents</a>		



**ENERGY RECOVERY, INC.  
2020 INCENTIVE PLAN**

**SECTION 1. PURPOSE**

The purpose of the Energy Recovery, Inc. 2020 Incentive Plan is to promote the long-term success of the Company and the creation of stockholder value by (a) encouraging employees, officers, directors, consultants, agents, advisors and independent contractors of the Company and its Related Companies to focus on critical long-range objectives, (b) encouraging the attraction and retention of such persons with exceptional qualifications, and (c) linking such persons directly to stockholder interests through increased stock ownership.

**SECTION 2. DEFINITIONS**

Certain capitalized terms used in the Plan have the meanings set forth in Appendix A.

**SECTION 3. ADMINISTRATION**

**3.1 Administration of the Plan**

(a) The Plan shall be administered by the Board or the Compensation Committee. The Board will cause the Compensation Committee to be composed of two or more directors and to satisfy the applicable requirements of any stock exchange on which the Common Stock may then be listed. For purposes of Awards to Participants who are subject to Section 16 of the Exchange Act, Compensation Committee means all of the members of the Compensation Committee who are “non-employee directors” within the meaning of Rule 16b-3(b)(3) promulgated under the Exchange Act or any successor definition adopted by the Securities and Exchange Commission. Awards to Nonemployee Directors shall be made by the Board upon recommendation of the Compensation Committee.

(b) Notwithstanding the foregoing, the Board may delegate concurrent responsibility for administering the Plan, including with respect to designated classes of Eligible Persons, to different committees consisting of one or more members of the Board, subject to such limitations as the Board deems appropriate, except with respect to Awards granted to Participants who are subject to Section 16 of the Exchange Act. Members of any committee shall serve for such term as the Board may determine, subject to removal by the Board at any time. To the extent consistent with applicable law, the Board or the Compensation Committee may authorize one or more officers of the Company to grant or amend Awards to designated classes of Eligible Persons, within limits specifically prescribed by the Board or the Compensation Committee; provided, however, that no such officer shall have or obtain authority to grant Awards to himself or herself or to any Participants who are subject to Section 16 of the Exchange Act. For the avoidance of doubt, provided it meets the limitation in the preceding sentence, this delegation shall include the right to modify Awards as necessary to accommodate changes in laws or regulations, including in jurisdictions outside the United States. Any delegation hereunder shall be subject to the restrictions and limits that the Board or the Committee specifies at the time of such delegation, and the Board may at any time rescind the authority so delegated or appoint a new delegate. At all times, any delegate appointed under this Section 3.1(b) shall serve in such capacity at the pleasure of the Board or the Committee.

(c) All references in the Plan to the “Committee” shall be, as applicable, to the Board, the Compensation Committee or any other committee or any officer to whom authority has been delegated to administer the Plan.

### 3.2 Administration and Interpretation by the Committee

(a) Except for the terms and conditions explicitly set forth in the Plan and to the extent permitted by applicable law, the Committee shall have full power and exclusive authority, subject to such orders or resolutions not inconsistent with the provisions of the Plan as may from time to time be adopted by the Board or a Committee composed of members of the Board, to (i) select the Eligible Persons to whom Awards may from time to time be granted under the Plan; (ii) determine the type or types of Awards to be granted to each Participant under the Plan; (iii) determine the number of shares of Common Stock to be covered by each Award granted under the Plan; (iv) determine the terms and conditions of any Award granted under the Plan; (v) approve the forms of notice or agreement for use under the Plan; (vi) amend, modify, suspend, discontinue or terminate the Plan, waive any restrictions or conditions applicable to any Award or amend or modify the terms and conditions of any outstanding Award; (vii) determine whether, to what extent and under what circumstances Awards may be settled in cash, shares of Common Stock or other property or canceled or suspended; (viii) interpret and administer the Plan and any instrument evidencing an Award, notice or agreement executed or entered into under the Plan; (ix) establish such rules and regulations as it shall deem appropriate for the proper administration and operation of the Plan; (x) delegate ministerial duties to such of the Company's employees as it so determines; and (xi) make any other determination and take any other action that the Committee deems necessary or desirable for administration of the Plan.

(b) In no event, however, shall the Committee have the right, without stockholder approval, to (i) lower the exercise or grant price of an Option or SAR after it is granted, except in connection with adjustments provided in Section 15.1 of the Plan; (ii) take any other action that is treated as a repricing under generally accepted accounting principles; or (iii) cancel an Option or SAR at a time when its exercise or grant price exceeds the Fair Market Value of the underlying stock in exchange for cash, another option, stock appreciation right, restricted stock, restricted stock unit or other equity, unless the cancellation and exchange occurs in connection with a merger, acquisition, spin-off or other similar corporate transaction.

(c) The effect on the vesting of an Award of a Company-approved leave of absence or a Participant's reduction in hours of employment or service shall be determined by the Company's General Counsel or, with respect to directors or executive officers, by the Compensation Committee, whose determination shall be final.

(d) Decisions of the Committee shall be final, conclusive and binding on all persons, including the Company, any Participant, any stockholder and any Eligible Person. A majority of the members of the Committee may determine its actions.

## SECTION 4. SHARES SUBJECT TO THE PLAN

### 4.1 Authorized Number of Shares

Subject to adjustment from time to time as provided in Section 15.1 of the Plan, the number of shares of Common Stock available for issuance under the Plan shall be:

(a) 4,500,000 shares; plus

(b) (i) up to 1,394,727 authorized shares available for issuance and not issued or subject to outstanding awards under the Company's 2016 Incentive Plan as of the Effective Date, which shares shall cease to be set aside or reserved for issuance pursuant to the 2016 Incentive Plan effective on the Effective Date and shall instead be set aside and reserved for issuance pursuant to the Plan, and (ii) up to 4,954,723 shares subject to outstanding awards under the 2016 Incentive Plan and the 2008 Equity Incentive Plan (the "**Prior Plans**") as of the Effective Date that cease to be subject to such awards following the Effective Date (other than by reason of exercise or settlement of the awards to the extent they are exercised for or settled in vested or nonforfeitable shares), which shares shall cease to be set aside or reserved for issuance pursuant to the Prior Plans effective on the date upon which they cease to be so subject to such awards and shall instead be set aside and reserved for issuance pursuant to the Plan.

No awards may be granted under the 2016 Incentive Plan after the Effective Date.

Shares issued under the Plan shall be drawn from authorized and unissued shares or shares now held or subsequently acquired by the Company as treasury shares.

## 4.2 Share Usage

(a) If any Award lapses, expires, terminates or is canceled prior to the issuance of shares thereunder or if shares of Common Stock are issued under the Plan to a Participant and thereafter are forfeited to the Company, the shares subject to such Awards and the forfeited shares shall again be available for issuance under the Plan. The following shares shall not again become available for issuance under the Plan: (i) shares of Common Stock tendered by a Participant or retained by the Company as full or partial payment to the Company upon exercise of an Option, (ii) shares of Common Stock reserved for issuance upon grant of SARs, to the extent the number of reserved shares exceeds the number of shares actually issued upon exercise of the SARs, and (iii) shares of Common Stock withheld by, or otherwise tendered to, the Company to satisfy a Participant's tax withholding obligations in connection with an Award. The number of shares of Common Stock available for issuance under the Plan shall not be reduced to reflect any dividends or dividend equivalents that are reinvested into additional shares of Common Stock or credited as additional shares of Common Stock subject to or paid with respect to an Award.

(b) The Committee shall also, without limitation, have the authority to grant Awards as an alternative to or as the form of payment for grants or rights earned or due under other compensation plans or arrangements of the Company.

(c) Notwithstanding any other provision of the Plan to the contrary, the Committee may grant Substitute Awards under the Plan. Substitute Awards shall not reduce the number of shares authorized for issuance under the Plan. In the event that an Acquired Entity has shares available for awards or grants under one or more preexisting plans not adopted in contemplation of such acquisition or combination, then, to the extent determined by the Board or the Compensation Committee, the shares available for grant pursuant to the terms of such preexisting plan (as adjusted, to the extent appropriate, using the exchange ratio or other adjustment or valuation ratio or formula used in such acquisition or combination to determine the consideration payable to holders of common stock of the entities that are parties to such acquisition or combination) may be used for Awards under the Plan and shall not reduce the number of shares of Common Stock authorized for issuance under the Plan; provided, however, that Awards using such available shares shall not be made after the date awards or grants could have been made under the terms of such preexisting plans, absent the acquisition or combination, and shall be made only to individuals who were not employees or directors of the Company or a Related Company prior to such acquisition or combination. In the event that a written agreement between the Company and an Acquired Entity pursuant to which a merger or consolidation is completed is approved by the Board and that agreement sets forth the terms and conditions of the substitution for or assumption of outstanding awards of the Acquired Entity, those terms and conditions shall be deemed to be the action of the Committee without any further action by the Committee, except as may be required for compliance with Rule 16b-3 under the Exchange Act, and the persons holding such awards shall be deemed to be Participants.

## 4.3 Maximum Awards

The maximum Common Stock amounts in this Section 4.3 are subject to adjustment under Section 15.1 of the Plan and are subject to the Plan maximum set forth in Section 4.1 of the Plan.

### (a) *Limit on Awards to Participants*

(i) No Participant may be granted Options or Stock Appreciation Rights in any calendar year period with respect to more than an aggregate of 500,000 shares of Common Stock for such Awards, except that the Company may make additional one-time grants of such Awards for up to an aggregate of 300,000 shares to newly hired or newly promoted individuals.

(ii) No Participant may be granted Awards other than Options, Stock Appreciation Rights, Performance Units or other Awards denominated in cash or other property in any calendar year period with respect to more than an aggregate of 500,000 shares of Common Stock for such Awards, except that the Company may make additional one-time grants of such Awards for up to 300,000 shares to newly hired or newly promoted individuals.

(iii) The maximum dollar value payable with respect to Performance Units or other Awards denominated in cash or other property subject to Section 16 of the Plan granted to any Participant in any one calendar year is \$7,500,000.

(b) *Limit on Awards to Nonemployee Directors.* Notwithstanding any provision in the Plan to the contrary, the aggregate amount of all compensation granted or paid, as applicable, to any individual for service as a Nonemployee Director during any fiscal year of the Company, including any Awards granted (based on grant date fair value computed as of the date of grant in accordance with applicable financial accounting rules) and any cash retainer or fees paid or provided for service on the Board or any committee thereof, or any Award granted in lieu of any such cash retainer or meeting fee, shall not exceed \$500,000. The Board may make an exception to the limit in this Section 4.3(a) for any Nonemployee Director in extraordinary circumstances, as the Board may determine in its discretion, provided that any Nonemployee Director who is granted or paid such additional compensation may not participate in the decision to grant or pay such additional compensation.

(c) *Incentive Stock Options.* The maximum number of shares of Common Stock that may be issued upon the exercise of Incentive Stock Options shall be 4,500,000 shares.

## **SECTION 5. ELIGIBILITY**

### **5.1 General**

An Award may be granted to any employee, officer or director of the Company or a Related Company whom the Committee from time to time selects. An Award may also be granted to any consultant, agent, advisor or independent contractor for bona fide services rendered to the Company or any Related Company that (a) are not in connection with the offer and sale of the Company's securities in a capital-raising transaction and (b) do not directly or indirectly promote or maintain a market for the Company's securities.

### **5.2 Non-U.S. Participants**

Notwithstanding any provision of the Plan to the contrary, in order to comply with the laws in countries outside the United States in which the Company and its Related Companies operate or have Eligible Persons, the Committee, in its sole discretion, shall have the power and authority to (i) determine which Related Companies shall be covered by the Plan; (ii) determine which Eligible Persons outside the United States are eligible to participate in the Plan; (iii) modify the terms and conditions of any Award granted to Eligible Persons outside the United States to comply with applicable laws of jurisdictions outside of the United States; (iv) establish subplans and modify exercise procedures and other terms and procedures and rules, to the extent such actions may be necessary or advisable, including adoption of rules, procedures or subplans applicable to particular Related Companies or Eligible Persons residing in particular locations; provided, however, that no such subplans and/or modifications shall increase the share limitations contained in Section 4 of the Plan; and (v) take any action, before or after an Award is made, that it deems advisable to obtain approval or comply with any necessary local governmental regulatory exemptions or approvals. Without limiting the generality of the foregoing, the Committee is specifically authorized to adopt rules, procedures and subplans with provisions that limit or modify rights on death, disability or termination of employment, available methods of exercise or settlement of an Award, payment of income, social insurance contributions and payroll taxes, the shifting of employer tax liability to the Participant, withholding procedures, the conversion of local currency and handling of any stock certificates or other indicia of ownership which may vary with local requirements. Notwithstanding the foregoing, the Committee may not take any actions hereunder, and no Awards shall be granted, that would violate the Exchange Act, the Code, any securities law or governing statute or any other applicable law.

## **SECTION 6. AWARDS**

### **6.1 Form, Grant and Settlement of Awards**

The Committee shall have the authority, in its sole discretion, to determine the type or types of Awards to be granted under the Plan. Such Awards may be granted either alone or in addition to or in tandem with any other type of Award. Any Award settlement may be subject to such conditions, restrictions and contingencies as the Committee shall determine.

### **6.2 Evidence of Awards**

Awards granted under the Plan shall be evidenced by a written, including an electronic, instrument that shall contain such terms, conditions, limitations and restrictions as the Committee shall deem advisable and that are not inconsistent with the Plan.

### **6.3 Minimum Vesting**

The Committee may provide for such vesting conditions for an Award as it may determine, except that, subject to adjustment as provided in Section 15.1, the aggregate number of shares that may be issued pursuant to Awards granted under the Plan that contain no restrictions or restrictions based solely on continuous employment or services over less than one year shall not exceed 5% of the aggregate maximum number of shares specified in Section 4.1. This limitation will not, however, apply in the following situations: (i) upon a Change in Control; (ii) termination of employment due to death or Disability; and (iii) a Substitute Award.

### **6.4 Dividends and Distributions**

Participants may, if the Committee so determines other than with respect to Options or Stock Appreciation Rights, be credited with dividends or dividend equivalents for dividends paid with respect to shares of Common Stock underlying an Award in a manner determined by the Committee in its sole discretion; provided, however, that any such credited dividends or dividend equivalents shall accrue and be paid only to the extent the Award becomes vested or payable. The Committee may apply any restrictions to the dividends or dividend equivalents that the Committee deems appropriate. The Committee, in its sole discretion, may determine the form of payment of dividends or dividend equivalents, including cash, shares of Common Stock, Restricted Stock or Stock Units. Notwithstanding the foregoing, the right to any dividends or dividend equivalents declared and paid on Restricted Stock must comply with or qualify for an exemption under Section 409A.

## **SECTION 7. OPTIONS**

### **7.1 Grant of Options**

The Committee may grant Options designated as Incentive Stock Options or Nonqualified Stock Options.

### **7.2 Option Exercise Price**

Options shall be granted with an exercise price per share not less than 100% of the Fair Market Value of the Common Stock on the Grant Date (and such exercise price shall not be less than the minimum exercise price required by Code Section 422 with respect to Incentive Stock Options), except in the case of Substitute Awards.

### **7.3 Term of Options**

Subject to earlier termination in accordance with the terms of the Plan and the instrument evidencing the Option, the maximum term of an Option shall be ten years from the Grant Date.

### **7.4 Exercise of Options**

The Committee shall establish and set forth in each instrument that evidences an Option the time at which, or the installments in which, the Option shall vest and become exercisable.

To the extent an Option has vested and become exercisable, the Option may be exercised in whole or from time to time in part by delivery, as directed by the Company, to the Company or a brokerage firm designated or approved by the Company of a properly executed stock option exercise agreement or notice, in a form and in accordance with procedures established by the Committee, setting forth the number of shares with respect to which the Option is being exercised, the restrictions imposed on the shares purchased under such exercise agreement or notice, if any, and such representations and agreements as may be required by the Committee, accompanied by payment in full as described in Section 7.5 of the Plan. An Option may be exercised only for whole shares and may not be exercised for less than a reasonable number of shares at any one time, as determined by the Committee.

### **7.5 Payment of Exercise Price**

The exercise price for shares purchased under an Option shall be paid in full to the Company by delivery of consideration equal to the product of the Option exercise price and the number of shares purchased. Such consideration must be paid before the Company will issue the shares being purchased and must be in a form or a combination of forms acceptable to the Committee for that purchase, which forms may include:

- (a) cash;
- (b) check or wire transfer;
- (c) having the Company withhold shares of Common Stock that would otherwise be issued on exercise of the Option that have an aggregate Fair Market Value equal to the aggregate exercise price of the shares being purchased under the Option;
- (d) tendering (either actually or, so long as the Common Stock is registered under Section 12(b) or 12(g) of the Exchange Act, by attestation) shares of Common Stock owned by the Participant that have an aggregate Fair Market Value equal to the aggregate exercise price of the shares being purchased under the Option;
- (e) so long as the Common Stock is registered under Section 12(b) or 12(g) of the Exchange Act, and to the extent permitted by law, delivery of a properly executed exercise agreement or notice, together with irrevocable instructions to a brokerage firm designated or approved by the Company to deliver promptly to the Company the aggregate amount of proceeds to pay the Option exercise price and any withholding tax obligations that may arise in connection with the exercise, all in accordance with the regulations of the Federal Reserve Board; or
- (f) such other consideration as the Committee may permit.

## **7.6 Effect of Termination of Service**

(a) The Committee shall establish and set forth in each instrument that evidences an Option whether the Option shall continue to be exercisable, and the terms and conditions of such exercise, after a Termination of Service, any of which provisions may be waived or modified by the Committee at any time.

(b) If the exercise of the Option following a Participant's Termination of Service, but while the Option is otherwise exercisable, would be prohibited solely because the issuance of Common Stock would violate the registration requirements under the Securities Act or similar requirements under the laws of any state or foreign jurisdiction, then the Option shall remain exercisable until the earlier of (i) the Option Expiration Date and (ii) the expiration of a period of three months (or such longer period of time as determined by the Committee in its sole discretion) after the Participant's Termination of Service during which the exercise of the Option would not be in violation of such Securities Act or other requirements.

## **SECTION 8. INCENTIVE STOCK OPTION LIMITATIONS**

Notwithstanding any other provision of the Plan to the contrary, the terms and conditions of any Incentive Stock Options shall in addition comply in all respects with Code Section 422, or any successor provision, and any applicable regulations thereunder. If the stockholders of the Company do not approve the Plan within 12 months after the Board's adoption of the Plan (or the Board's adoption of any amendment to the Plan that constitutes the adoption of a new plan for purposes of Code Section 422), Incentive Stock Options granted under the Plan after the date of the Board's adoption (or approval) will be treated as Nonqualified Stock Options. No Incentive Stock Options may be granted more than ten years after the earlier of the approval by the Board or the stockholders of the Plan (or any amendment to the Plan that constitutes the adoption of a new plan for purposes of Code Section 422). In interpreting and applying the provisions of the Plan, any Option granted as an Incentive Stock Option pursuant to the Plan shall, to the extent permitted by law, be construed as an "incentive stock option" within the meaning of Code Section 422.

## **SECTION 9. STOCK APPRECIATION RIGHTS**

### **9.1 Grant of Stock Appreciation Rights**

The Committee may grant Stock Appreciation Rights to Participants at any time on such terms and conditions as the Committee shall determine in its sole discretion. An SAR may be granted in tandem with an Option or alone ("**freestanding**"). The grant price of a tandem SAR shall be equal to the exercise price of the related Option. The grant price of a freestanding SAR shall be established in accordance with the procedures for Options set forth in Section 7.2 of the Plan. An SAR may be exercised upon such terms and conditions and for such term as the Committee determines in its sole discretion; provided, however, that, subject to earlier termination in accordance with the terms of the Plan and the instrument evidencing the SAR, the maximum term of a freestanding SAR shall be ten years, and in the case of a tandem SAR, (a) the term shall not exceed the term of the related Option and (b) the tandem SAR may be exercised for all or part of the shares subject to the related Option upon the surrender of the right to exercise the equivalent portion of the related Option, except that the tandem SAR may be exercised only with respect to the shares for which its related Option is then exercisable. An SAR agreement may provide for an automatic exercise of the SAR subject to any applicable requirements.

### **9.2 Payment of SAR Amount**

Upon the exercise of an SAR, a Participant shall be entitled to receive payment in an amount determined by multiplying (a) the difference between the Fair Market Value of the Common Stock on the date of exercise over the grant price of the SAR by (b) the number of shares with respect to which the SAR is exercised. At the discretion of the Committee as set forth in the instrument evidencing the Award, the payment upon exercise of an SAR may be in cash, in shares, in some combination thereof or in any other manner approved by the Committee in its sole discretion.

## **SECTION 10. STOCK AWARDS, RESTRICTED STOCK AND STOCK UNITS**

### **10.1 Grant of Stock Awards, Restricted Stock and Stock Units**

The Committee may grant Stock Awards, Restricted Stock and Stock Units on such terms and conditions and subject to such repurchase or forfeiture restrictions, if any, which may be based on continuous employment or service with the Company or a Related Company or the achievement of any performance goals, as the Committee shall determine in its sole discretion, which terms, conditions and restrictions shall be set forth in the instrument evidencing the Award.

## 10.2 Vesting of Restricted Stock and Stock Units

Upon the satisfaction of any terms, conditions and restrictions prescribed with respect to Restricted Stock or Stock Units, or upon a Participant's release from any terms, conditions and restrictions on Restricted Stock or Stock Units, as determined by the Committee (a) the shares of Restricted Stock covered by each Award of Restricted Stock shall become freely transferable by the Participant, and (b) Stock Units shall be paid in shares of Common Stock or, if set forth in the instrument evidencing the Awards, in cash or a combination of cash and shares of Common Stock. Any fractional shares subject to such Awards shall be paid to the Participant in cash.

## SECTION 11. PERFORMANCE AWARDS

### 11.1 Performance Shares

The Committee may grant Awards of Performance Shares, designate the Participants to whom Performance Shares are to be awarded and determine the number of Performance Shares and the terms and conditions of each such Award. Performance Shares shall consist of a unit valued by reference to a designated number of shares of Common Stock, the value of which may be paid to the Participant by delivery of shares of Common Stock or, if set forth in the instrument evidencing the Award, of such property as the Committee shall determine, including, without limitation, cash, shares of Common Stock, other property, or any combination thereof, upon the attainment of Performance Measures, as established by the Committee, and other terms and conditions specified by the Committee. The amount to be paid under an Award of Performance Shares may be adjusted on the basis of such further consideration as the Committee shall determine in its sole discretion.

### 11.2 Performance Units

The Committee may grant Awards of Performance Units, designate the Participants to whom Performance Units are to be awarded and determine the number of Performance Units and the terms and conditions of each such Award. Performance Units shall consist of a unit valued by reference to a designated amount of property other than shares of Common Stock, which value may be paid to the Participant by delivery of such property as the Committee shall determine, including, without limitation, cash, shares of Common Stock, other property, or any combination thereof, upon the attainment of Performance Measures, as established by the Committee, and other terms and conditions specified by the Committee. The amount to be paid under an Award of Performance Units may be adjusted on the basis of such further consideration as the Committee shall determine in its sole discretion.

## SECTION 12. OTHER STOCK- OR CASH-BASED AWARDS

Subject to the terms of the Plan and such other terms and conditions as the Committee deems appropriate, the Committee may grant other incentives denominated in cash, shares of Common Stock or other property under the Plan, which incentives may be paid to the Participant by delivery of such property as the Committee shall determine, including, without limitation, cash, shares of Common Stock, other property, or any combination thereof, subject to the terms and conditions specified by the Committee.

## SECTION 13. WITHHOLDING

(a) The Company or any Related Company may require the Participant to pay to the Company or any Related Company, as applicable, the amount of (i) any taxes that the Company or any Related Company is required by applicable federal, state, local or foreign law to withhold with respect to the grant, vesting or exercise of an Award ("**tax withholding obligations**") and (ii) any amounts due from the Participant to the Company or to any Related Company ("**other obligations**"). Notwithstanding any other provision of the Plan to the contrary, the Company shall not be required to issue any shares of Common Stock or otherwise settle an Award under the Plan until such tax withholding obligations and other obligations are satisfied.

(b) The Committee may permit or require a Participant to satisfy all or part of the Participant's tax withholding obligations and other obligations by (i) paying cash to the Company or a Related Company, as applicable, (ii) having the Company or a Related Company, as applicable, withhold an amount from any cash amounts otherwise due or to become due from the Company or a Related Company, as applicable, to the Participant, (iii) having the Company withhold a number of shares of Common Stock that would otherwise be issued to the Participant (or become vested, in the case of Restricted Stock) having a Fair Market Value equal to the tax withholding obligations and other obligations, or (iv) surrendering a number of shares of Common Stock the Participant already owns having a value equal to the tax withholding obligations and other obligations. The value of the shares so withheld or tendered may not exceed the employer's minimum required tax withholding rate or such other applicable rate as may be approved by the Committee so long as such withholding does not result in adverse treatment for financial accounting purposes.



## **SECTION 14. ASSIGNABILITY**

No Award or interest in an Award may be sold, assigned, pledged (as collateral for a loan or as security for the performance of an obligation or for any other purpose) or transferred by a Participant or made subject to attachment or similar proceedings otherwise than by will or by the applicable laws of descent and distribution, except to the extent the Participant designates one or more beneficiaries on a Company-approved form who may exercise the Award or receive payment under the Award after the Participant's death. During a Participant's lifetime, an Award may be exercised only by the Participant. Notwithstanding the foregoing and to the extent permitted by Code Section 422, the Committee, in its sole discretion, may permit a Participant to assign or transfer an Award subject to such terms and conditions as the Committee shall specify.

## **SECTION 15. ADJUSTMENTS**

### **15.1 Adjustment of Shares**

In the event that, at any time or from time to time, a stock dividend, stock split, spin-off, combination or exchange of shares, recapitalization, merger, consolidation, distribution to stockholders other than a normal cash dividend, or other change in the Company's corporate or capital structure results in (i) the outstanding shares of Common Stock, or any securities exchanged therefor or received in their place, being exchanged for a different number or kind of securities of the Company or (ii) new, different or additional securities of the Company or any other company being received by the holders of shares of Common Stock, or in the event of an extraordinary cash dividend, then the Committee shall make proportional adjustments in (1) the maximum number and kind of securities available for issuance under the Plan; (2) the maximum number and kind of securities set forth in Section 4.3 of the Plan; and (3) the number and kind of securities that are subject to any outstanding Award and/or the per share price of such securities. The determination by the Committee, as to the terms of any of the foregoing adjustments shall be conclusive and binding.

Notwithstanding the foregoing provisions of this Section 15.1, the issuance by the Company of shares of stock of any class, or securities convertible into shares of stock of any class, for cash or property, or for labor or services rendered, either upon direct sale or upon the exercise of rights or warrants to subscribe therefor, or upon conversion of shares or obligations of the Company convertible into such shares or other securities, shall not affect, and no adjustment by reason thereof shall be made with respect to, outstanding Awards. Also notwithstanding the foregoing, a dissolution or liquidation of the Company, a reorganization or a Change in Control shall not be governed by this Section 15.1 but shall be governed by Sections 15.2, 15.3 and 15.4, respectively.

### **15.2 Dissolution or Liquidation**

To the extent not previously exercised or settled, and unless otherwise determined by the Committee in its sole discretion, Awards shall terminate immediately prior to the dissolution or liquidation of the Company. To the extent a vesting condition, forfeiture provision or repurchase right applicable to an Award has not been waived by the Committee, the Award shall be forfeited immediately prior to the consummation of the dissolution or liquidation.

### **15.3 Reorganization**

Notwithstanding any other provision of the Plan to the contrary, unless the Committee shall determine otherwise in the instrument evidencing the Award or in a written employment, services or other agreement between the Participant and the Company or a Related Company, in the event that the Company is a party to a merger or consolidation, all outstanding Awards shall be subject to the agreement of merger or consolidation approved by the Board, provided that such agreement shall provide for one or more of the following:

- (a) The continuation of such outstanding Awards by the Company (if the Company is the surviving corporation).
- (b) The assumption of such outstanding Awards by the surviving company or its parent, provided that the assumption of Options or SARs shall comply with Code Section 424(a) if the Options are Incentive Stock Options, and shall comply with Treasury Regulation Section 1.409A-1(b)(5)(v)(D) if the Options are Nonqualified Stock Options.
- (c) The substitution by the surviving company or its parent of new awards for such outstanding Awards, provided that the substitution of Options or SARs shall comply with Code Section 424(a) if the Options are Incentive Stock Options, and shall comply with Treasury Regulation Section 1.409A-1(b)(5)(v)(D) if the Options are Nonqualified Stock Options.

(d) The acceleration of the exercisability of 100% of the then unexercisable portion of such Options and SARs and acceleration of vesting of 100% of the then unvested portion of the Common Stock subject to such Options and SARs. The acceleration of exercisability of such Options and SARs and vesting of such Common Stock shall be contingent on the closing of such merger or consolidation. The Optionee shall be able to exercise such Options and SARs during a period of not less than five full business days preceding the closing date of such merger or consolidation, unless (i) a shorter period is required to permit a timely closing of such merger or consolidation and (ii) such shorter period still offers the Optionees a reasonable opportunity to exercise such Options and SARs. Any exercise of such Options and SARs during such period may be contingent on the closing of such merger or consolidation.

(e) The cancellation of outstanding Options and SARs and a payment to the Optionees equal to the excess of (i) the fair market value of the Common Stock subject to such Options and SARs (whether or not such Options and SARs are then exercisable or such Common Stock is then vested) as of the closing date of such merger or consolidation over (ii) their exercise price. Such payment shall be made in the form of cash, cash equivalents, or securities of the surviving company or its parent with a fair market value equal to the required amount. Such payment may be subject to vesting based on the Optionee's continuing employment or service, provided that the vesting schedule shall not be less favorable to the Optionee than the schedule under which such Options and SARs would have become exercisable or such Common Stock would have vested. If the exercise price of the Common Stock subject to such Options and SARs exceeds the fair market value of such Common Stock, then such Options and SARs may be cancelled without making a payment to the Optionees. For purposes of this Section 15.3(e), the fair market value of any security shall be determined without regard to any vesting conditions that may apply to such security.

(f) The cancellation of outstanding Stock Units and a payment to the Participants equal to the fair market value of the Common Stock subject to such Stock Units (whether or not such Stock Units are then vested) as of the closing date of such merger or consolidation. Such payment shall be made in the form of cash, cash equivalents, or securities of the surviving company or its parent with a fair market value equal to the required amount. Such payment may be subject to vesting based on the Participant's continuing employment or service, provided that the vesting schedule shall not be less favorable to the Participant than the schedule under which such Stock Units would have vested. For purposes of this Section 15.3(f), the fair market value of any security shall be determined without regard to any vesting conditions that may apply to such security.

#### **15.4 Acceleration**

The Committee shall have the discretion, exercisable either at the time the Award is granted or at any time while the Award remains outstanding, to provide for the automatic acceleration of vesting upon the occurrence of a Change in Control, whether or not the Award is to be assumed or replaced in the Change in Control, or in connection with a termination of a Participant's service following a Change in Control.

#### **15.5 Further Adjustment of Awards**

Subject to Sections 15.2, 15.3 and 15.4 of the Plan, the Committee shall have the discretion, exercisable at any time before a sale, merger, consolidation, reorganization, liquidation, dissolution or change in control of the Company, as defined by the Committee, to take such further action as it determines to be necessary or advisable with respect to Awards. Such authorized action may include (but shall not be limited to) establishing, amending or waiving the type, terms, conditions or duration of, or restrictions on, Awards so as to provide for earlier, later, extended or additional time for exercise, lifting restrictions and other modifications, and the Committee may take such actions with respect to all Participants, to certain categories of Participants or only to individual Participants. The Committee may take such action before or after granting Awards to which the action relates and before or after any public announcement with respect to such sale, merger, consolidation, reorganization, liquidation, dissolution or change in control that is the reason for such action.

#### **15.6 No Limitations**

The grant of Awards shall in no way affect the Company's right to adjust, reclassify, reorganize or otherwise change its capital or business structure or to merge, consolidate, dissolve, liquidate or sell or transfer all or any part of its business or assets.

#### **15.7 No Fractional Shares**

In the event of any adjustment in the number of shares covered by any Award, each such Award shall cover only the number of full shares resulting from such adjustment, and any fractional shares resulting from such adjustment shall be disregarded.

## **15.8 Section 409A**

Notwithstanding any other provision of the Plan to the contrary, (a) any adjustments made pursuant to this Section 15 to Awards that are considered "deferred compensation" within the meaning of Section 409A shall be made in compliance with the requirements of Section 409A, and (b) any adjustments made pursuant to this Section 15 to Awards that are not considered "deferred compensation" subject to Section 409A shall be made in such a manner as to ensure that after such adjustment the Awards either (i) continue not to be subject to Section 409A or (ii) comply with the requirements of Section 409A.

## **SECTION 16. AMENDMENT AND TERMINATION**

### **16.1 Amendment, Suspension or Termination**

The Board or the Compensation Committee may amend, suspend or terminate the Plan or any portion of the Plan at any time and in such respects as it shall deem advisable; provided, however, that, to the extent required by applicable law, regulation or stock exchange rule, stockholder approval shall be required for any amendment to the Plan; and provided, further, that any amendment that requires stockholder approval may be made only by the Board. Subject to Section 16.3 of the Plan, the Committee may amend the terms of any outstanding Award, prospectively or retroactively.

### **16.2 Term of the Plan**

Unless sooner terminated as provided herein, the Plan shall terminate ten years from the Effective Date. After the Plan is terminated, no future Awards may be granted, but Awards previously granted shall remain outstanding in accordance with their applicable terms and conditions and the Plan's terms and conditions.

### **16.3 Consent of Participant**

The amendment, suspension or termination of the Plan or a portion thereof or the amendment of an outstanding Award shall not, without the Participant's consent, materially adversely affect any rights under any Award theretofore granted to the Participant under the Plan. Any change or adjustment to an outstanding Incentive Stock Option shall not, without the consent of the Participant, be made in a manner so as to constitute a "modification" that would cause such Incentive Stock Option to fail to continue to qualify as an Incentive Stock Option. Notwithstanding the foregoing, any adjustments made pursuant to Section 15.1 of the Plan shall not be subject to these restrictions.

## **SECTION 17. GENERAL**

### **17.1 No Individual Rights**

No individual or Participant shall have any claim to be granted any Award under the Plan, and the Company has no obligation for uniformity of treatment of Participants under the Plan.

Furthermore, nothing in the Plan or any Award granted under the Plan shall be deemed to constitute an employment contract or confer or be deemed to confer on any Participant any right to continue in the employ of, or to continue any other relationship with, the Company or any Related Company or limit in any way the right of the Company or any Related Company to terminate a Participant's employment or other relationship at any time, with or without cause.

### **17.2 Issuance of Shares**

(a) Notwithstanding any other provision of the Plan, the Company shall have no obligation to issue or deliver any shares of Common Stock under the Plan or make any other distribution of benefits under the Plan unless, in the opinion of the Company's counsel, such issuance, delivery or distribution would comply with all applicable laws (including, without limitation, the requirements of the Securities Act or the laws of any state or foreign jurisdiction) and the applicable requirements of any securities exchange or similar entity.

(b) The Company shall be under no obligation to any Participant to register for offering or resale or to qualify for exemption under the Securities Act, or to register or qualify under the laws of any state or foreign jurisdiction, any shares of Common Stock, security or interest in a security paid or issued under, or created by, the Plan, or to continue in effect any such registrations or qualifications if made.

(c) As a condition to the exercise of an Option or any other receipt of Common Stock pursuant to an Award under the Plan, the Company may require (i) the Participant to represent and warrant at the time of any such exercise or receipt that such shares are being purchased or received only for the Participant's own account and without any present intention to sell or distribute such shares and (ii) such other action or agreement by the Participant as may from time to time be necessary to comply with the federal, state and foreign securities laws. At the option of the Company, a stop-transfer order against any such shares may be placed on the official stock books and records of the Company, and a legend indicating that such shares may not be pledged, sold or otherwise transferred, unless an opinion of counsel is provided (concurring in by counsel for the Company) stating that such transfer is not in violation of any applicable law or regulation, may be stamped on stock certificates to ensure exemption from registration. The Committee may also require the Participant to execute and deliver to the Company a purchase agreement or such other agreement as may be in use by the Company at such time that describes certain terms and conditions applicable to the shares.

(d) To the extent the Plan or any instrument evidencing an Award provides for issuance of stock certificates to reflect the issuance of shares of Common Stock, the issuance may be effected on a noncertificated basis, to the extent not prohibited by applicable law or the applicable rules of any stock exchange.

### 17.3 Indemnification

Each person who is or shall have been a member of the Board, or a member of a committee appointed by the Board or an officer of the Company to whom authority was delegated in accordance with Section 3.1 of the Plan, shall be indemnified and held harmless by the Company against and from any loss, cost, liability or expense that may be imposed upon or reasonably incurred by such person in connection with or resulting from any claim, action, suit or proceeding to which such person may be a party or in which such person may be involved by reason of any action taken or failure to act under the Plan and against and from any and all amounts paid by such person in settlement thereof, with the Company's approval, or paid by such person in satisfaction of any judgment in any such claim, action, suit or proceeding against such person; provided, however, that such person shall give the Company an opportunity, at its own expense, to handle and defend the same before such person undertakes to handle and defend it on such person's own behalf, unless such loss, cost, liability or expense is a result of such person's own willful misconduct or except as expressly provided by statute.

The foregoing right of indemnification shall not be exclusive of any other rights of indemnification to which such person may be entitled under the Company's certificate of incorporation or bylaws, as a matter of law, or otherwise, or of any power that the Company may have to indemnify or hold harmless.

### 17.4 No Rights as a Stockholder

Unless otherwise provided by the Committee or in the instrument evidencing the Award or in a written employment, services or other agreement, no Award, other than a Stock Award or Restricted Stock, shall entitle the Participant to any cash dividend, voting or other right of a stockholder unless and until the date of issuance under the Plan of the shares that are the subject of such Award.

### 17.5 Section 409A

(a) **General.** The Plan and Awards granted under the Plan are intended to be exempt from the requirements of Section 409A to the maximum extent possible, whether pursuant to the short-term deferral exception described in Treasury Regulation Section 1.409A-1(b)(4), the exclusion applicable to stock options and certain other equity-based compensation under Treasury Regulation Section 1.409A-1(b)(5), or otherwise. To the extent Section 409A is applicable to the Plan or any Award granted under the Plan, it is intended that the Plan and any Awards granted under the Plan comply with the deferral, payout and other limitations and restrictions imposed under Section 409A. Notwithstanding any other provision of the Plan or any Award granted under the Plan to the contrary, the Plan and any Award granted under the Plan shall be interpreted, operated and administered in a manner consistent with such intentions.

(b) **Separation from Service; Six-Month Delay.** Without limiting the generality of the foregoing, and notwithstanding any other provision of the Plan or any Award granted under the Plan to the contrary, with respect to any payments and benefits under the Plan or any Award granted under the Plan to which Section 409A applies, all references in the Plan or any Award granted under the Plan to the termination of the Participant's employment or service are intended to mean the Participant's "separation from service," within the meaning of Section 409A(a)(2)(A)(i). In addition, if the Participant is a "specified employee," within the meaning of Section 409A, then to the extent necessary to avoid subjecting the Participant to the imposition of any additional tax under Section 409A, amounts that would otherwise be payable under the Plan or any Award granted under the Plan during the six-month period immediately following the Participant's "separation from service," within the meaning of Section 409A(a)(2)(A)(i), shall not be paid to the Participant during such period, but shall instead be accumulated and paid to the Participant (or, in the event of the Participant's death, the Participant's estate) in a lump sum on the first business day after the earlier of the date that is six months following the Participant's separation from service or the Participant's death.

(c) **Unilateral Amendment.** Notwithstanding any other provision of the Plan to the contrary, the Committee, to the extent it deems necessary or advisable in its sole discretion, reserves the right, but shall not be required, to unilaterally amend or modify the Plan and any Award granted under the Plan so that the Award qualifies for exemption from or complies with Section 409A; provided that the Committee makes no undertaking to preclude Section 409A from applying to Awards granted under the Plan.

(d) **No Guarantee of Tax Treatment** Notwithstanding any provision of the Plan to the contrary, the Company does not guarantee to any Participant or any other person(s) with an interest in an Award that (i) any Award intended to be exempt from Section 409A shall be so exempt, (ii) any Award intended to comply with Section 409A shall so comply, or (iii) any Award shall otherwise receive a specific tax treatment under any other applicable tax law, nor in any such case will the Company or any affiliate be required to indemnify, defend or hold harmless any individual with respect to the tax consequences of any Award.

#### **17.6 No Trust or Fund**

The Plan is intended to constitute an "unfunded" plan. Nothing contained herein shall require the Company to segregate any monies or other property, or shares of Common Stock, or to create any trusts, or to make any special deposits for any immediate or deferred amounts payable to any Participant, and no Participant shall have any rights that are greater than those of a general unsecured creditor of the Company.

#### **17.7 Successors**

All obligations of the Company under the Plan with respect to Awards shall be binding on any successor to the Company, whether the existence of such successor is the result of a direct or indirect purchase, merger, consolidation, or otherwise, of all or substantially all the business and/or assets of the Company.

#### **17.8 Severability**

If any provision of the Plan or any Award is determined to be invalid, illegal or unenforceable in any jurisdiction, or as to any person, 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 applicable laws, or, if it cannot be so construed or deemed amended without, in the Committee's determination, materially altering the intent of the Plan or the Award, such provision shall be stricken as to such jurisdiction, person or Award, and the remainder of the Plan and any such Award shall remain in full force and effect.

#### **17.9 Choice of Law and Venue**

The Plan, all Awards granted thereunder and all determinations made and actions taken pursuant hereto, to the extent not otherwise governed by the laws of the United States, shall be governed by the laws of the State of Delaware without giving effect to principles of conflicts of law. Participants irrevocably consent to the nonexclusive jurisdiction and venue of the state and federal courts located in the State of Delaware.

#### **17.10 Legal Requirements**

The granting of Awards and the issuance of shares of Common Stock under the Plan are subject to all applicable laws, rules and regulations and to such approvals by any governmental agencies or national securities exchanges as may be required.

#### **17.11 Recoupment**

Awards shall be subject to any policy adopted by the Company pursuant to the requirements of (i) Section 954 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (regarding recovery of erroneously awarded compensation) and any implementing rules and regulations thereunder, (ii) similar rules under the laws of any other jurisdiction, (iii) any compensation recovery or clawback policies adopted by the Company to implement any such requirements, or (iv) any other compensation recovery or clawback policies as may be adopted from time to time by the Company, all to the extent determined by the Committee in its discretion to be applicable to a Participant.

### **SECTION 18. EFFECTIVE DATE**

The effective date (the "**Effective Date**") is the date on which the Plan is approved by the stockholders of the Company. If the stockholders of the Company do not approve the Plan within 12 months after the Board's adoption of the Plan, any Incentive Stock Options granted under the Plan will be treated as Nonqualified Stock Options.

**PLAN ADOPTION AND AMENDMENTS/ADJUSTMENTS  
SUMMARY PAGE**

<b>Date of Board Action</b>	<b>Action</b>	<b>Section/Effect of Amendment</b>	<b>Date of Shareholder Approval</b>
May 5, 2020	Initial Plan Adoption		July 16, 2020

## APPENDIX A

### DEFINITIONS

As used in the Plan,

**"Acquired Entity"** means any entity acquired by the Company or a Related Company or with which the Company or a Related Company merges or combines.

**"Award"** means any Option, Stock Appreciation Right, Stock Award, Restricted Stock, Stock Unit, Performance Share, Performance Unit, cash-based award or other incentive payable in cash or in shares of Common Stock as may be designated by the Committee from time to time.

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

**"Change in Control,"** unless the Committee determines otherwise with respect to an Award at the time the Award is granted or unless otherwise defined for purposes of an Award in a written employment, services or other agreement between the Participant and the Company or a Related Company, means the occurrence of any of the following events:

(a) The consummation of a merger or consolidation of the Company with or into another entity or any other corporate reorganization, if persons who were not stockholders of the Company immediately prior to such merger, consolidation or other reorganization own immediately after such merger, consolidation or other reorganization 50% or more of the voting power of the outstanding securities of each of (i) the continuing or surviving entity and (ii) any direct or indirect parent corporation of such continuing or surviving entity;

(b) The sale, transfer or other disposition of all or substantially all of the Company's assets;

(c) A change in the composition of the Board, as a result of which fewer than 50% of the incumbent directors are directors who either:

(i) Had been directors of the Company on the date 12 months prior to the date of such change in the composition of the Board (the **Original Directors**");

or

(ii) Were appointed to the Board, or nominated for election to the Board, with the affirmative votes of at least a majority of the aggregate of (A) the Original Directors who were in office at the time of their appointment or nomination and (B) the directors whose appointment or nomination was previously approved in a manner consistent with this Subsection (ii); or

(d) Any transaction as a result of which any person is the "beneficial owner" (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of securities of the Company representing at least 50% of the total voting power represented by the Company's then outstanding voting securities. For purposes of this Subsection (d), the term "person" shall have the same meaning as when used in Sections 13(d) and 14(d) of the Exchange Act but shall exclude (i) a trustee or other fiduciary holding securities under an employee benefit plan of the Company or of a Parent or Subsidiary and (ii) a corporation owned directly or indirectly by the stockholders of the Company in substantially the same proportions as their ownership of the Common Stock of the Company.

A transaction shall not constitute a Change in Control if its sole purpose is to change the state of the Company's incorporation or to create a holding company that will be owned in substantially the same proportions by the persons who held the Company's securities immediately before such transaction.

**"Code"** means the Internal Revenue Code of 1986, as amended from time to time.

**"Committee"** has the meaning set forth in Section 3.1 of the Plan.

**"Common Stock"** means the common stock, par value \$0.001 per share, of the Company.

**"Company"** means Energy Recovery, Inc., a Delaware corporation.

**"Compensation Committee"** means the Compensation Committee of the Board.



**"Disability,"** unless otherwise defined by the Committee for purposes of the Plan in the instrument evidencing an Award or in a written employment, services or other agreement between the Participant and the Company or a Related Company, means a mental or physical impairment of the Participant that is expected to result in death or that has lasted or is expected to last for a continuous period of 12 months or more and that causes the Participant to be unable to perform his or her material duties for the Company or a Related Company and to be engaged in any substantial gainful activity, in each case as determined by the Company's General Counsel or, in the case of directors and executive officers, the Compensation Committee, whose determination shall be conclusive and binding.

**"Effective Date"** has the meaning set forth in Section 18 of the Plan.

**"Eligible Person"** means any person eligible to receive an Award as set forth in Section 5.1 of the Plan.

**"Exchange Act"** means the Securities Exchange Act of 1934, as amended from time to time.

**"Fair Market Value"** means the closing price for the Common Stock on any given date during regular trading, or if not trading on that date, such price on the last preceding date on which the Common Stock was traded, unless determined otherwise by the Committee using such methods or procedures as it may establish. The Committee may vary its determination of the Fair Market Value as provided in this paragraph depending on whether Fair Market Value is in reference to the grant, exercise, vesting, settlement or payout of an Award and, for Awards subject to Section 409A, as provided in Section 409A.

**"Grant Date"** means the later of (a) the date on which the Committee completes the corporate action authorizing the grant of an Award or such later date specified by the Committee and (b) the date on which all conditions precedent to an Award have been satisfied, provided that conditions to the exercisability or vesting of Awards shall not defer the Grant Date.

**"Incentive Stock Option"** means an Option granted with the intention that it qualify as an "incentive stock option" as that term is defined for purposes of Code Section 422 or any successor provision.

**"Nonemployee Director"** means any member of the Board who is not an employee of the Company.

**"Nonqualified Stock Option"** means an Option other than an Incentive Stock Option.

**"Option"** means a right to purchase Common Stock granted under Section 7 of the Plan.

**"Option Expiration Date"** means the last day of the maximum term of an Option.

**"Optionee"** means the holder of an Option.

**"Parent"** means any corporation (other than the Company) in an unbroken chain of corporations ending with the Company, if each of the corporations other than the Company owns stock possessing 50% or more of the total combined voting power of all classes of stock in one of the other corporations in such chain. A corporation that attains the status of a Parent on a date after the adoption of the Plan shall be considered a Parent commencing as of such date.

**"Participant"** means any Eligible Person to whom an Award is granted.

**"Performance Award"** means an Award of Performance Shares or Performance Units granted under Section 11 of the Plan.

**"Performance Measures"** means any measures of performance established by the Committee in connection with the grant of an Award. performance measures may include, but are not limited to, one of or any combination of the following performance measures for the Company as a whole or any business unit of the Company, as reported or calculated by the Company: cash flows (including, but not limited to, operating cash flow, free cash flow or cash flow return on capital); working capital; earnings per share; book value per share; operating income (including or excluding depreciation, amortization, items that are unusual in nature or infrequently occurring or both, restructuring charges or other expenses); revenues; operating margins; return on assets; return on equity; debt; debt plus equity; market or economic value added; stock price appreciation; total stockholder return; cost control; strategic initiatives; market share; net income; return on invested capital; improvements in capital structure; or customer satisfaction, employee satisfaction, services performance, subscriber, cash management or asset management metrics (together, the **"Performance Measures"**). Such performance measures also may be based on the achievement of specified levels of Company performance (or performance of an applicable affiliate or business unit of the Company) under one or more of the Performance Measures described above relative to the performance of other corporations.

The Committee may provide in any such Award that any evaluation of performance may include or exclude any of the following events that occur during a performance period: (i) asset write-downs, (ii) litigation or claim judgments or settlements, (iii) the effect of changes in tax law or rate on deferred tax liabilities, accounting principles, or other laws or provisions affecting reported results, (iv) any reorganization and restructuring programs, (v) items that are unusual in nature or infrequently occurring or both, that the Company identifies in its audited financial statements, including notes to the financial statements, or the Management's Discussion and Analysis section of the Company's periodic reports, (vi) acquisitions or divestitures, (vii) foreign exchange gains and losses, (viii) gains and losses on asset sales or dispositions, (ix) accruals for historic environmental obligations, (x) uninsured catastrophic property losses, and (xi) impairments.

**"Performance Share"** means an Award of units denominated in shares of Common Stock granted under Section 11.1 of the Plan.

**"Performance Unit"** means an Award of units denominated in cash or property other than shares of Common Stock granted under Section 11.2 of the Plan.

**"Plan"** means the Energy Recovery, Inc. 2020 Incentive Plan.

**"Prior Plans"** has the meaning set forth in Section 4.1(b) of the Plan.

**"Related Company"** means any entity that is directly or indirectly controlled by, in control of or under common control with the Company.

**"Restricted Stock"** means an Award of shares of Common Stock granted under Section 10 of the Plan, the rights of ownership of which are subject to restrictions prescribed by the Committee.

**"Restricted Stock Unit"** means a Stock Unit subject to restrictions prescribed by the Committee.

**"Retirement,"** unless otherwise defined in the instrument evidencing the Award or in a written employment, services or other agreement between the Participant and the Company or a Related Company, means "Retirement" as defined for purposes of the Plan by the Committee or the Company's General Counsel or, if not so defined, means Termination of Service on or after the date the Participant reaches "normal retirement age," as that term is defined in Code Section 411(a)(8).

**"Securities Act"** means the Securities Act of 1933, as amended from time to time.

**"Section 409A"** means Code Section 409A.

**"Stock Appreciation Right"** or **"SAR"** means a right granted under Section 9.1 of the Plan to receive the excess of the Fair Market Value of a specified number of shares of Common Stock over the grant price.

**"Stock Award"** means an Award of shares of Common Stock granted under Section 10 of the Plan, the rights of ownership of which are not subject to restrictions prescribed by the Committee.

**"Stock Unit"** means an Award denominated in units of Common Stock granted under Section 10 of the Plan.

**"Subsidiary"** means any corporation (other than the Company) in an unbroken chain of corporations beginning with the Company, if each of the corporations other than the last corporation in the unbroken chain owns stock possessing 50% or more of the total combined voting power of all classes of stock in one of the other corporations in such chain. A corporation that attains the status of a Subsidiary on a date after the adoption of the Plan shall be considered a Subsidiary commencing as of such date.

**"Substitute Awards"** means Awards granted or shares of Common Stock issued by the Company in substitution or exchange for awards previously granted by an Acquired Entity.

**"Termination of Service,"** unless the Committee shall determine otherwise in the instrument evidencing the Award or in a written employment, services or other agreement between the Participant and the Company or a Related Company, means a termination of employment or service relationship with the Company or a Related Company for any reason, whether voluntary or involuntary, including by reason of death, Disability or Retirement. Any question as to whether and when there has been a Termination of Service for the purposes of an Award and the cause of such Termination of Service shall be determined by the Company's General Counsel or, with respect to directors and executive officers, by the Compensation Committee, whose determination shall be conclusive and binding. Transfer of a Participant's employment or service relationship between the Company and any Related Company shall not be considered a Termination of Service for purposes of an Award. Unless the Committee determines otherwise, a Termination of Service shall be deemed to occur if the Participant's employment or service relationship is with an entity that has ceased to be a Related Company. A Participant's change in status from an employee of the Company or a Related Company to a Nonemployee Director, consultant, advisor, or independent contractor of the Company or a Related Company or a change in status from a nonemployee director, consultant, advisor or independent contractor of the Company or a Related Company to an employee of the Company or a Related Company shall not be considered a Termination of Service.

**"Vesting Commencement Date"** means the Grant Date or such other date selected by the Committee as the date from which an Award begins to vest.

**ENERGY RECOVERY, INC.  
2020 INCENTIVE PLAN**

**RESTRICTED STOCK UNIT GRANT NOTICE AND RESTRICTED STOCK UNIT AGREEMENT**

Energy Recovery, Inc., a Delaware corporation (the “**Company**”), pursuant to its 2020 Incentive Plan, as amended from time to time (the “**Plan**”), hereby grants to the individual listed below (the “**Grantee**”) an Award for the number of Restricted Stock Units set forth below. This Award of Restricted Stock Units is subject to all of the terms and conditions as set forth herein, in the Restricted Stock Unit Agreement that is attached hereto (the “**Restricted Stock Unit Agreement**”), including the special provisions for the Grantee’s country of residence, if any, set forth in the attached Addendum (the “**Addendum**”), and the Plan, each of which is incorporated herein by reference. Unless otherwise defined herein, the terms defined in the Plan shall have the same defined meanings in this Restricted Stock Unit Grant Notice (“**Grant Notice**”) and the Restricted Stock Unit Agreement, including the Addendum.

**Grantee:**

**Date of Grant:**

**Total Number of Restricted Stock Units:**

**Vesting Date:**

**Vesting Schedule:** 100% of the Restricted Stock Units under this Award will vest and be settled (i.e., paid or distributed to you) on the date of the next Annual Meeting of Stockholders following the Grant Date, as long as you remained in continuous service during such vesting period. Settlement of vested Restricted Stock Units will occur as soon as practicable after they become vested.

The Grantee acknowledges receipt of a copy of the Plan, the Restricted Stock Unit Agreement, and the addendum, and represents that he or she is familiar with the terms and provisions thereof, and hereby accepts the Restricted Stock Units subject to all of the terms and provisions hereof and thereof. The Grantee has reviewed this Grant Notice, the Plan, the restricted Stock Unit Agreement, and the addendum, in their entirety, has had an opportunity to obtain the advice of counsel prior to executing this Grant Notice, and fully understands all provisions of this Grant Notice, the Plan, the Restricted Stock Unit Agreement, and the addendum. The Grantee hereby agrees to accept as binding, conclusive and final all decisions or interpretations of the Committee upon any questions arising under the Plan, this Grant Notice or the Restricted Stock Unit Agreement, including the addendum.

**ENERGY RECOVERY, INC.**

By:

Name:

Title:

**GRANTEE:**

By:

Name:

**ENERGY RECOVERY, INC.**  
**2020 INCENTIVE PLAN**  
**RESTRICTED STOCK UNIT AGREEMENT**

**1. Award of Restricted Stock Units.**

(a) **Award.** Energy Recovery, Inc., a Delaware corporation (the "**Company**") hereby grants as of the Grant Date set forth in the Restricted Stock Unit Grant Notice (the "**Grant Notice**") to the Grantee (the "**Grantee**") named in the Grant Notice an Award with respect to the number of Restricted Stock Units set forth in the Grant Notice, subject to the terms and provisions of the Grant Notice, this Restricted Stock Unit Agreement and the Addendum (collectively this "**Agreement**"), and the Company's 2020 Incentive Plan (the "**Plan**"). Each Restricted Stock Unit represents the right to receive one share of Common Stock of the Company (a "**Share**") on the date the Restricted Stock Units vest. Unless and until the Restricted Stock Units are vested in the manner set forth in Section 2 hereof, the Grantee shall have no right to settlement of any such Restricted Stock Units. Prior to settlement of any vested Restricted Stock Units, such Restricted Stock Units represent an unsecured obligation of the Company, payable (if at all) from the general assets of the Company.

(b) **Definitions.** All capitalized terms used in this Agreement without definition shall have the meanings ascribed in the Plan and the Grant Notice.

(c) **Incorporation of Terms of Plan.** The award of Restricted Stock Units is subject to the terms and conditions of the Plan which are incorporated herein by reference. In the event of any inconsistency between the Plan and this Agreement, the terms of the Plan shall control.

**2. Vesting and Forfeiture.**

(a) **Forfeiture.** Any Restricted Stock Units which are not vested as of the date of the Grantee's Termination of Service shall thereupon be forfeited immediately and without any further action by the Company. The date of the Grantee's Termination of Service shall not be extended to include any notice of termination or similar period and shall be considered ceased on the last active day of service (as determined by the Committee) for the purposes of the Plan.

(b) **Vesting.** Subject to Section 2(a) hereof, the Restricted Stock Units shall vest in accordance with the vesting schedule set forth on the Grant Notice, provided the Grantee remains in continuous service during the entire period commencing on the Vesting Commencement Date and ending on the applicable vesting date. The Grantee's active service does not terminate when the Grantee goes on a military leave, a sick leave or another bona fide leave of absence, if the leave was approved by the Company in writing. However, the Grantee's active service terminates when the approved leave ends, unless the Grantee immediately returns to active service. If the Grantee goes on a leave of absence, then the vesting schedule specified in the Grant Notice may be adjusted in accordance with the Company's leave of absence policy or the terms of the Grantee's leave if permissible under applicable local law. If the Grantee commences working on a part-time basis, then the vesting schedule specified in the Grant Notice may be adjusted in accordance with the Company's part-time work policy or the terms of an agreement between the Grantee and the Company pertaining to the Grantee's part-time schedule if permissible under applicable local law.

**3. Settlement.**

(a) **Time and Form of Payment.** Subject to the terms of the Plan and this Agreement, any Restricted Stock Units that vest and become nonforfeitable shall be settled in whole Shares, which shall be issued in book-entry form, registered in the Grantee's name. Such settlement shall be made as soon as practicable, but no later than 60 days, following the date of vesting. The value of any fractional Restricted Stock Units shall be paid in cash at the time the Shares are delivered in settlement of the Restricted Stock Units.

(b) **Conditions to Settlement of Restricted Stock Units.** Notwithstanding any other provision of this Agreement (including without limitation Section 2(b)):

(i) No Shares shall be issued to the Grantee or his or her legal representative unless and until the Grantee or his or her legal representative shall have satisfied all applicable tax withholding obligations pursuant to Section 4 hereof.

(ii) The Company shall not be required to issue or deliver any Shares prior to the fulfillment of all of the following conditions: (A) the admission of the Shares subject to the award to listing on all stock exchanges on which the Common Stock is then listed; (B) the completion of any subject to the Award registration or other qualification of the Shares under any applicable securities law, any U.S. state or federal or foreign law, or under rulings or regulations of the U.S. Securities and Exchange Commission or other governmental regulatory body, which the Committee shall, in its sole and absolute discretion, deem necessary and advisable, or if the offering of the Shares is not so registered, a determination by the Company that the issuance of the Shares would be exempt from any such registration or qualification requirements; (C) the obtaining of any approval or other clearance from any state or federal or foreign governmental agency that the Committee shall, in its absolute discretion, determine to be necessary or advisable; and (D) the lapse of any such reasonable period of time following the date the Restricted Stock Units vest as the Committee may from time to time establish for reasons of administrative convenience.

4. **Tax Obligations.** Regardless of any action the Company and/or the Grantee's actual employer (the ***Employer***"), if the Company is not the Grantee's employer, takes with respect to any or all income tax, social security, payroll tax, payment on account or other tax-related items related to the Grantee's participation in the Plan and legally applicable to the Grantee ("***Tax Obligations***"), the Grantee hereby acknowledges that the ultimate liability for all Tax Obligations is and remains the Grantee's responsibility and may exceed the amount actually withheld by the Company and/or the Employer. The Grantee further acknowledges that neither the Company nor the Employer (1) makes any representations or undertakings regarding the treatment of any Tax Obligations in connection with any aspect of the Restricted Stock Units, including, but not limited to, the grant, vesting or settlement of the Restricted Stock Units, the issuance of Shares upon settlement of the Restricted Stock Units, the subsequent sale of Shares acquired pursuant to such issuance and the receipt of any dividends and/or any dividend equivalents; and (2) does not commit to and is under no obligation to structure the terms of the grant or any aspect of the Restricted Stock Units to reduce or eliminate the Grantee's liability for Tax Obligations or achieve any particular tax result. Further, if the Grantee has become subject to tax in more than one jurisdiction between the Date of Grant and the date of any relevant taxable event, the Grantee hereby acknowledges that the Company or the Employer may be required to withhold or account for Tax Obligations in more than one jurisdiction.

Prior to the relevant taxable or tax withholding event, as applicable, the Grantee shall pay or make arrangements satisfactory to the Company and/or the Employer to satisfy all Tax Obligations. In this regard, the Grantee authorizes the Company and/or the Employer, or their respective agents, at their discretion, to satisfy any applicable withholding obligations or rights with regard to the Tax Obligations by one or a combination of the following: (i) withholding from proceeds of the sale of shares of Common Stock issued upon vesting/settlement of the Restricted Stock Units either through a voluntary sale or through a mandatory sale arranged by the Company (on Grantee's behalf pursuant to this authorization); or (ii) withholding in shares of Common Stock to be issued upon vesting/settlement of the Restricted Stock Units.

The Company may withhold or account for Tax Obligations by considering applicable minimum or maximum statutory withholding amounts or other applicable withholding rates so long as such withholding does not result in adverse treatment for financial accounting purposes. If the obligation for Tax Obligations is satisfied by withholding in Shares, for tax purposes, the Grantee shall be deemed to have been issued the full number of Shares subject to the vested Restricted Stock Units, notwithstanding that a number of Shares are held back solely for the purpose of paying the Tax Obligations due as a result of any aspect of the Grantee's participation in the Plan.

Finally, the Grantee shall pay to the Company and/or the Employer any amount of Tax Obligations that the Company and/or the Employer may be required to withhold or account for as a result of the Grantee's participation in the Plan that cannot be satisfied by the means previously described. The Grantee hereby acknowledges and agrees that the Company may refuse to issue or deliver the Shares, any cash payments receivable at settlement or the proceeds of the sale of Shares, if the Grantee fails to comply with his or her obligations in connection with the Tax Obligations.

5. **Restricted Stock Units and Interests Not Transferable.** No Restricted Stock Units or any interest or right therein or part thereof shall be liable for the debts, contracts or engagements of the Grantee or his or her successors in interest or shall be subject to disposition by transfer, alienation, anticipation, pledge, encumbrance, assignment or any other means whether such disposition be voluntary or involuntary or by operation of law by judgment, levy, attachment, garnishment or any other legal or equitable proceedings (including bankruptcy), and any attempted disposition thereof shall be null and void and of no effect.

6. **Rights as Stockholder.** Neither the Grantee nor any person claiming under or through the Grantee shall have any of the rights or privileges of a stockholder of the Company in respect of any Shares issuable hereunder unless and until certificates representing such Shares (which may be in uncertificated form) will have been issued and recorded on the books and records of the Company or its transfer agents or registrars, and delivered to the Grantee (including through electronic delivery to a brokerage account). After such issuance, recordation and delivery, the Grantee shall have all the rights of a stockholder of the Company, including with respect to the right to vote the Shares and the right to receive any cash or share dividends or other distributions paid to or made with respect to the Shares.

7. **Restrictions on Resale.** The Grantee hereby agrees not to sell any Shares at a time when applicable laws, Company policies or an agreement between the Company and/or its underwriters prohibit a sale. This restriction (if any) will apply as long as the Grantee's service continues and for such period of time after the Grantee's Termination of Service as the Company may specify.

8. **Adjustments.** The number of Restricted Stock Units awarded pursuant to this Agreement is subject to adjustment as provided in Article 15 of the Plan. The Grantee shall be notified of such adjustment and such adjustment shall be binding upon the Company and the Grantee.

9. **NO GUARANTEE OF CONTINUED SERVICE. THE GRANTEE HEREBY ACKNOWLEDGES AND AGREES THAT THE VESTING OF RESTRICTED STOCK UNITS PURSUANT TO THE VESTING SCHEDULE HEREOF IS EARNED ONLY BY CONTINUING TO PROVIDE SERVICE AS AN EMPLOYEE OR OTHER SERVICE PROVIDER AT THE WILL OF THE COMPANY OR THE EMPLOYER (AND NOT THROUGH THE ACT OF BEING HIRED, BEING AWARDED RESTRICTED STOCK UNITS, OR RECEIVING CASH OR SHARES HEREUNDER). THE GRANTEE FURTHER ACKNOWLEDGES AND AGREES THAT THIS AGREEMENT, THE TRANSACTIONS CONTEMPLATED HEREUNDER AND THE VESTING SCHEDULE SET FORTH HEREIN DO NOT CONSTITUTE AN EXPRESS OR IMPLIED PROMISE OF CONTINUED ENGAGEMENT AS AN EMPLOYEE OR OTHER SERVICE PROVIDER, AS APPLICABLE, FOR THE VESTING PERIOD, FOR ANY PERIOD, OR AT ALL, AND SHALL NOT INTERFERE WITH THE GRANTEE'S RIGHT OR THE COMPANY'S OR THE EMPLOYER'S RIGHT TO TERMINATE THE GRANTEE'S RELATIONSHIP AS AN EMPLOYEE OR OTHER SERVICE PROVIDER AT ANY TIME, WITH OR WITHOUT CAUSE, AND IN ACCORDANCE WITH APPLICABLE LOCAL LAW.**

**10. Entire Agreement: Governing Law.** The Grant Notice, the Plan and this Agreement constitute the entire agreement of the parties with respect to the subject matter hereof and supersede in their entirety all prior undertakings and agreements of the Company and the Grantee with respect to the subject matter hereof, and may not be modified adversely to the Grantee's interest except by means of a writing signed by the Company and the Grantee. Nothing in the Grant Notice, the Plan and this Agreement (except as expressly provided therein) is intended to confer any rights or remedies on any persons other than the parties. The Grant Notice, the Plan and this Agreement are to be construed in accordance with and governed by the internal laws of the State of California (as permitted by Section 1646.5 of the California Civil Code, or any similar successor provision) without giving effect to any choice of law rule that would cause the application of the laws of any jurisdiction other than the internal laws of the State of California to the rights and duties of the parties. For purposes of litigating any dispute that arises directly or indirectly from the relationship of the parties evidenced by this grant or the Agreement, the parties hereby submit to and consent to the exclusive jurisdiction of the State of California and agree that such litigation shall be conducted only in the courts of Alameda County, California, or the federal courts for the United States for the Northern District of California, and no other courts, where this grant is made and/or to be performed. Should any provision of the Grant Notice, the Plan or this Agreement be determined by a court of law to be illegal or unenforceable, such provision shall be enforced to the fullest extent allowed by law and the other provisions shall nevertheless remain effective and shall remain enforceable.

**11. Conformity to Securities Laws.** The Grantee acknowledges that the Plan and this Agreement are intended to conform to the extent necessary with all provisions of the Securities Act of 1933, as amended, and the Exchange Act, and any and all regulations and rules promulgated thereunder by the U.S. Securities and Exchange Commission, including, without limitation, Rule 16b-3 under the Exchange Act. Notwithstanding anything herein to the contrary, the Plan shall be administered, and the Restricted Stock Units are granted, only in such a manner as to conform to such laws, rules and regulations. To the extent permitted by applicable law, the Plan and this Agreement shall be deemed amended to the extent necessary to conform to such laws, rules and regulations.

**12. Interpretation and Amendments.** The award of Restricted Stock Units, the vesting and delivery of Restricted Stock Units and the issuance of Shares upon vesting are subject to, and shall be administered in accordance with, the provisions of the Plan, as the same may be amended from time to time, provided that no amendment may, without the consent of the Grantee, affect the rights of the Grantee under this award of Restricted Stock Units in a materially adverse manner. For purposes of the foregoing sentence, an amendment that affects the tax treatment of the Restricted Stock Units shall not be considered as affecting the Grantee's rights in a materially adverse manner.

**13. Headings.** The captions used in the Grant Notice and this Agreement are inserted for convenience and shall not be deemed a part of the award of Restricted Stock Units for construction or interpretation.

**14. Notices.** Any notice required or permitted hereunder shall be given in writing and shall be deemed effectively given upon personal delivery or upon deposit in the United States mail by certified mail, (if the parties are within the United States) or upon deposit for delivery by an internationally recognized express mail courier service (for international delivery of notice) with postage and fees prepaid, addressed to the Grantee to his or her address shown in the Company records, and to the Company at its principal executive office.

**15. Successors and Assigns.** The Company may assign any of its rights under this Agreement to single or multiple assignees, and this Agreement shall inure to the benefit of the successors and assigns of the Company. Subject to the restrictions on transfer herein set forth, this Agreement shall be binding upon the Grantee and his or her heirs, executors, administrators, successors and assign.

**16. Severability.** In the event that any provision in this Agreement is held invalid or unenforceable, such provision will be severable from, and such invalidity or unenforceability will not be construed to have any effect on, the remaining provisions of this Agreement.

**17. Code Section 409A.** For Grantees subject to tax in the U.S., the vesting and settlement of Restricted Stock Units awarded pursuant to this Agreement are intended to qualify for the "short-term deferral" exemption from Section 409A of the Code. The Company reserves the right, to the extent the Company deems necessary or advisable in its sole discretion, to unilaterally amend or modify the Plan and/or this Agreement to ensure that the Restricted Stock Units qualify for exemption from or comply with Section 409A of the Code; *provided, however*, that the Company makes no representations that the Restricted Stock Units will be exempt from Section 409A of the Code and makes no undertaking to preclude Section 409A of the Code from applying to these Restricted Stock Units.

**18. Nature of Grant.** In accepting the grant, the Grantee hereby acknowledges that:

- (a) the Plan is established voluntarily by the Company, it is discretionary in nature and it may be modified, amended, suspended or terminated by the Company at any time;
- (b) the grant of the Restricted Stock Units is voluntary and occasional and does not create any contractual or other right to receive future grants of Restricted Stock Units, or benefits in lieu of Restricted Stock Units, even if Restricted Stock Units have been granted repeatedly in the past;
- (c) all decisions with respect to future Restricted Stock Units grants, if any, shall be at the sole discretion of the Company;
- (d) the Grantee's participation in the Plan shall not create a right to further employment with the Company or the Employer and shall not interfere with the ability of the Company or the Employer, as applicable, to terminate the Grantee's employment or other service relationship with the Company or the Employer at any time;

- (e) the Grantee is voluntarily participating in the Plan;
- (f) the Restricted Stock Units grant and the Grantee's participation in the Plan shall not be interpreted to form an employment contract or other service relationship with the Company or a Related Company;
- (g) the future value of the underlying Shares is unknown and cannot be predicted with certainty;
- (h) Neither the Company nor the Employer is providing any tax, legal or financial advice, nor is the Company or the Employer making any recommendations regarding the Grantee's participation in the Plan, or the Grantee's acquisition or sale of the underlying Shares;
- (i) the Grantee is hereby advised to consult with his or her own personal tax, legal and financial advisors regarding the Grantee's participation in the Plan before taking any action related to the Plan;
- (j) the Restricted Stock Units and the benefits, if any, under the Plan shall not automatically transfer to another company in the case of a merger, take-over or transfer of liability;
- (k) the Restricted Stock Units and the Shares subject to the Restricted Stock Units are an extraordinary item that does not constitute compensation of any kind for services of any kind rendered to the Company or any Related Company, and which is outside the scope of the Grantee's employment or other service relationship contract, if any;
- (l) the Restricted Stock Units and the Shares subject to the Restricted Stock Units are not intended to replace any pension rights or compensation;
- (m) in consideration of the grant of the Restricted Stock Units, no claim or entitlement to compensation or damages shall arise from forfeiture of the Restricted Stock Units resulting from the Grantee's Termination of Service with the Company or any Related Company (for any reason whatsoever and whether or not later found to be invalid or in breach of employment or other applicable law in the jurisdiction where the Grantee is providing services or the terms of the Grantee's employment or service agreement, if any), and the Grantee hereby irrevocably releases the Company and the Employer from any such claim that may arise; if, notwithstanding the foregoing, any such claim is found by a court of competent jurisdiction to have arisen, the Grantee shall be deemed irrevocably to have waived his or her entitlement to pursue such claim;
- (n) the Restricted Stock Units and the Shares subject to the Restricted Stock Units are not part of normal or expected compensation or salary for any purposes, including, but not limited to, calculating any severance, resignation, termination, redundancy, dismissal, end-of-service payments, bonuses, long-service awards, pension or retirement or welfare benefits or similar payments and in no event should be considered as compensation for, or relating in any way to, past services for the Company or any Related Company; and
- (o) in the event the Grantee's Termination of Service (whether or not later found to be invalid or in breach of employment or other applicable law in the jurisdiction where the Grantee is providing services or the terms of the Grantee's employment or service agreement, if any), the Grantee's right, if any, to vest in the Restricted Stock Units under the Plan shall terminate effective as of the date that the Grantee is no longer actively employed by or in a service relationship with the Company or a Related Company and shall not be extended by any notice period mandated under local law; the Committee shall have the exclusive discretion to determine when the Grantee is no longer actively employed by or in a service relationship with the Company or a Related Company for purposes of the Restricted Stock Units granted hereunder.

**19. Data Privacy. Grantee hereby explicitly and unambiguously consents to the collection, use and transfer, in electronic or other form, of the Grantee's personal data as described in this Agreement, including the Addendum, and any other Restricted Stock Unit materials by and among, as applicable, the Company and any Related Company for the exclusive purposes of implementing, administering and managing the Grantee's participation in the Plan.**

***The Grantee hereby acknowledges that he or she understands that the Company may hold certain personal information about the Grantee, including, but not limited to, the Grantee's name, home address and telephone number, date of birth, social security number or other identification number, salary, nationality, job title, any Shares or directorships held in the Company, details of all Restricted Stock Units or any other entitlement to Shares awarded, canceled, exercised, vested, unvested or outstanding in favor of the Grantee ("Data"), for the exclusive purpose of implementing, administering and managing the Plan.***

***The Grantee hereby acknowledges that he or she understands that Data will be transferred to any Company authorized third party(ies) assisting in the implementation, administration and management of the Plan. The Grantee hereby acknowledges that he or she understands that the recipients of the Data may be located in the Grantee's country of residence or elsewhere, and that the recipients' country may have different data privacy laws and protections than the Grantee's country.***



*For Grantees outside the U.S., the following paragraph applies:*

*The Grantee hereby acknowledges that he or she understands that the Grantee may request a list with the names and addresses of any potential recipients of the Data by contacting the Grantee's local human resources representative. The Grantee hereby authorizes the Company and any Company authorized third party service provider(s) which may assist the Company (presently or in the future) with implementing, administering and managing the Plan to receive, possess, use, retain and transfer Data, in electronic or other form, for the purposes of implementing, administering and managing the Grantee's participation in the Plan. The Grantee hereby acknowledges that he or she understands that Data will be held only as long as is necessary to implement, administer and manage the Grantee's participation in the Plan. The Grantee hereby acknowledges that he or she understands that the Grantee may, at any time, view Data, request additional information about the storage and processing of Data, require any necessary amendments to Data or refuse or withdraw the consents herein, in any case without cost, by contacting in writing the Grantee's local human resources representative. The Grantee hereby acknowledges that he or she understands, however, that refusing or withdrawing the Grantee's consent may affect the Grantee's ability to participate in the Plan. For more information on the consequences of the Grantee's refusal to consent or withdrawal of consent, the Grantee hereby acknowledges that he or she understands that the Grantee may contact his or her local human resources representative.*

**20. Electronic Delivery and Participation.** The Company may, in its sole discretion, decide to deliver any documents related to current or future participation in the Plan by electronic means. The Grantee hereby consents to receive such documents by electronic delivery and agree to participate in the Plan through an on-line or electronic system established and maintained by the Company or a third party designated by the Company.

**21. Language.** If the Grantee has received this Agreement or any other document related to the Plan translated into a language other than English and if the meaning of the translated version is different than the English version, the English version will control.

**22. Addendum.** Notwithstanding any provisions in this Agreement, the Restricted Stock Unit grant shall be subject to any special terms and conditions set forth in any Addendum to this Agreement for the Grantee's country. Moreover, if the Grantee relocates to one of the countries included in the Addendum, the special terms and conditions for such country will apply to the Grantee, to the extent the Company determines that the application of such terms and conditions is necessary or advisable in order to comply with local law or facilitate the administration of the Plan. The Addendum constitutes part of this Agreement.

**23. Imposition of Other Requirements.** The Company reserves the right to impose other requirements on the Grantee's participation in the Plan, on the Restricted Stock Units and on any Shares acquired under the Plan, to the extent the Company determines it is necessary or advisable in order to comply with local law or facilitate the administration of the Plan, and to require the Grantee to sign any additional agreements or undertakings that may be necessary to accomplish the foregoing.

\*\*\*\*\*

**ENERGY RECOVERY, INC.  
2020 INCENTIVE PLAN**

**STOCK OPTION GRANT NOTICE AND STOCK OPTION AGREEMENT**

Energy Recovery, Inc., a Delaware corporation (the “**Company**”), pursuant to its 2020 Incentive Plan, as amended from time to time (the “**Plan**”), hereby grants to the individual listed below (the “**Optionee**”) an Award of an Option to purchase the number of shares of the Common Stock of the Company set forth below, upon and subject to the terms and conditions set forth below:

**Name of Optionee:**

**Total Number of Shares of Common Stock:**

**Type of Option:**

**Exercise Price per Share:**

**Grant Date:**

**Vesting Commencement Date:**

**Vesting Schedule:**

This Option becomes exercisable with respect to 100% of the shares subject to this Option on the date of the next Annual Stockholder Meeting following the Grant Date, as long as you remain in continuous service during the vesting period.

**Expiration Date:**

This option expires on the earlier of 10-years from the grant date or three (3) months from the date of Termination of Service, unless termination is for cause as defined in the Plan, in which case all vested and unvested options are forfeited immediately.

This Option is granted under and governed by the terms and conditions of the Stock Option Agreement, which is attached to and made a part of this document, and the Plan. Unless otherwise defined herein, the terms defined in the Plan shall have the same defined meanings in this Stock Option Grant Notice, the Stock Option Agreement and the special provisions for your country of residence, if any, in the Addendum attached hereto (the “**Addendum**”).

By your signature, you agree to be bound by the terms and conditions of the Plan, the Stock Option Agreement, the Addendum and this Grant Notice. You hereby acknowledge that you have reviewed the Stock Option Agreement, the Addendum, the Plan and this Grant Notice in their entirety, have had an opportunity to obtain the advice of counsel prior to executing this Stock Option Grant Notice and fully understand all provisions of this Stock Option Grant Notice, the Stock Option Agreement and the Plan. You hereby agree to accept as binding, conclusive and final all decisions or interpretations of the Committee upon any questions arising under the Plan or relating to the Option.

**OPTIONEE:**

By:

Name:

**ENERGY RECOVERY, INC.**

By:

Name:

Title:

**ENERGY RECOVERY, INC.**  
**2020 INCENTIVE PLAN**  
**STOCK OPTION AGREEMENT**

1. **Grant of Option.** Pursuant to the Stock Option Grant Notice (the "**Grant Notice**") to which this Stock Option Agreement and any Addendum (collectively this "**Agreement**") are attached, Energy Recovery, Inc., a Delaware corporation (the "**Company**"), has granted to the Optionee an Option under the Company's 2020 Incentive Plan (the "**Plan**") to purchase the number of shares of Common Stock indicated in the Grant Notice at the exercise price per share set forth in the Grant Notice (the "**Exercise Price**"), and subject to the terms and conditions of this Agreement and the Plan, which is incorporated herein by reference. In the event of a conflict between the terms and conditions of the Plan and this Agreement, the terms and conditions of the Plan shall prevail.

2. **Exercise of Option.**

(a) **Right to Exercise.** This Option shall be exercisable during its term in accordance with the Vesting Schedule set out in the Grant Notice and with the applicable provisions of the Plan and this Agreement.

(b) **Method of Exercise.** The vested portion of the Option shall be exercisable by delivery of a notice of exercise in such form as may be designated by the Committee from time to time, which shall state the election to exercise the Option, the number of shares of Common Stock with respect to which the Option is being exercised, and such other representations and agreements as may be required by the Company. The notice of exercise shall be accompanied by payment of the aggregate Exercise Price (as set forth in the Grant Notice) as to all of the shares of Common Stock subject to the exercised Option, and any Tax Obligations (as defined in Section 6 below). Payment may be made in one (or a combination of two or more) of the following forms:

(i) Cash, a personal check, a cashier's check or a wire transfer.

(ii) For employees in the U.S., certificates for shares of Common Stock of the Company already owned by the Optionee, along with any forms needed to effect a transfer of those shares to the Company. The Fair Market Value of the shares of Common Stock, determined as of the effective date of the Option exercise, will be applied to the Exercise Price. Instead of surrendering shares of Common Stock, the Optionee may attest to the ownership of those shares on a form provided by the Company and have the same number of shares of Common Stock subtracted from the Common Stock issued to the Optionee. This method of exercise is available only to employees in the U.S.

(iii) Irrevocable directions to a securities broker approved by the Company to sell all or a portion of the shares of Common Stock subject to the exercised Option and to deliver to the Company from the sale proceeds an amount sufficient to pay the Exercise Price and any Tax Obligations. (The balance of the sale proceeds, if any, will be delivered to the Optionee.)

No Common Stock shall be issued pursuant to the exercise of an Option unless such issuance and such exercise comply with applicable laws. Assuming such compliance, for income tax purposes the shares of Common Stock shall be considered transferred to the Optionee on the date on which the Option is exercised with respect to such shares.

(c) **Restrictions on Exercise.** This Option may not be exercised until such time as the Plan has been approved by the stockholders of the Company, or if the issuance of such Common Stock upon such exercise or the method of payment of consideration for such Common Stock would constitute a violation of any applicable law.

(d) **Responsibility for Exercise.** The Optionee is responsible for taking any and all actions as may be required to exercise this Option in a timely manner and for properly executing any such documents as may be required for exercise in accordance with such rules and procedures as may be established from time to time. The Company and/or any Parent, Subsidiary or Related Company shall have no duty or obligation to notify the Optionee of the Expiration Date of this Option.

3. **Termination of Service; Forfeiture.**

(a) **General Rule.** Except as provided below in Sections 3(b) and 3(c), and subject to the Plan, to the extent vested on the date of the Optionee's Termination of Service, this Option may be exercised for three (3) months after the date of the Optionee's Termination of Service with the Company or a Parent, Subsidiary or Related Company. The date of Termination of Service will be the date on which the Optionee ceases active employment or service (as determined by the Committee or as provided in the Plan) and will not be extended by any notice period mandated under local law. In no event shall this Option be exercised later than the Expiration Date set forth in the Grant Notice.

(b) **Death; Disability.** Upon the date of the Optionee's Termination of Service with the Company or a Parent, Subsidiary or Related Company by reason of his or her Disability or death, the vesting of the Option shall be accelerated effective upon the date of the Optionee's Termination of Service and the Option may be exercised for twelve (12) months thereafter, provided that in no event shall this Option be exercised later than the Expiration Date set forth in the Grant Notice.

(c) **Cause.** Upon the Optionee's Termination of Service by the Company or a Parent, Subsidiary or Related Company for cause (as determined by the Committee or as provided in the Plan), the Option shall expire on the date of the Optionee's Termination of Service.

(d) **Leave of Absence and Part-Time Work** For purposes of this Option, the Optionee's active service does not terminate when the Optionee goes on a military leave, a sick leave or another bona fide leave of absence, if the leave was approved by the Company in writing. However, the Optionee's active service terminates when the approved leave ends, unless the Optionee immediately returns to active work. If the Optionee goes on a leave of absence, then the vesting schedule specified in the Grant Notice may be adjusted in accordance with the Company's leave of absence policy or the terms of the Optionee's leave if permissible under applicable local law. If the Optionee commences working on a part-time basis, then the vesting schedule specified in the Grant Notice may be adjusted in accordance with the Company's part-time work policy or the terms of an agreement between the Optionee and the Company pertaining to the Optionee's part-time schedule if permissible under applicable local law.

(e) **Forfeiture.** The Optionee shall forfeit on the date designated by the Company ("**Designated Date**") any right to exercise the Option if the Optionee fails to deliver to the Company on or prior to the Designated Date a valid and signed original of the Grant Notice in a form acceptable to, and accepted by, the Company.

**4. Non-Transferability of Option.** This Option may not be transferred in any manner otherwise than by will or by the laws of descent or distribution and may be exercised during the lifetime of the Optionee only by the Optionee. The terms of the Plan and this Agreement shall be binding upon the executors, heirs, successors and assigns of the Optionee. Regardless of any marital property settlement agreement, the Company is not obligated to honor a notice of exercise from the Optionee's former spouse, nor is the Company obligated to recognize the Optionee's former spouse's interest in the Option in any other way.

**5. Term of Option.** This Option may be exercised only within the term set out in the Grant Notice, and may be exercised during such term only in accordance with the Plan and the terms of this Agreement.

**6. Tax Obligations.**

(a) Regardless of any action the Company and/or the Optionee's employer (the "**Employer**") take with respect to any or all income tax, social insurance, payroll tax, payment on account or other tax-related items arising out of the Optionee's participation in the Plan and legally applicable to the Optionee ("**Tax Obligation**"), the Optionee acknowledges that the ultimate liability for all Tax Obligations is and remains the Optionee's responsibility and may exceed the amount actually withheld by the Company and/or the Employer. The Optionee further acknowledges that the Company and/or the Employer (i) make no representations or undertakings regarding the treatment of any Tax Obligations in connection with any aspect of the Option, including, but not limited to, the grant, vesting or exercise of the Option, the subsequent sale of shares of Common Stock acquired pursuant to such exercise and the receipt of any dividends; and (ii) do not commit and are under no obligation to structure the terms of the grant or any aspect of the Option to reduce or eliminate the Optionee's liability for Tax Obligations or achieve any particular tax result. Furthermore, if the Optionee has become subject to tax in more than one jurisdiction between the Grant Date and the date of any relevant taxable event, the Optionee acknowledges that the Company and/or the Employer (or former employer, as applicable) may be required to withhold or account for Tax Obligations in more than one jurisdiction.

(b) Prior to the relevant taxable or tax withholding event, as applicable, the Optionee shall pay or make arrangements satisfactory to the Company and/or the Employer to satisfy all Tax Obligations. In this regard, the Optionee authorizes the Company and/or the Employer, or their respective agents, at their discretion, to satisfy the Tax Obligations by one or a combination of the following: (i) withholding from the Optionee's wages or other cash compensation paid to the Optionee by the Company, the Employer and/or any Related Company; or (ii) withholding from proceeds of the sale of shares of Common Stock acquired at exercise of the Option either through a voluntary sale or through a mandatory sale arranged by the Company (on Optionee's behalf pursuant to this authorization); or (iii) withholding in shares of Common Stock to be issued at exercise of the Option.

(c) The Company may withhold or account for Tax Obligations by considering applicable minimum or maximum statutory withholding amounts or other applicable withholding rates so long as such withholding does not result in adverse treatment for financial accounting purposes. If the obligation for Tax Obligations is satisfied by withholding in shares of Common Stock, for tax purposes, the Optionee is deemed to have been issued the full number of shares of Common Stock subject to the exercised Options, notwithstanding that a number of the shares are held back solely for the purpose of paying the Tax Obligations due as a result of any aspect of the Optionee's participation in the Plan.

(d) The Optionee shall pay to the Company or the Employer any amount of Tax Obligations that the Company or the Employer may be required to withhold or account for as a result of the Optionee's participation in the Plan that cannot be satisfied by the means previously described in this Section. The Company may refuse to issue or deliver the shares of Common Stock or the proceeds of the sale of shares, if the Optionee fails to comply with the Optionee's obligations in connection with the Tax Obligations.

**7. Restrictions on Resale.** The Optionee agrees not to sell any Common Stock at a time when applicable laws, Company policies or an agreement between the Company and its underwriters prohibit a sale. This restriction will apply as long as the Optionee's service continues and for such period of time after the date of the Optionee's Termination of Service as the Company may specify.

**8. Retention Rights.** The Optionee acknowledges and agrees that the vesting of the Option pursuant to the Vesting Schedule hereof is earned only by continuing service at the will of the Company or the Employer and not through the act of being hired, being granted this Option or acquiring shares of Common Stock hereunder. The Optionee further acknowledges and agrees that this Agreement, the transactions contemplated hereunder and the Vesting Schedule set forth herein do not constitute an express or implied promise of continued engagement by the Company or the Employer in any capacity for the vesting period or for any period, or at all, and shall not interfere in any way with the Optionee's right or the right of the Company or the Employer to terminate the Optionee's service at any time, with or without cause subject to applicable law.

**9. Stockholder Rights.** Neither the Optionee nor any person claiming under or through the Optionee shall have any of the rights or privileges of a stockholder of the Company in respect of any Shares issuable hereunder upon exercise of the Option unless and until certificates representing such Shares (which may be in uncertificated form) will have been issued and recorded on the books and records of the Company or its transfer agents or registrars, and delivered to the Optionee (including through electronic delivery to a brokerage account). After such issuance, recordation and delivery, the Optionee shall have all the rights of a stockholder of the Company, including with respect to the right to vote the Shares and the right to receive any cash or share dividends or other distributions paid to or made with respect to the Shares. Notwithstanding the foregoing provisions, nothing in this Section 9 eliminates or reduces the Company's rights to enforce the terms and provisions of the *[NTD Update: Claw-Back Policy]*, if applicable, to the extent permissible under applicable law.

**10. Nature of Grant.** In accepting the Option, the Optionee acknowledges that:

- (a) the Plan is established voluntarily by the Company, is discretionary in nature, and may be amended, suspended or terminated by the Company at any time;
- (b) the grant of the Option is voluntary and occasional and does not create any contractual or other right to receive future grants of options, or benefits in lieu of options, even if options have been granted repeatedly in the past;
- (c) all decisions with respect to future option grants, if any, will be at the sole discretion of the Company;
- (d) the Optionee's participation in the Plan is voluntary;
- (e) the Optionee's participation in the Plan shall not create a right to further employment with the Company or the Employer and shall not interfere with the ability of the Company or the Employer to terminate the Optionee's employment or service relationship (if any) at any time;
- (f) the future value of the shares of Common Stock underlying the Option is unknown and cannot be predicted with certainty;
- (g) if the underlying shares of Common Stock do not increase in value, the Option will have no value;
- (h) the Company is not providing any tax, legal or financial advice, nor is the Company making any recommendations regarding the Optionee's participation in the Plan or the Optionee's purchase or sale of shares of Common Stock;
- (i) the Optionee is hereby advised to consult with his or her own personal tax, legal and financial advisors regarding participation in the Plan before taking any action related to the Plan;
- (j) the Option and the benefits under the Plan, if any, will not automatically transfer to another company in the case of a merger, take-over or transfer of liability;
- (k) the Option and any shares of Common Stock acquired under the Plan are extraordinary items that do not constitute compensation of any kind for services of any kind rendered to the Company, the Employer, or any Parent, Subsidiary or Related Company, and that are outside the scope of the Optionee's employment or service contract, if any;
- (l) the Option and any shares of Common Stock acquired under the Plan are not intended to replace any pension rights or compensation;
- (m) the Option and any shares of Common Stock acquired under the Plan are not part of normal or expected compensation or salary for any purposes, including, but not limited to, calculating any severance, resignation, termination, redundancy, end of service payments, bonuses, long-service awards, pension or retirement or welfare benefits or similar payments and in no event should be considered as compensation for, or relating in any way to, past services for the Employer, the Company or any Parent, Subsidiary or Related Company; and
- (n) in consideration of the grant of the Option, no claim or entitlement to compensation or damages shall arise from termination of the Option or diminution in value of the Option or shares of Common Stock acquired upon exercise of the Option resulting from the Optionee's Termination of Service (for any reason whatsoever and whether or not in breach of local labor laws) and the Optionee irrevocably releases the Company, Employer, and/or any Parent, Subsidiary or Related Company from any such claim that may arise; if, notwithstanding the foregoing, any such claim is found by a court of competent jurisdiction to have arisen, then by exercising the Option, Optionee shall be deemed irrevocably to have waived his or her entitlement to pursue such claim.

**11. Data Privacy Notice and Consent** The Optionee hereby explicitly and unambiguously consents to the collection, use and transfer, in electronic or other form, of the Optionee's personal data as described in this Agreement, including the Addendum, and any other Option materials by and among, as applicable, the Company, the Employer, and any Parent, Subsidiary or Related Company for the exclusive purpose of implementing, administering and managing the Optionee's participation in the Plan.

The Optionee hereby acknowledges that he or she understands that the Company and the Employer may hold certain personal information about the Optionee, including, but not limited to, the Optionee's name, home address and telephone number, date of birth, social insurance or other identification number, salary, nationality, job title, any shares of Common Stock or directorships held in the Company or any Parent, Subsidiary or Related Company, details of all options or any other entitlement to shares of Common Stock awarded, canceled, exercised, vested, unvested or outstanding in the Optionee's favor ("Data"), for the exclusive purpose of implementing, administering and managing the Plan.

The Optionee hereby acknowledges that he or she understands that Data will be transferred to any Company authorized third party(ies) assisting in the implementation, administration and management of the Plan. The Optionee understands that the recipients of the Data may be located in the Optionee's country of residence or elsewhere, and that the recipient's country may have different data privacy laws and protections than the Optionee's country.

For the Optionee outside the U.S., the following paragraph applies:

The Optionee hereby acknowledges that he or she understands that he or she may request a list with the names and addresses of any potential recipients of Data by contacting the Optionee's local human resources representative. The Optionee authorizes the Company and any Company authorized third party service provider(s) which may assist the Company (presently or in the future) with implementing, administering and managing the Plan to receive, possess, use, retain and transfer Data, in electronic or other form, for the purposes of implementing, administering and managing the Optionee's participation in the Plan, including any requisite transfer of Data as may be required to a broker or other third party with whom the Optionee may elect to deposit any shares of Common Stock purchased upon exercise of the Option. The Optionee understands that Data will be held only as long as is necessary to implement, administer and manage the Optionee's participation in the Plan. The Optionee understands that he or she may, at any time, view Data, request additional information about the storage and processing of Data, require any necessary amendments to Data or refuse or withdraw the consents herein, in any case without cost, by contacting in writing the Optionee's local human resources representative. The Optionee understands that refusal or withdrawal of consent may affect the Optionee's ability to participate in the Plan. For more information on the consequences of the Optionee's refusal to consent or withdrawal of consent, the Optionee understands that he or she may contact his or her local human resources representative.

**12. Adjustments** The number of shares of Common Stock covered by this Option and the Exercise Price per share are subject to adjustment as provided in Article 15 of the Plan. The Optionee shall be notified of such adjustment and such adjustment shall be binding upon the Company and the Optionee.

**13. Limitations Applicable to Section 16 Persons** Notwithstanding any other provision of the Plan or this Agreement, if the Optionee is subject to Section 16 of the Exchange Act, the Plan, the Option and this Agreement shall be subject to any additional limitations set forth in any applicable exemptive rule under Section 16 of the Exchange Act (including any amendment to Rule 16b-3 of the Exchange Act) that are requirements for the application of such exemptive rule. To the extent permitted by applicable law, this Agreement shall be deemed amended to the extent necessary to conform to such applicable exemptive rule.

**14. Section 409A** For Optionees subject to tax in the U.S., notwithstanding any other provision of the Plan, this Agreement or the Grant Notice, the Plan, this Agreement and the Grant Notice shall be interpreted in accordance with, and incorporate the terms and conditions required by, Section 409A of the U.S. Internal Revenue Code of 1986, as amended (together with any Department of Treasury regulations and other interpretive guidance issued thereunder, including without limitation any such regulations or other guidance that may be issued after the date hereof, "Section 409A"). The Company reserves the right, to the extent the Company deems necessary or advisable in its sole discretion, to unilaterally amend or modify the Plan, this Agreement or the Grant Notice or adopt other policies and procedures (including amendments, policies and procedures with retroactive effect), or take any other actions, as the Committee determines are necessary or appropriate to ensure that this Option qualifies for exemption from, or complies with the requirements of, Section 409A; provided, however, that the Company makes no representation that the Option will be exempt from, or will comply with, Section 409A, and makes no undertakings to preclude Section 409A of the Code from applying to the Option or to ensure that it complies with Section 409A.

**15. Entire Agreement; Governing Law.** The Plan, the Grant Notice and this Agreement constitute the entire agreement of the parties with respect to the subject matter hereof and supersede in their entirety all prior undertakings and agreements of the Company and the Optionee with respect to the subject matter hereof. This Agreement may not be modified adversely to the Optionee's interest except by means of a writing signed by the Company and the Optionee. Nothing in the Plan and this Agreement (except as expressly provided therein) is intended to confer any rights or remedies on any persons other than the parties. The Plan and this Agreement are to be construed in accordance with and governed by the internal laws of the State of California (as permitted by Section 1646.5 of the California Civil Code, or any similar successor provision) without giving effect to any choice of law rule that would cause the application of the laws of any jurisdiction other than the internal laws of the State of California to the rights and duties of the parties. For purposes of litigating any dispute that arises directly or indirectly from the relationship of the parties evidenced by this grant or the Agreement, the parties hereby submit to and consent to the exclusive jurisdiction of the State of California and agree that such litigation shall be conducted only in the courts of Alameda county, California, or the federal courts for the United States for the Northern District of California, and no other courts, where this grant is made and/or to be performed. Should any provision of the Plan or this Agreement be determined by a court of law to be illegal or unenforceable, such provision shall be enforced to the fullest extent allowed by law and the other provisions shall nevertheless remain effective and shall remain enforceable.

**16. Compliance with Law.** Notwithstanding any other provision of the Plan or this Agreement, unless there is an available exemption from any registration, qualification or other legal requirement applicable to the shares of Common Stock, the Company shall not be required to deliver any shares issuable upon exercise of the Option prior to the completion of any registration or qualification of the shares under any local, state, federal or foreign securities or exchange control law or under rulings or regulations of the U.S. Securities and Exchange Commission ("**SEC**") or of any other governmental regulatory body, or prior to obtaining any approval or other clearance from any local, state, federal or foreign governmental agency, which registration, qualification or approval the Company shall, in its absolute discretion, deem necessary or advisable. The Optionee understands that the Company is under no obligation to register or qualify the shares with the SEC or any state or foreign securities commission or to seek approval or clearance from any governmental authority for the issuance or sale of the shares. Further, the Optionee agrees that the Company shall have unilateral authority to amend the Plan and the Agreement without the Optionee's consent to the extent necessary to comply with securities or other laws applicable to issuance of shares.

**17. Electronic Delivery and Participation.** The Company may, in its sole discretion, decide to deliver any documents related to the Option or future options that may be granted under the Plan by electronic means or request the Optionee's consent to participate in the Plan by electronic means. The Optionee hereby consents to receive such documents by electronic delivery and, if requested, to agree to participate in the Plan through an on-line or electronic system established and maintained by the Company or a third party designated by the Company.

**18. Language.** If the Optionee has received this Agreement, or any other document related to the Option and/or the Plan translated into a language other than English and if the translated version is different than the English version, the English version will control, unless otherwise prescribed by local law.

**19. Severability.** The provisions of this Agreement are severable and if any one or more provisions are determined to be illegal or otherwise unenforceable, in whole or in part, the remaining provisions shall nevertheless be binding and enforceable.

**20. Addendum.** Notwithstanding any provisions in this Agreement, the Option shall be subject to any special terms and conditions set forth in the Addendum for the Optionee's country of residence, if any. If the Optionee relocates to one of the countries included in the Addendum during the life of the Option, the special provisions for such country shall apply to the Optionee, to the extent the Company determines that the application of such provisions is necessary or advisable in order to comply with local law or facilitate the administration of the Plan. The Addendum constitutes part of this Agreement.

**21. Imposition of Other Requirements.** In addition, the Company reserves the right to impose other requirements on the Option and the shares of Common Stock purchased upon exercise of the Option, to the extent the Company determines it is necessary or advisable in order to comply with local laws or facilitate the administration of the Plan, and to require the Optionee to sign any additional agreements or undertakings that may be necessary to accomplish the foregoing.

**22. Waiver.** The Optionee acknowledges that a waiver by the Company of breach of any provision of this Agreement shall not operate or be construed as a waiver of any other provision of this Agreement, or of any subsequent breach by the Optionee or any other optionee.

\*\*\*\*\*

**ENERGY RECOVERY, INC.  
2020 INCENTIVE PLAN**

**STOCK OPTION GRANT NOTICE AND STOCK OPTION AGREEMENT**

Energy Recovery, Inc., a Delaware corporation (the “**Company**”), pursuant to its 2020 Incentive Plan, as amended from time to time (the “**Plan**”), hereby grants to the individual listed below (the “**Optionee**”) an Award of an Option to purchase the number of shares of the Common Stock of the Company set forth below, upon and subject to the terms and conditions set forth below:

**Name of Optionee:**

**Total Number of Shares of Common Stock:**

**Type of Option:**

**Exercise Price per Share:**

**Grant Date:**

**Vesting Commencement Date:**

**Vesting Schedule:**

This Option becomes exercisable in accordance with the vesting schedule attached hereto as Appendix, which sets forth each date of vesting under the column labeled “**Date**” (each, a “**Vesting Date**”) and the number of options that vest on such Vesting Date under the column labeled “**Quantity**”. Additional terms and conditions also apply to the vesting of options, which are described more fully in the accompanying Stock Option Agreement.

Notwithstanding the foregoing, if you are eligible for severance benefits as provided for in Sections 2 and 3.1 of the Energy Recovery, Inc. Severance Plan, 25% of the shares subject to this Option that are not vested on the effective date of your Termination of Service will immediately become vested. Shares vested pursuant to the prior sentence are referred to as “**Accelerated Shares**”.

**Expiration Date:**

This Option expires the earlier of 10-years from the grant date or (1) in the case of a Qualified Severance Event, six (6) months from the date of your Termination of Service; (2) in the event of a voluntary resignation that is not a Qualified Severance Event, three (3) months from the date of your Termination of Service; and (3) in the event your termination is for cause as defined in the Stock Option Agreement, all vested and unvested options are forfeited immediately.

This Option is granted under and governed by the terms and conditions of the Stock Option Agreement, which is attached to and made a part of this document, and the Plan. Unless otherwise defined herein, the terms defined in the Plan shall have the same defined meanings in this Stock Option Grant Notice, the Stock Option Agreement and the special provisions for your country of residence, if any, in the Addendum attached hereto (the “**Addendum**”).

By your signature, you agree to be bound by the terms and conditions of the Plan, the Stock Option Agreement, the Addendum, this Grant Notice, and the Compensation Recovery Policy (the “**Compensation Recovery Policy**”) if applicable. You hereby acknowledge that you have reviewed the Stock Option Agreement, the Addendum, the Plan, this Grant Notice, and the Compensation Recovery Policy in their entirety, have had an opportunity to obtain the advice of counsel prior to executing this Stock Option Grant Notice and fully understand all provisions of this Stock Option Grant Notice, the Stock Option Agreement, the Plan, and the Compensation Recovery Policy (if applicable). You hereby agree to accept as binding, conclusive and final all decisions or interpretations of the Committee upon any questions arising under the Plan or relating to the Option.

**OPTIONEE:**

By:

Name:

**ENERGY RECOVERY, INC.**

By:

Name:

Title:



## Appendix

### VESTING SCHEDULE

Date	Quantity

**ENERGY RECOVERY, INC.**  
**2020 INCENTIVE PLAN**  
**STOCK OPTION AGREEMENT**

1. **Grant of Option.** Pursuant to the Stock Option Grant Notice (the "**Grant Notice**") to which this Stock Option Agreement and any Addendum (collectively this "**Agreement**") are attached, Energy Recovery, Inc., a Delaware corporation (the "**Company**"), has granted to the Optionee an Option under the Company's 2020 Incentive Plan (the "**Plan**") to purchase the number of shares of Common Stock indicated in the Grant Notice at the exercise price per share set forth in the Grant Notice (the "**Exercise Price**"), and subject to the terms and conditions of this Agreement, the Plan, and the Compensation Recovery Policy (if applicable), which is incorporated herein by reference. In the event of a conflict between the terms and conditions of the Plan and this Agreement, the terms and conditions of the Plan shall prevail.

If designated in the Grant Notice as an Incentive Stock Option (or ISO) (i.e., U.S. Incentive Stock Option), this Option is intended to qualify as an Incentive Stock Option as defined in Section 422 of the U.S. Internal Revenue Code of 1986, as amended (the "**Code**"). Nevertheless, to the extent that it exceeds the \$100,000 rule of Code Section 422(d), this Option shall be treated as a Nonqualified Stock Option (or NSO) (i.e., U.S. Nonstatutory Stock Option or Option that is not described in Section 422 or 423 of the Code). Further, if for any reason this Option (or portion thereof) shall not qualify as an ISO, then, to the extent of such nonqualification, such Option (or portion thereof) shall be regarded as a NSO granted under the Plan. In no event shall the Committee, the Company or any Parent, Subsidiary or Related Company or any of their respective employees or directors have any liability to the Optionee (or any other person) due to the failure of the Option to qualify for any reason as an ISO.

2. **Exercise of Option.**

(a) **Right to Exercise.** This Option shall be exercisable during its term in accordance with the Vesting Schedule set forth on Appendix, attached hereto, provided the Grantee is employed or in a service relationship on such Vesting Date, and remains in continuous service during the entire period commencing on the Vesting Commencement Date and ending on the applicable Vesting Date and with the applicable provisions of the Plan and this Agreement.

(b) **Method of Exercise.** The vested portion of the Option shall be exercisable by delivery of a notice of exercise in such form as may be designated by the Committee from time to time, which shall state the election to exercise the Option, the number of shares of Common Stock with respect to which the Option is being exercised, and such other representations and agreements as may be required by the Company. The notice of exercise shall be accompanied by payment of the aggregate Exercise Price (as set forth in the Grant Notice) as to all of the shares of Common Stock subject to the exercised Option, and any Tax Obligations (as defined in Section 6 below). Payment may be made in one (or a combination of two or more) of the following forms:

(i) Cash, a personal check, a cashier's check or a wire transfer.

(ii) For employees in the U.S., certificates for shares of Common Stock of the Company already owned by the Optionee, along with any forms needed to effect a transfer of those shares to the Company. The Fair Market Value of the shares of Common Stock, determined as of the effective date of the Option exercise, will be applied to the Exercise Price. Instead of surrendering shares of Common Stock, the Optionee may attest to the ownership of those shares on a form provided by the Company and have the same number of shares of Common Stock subtracted from the Common Stock issued to the Optionee. This method of exercise is available only to employees in the U.S.

(iii) Irrevocable directions to a securities broker approved by the Company to sell all or a portion of the shares of Common Stock subject to the exercised Option and to deliver to the Company from the sale proceeds an amount sufficient to pay the Exercise Price and any Tax Obligations. (The balance of the sale proceeds, if any, will be delivered to the Optionee.)

No Common Stock shall be issued pursuant to the exercise of an Option unless such issuance and such exercise comply with applicable laws. Assuming such compliance, for income tax purposes the shares of Common Stock shall be considered transferred to the Optionee on the date on which the Option is exercised with respect to such shares.

(c) **Restrictions on Exercise.** This Option may not be exercised until such time as the Plan has been approved by the stockholders of the Company, or if the issuance of such Common Stock upon such exercise or the method of payment of consideration for such Common Stock would constitute a violation of any applicable law.

(d) **Responsibility for Exercise.** The Optionee is responsible for taking any and all actions as may be required to exercise this Option in a timely manner and for properly executing any such documents as may be required for exercise in accordance with such rules and procedures as may be established from time to time. The Company and/or any Parent, Subsidiary or Related Company shall have no duty or obligation to notify the Optionee of the Expiration Date of this Option.

### 3. Termination of Service; Forfeiture.

(a) **General Rule.** Except as provided below in Sections 3(b), 3(c), and 3(d), and subject to the Plan, to the extent vested on the date of the Optionee's Termination of Service, this Option may be exercised for three (3) months after the date of the Optionee's Termination of Service with the Company or a Parent, Subsidiary or Related Company. The date of Termination of Service will be the date on which the Optionee ceases active employment or service (as determined by the Committee or as provided in the Plan) and will not be extended by any notice period mandated under local law. In no event shall this Option be exercised later than the Expiration Date set forth in the Grant Notice.

(b) **Death; Disability.** Upon the date of the Optionee's Termination of Service with the Company or a Parent, Subsidiary or Related Company by reason of his or her Disability or death, the vesting of the Option shall be accelerated effective upon the date of the Optionee's Termination of Service and the Option may be exercised for twelve (12) months thereafter, provided that in no event shall this Option be exercised later than the Expiration Date set forth in the Grant Notice.

(c) **Severance and Change in Control Plans.** If the Optionee is eligible for severance benefits as provided for in Sections 2 and 3.1 of the Energy Recovery, Inc. Severance Plan, the Accelerated Shares (as defined in the Grant Notice) may be exercised for six (6) months after the date of the Optionee's Termination of Service with the Company or a Parent, Subsidiary or Related Company, provided that in no event shall this Option be exercised later than the Expiration Date set forth in the Grant Notice. Exercising an Option during the period permitted in this Section 3(c) but after the period provided for in Sections 3(a) and 3(b) may cause an Option that would otherwise qualify as an ISO to lose its status as an ISO. In the event of a Change in Control as defined in the Energy Recovery, Inc. Change in Control Severance Plan (the "**CIC Plan**"), the vesting of the Award will be treated in accordance with the terms of the CIC Plan.

(d) **Cause.** Upon the Optionee's Termination of Service by the Company or a Parent, Subsidiary or Related Company for cause (as determined by the Committee or as provided in the Plan), the Option shall expire on the date of the Optionee's Termination of Service.

(e) **Leave of Absence and Part-Time Work.** For purposes of this Option, the Optionee's active service does not terminate when the Optionee goes on a military leave, a sick leave or another *bona fide* leave of absence, if the leave was approved by the Company in writing. However, the Optionee's active service terminates when the approved leave ends, unless the Optionee immediately returns to active work. If the Optionee goes on a leave of absence, then the vesting schedule specified in the Grant Notice may be adjusted in accordance with the Company's leave of absence policy or the terms of the Optionee's leave if permissible under applicable local law. If the Optionee commences working on a part-time basis, then the vesting schedule specified in the Grant Notice may be adjusted in accordance with the Company's part-time work policy or the terms of an agreement between the Optionee and the Company pertaining to the Optionee's part-time schedule if permissible under applicable local law.

(f) **Forfeiture.** The Optionee shall forfeit on the date designated by the Company ("**Designated Date**") any right to exercise the Option if the Optionee fails to deliver to the Company on or prior to the Designated Date a valid and signed original of the Grant Notice in a form acceptable to, and accepted by, the Company.

4. **Non-Transferability of Option.** This Option may not be transferred in any manner otherwise than by will or by the laws of descent or distribution and may be exercised during the lifetime of the Optionee only by the Optionee. The terms of the Plan and this Agreement shall be binding upon the executors, heirs, successors and assigns of the Optionee. Regardless of any marital property settlement agreement, the Company is not obligated to honor a notice of exercise from the Optionee's former spouse, nor is the Company obligated to recognize the Optionee's former spouse's interest in the Option in any other way.

5. **Term of Option.** This Option may be exercised only within the term set out in the Grant Notice, and may be exercised during such term only in accordance with the Plan and the terms of this Agreement.

### 6. Tax Obligations.

(a) Regardless of any action the Company and/or the Optionee's employer (the "**Employer**") take with respect to any or all income tax, social insurance, payroll tax, payment on account or other tax-related items arising out of the Optionee's participation in the Plan and legally applicable to the Optionee ("**Tax Obligation**"), the Optionee acknowledges that the ultimate liability for all Tax Obligations is and remains the Optionee's responsibility and may exceed the amount actually withheld by the Company and/or the Employer. The Optionee further acknowledges that the Company and/or the Employer (i) make no representations or undertakings regarding the treatment of any Tax Obligations in connection with any aspect of the Option, including, but not limited to, the grant, vesting or exercise of the Option, the subsequent sale of shares of Common Stock acquired pursuant to such exercise and the receipt of any dividends; and (ii) do not commit and are under no obligation to structure the terms of the grant or any aspect of the Option to reduce or eliminate the Optionee's liability for Tax Obligations or achieve any particular tax result. Furthermore, if the Optionee has become subject to tax in more than one jurisdiction between the Grant Date and the date of any relevant taxable event, the Optionee acknowledges that the Company and/or the Employer (or former employer, as applicable) may be required to withhold or account for Tax Obligations in more than one jurisdiction.

(b) Prior to the relevant taxable or tax withholding event, as applicable, the Optionee shall pay or make arrangements satisfactory to the Company and/or the Employer to satisfy all Tax Obligations. In this regard, the Optionee authorizes the Company and/or the Employer, or their respective agents, at their discretion, to satisfy the Tax Obligations by one or a combination of the following: (i) withholding from the Optionee's wages or other cash compensation paid to the Optionee by the Company, the Employer and/or any Related Company; or (ii) withholding from proceeds of the sale of shares of Common Stock acquired at exercise of the Option either through a voluntary sale or through a mandatory sale arranged by the Company (on Optionee's behalf pursuant to this authorization); or (iii) withholding in shares of Common Stock to be issued at exercise of the Option.

(c) The Company may withhold or account for Tax Obligations by considering applicable minimum or maximum statutory withholding amounts or other applicable withholding rates so long as such withholding does not result in adverse treatment for financial accounting purposes. If the obligation for Tax Obligations is satisfied by withholding in shares of Common Stock, for tax purposes, the Optionee is deemed to have been issued the full number of shares of Common Stock subject to the exercised Options, notwithstanding that a number of the shares are held back solely for the purpose of paying the Tax Obligations due as a result of any aspect of the Optionee's participation in the Plan.

(d) The Optionee shall pay to the Company or the Employer any amount of Tax Obligations that the Company or the Employer may be required to withhold or account for as a result of the Optionee's participation in the Plan that cannot be satisfied by the means previously described in this Section. The Company may refuse to issue or deliver the shares of Common Stock or the proceeds of the sale of shares, if the Optionee fails to comply with the Optionee's obligations in connection with the Tax Obligations.

(e) If the Option granted to the Optionee herein is an ISO and the Optionee is subject to tax in the United States, and if the Optionee sells or otherwise disposes of any of the Common Stock acquired pursuant to the ISO on or before the later of (i) the date two (2) years after the Date of Grant, or (ii) the date one (1) year after the date of exercise, the Optionee shall immediately notify the Company in writing of such disposition. The Optionee agrees that the Optionee may be subject to a Tax Obligation by the Company or the Employer on the compensation income recognized by the Optionee.

**7. Restrictions on Resale.** The Optionee agrees not to sell any Common Stock at a time when applicable laws, Company policies or an agreement between the Company and its underwriters prohibit a sale. This restriction will apply as long as the Optionee's service continues and for such period of time after the date of the Optionee's Termination of Service as the Company may specify.

**8. Retention Rights.** The Optionee acknowledges and agrees that the vesting of the Option pursuant to the Vesting Schedule hereof is earned only by continuing service at the will of the Company or the Employer and not through the act of being hired, being granted this Option or acquiring shares of Common Stock hereunder. The Optionee further acknowledges and agrees that this Agreement, the transactions contemplated hereunder and the Vesting Schedule set forth herein do not constitute an express or implied promise of continued engagement by the Company or the Employer in any capacity for the vesting period or for any period, or at all, and shall not interfere in any way with the Optionee's right or the right of the Company or the Employer to terminate the Optionee's service at any time, with or without cause subject to applicable law.

**9. Stockholder Rights.** Neither the Optionee nor any person claiming under or through the Optionee shall have any of the rights or privileges of a stockholder of the Company in respect of any Shares issuable hereunder upon exercise of the Option unless and until certificates representing such Shares (which may be in uncertificated form) will have been issued and recorded on the books and records of the Company or its transfer agents or registrars, and delivered to the Optionee (including through electronic delivery to a brokerage account). After such issuance, recordation and delivery, the Optionee shall have all the rights of a stockholder of the Company, including with respect to the right to vote the Shares and the right to receive any cash or share dividends or other distributions paid to or made with respect to the Shares. Notwithstanding the foregoing provisions, nothing in this Section 9 eliminates or reduces the Company's rights to enforce the terms and provisions of the Compensation Recovery Policy, if applicable, to the extent permissible under applicable law.

**10. Nature of Grant.** In accepting the Option, the Optionee acknowledges that:

(a) the Plan is established voluntarily by the Company, is discretionary in nature, and may be amended, suspended or terminated by the Company at any time;

(b) the grant of the Option is voluntary and occasional and does not create any contractual or other right to receive future grants of options, or benefits in lieu of options, even if options have been granted repeatedly in the past;

(c) if applicable, in the event the Company later determines, in its sole discretion, that the Company is required to recover certain compensation paid to Grantee pursuant to the Compensation Recovery Policy, the Company reserves the right to pursue and any and all actions identified in the Compensation Recovery Policy, to the extent permissible under applicable law.

(d) all decisions with respect to future option grants, if any, will be at the sole discretion of the Company;

(e) the Optionee's participation in the Plan is voluntary;

- (f) the Optionee's participation in the Plan shall not create a right to further employment with the Company or the Employer and shall not interfere with the ability of the Company or the Employer to terminate the Optionee's employment or service relationship (if any) at any time;
- (g) the future value of the shares of Common Stock underlying the Option is unknown and cannot be predicted with certainty;
- (h) if the underlying shares of Common Stock do not increase in value, the Option will have no value;
- (i) the Company is not providing any tax, legal or financial advice, nor is the Company making any recommendations regarding the Optionee's participation in the Plan or the Optionee's purchase or sale of shares of Common Stock;
- (j) the Optionee is hereby advised to consult with his or her own personal tax, legal and financial advisors regarding participation in the Plan before taking any action related to the Plan;
- (k) the Option and the benefits under the Plan, if any, will not automatically transfer to another company in the case of a merger, take-over or transfer of liability;
- (l) the Option and any shares of Common Stock acquired under the Plan are extraordinary items that do not constitute compensation of any kind for services of any kind rendered to the Company, the Employer, or any Parent, Subsidiary or Related Company, and that are outside the scope of the Optionee's employment or service contract, if any;
- (m) the Option and any shares of Common Stock acquired under the Plan are not intended to replace any pension rights or compensation;
- (n) the Option and any shares of Common Stock acquired under the Plan are not part of normal or expected compensation or salary for any purposes, including, but not limited to, calculating any severance, resignation, termination, redundancy, end of service payments, bonuses, long-service awards, pension or retirement or welfare benefits or similar payments and in no event should be considered as compensation for, or relating in any way to, past services for the Company, the Employer, or any Parent, Subsidiary or Related Company; and
- (o) in consideration of the grant of the Option, no claim or entitlement to compensation or damages shall arise from termination of the Option or diminution in value of the Option or shares of Common Stock acquired upon exercise of the Option resulting from the Optionee's Termination of Service (for any reason whatsoever and whether or not in breach of local labor laws) and the Optionee irrevocably releases the Company, the Employer, and/or any Parent, Subsidiary or Related Company from any such claim that may arise; if, notwithstanding the foregoing, any such claim is found by a court of competent jurisdiction to have arisen, then by exercising the Option, Optionee shall be deemed irrevocably to have waived his or her entitlement to pursue such claim.

**11. Data Privacy Notice and Consent** *The Optionee hereby explicitly and unambiguously consents to the collection, use and transfer, in electronic or other form, of the Optionee's personal data as described in this Agreement, including the Addendum, and any other Option materials by and among, as applicable, the Company, the Employer, and any Parent, Subsidiary or Related Company for the exclusive purpose of implementing, administering and managing the Optionee's participation in the Plan.*

*The Optionee hereby acknowledges that he or she understands that the Company and the Employer may hold certain personal information about the Optionee, including, but not limited to, the Optionee's name, home address and telephone number, date of birth, social insurance or other identification number, salary, nationality, job title, any shares of Common Stock or directorships held in the Company or any Parent, Subsidiary or Related Company, details of all options or any other entitlement to shares of Common Stock awarded, canceled, exercised, vested, unvested or outstanding in the Optionee's favor ("Data"), for the exclusive purpose of implementing, administering and managing the Plan.*

*The Optionee hereby acknowledges that he or she understands that Data will be transferred to any Company authorized third party(ies) assisting in the implementation, administration and management of the Plan. The Optionee understands that the recipients of the Data may be located in the Optionee's country of residence or elsewhere, and that the recipient's country may have different data privacy laws and protections than the Optionee's country.*

*For the Optionee outside the U.S., the following paragraph applies:*

*The Optionee hereby acknowledges that he or she understands that he or she may request a list with the names and addresses of any potential recipients of Data by contacting the Optionee's local human resources representative. The Optionee authorizes the Company and any Company authorized third party(ies) service provider which may assist the Company (presently or in the future) with implementing, administering and managing the Plan to receive, possess, use, retain and transfer Data, in electronic or other form, for the purposes of implementing, administering and managing the Optionee's participation in the Plan, including any requisite transfer of Data as may be required to a broker or other third party with whom the Optionee may elect to deposit any shares of Common Stock purchased upon exercise of the Option. The Optionee understands that Data will be held only as long as is necessary to implement, administer and manage the Optionee's participation in the Plan. The Optionee understands that he or she may, at any time, view Data, request additional information about the storage and processing of Data, require any necessary amendments to Data or refuse or withdraw the consents herein, in any case without cost, by contacting in writing the Optionee's local human resources representative. The Optionee understands that refusal or withdrawal of consent may affect the Optionee's ability to participate in the Plan. For more information on the consequences of the Optionee's refusal to consent or withdrawal of consent, the Optionee understands that he or she may contact his or her local human resources representative.*

**12. Adjustments.** The number of shares of Common Stock covered by this Option and the Exercise Price per share are subject to adjustment as provided in Article 15 of the Plan. The Optionee shall be notified of such adjustment and such adjustment shall be binding upon the Company and the Optionee.

**13. Limitations Applicable to Section 16 Persons** Notwithstanding any other provision of the Plan or this Agreement, if the Optionee is subject to Section 16 of the Exchange Act, the Plan, the Option and this Agreement shall be subject to any additional limitations set forth in any applicable exemptive rule under Section 16 of the Exchange Act (including any amendment to Rule 16b-3 of the Exchange Act) that are requirements for the application of such exemptive rule. To the extent permitted by applicable law, this Agreement shall be deemed amended to the extent necessary to conform to such applicable exemptive rule.

**14. Section 409A.** For Optionees subject to tax in the U.S., notwithstanding any other provision of the Plan, this Agreement or the Grant Notice, the Plan, this Agreement and the Grant Notice shall be interpreted in accordance with, and incorporate the terms and conditions required by, Section 409A of the U.S. Internal Revenue Code of 1986, as amended (together with any Department of Treasury regulations and other interpretive guidance issued thereunder, including without limitation any such regulations or other guidance that may be issued after the date hereof, "Section 409A"). The Company reserves the right, to the extent the Company deems necessary or advisable in its sole discretion, to unilaterally amend or modify the Plan, this Agreement or the Grant Notice or adopt other policies and procedures (including amendments, policies and procedures with retroactive effect), or take any other actions, as the Committee determines are necessary or appropriate to ensure that this Option qualifies for exemption from, or complies with the requirements of, Section 409A; provided, however, that the Company makes no representation that the Option will be exempt from, or will comply with, Section 409A, and makes no undertakings to preclude Section 409A of the Code from applying to the Option or to ensure that it complies with Section 409A.

**15. Entire Agreement; Governing Law.** The Plan, the Grant Notice and this Agreement constitute the entire agreement of the parties with respect to the subject matter hereof and supersede in their entirety all prior undertakings and agreements of the Company and the Optionee with respect to the subject matter hereof. This Agreement may not be modified adversely to the Optionee's interest except by means of a writing signed by the Company and the Optionee. Nothing in the Plan and this Agreement (except as expressly provided therein) is intended to confer any rights or remedies on any persons other than the parties. The Plan and this Agreement are to be construed in accordance with and governed by the internal laws of the State of California (as permitted by Section 1646.5 of the California Civil Code, or any similar successor provision) without giving effect to any choice of law rule that would cause the application of the laws of any jurisdiction other than the internal laws of the State of California to the rights and duties of the parties. For purposes of litigating any dispute that arises directly or indirectly from the relationship of the parties evidenced by this grant or the Agreement, the parties hereby submit to and consent to the exclusive jurisdiction of the State of California and agree that such litigation shall be conducted only in the courts of Alameda county, California, or the federal courts for the United States for the Northern District of California, and no other courts, where this grant is made and/or to be performed. Should any provision of the Plan or this Agreement be determined by a court of law to be illegal or unenforceable, such provision shall be enforced to the fullest extent allowed by law and the other provisions shall nevertheless remain effective and shall remain enforceable.

**16. Compliance with Law.** Notwithstanding any other provision of the Plan or this Agreement, unless there is an available exemption from any registration, qualification or other legal requirement applicable to the shares of Common Stock, the Company shall not be required to deliver any shares issuable upon exercise of the Option prior to the completion of any registration or qualification of the shares under any local, state, federal or foreign securities or exchange control law or under rulings or regulations of the U.S. Securities and Exchange Commission ("**SEC**") or of any other governmental regulatory body, or prior to obtaining any approval or other clearance from any local, state, federal or foreign governmental agency, which registration, qualification or approval the Company shall, in its absolute discretion, deem necessary or advisable. The Optionee understands that the Company is under no obligation to register or qualify the shares with the SEC or any state or foreign securities commission or to seek approval or clearance from any governmental authority for the issuance or sale of the shares. Further, the Optionee agrees that the Company shall have unilateral authority to amend the Plan and this Agreement without the Optionee's consent to the extent necessary to comply with securities or other laws applicable to issuance of shares.

17. **Electronic Delivery and Participation.** The Company may, in its sole discretion, decide to deliver any documents related to the Option or future options that may be granted under the Plan by electronic means or request the Optionee's consent to participate in the Plan by electronic means. The Optionee hereby consents to receive such documents by electronic delivery and, if requested, to agree to participate in the Plan through an on-line or electronic system established and maintained by the Company or a third party designated by the Company.

18. **Language.** If the Optionee has received this Agreement, or any other document related to the Option and/or the Plan translated into a language other than English and if the translated version is different than the English version, the English version will control, unless otherwise prescribed by local law.

19. **Severability.** The provisions of this Agreement are severable and if any one or more provisions are determined to be illegal or otherwise unenforceable, in whole or in part, the remaining provisions shall nevertheless be binding and enforceable.

20. **Addendum.** Notwithstanding any provisions in this Agreement, the Option shall be subject to any special terms and conditions set forth in the Addendum for the Optionee's country of residence, if any. If the Optionee relocates to one of the countries included in the Addendum during the life of the Option, the special provisions for such country shall apply to the Optionee, to the extent the Company determines that the application of such provisions is necessary or advisable in order to comply with local law or facilitate the administration of the Plan. The Addendum constitutes part of this Agreement.

21. **Imposition of Other Requirements.** In addition, the Company reserves the right to impose other requirements on the Option and the shares of Common Stock purchased upon exercise of the Option, to the extent the Company determines it is necessary or advisable in order to comply with local laws or facilitate the administration of the Plan, and to require the Optionee to sign any additional agreements or undertakings that may be necessary to accomplish the foregoing.

22. **Waiver.** The Optionee acknowledges that a waiver by the Company of breach of any provision of this Agreement shall not operate or be construed as a waiver of any other provision of this Agreement, or of any subsequent breach by the Optionee or any other optionee.

\* \* \* \* \*

**ENERGY RECOVERY, INC.  
2020 INCENTIVE PLAN**

**RESTRICTED STOCK UNIT GRANT NOTICE AND RESTRICTED STOCK UNIT AGREEMENT**

Energy Recovery, Inc., a Delaware corporation (the “**Company**”), pursuant to its 2020 Incentive Plan, as amended from time to time (the “**Plan**”), hereby grants to the individual listed below (the “**Grantee**”) an Award for the number of Restricted Stock Units set forth below. This Award of Restricted Stock Units is subject to all of the terms and conditions as set forth herein, in the Restricted Stock Unit Agreement that is attached hereto (the “**Restricted Stock Unit Agreement**”), including the special provisions for the Grantee’s country of residence, if any, set forth in the attached Addendum (the “**Addendum**”), the Compensation Recovery Policy (the “**Compensation Recovery Policy**”), if applicable, and the Plan, each of which is incorporated herein by reference. Unless otherwise defined herein, the terms defined in the Plan shall have the same defined meanings in this Restricted Stock Unit Grant Notice (“**Grant Notice**”) and the Restricted Stock Unit Agreement, including the Addendum.

**Grantee:**

**Date of Grant:**

**Total Number of Restricted Stock Units:**

**Vesting Commencement Date:**

**Vesting Schedule:**

The Restricted Stock Units (“**RSUs**”) granted under this Award are subject to the vesting schedule attached hereto as Appendix, which sets forth each date of vesting under the column labeled “**Date**” (each, a “**Vesting Date**”) and the number of RSUs that vest on such Vesting Date under the column labeled “**Quantity**”. Additional terms and conditions also apply to the vesting of RSUs, which are described more fully in the accompanying Restricted Stock Unit Agreement.

Notwithstanding the foregoing, if the Grantee is eligible for severance benefits as provided for in Sections 2 and 3.1 of the Energy Recovery, Inc. Severance Plan, 25% of the RSUs subject to this Award that are not vested on the effective date of the Grantee’s termination will immediately become vested.

The Grantee acknowledges receipt of a copy of the Plan, the Restricted Stock Unit Agreement, the *Compensation Recovery Policy*, and the addendum, and represents that he or she is familiar with the terms and provisions thereof, and hereby accepts the Restricted Stock Units subject to all of the terms and provisions hereof and thereof, including, without limitation, the provision in the restricted stock unit agreement under which the grantee irrevocably authorizes and instructs the company and/or the Employer, or their respective agents, at their discretion, to satisfy the Tax Obligations by one or a combination of the following: (i) withholding from the Grantee’s wages or other cash compensation paid to the Grantee by the Company, the Employer and/or any Related Company; or (ii) withholding from proceeds of the sale of shares of Common Stock issued upon vesting/settlement of the Restricted Stock Units either through a voluntary sale or through a mandatory sale arranged by the Company (on Grantee’s behalf pursuant to this authorization); or (iii) withholding in shares of Common Stock to be issued upon vesting/settlement of the Restricted Stock Units and, if applicable, the provisions of the *Compensation Recovery Policy* authorizing the company to recoup *Erroneously Awarded Compensation* (as defined in the compensation recovery policy). The Grantee has reviewed this Grant Notice, the Plan, the restricted Stock Unit Agreement, the *Compensation Recovery Policy*, and the addendum, in their entirety, has had an opportunity to obtain the advice of counsel prior to executing this Grant Notice, and fully understands all provisions of this Grant Notice, the Plan, the Restricted Stock Unit Agreement, the *Compensation Recovery Policy*, and the addendum. The Grantee hereby agrees to accept as binding, conclusive and final all decisions or interpretations of the Committee upon any questions arising under the Plan, this Grant Notice or the Restricted Stock Unit Agreement, including the addendum.

**ENERGY RECOVERY, INC.**

By:

Name:

Title:

**GRANTEE:**

By:

Name:



## Appendix

### VESTING SCHEDULE

Date	Quantity

**ENERGY RECOVERY, INC.**  
**2020 INCENTIVE PLAN**  
**RESTRICTED STOCK UNIT AGREEMENT**

**1. Award of Restricted Stock Units.**

(a) **Award.** Energy Recovery, Inc., a Delaware corporation (the "**Company**") hereby grants as of the Grant Date set forth in the Restricted Stock Unit Grant Notice (the "**Grant Notice**") to the Grantee (the "**Grantee**") named in the Grant Notice an Award with respect to the number of Restricted Stock Units set forth in the Grant Notice, subject to the terms and provisions of the Grant Notice, this Restricted Stock Unit Agreement and the Addendum (collectively this "**Agreement**"), the *Compensation Recovery Policy*, and the Company's 2020 Incentive Plan (the "**Plan**"). Each Restricted Stock Unit represents the right to receive one share of Common Stock of the Company (a "**Share**") on the date the Restricted Stock Units vest. Unless and until the Restricted Stock Units are vested in the manner set forth in Section 2 hereof, the Grantee shall have no right to settlement of any such Restricted Stock Units. Prior to settlement of any vested Restricted Stock Units, such Restricted Stock Units represent an unsecured obligation of the Company, payable (if at all) from the general assets of the Company.

(b) **Definitions.** All capitalized terms used in this Agreement without definition shall have the meanings ascribed in the Plan and the Grant Notice.

(c) **Incorporation of Terms of Plan.** The award of Restricted Stock Units is subject to the terms and conditions of the Plan and the *Compensation Recovery Policy* which are incorporated herein by reference. In the event of any inconsistency between the Plan and this Agreement, the terms of the Plan shall control.

**2. Vesting and Forfeiture.**

(a) **Forfeiture.** Except as provided below in Section 2(c), any Restricted Stock Units which are not vested as of the date of the Grantee's Termination of Service shall thereupon be forfeited immediately and without any further action by the Company. The date of the Grantee's Termination of Service shall not be extended to include any notice of termination or similar period and shall be considered ceased on the last active day of service (as determined by the Committee) for the purposes of the Plan.

(b) **Vesting.** Subject to Section 2(a) hereof, the Restricted Stock Units shall vest in accordance with the vesting schedule set forth on Appendix, attached hereto, provided the Grantee is employed or in a service relationship on such Vesting Date and remains in continuous service during the entire period commencing on the Vesting Commencement Date and ending on the applicable Vesting Date. The Grantee's active service does not terminate when the Grantee goes on a military leave, a sick leave or another bona fide leave of absence, if the leave was approved by the Company in writing. However, the Grantee's active service terminates when the approved leave ends, unless the Grantee immediately returns to active service. If the Grantee goes on a leave of absence, then the vesting schedule specified in the Grant Notice may be adjusted in accordance with the Company's leave of absence policy or the terms of the Grantee's leave if permissible under applicable local law. If the Grantee commences working on a part-time basis, then the vesting schedule specified in the Grant Notice may be adjusted in accordance with the Company's part-time work policy or the terms of an agreement between the Grantee and the Company pertaining to the Grantee's part-time schedule if permissible under applicable local law.

(c) **Severance and Change in Control Plans.** If the Grantee is eligible for severance benefits as provided for in Sections 2 and 3.1 of the Energy Recovery, Inc. Severance Plan, 25% of the RSUs subject to the Award that are not vested on the effective date of the Grantee's Qualifying Termination (as defined in the Severance Plan) will immediately become vested. In the event of a Change in Control as defined in the Energy Recovery, Inc. Change in Control Severance Plan (the "**CIC Plan**"), the vesting of the Award will be treated in accordance with the terms of the CIC Plan.

**3. Settlement.**

(a) **Time and Form of Payment** Subject to the terms of the Plan and this Agreement, any Restricted Stock Units that vest and become nonforfeitable shall be settled in whole Shares, which shall be issued in book-entry form, registered in the Grantee's name. Such settlement shall be made as soon as practicable, but no later than 60 days, following the date of vesting. The value of any fractional Restricted Stock Units shall be paid in cash at the time the Shares are delivered in settlement of the Restricted Stock Units.

(b) **Conditions to Settlement of Restricted Stock Units** Notwithstanding any other provision of this Agreement (including without limitation Section 2(b)):

(i) No Shares shall be issued to the Grantee or his or her legal representative unless and until the Grantee or his or her legal representative shall have satisfied all applicable tax withholding obligations pursuant to Section 4 hereof.

(ii) The Company shall not be required to issue or deliver any Shares prior to the fulfillment of all of the following conditions: (A) the admission of the Shares subject to the award to listing on all stock exchanges on which the Common Stock is then listed; (B) the completion of any subject to the Award registration or other qualification of the Shares under any applicable securities law, any U.S. state or federal or foreign law, or under rulings or regulations of the U.S. Securities and Exchange Commission or other governmental regulatory body, which the Committee shall, in its sole and absolute discretion, deem necessary and advisable, or if the offering of the Shares is not so registered, a determination by the Company that the issuance of the Shares would be exempt from any such registration or qualification requirements; (C) the obtaining of any approval or other clearance from any state or federal or foreign governmental agency that the Committee shall, in its absolute discretion, determine to be necessary or advisable; and (D) the lapse of any such reasonable period of time following the date the Restricted Stock Units vest as the Committee may from time to time establish for reasons of administrative convenience.

(iii) If applicable, in the event the Company later determines, in its sole discretion, that the Company is required to recover certain compensation paid to Grantee pursuant to the Compensation Recovery Policy, the Company reserves the right to pursue and any and all actions identified in the Compensation Recovery Policy, to the extent permissible under applicable law.

**4. Tax Obligations.** Regardless of any action the Company and/or the Grantee's actual employer (the ***Employer***"), if the Company is not the Grantee's employer, takes with respect to any or all income tax, social security, payroll tax, payment on account or other tax-related items related to the Grantee's participation in the Plan and legally applicable to the Grantee ("***Tax Obligations***"), the Grantee hereby acknowledges that the ultimate liability for all Tax Obligations is and remains the Grantee's responsibility and may exceed the amount actually withheld by the Company and/or the Employer. The Grantee further acknowledges that neither the Company nor the Employer (1) makes any representations or undertakings regarding the treatment of any Tax Obligations in connection with any aspect of the Restricted Stock Units, including, but not limited to, the grant, vesting or settlement of the Restricted Stock Units, the issuance of Shares upon settlement of the Restricted Stock Units, the subsequent sale of Shares acquired pursuant to such issuance and the receipt of any dividends and/or any dividend equivalents; and (2) does not commit to and is under no obligation to structure the terms of the grant or any aspect of the Restricted Stock Units to reduce or eliminate the Grantee's liability for Tax Obligations or achieve any particular tax result. Further, if the Grantee has become subject to tax in more than one jurisdiction between the Date of Grant and the date of any relevant taxable event, the Grantee hereby acknowledges that the Company or the Employer may be required to withhold or account for Tax Obligations in more than one jurisdiction.

Prior to the relevant taxable or tax withholding event, as applicable, the Grantee shall pay or make arrangements satisfactory to the Company and/or the Employer to satisfy all Tax Obligations. In this regard, the Grantee authorizes the Company and/or the Employer, or their respective agents, at their discretion, to satisfy any applicable withholding obligations or rights with regard to the Tax Obligations by one or a combination of the following: (i) withholding from the Grantee's wages or other cash compensation paid to the Grantee by the Company, the Employer and/or any Related Company; or (ii) withholding from proceeds of the sale of shares of Common Stock issued upon vesting/settlement of the Restricted Stock Units either through a voluntary sale or through a mandatory sale arranged by the Company (on Grantee's behalf pursuant to this authorization); or (iii) withholding in shares of Common Stock to be issued upon vesting/settlement of the Restricted Stock Units.

The Company may withhold or account for Tax Obligations by considering applicable minimum or maximum statutory withholding amounts or other applicable withholding rates so long as such withholding does not result in adverse treatment for financial accounting purposes. If the obligation for Tax Obligations is satisfied by withholding in Shares, for tax purposes, the Grantee shall be deemed to have been issued the full number of Shares subject to the vested Restricted Stock Units, notwithstanding that a number of Shares are held back solely for the purpose of paying the Tax Obligations due as a result of any aspect of the Grantee's participation in the Plan.

Finally, the Grantee shall pay to the Company and/or the Employer any amount of Tax Obligations that the Company and/or the Employer may be required to withhold or account for as a result of the Grantee's participation in the Plan that cannot be satisfied by the means previously described. The Grantee hereby acknowledges and agrees that the Company may refuse to issue or deliver the Shares, any cash payments receivable at settlement or the proceeds of the sale of Shares, if the Grantee fails to comply with his or her obligations in connection with the Tax Obligations.

**5. Restricted Stock Units and Interests Not Transferable.** No Restricted Stock Units or any interest or right therein or part thereof shall be liable for the debts, contracts or engagements of the Grantee or his or her successors in interest or shall be subject to disposition by transfer, alienation, anticipation, pledge, encumbrance, assignment or any other means whether such disposition be voluntary or involuntary or by operation of law by judgment, levy, attachment, garnishment or any other legal or equitable proceedings (including bankruptcy), and any attempted disposition thereof shall be null and void and of no effect.

**6. Rights as Stockholder.** Neither the Grantee nor any person claiming under or through the Grantee shall have any of the rights or privileges of a stockholder of the Company in respect of any Shares issuable hereunder unless and until certificates representing such Shares (which may be in uncertificated form) will have been issued and recorded on the books and records of the Company or its transfer agents or registrars, and delivered to the Grantee (including through electronic delivery to a brokerage account). After such issuance, recordation and delivery, the Grantee shall have all the rights of a stockholder of the Company, including with respect to the right to vote the Shares and the right to receive any cash or share dividends or other distributions paid to or made with respect to the Shares. Notwithstanding the foregoing provisions, nothing in this Section 6 eliminates or reduces the Company's rights to enforce the terms and provisions of the *Compensation Recovery Policy*, if applicable, to the extent permissible under applicable law.

7. **Restrictions on Resale.** The Grantee hereby agrees not to sell any Shares at a time when applicable laws, Company policies or an agreement between the Company and/or its underwriters prohibit a sale. This restriction (if any) will apply as long as the Grantee's service continues and for such period of time after the Grantee's Termination of Service as the Company may specify.

8. **Adjustments.** The number of Restricted Stock Units awarded pursuant to this Agreement is subject to adjustment as provided in Article 15 of the Plan. The Grantee shall be notified of such adjustment and such adjustment shall be binding upon the Company and the Grantee.

9. **NO GUARANTEE OF CONTINUED SERVICE. THE GRANTEE HEREBY ACKNOWLEDGES AND AGREES THAT THE VESTING OF RESTRICTED STOCK UNITS PURSUANT TO THE VESTING SCHEDULE HEREOF IS EARNED ONLY (1) BY CONTINUING TO PROVIDE SERVICE AS AN EMPLOYEE OR OTHER SERVICE PROVIDER AT THE WILL OF THE COMPANY OR THE EMPLOYER (AND NOT THROUGH THE ACT OF BEING HIRED, BEING AWARDED RESTRICTED STOCK UNITS, OR RECEIVING CASH OR SHARES HEREUNDER) AND, IF APPLICABLE, (2) THE ABSENCE OF AN ACCOUNTING RESTATEMENT (AS THAT TERM IS DEFINED IN THE COMPENSATION RECOVERY POLICY) . THE GRANTEE FURTHER ACKNOWLEDGES AND AGREES THAT THIS AGREEMENT, THE TRANSACTIONS CONTEMPLATED HEREUNDER AND THE VESTING SCHEDULE SET FORTH HEREIN DO NOT CONSTITUTE AN EXPRESS OR IMPLIED PROMISE OF CONTINUED ENGAGEMENT AS AN EMPLOYEE OR OTHER SERVICE PROVIDER, AS APPLICABLE, FOR THE VESTING PERIOD, FOR ANY PERIOD, OR AT ALL, AND SHALL NOT INTERFERE WITH THE GRANTEE'S RIGHT OR THE COMPANY'S OR THE EMPLOYER'S RIGHT TO TERMINATE THE GRANTEE'S RELATIONSHIP AS AN EMPLOYEE OR SERVICE PROVIDER AT ANY TIME, WITH OR WITHOUT CAUSE, AND IN ACCORDANCE WITH APPLICABLE LOCAL LAW.**

10. **Entire Agreement: Governing Law.** The Grant Notice, the Plan and this Agreement constitute the entire agreement of the parties with respect to the subject matter hereof and supersede in their entirety all prior undertakings and agreements of the Company and the Grantee with respect to the subject matter hereof, and may not be modified adversely to the Grantee's interest except by means of a writing signed by the Company and the Grantee. Nothing in the Grant Notice, the Plan and this Agreement (except as expressly provided therein) is intended to confer any rights or remedies on any persons other than the parties. The Grant Notice, the Plan and this Agreement are to be construed in accordance with and governed by the internal laws of the State of California (as permitted by Section 1646.5 of the California Civil Code, or any similar successor provision) without giving effect to any choice of law rule that would cause the application of the laws of any jurisdiction other than the internal laws of the State of California to the rights and duties of the parties. For purposes of litigating any dispute that arises directly or indirectly from the relationship of the parties evidenced by this grant or the Agreement, the parties hereby submit to and consent to the exclusive jurisdiction of the State of California and agree that such litigation shall be conducted only in the courts of Alameda County, California, or the federal courts for the United States for the Northern District of California, and no other courts, where this grant is made and/or to be performed. Should any provision of the Grant Notice, the Plan or this Agreement be determined by a court of law to be illegal or unenforceable, such provision shall be enforced to the fullest extent allowed by law and the other provisions shall nevertheless remain effective and shall remain enforceable.

11. **Conformity to Securities Laws.** The Grantee acknowledges that the Plan and this Agreement are intended to conform to the extent necessary with all provisions of the Securities Act of 1933, as amended, and the Exchange Act, and any and all regulations and rules promulgated thereunder by the U.S. Securities and Exchange Commission, including, without limitation, Rule 16b-3 under the Exchange Act. Notwithstanding anything herein to the contrary, the Plan shall be administered, and the Restricted Stock Units are granted, only in such a manner as to conform to such laws, rules and regulations. To the extent permitted by applicable law, the Plan and this Agreement shall be deemed amended to the extent necessary to conform to such laws, rules and regulations.

12. **Interpretation and Amendments.** The award of Restricted Stock Units, the vesting and delivery of Restricted Stock Units and the issuance of Shares upon vesting are subject to, and shall be administered in accordance with, the provisions of the Plan, as the same may be amended from time to time, provided that no amendment may, without the consent of the Grantee, affect the rights of the Grantee under this award of Restricted Stock Units in a materially adverse manner. For purposes of the foregoing sentence, an amendment that affects the tax treatment of the Restricted Stock Units shall not be considered as affecting the Grantee's rights in a materially adverse manner.

13. **Headings.** The captions used in the Grant Notice and this Agreement are inserted for convenience and shall not be deemed a part of the award of Restricted Stock Units for construction or interpretation.

14. **Notices.** Any notice required or permitted hereunder shall be given in writing and shall be deemed effectively given upon personal delivery or upon deposit in the United States mail by certified mail, (if the parties are within the United States) or upon deposit for delivery by an internationally recognized express mail courier service (for international delivery of notice) with postage and fees prepaid, addressed to the Grantee to his or her address shown in the Company records, and to the Company at its principal executive office.

15. **Successors and Assigns.** The Company may assign any of its rights under this Agreement to single or multiple assignees, and this Agreement shall inure to the benefit of the successors and assigns of the Company. Subject to the restrictions on transfer herein set forth, this Agreement shall be binding upon the Grantee and his or her heirs, executors, administrators, successors and assign.

16. **Severability.** In the event that any provision in this Agreement is held invalid or unenforceable, such provision will be severable from, and such invalidity or unenforceability will not be construed to have any effect on, the remaining provisions of this Agreement.

**17. Code Section 409A.** For Grantees subject to tax in the U.S., the vesting and settlement of Restricted Stock Units awarded pursuant to this Agreement are intended to qualify for the "short-term deferral" exemption from Section 409A of the Code. The Company reserves the right, to the extent the Company deems necessary or advisable in its sole discretion, to unilaterally amend or modify the Plan and/or this Agreement to ensure that the Restricted Stock Units qualify for exemption from or comply with Section 409A of the Code; *provided, however*, that the Company makes no representations that the Restricted Stock Units will be exempt from Section 409A of the Code and makes no undertaking to preclude Section 409A of the Code from applying to these Restricted Stock Units.

**18. Nature of Grant.** In accepting the grant, the Grantee hereby acknowledges that:

- (a) the Plan is established voluntarily by the Company, it is discretionary in nature and it may be modified, amended, suspended or terminated by the Company at any time;
- (b) the grant of the Restricted Stock Units is voluntary and occasional and does not create any contractual or other right to receive future grants of Restricted Stock Units, or benefits in lieu of Restricted Stock Units, even if Restricted Stock Units have been granted repeatedly in the past;
- (c) all decisions with respect to future Restricted Stock Units grants, if any, shall be at the sole discretion of the Company;
- (d) the Grantee's participation in the Plan shall not create a right to further employment with the Company or the Employer and shall not interfere with the ability of the Company or the Employer, as applicable, to terminate the Grantee's employment or other service relationship with the Company or the Employer at any time;
- (e) the Grantee is voluntarily participating in the Plan;
- (f) the Restricted Stock Units grant and the Grantee's participation in the Plan shall not be interpreted to form an employment contract or other service relationship with the Company or a Related Company;
- (g) the future value of the underlying Shares is unknown and cannot be predicted with certainty;
- (h) Neither the Company nor the Employer is providing any tax, legal or financial advice, nor is the Company or the Employer making any recommendations regarding the Grantee's participation in the Plan, or the Grantee's acquisition or sale of the underlying Shares;
- (i) the Grantee is hereby advised to consult with his or her own personal tax, legal and financial advisors regarding the Grantee's participation in the Plan before taking any action related to the Plan;
- (j) the Restricted Stock Units and the benefits, if any, under the Plan shall not automatically transfer to another company in the case of a merger, take-over or transfer of liability;
- (k) the Restricted Stock Units and the Shares subject to the Restricted Stock Units are an extraordinary item that does not constitute compensation of any kind for services of any kind rendered to the Company or any Related Company, and which is outside the scope of the Grantee's employment or other service relationship contract, if any;
- (l) the Restricted Stock Units and the Shares subject to the Restricted Stock Units are not intended to replace any pension rights or compensation;
- (m) in consideration of the grant of the Restricted Stock Units, no claim or entitlement to compensation or damages shall arise from forfeiture of the Restricted Stock Units resulting from the Grantee's Termination of Service with the Company or any Related Company (for any reason whatsoever and whether or not later found to be invalid or in breach of employment or other applicable law in the jurisdiction where the Grantee is providing services or the terms of the Grantee's employment or service agreement, if any), and the Grantee hereby irrevocably releases the Company and the Employer from any such claim that may arise; if, notwithstanding the foregoing, any such claim is found by a court of competent jurisdiction to have arisen, the Grantee shall be deemed irrevocably to have waived his or her entitlement to pursue such claim;
- (n) the Restricted Stock Units and the Shares subject to the Restricted Stock Units are not part of normal or expected compensation or salary for any purposes, including, but not limited to, calculating any severance, resignation, termination, redundancy, dismissal, end-of-service payments, bonuses, long-service awards, pension or retirement or welfare benefits or similar payments and in no event should be considered as compensation for, or relating in any way to, past services for the Company or any Related Company; and
- (o) in the event of the Grantee's Termination of Service (whether or not later found to be invalid or in breach of employment or other applicable law in the jurisdiction where the Grantee is providing services or the terms of the Grantee's employment or service agreement, if any), the Grantee's right, if any, to vest in the Restricted Stock Units under the Plan shall terminate effective as of the date that the Grantee is no longer actively employed by or in a service relationship with the Company or a Related Company and shall not be extended by any notice period mandated under local law; the Committee shall have the exclusive discretion to determine when the Grantee is no longer actively employed by or in a service relationship with the Company or a Related Company for purposes of the Restricted Stock Units granted hereunder.

19. **Data Privacy.** Grantee hereby explicitly and unambiguously consents to the collection, use and transfer, in electronic or other form, of the Grantee's personal data as described in this Agreement, including the Addendum, and any other Restricted Stock Unit materials by and among, as applicable, the Company and any Related Company for the exclusive purposes of implementing, administering and managing the Grantee's participation in the Plan.

The Grantee hereby acknowledges that he or she understands that the Company may hold certain personal information about the Grantee, including, but not limited to, the Grantee's name, home address and telephone number, date of birth, social security number or other identification number, salary, nationality, job title, any Shares or directorships held in the Company, details of all Restricted Stock Units or any other entitlement to Shares awarded, canceled, exercised, vested, unvested or outstanding in favor of the Grantee ("Data"), for the exclusive purpose of implementing, administering and managing the Plan.

The Grantee hereby acknowledges that he or she understands that Data will be transferred to any Company authorized third party(ies) assisting in the implementation, administration and management of the Plan. The Grantee hereby acknowledges that he or she understands that the recipients of the Data may be located in the Grantee's country of residence or elsewhere, and that the recipients' country may have different data privacy laws and protections than the Grantee's country.

For Grantees outside the U.S., the following paragraph applies:

The Grantee hereby acknowledges that he or she understands that the Grantee may request a list with the names and addresses of any potential recipients of the Data by contacting the Grantee's local human resources representative. The Grantee hereby authorizes the Company and any Company authorized third party service provider(s) which may assist the Company (presently or in the future) with implementing, administering and managing the Plan to receive, possess, use, retain and transfer Data, in electronic or other form, for the purposes of implementing, administering and managing the Grantee's participation in the Plan. The Grantee hereby acknowledges that he or she understands that Data will be held only as long as is necessary to implement, administer and manage the Grantee's participation in the Plan. The Grantee hereby acknowledges that he or she understands that the Grantee may, at any time, view Data, request additional information about the storage and processing of Data, require any necessary amendments to Data or refuse or withdraw the consents herein, in any case without cost, by contacting in writing the Grantee's local human resources representative. The Grantee hereby acknowledges that he or she understands, however, that refusing or withdrawing the Grantee's consent may affect the Grantee's ability to participate in the Plan. For more information on the consequences of the Grantee's refusal to consent or withdrawal of consent, the Grantee hereby acknowledges that he or she understands that the Grantee may contact his or her local human resources representative.

20. **Electronic Delivery and Participation.** The Company may, in its sole discretion, decide to deliver any documents related to current or future participation in the Plan by electronic means. The Grantee hereby consents to receive such documents by electronic delivery and agree to participate in the Plan through an on-line or electronic system established and maintained by the Company or a third party designated by the Company.

21. **Language.** If the Grantee has received this Agreement or any other document related to the Plan translated into a language other than English and if the meaning of the translated version is different than the English version, the English version will control, unless otherwise prescribed by local law.

22. **Addendum.** Notwithstanding any provisions in this Agreement, the Restricted Stock Unit grant shall be subject to any special terms and conditions set forth in any Addendum to this Agreement for the Grantee's country. Moreover, if the Grantee relocates to one of the countries included in the Addendum, the special terms and conditions for such country will apply to the Grantee, to the extent the Company determines that the application of such terms and conditions is necessary or advisable in order to comply with local law or facilitate the administration of the Plan. The Addendum constitutes part of this Agreement.

23. **Imposition of Other Requirements.** The Company reserves the right to impose other requirements on the Grantee's participation in the Plan, on the Restricted Stock Units and on any Shares acquired under the Plan, to the extent the Company determines it is necessary or advisable in order to comply with local law or facilitate the administration of the Plan, and to require the Grantee to sign any additional agreements or undertakings that may be necessary to accomplish the foregoing.

24. **Waiver.** The Grantee acknowledges that a waiver by the Company of breach of any provision of this Agreement shall not operate or be construed as a waiver of any other provision of this Agreement, or of any subsequent breach by the Grantee or any other grantee.

\*\*\*\*\*

**ENERGY RECOVERY, INC.  
2020 INCENTIVE PLAN**

**RESTRICTED STOCK UNIT GRANT NOTICE AND RESTRICTED STOCK UNIT AGREEMENT**

Energy Recovery, Inc., a Delaware corporation (the “**Company**”), pursuant to its 2020 Incentive Plan, as amended from time to time (the “**Plan**”), hereby grants to the individual listed below (the “**Grantee**”) an Award for the number of Restricted Stock Units set forth below. This Award of Restricted Stock Units is subject to all of the terms and conditions as set forth herein, in the Restricted Stock Unit Agreement that is attached hereto (the “**Restricted Stock Unit Agreement**”), including the special provisions for the Grantee’s country of residence, if any, set forth in the attached Addendum (the “**Addendum**”), and the Plan, each of which is incorporated herein by reference. Unless otherwise defined herein, the terms defined in the Plan shall have the same defined meanings in this Restricted Stock Unit Grant Notice (“**Grant Notice**”) and the Restricted Stock Unit Agreement, including the Addendum.

**Grantee:**

**Date of Grant:**

**Total Number of Restricted Stock Units:**

**Vesting Commencement Date:**

**Vesting Schedule:**

The Restricted Stock Units (“**RSUs**”) granted under this Award are subject to the vesting schedule attached hereto as Appendix, which sets forth each date of vesting under the column labeled “**Date**” (each, a “**Vesting Date**”) and the number of RSUs that vest on such Vesting Date under the column labeled “**Quantity**”. Additional terms and conditions also apply to the vesting of RSUs, which are described more fully in the accompanying Restricted Stock Unit Agreement.

The Grantee acknowledges receipt of a copy of the Plan, the Restricted Stock Unit Agreement, and the addendum, and represents that he or she is familiar with the terms and provisions thereof, and hereby accepts the Restricted Stock Units subject to all of the terms and provisions hereof and thereof, including, without limitation, the provision in the restricted stock unit agreement under which the grantee irrevocably authorizes and instructs the company and/or the Employer, or their respective agents, at their discretion, to satisfy the Tax Obligations by one or a combination of the following: (i) withholding from the Grantee’s wages or other cash compensation paid to the Grantee by the Company, the Employer and/or any Related Company; or (ii) withholding from proceeds of the sale of shares of Common Stock issued upon vesting/settlement of the Restricted Stock Units either through a voluntary sale or through a mandatory sale arranged by the Company (on Grantee’s behalf pursuant to this authorization); or (iii) withholding in shares of Common Stock to be issued upon vesting/settlement of the Restricted Stock Units. The Grantee has reviewed this Grant Notice, the Plan, the restricted Stock Unit Agreement, and the addendum, in their entirety, has had an opportunity to obtain the advice of counsel prior to executing this Grant Notice, and fully understands all provisions of this Grant Notice, the Plan, the Restricted Stock Unit Agreement, and the addendum. The Grantee hereby agrees to accept as binding, conclusive and final all decisions or interpretations of the Committee upon any questions arising under the Plan, this Grant Notice or the Restricted Stock Unit Agreement, including the addendum.

**ENERGY RECOVERY, INC.**

By:

Name:

Title:

**GRANTEE:**

By:

Name:

**Appendix**

**VESTING SCHEDULE**

Date	Quantity



**ENERGY RECOVERY, INC.**  
**2020 INCENTIVE PLAN**  
**RESTRICTED STOCK UNIT AGREEMENT**

**1. Award of Restricted Stock Units.**

(a) **Award.** Energy Recovery, Inc., a Delaware corporation (the "**Company**") hereby grants as of the Grant Date set forth in the Restricted Stock Unit Grant Notice (the "**Grant Notice**") to the Grantee (the "**Grantee**") named in the Grant Notice an Award with respect to the number of Restricted Stock Units set forth in the Grant Notice, subject to the terms and provisions of the Grant Notice, this Restricted Stock Unit Agreement and the Addendum (collectively this "**Agreement**"), and the Company's 2020 Incentive Plan (the "**Plan**"). Each Restricted Stock Unit represents the right to receive one share of Common Stock of the Company (a "**Share**") on the date the Restricted Stock Units vest. Unless and until the Restricted Stock Units are vested in the manner set forth in Section 2 hereof, the Grantee shall have no right to settlement of any such Restricted Stock Units. Prior to settlement of any vested Restricted Stock Units, such Restricted Stock Units represent an unsecured obligation of the Company, payable (if at all) from the general assets of the Company.

(b) **Definitions.** All capitalized terms used in this Agreement without definition shall have the meanings ascribed in the Plan and the Grant Notice.

(c) **Incorporation of Terms of Plan.** The award of Restricted Stock Units is subject to the terms and conditions of the Plan which are incorporated herein by reference. In the event of any inconsistency between the Plan and this Agreement, the terms of the Plan shall control.

**2. Vesting and Forfeiture.**

(a) **Forfeiture.** Any Restricted Stock Units which are not vested as of the date of the Grantee's Termination of Service shall thereupon be forfeited immediately and without any further action by the Company. The date of the Grantee's Termination of Service shall not be extended to include any notice of termination or similar period and shall be considered ceased on the last active day of service (as determined by the Committee) for the purposes of the Plan.

(b) **Vesting.** Subject to Section 2(a) hereof, the Restricted Stock Units shall vest in accordance with the vesting schedule set forth on Appendix, attached hereto, provided the Grantee is employed or in a service relationship on such Vesting Date and remains in continuous service during the entire period commencing on the Vesting Commencement Date and ending on the applicable Vesting Date. The Grantee's active service does not terminate when the Grantee goes on a military leave, a sick leave or another bona fide leave of absence, if the leave was approved by the Company in writing. However, the Grantee's active service terminates when the approved leave ends, unless the Grantee immediately returns to active service. If the Grantee goes on a leave of absence, then the vesting schedule specified in the Grant Notice may be adjusted in accordance with the Company's leave of absence policy or the terms of the Grantee's leave if permissible under applicable local law. If the Grantee commences working on a part-time basis, then the vesting schedule specified in the Grant Notice may be adjusted in accordance with the Company's part-time work policy or the terms of an agreement between the Grantee and the Company pertaining to the Grantee's part-time schedule if permissible under applicable local law.

**3. Settlement.**

(a) **Time and Form of Payment.** Subject to the terms of the Plan and this Agreement, any Restricted Stock Units that vest and become nonforfeitable shall be settled in whole Shares, which shall be issued in book-entry form, registered in the Grantee's name. Such settlement shall be made as soon as practicable, but no later than 60 days, following the date of vesting. The value of any fractional Restricted Stock Units shall be paid in cash at the time the Shares are delivered in settlement of the Restricted Stock Units.

(b) **Conditions to Settlement of Restricted Stock Units.** Notwithstanding any other provision of this Agreement (including without limitation Section 2(b)):

(i) No Shares shall be issued to the Grantee or his or her legal representative unless and until the Grantee or his or her legal representative shall have satisfied all applicable tax withholding obligations pursuant to Section 4 hereof.

(ii) The Company shall not be required to issue or deliver any Shares prior to the fulfillment of all of the following conditions: (A) the admission of the Shares subject to the award to listing on all stock exchanges on which the Common Stock is then listed; (B) the completion of any subject to the Award registration or other qualification of the Shares under any applicable securities law, any U.S. state or federal or foreign law, or under rulings or regulations of the U.S. Securities and Exchange Commission or other governmental regulatory body, which the Committee shall, in its sole and absolute discretion, deem necessary and advisable, or if the offering of the Shares is not so registered, a determination by the Company that the issuance of the Shares would be exempt from any such registration or qualification requirements; (C) the obtaining of any approval or other clearance from any state or federal or foreign governmental agency that the Committee shall, in its absolute discretion, determine to be necessary or advisable; and (D) the lapse of any such reasonable period of time following the date the Restricted Stock Units vest as the Committee may from time to time establish for reasons of administrative convenience.

4. **Tax Obligations.** Regardless of any action the Company and/or the Grantee's actual employer (the ***Employer***"), if the Company is not the Grantee's employer, takes with respect to any or all income tax, social security, payroll tax, payment on account or other tax-related items related to the Grantee's participation in the Plan and legally applicable to the Grantee ("***Tax Obligations***"), the Grantee hereby acknowledges that the ultimate liability for all Tax Obligations is and remains the Grantee's responsibility and may exceed the amount actually withheld by the Company and/or the Employer. The Grantee further acknowledges that neither the Company nor the Employer (1) makes any representations or undertakings regarding the treatment of any Tax Obligations in connection with any aspect of the Restricted Stock Units, including, but not limited to, the grant, vesting or settlement of the Restricted Stock Units, the issuance of Shares upon settlement of the Restricted Stock Units, the subsequent sale of Shares acquired pursuant to such issuance and the receipt of any dividends and/or any dividend equivalents; and (2) does not commit to and is under no obligation to structure the terms of the grant or any aspect of the Restricted Stock Units to reduce or eliminate the Grantee's liability for Tax Obligations or achieve any particular tax result. Further, if the Grantee has become subject to tax in more than one jurisdiction between the Date of Grant and the date of any relevant taxable event, the Grantee hereby acknowledges that the Company or the Employer may be required to withhold or account for Tax Obligations in more than one jurisdiction.

Prior to the relevant taxable or tax withholding event, as applicable, the Grantee shall pay or make arrangements satisfactory to the Company and/or the Employer to satisfy all Tax Obligations. In this regard, the Grantee authorizes the Company and/or the Employer, or their respective agents, at their discretion, to satisfy any applicable withholding obligations or rights with regard to the Tax Obligations by one or a combination of the following: (i) withholding from the Grantee's wages or other cash compensation paid to the Grantee by the Company, the Employer and/or any Related Company; or (ii) withholding from proceeds of the sale of shares of Common Stock issued upon vesting/settlement of the Restricted Stock Units either through a voluntary sale or through a mandatory sale arranged by the Company (on Grantee's behalf pursuant to this authorization); or (iii) withholding in shares of Common Stock to be issued upon vesting/settlement of the Restricted Stock Units.

The Company may withhold or account for Tax Obligations by considering applicable minimum or maximum statutory withholding amounts or other applicable withholding rates so long as such withholding does not result in adverse treatment for financial accounting purposes. If the obligation for Tax Obligations is satisfied by withholding in Shares, for tax purposes, the Grantee shall be deemed to have been issued the full number of Shares subject to the vested Restricted Stock Units, notwithstanding that a number of Shares are held back solely for the purpose of paying the Tax Obligations due as a result of any aspect of the Grantee's participation in the Plan.

Finally, the Grantee shall pay to the Company and/or the Employer any amount of Tax Obligations that the Company and/or the Employer may be required to withhold or account for as a result of the Grantee's participation in the Plan that cannot be satisfied by the means previously described. The Grantee hereby acknowledges and agrees that the Company may refuse to issue or deliver the Shares, any cash payments receivable at settlement or the proceeds of the sale of Shares, if the Grantee fails to comply with his or her obligations in connection with the Tax Obligations.

5. **Restricted Stock Units and Interests Not Transferable.** No Restricted Stock Units or any interest or right therein or part thereof shall be liable for the debts, contracts or engagements of the Grantee or his or her successors in interest or shall be subject to disposition by transfer, alienation, anticipation, pledge, encumbrance, assignment or any other means whether such disposition be voluntary or involuntary or by operation of law by judgment, levy, attachment, garnishment or any other legal or equitable proceedings (including bankruptcy), and any attempted disposition thereof shall be null and void and of no effect.

6. **Rights as Stockholder.** Neither the Grantee nor any person claiming under or through the Grantee shall have any of the rights or privileges of a stockholder of the Company in respect of any Shares issuable hereunder unless and until certificates representing such Shares (which may be in uncertificated form) will have been issued and recorded on the books and records of the Company or its transfer agents or registrars, and delivered to the Grantee (including through electronic delivery to a brokerage account). After such issuance, recordation and delivery, the Grantee shall have all the rights of a stockholder of the Company, including with respect to the right to vote the Shares and the right to receive any cash or share dividends or other distributions paid to or made with respect to the Shares.

7. **Restrictions on Resale.** The Grantee hereby agrees not to sell any Shares at a time when applicable laws, Company policies or an agreement between the Company and/or its underwriters prohibit a sale. This restriction (if any) will apply as long as the Grantee's service continues and for such period of time after the Grantee's Termination of Service as the Company may specify.

8. **Adjustments.** The number of Restricted Stock Units awarded pursuant to this Agreement is subject to adjustment as provided in Article 15 of the Plan. The Grantee shall be notified of such adjustment and such adjustment shall be binding upon the Company and the Grantee.

9. **NO GUARANTEE OF CONTINUED SERVICE.** THE GRANTEE HEREBY ACKNOWLEDGES AND AGREES THAT THE VESTING OF RESTRICTED STOCK UNITS PURSUANT TO THE VESTING SCHEDULE HEREOF IS EARNED ONLY (1) BY CONTINUING TO PROVIDE SERVICE AS AN EMPLOYEE OR OTHER SERVICE PROVIDER AT THE WILL OF THE COMPANY OR THE EMPLOYER (AND NOT THROUGH THE ACT OF BEING HIRED, BEING AWARDED RESTRICTED STOCK UNITS, OR RECEIVING CASH OR SHARES HEREUNDER) AND, IF APPLICABLE, (2) *THE ABSENCE OF AN ACCOUNTING RESTATEMENT (AS THAT TERM IS DEFINED IN THE COMPENSATION RECOVERY POLICY)*. THE GRANTEE FURTHER ACKNOWLEDGES AND AGREES THAT THIS AGREEMENT, THE TRANSACTIONS CONTEMPLATED HEREUNDER AND THE VESTING SCHEDULE SET FORTH HEREIN DO NOT CONSTITUTE AN EXPRESS OR IMPLIED PROMISE OF CONTINUED ENGAGEMENT AS AN EMPLOYEE OR OTHER SERVICE PROVIDER, AS APPLICABLE, FOR THE VESTING PERIOD, FOR ANY PERIOD, OR AT ALL, AND SHALL NOT INTERFERE WITH THE GRANTEE'S RIGHT OR THE COMPANY'S OR THE EMPLOYER'S RIGHT TO TERMINATE THE GRANTEE'S RELATIONSHIP AS AN EMPLOYEE OR SERVICE PROVIDER AT ANY TIME, WITH OR WITHOUT CAUSE, AND IN ACCORDANCE WITH APPLICABLE LOCAL LAW.

10. **Entire Agreement: Governing Law.** The Grant Notice, the Plan and this Agreement constitute the entire agreement of the parties with respect to the subject matter hereof and supersede in their entirety all prior undertakings and agreements of the Company and the Grantee with respect to the subject matter hereof, and may not be modified adversely to the Grantee's interest except by means of a writing signed by the Company and the Grantee. Nothing in the Grant Notice, the Plan and this Agreement (except as expressly provided therein) is intended to confer any rights or remedies on any persons other than the parties. The Grant Notice, the Plan and this Agreement are to be construed in accordance with and governed by the internal laws of the State of California (as permitted by Section 1646.5 of the California Civil Code, or any similar successor provision) without giving effect to any choice of law rule that would cause the application of the laws of any jurisdiction other than the internal laws of the State of California to the rights and duties of the parties. For purposes of litigating any dispute that arises directly or indirectly from the relationship of the parties evidenced by this grant or the Agreement, the parties hereby submit to and consent to the exclusive jurisdiction of the State of California and agree that such litigation shall be conducted only in the courts of Alameda County, California, or the federal courts for the United States for the Northern District of California, and no other courts, where this grant is made and/or to be performed. Should any provision of the Grant Notice, the Plan or this Agreement be determined by a court of law to be illegal or unenforceable, such provision shall be enforced to the fullest extent allowed by law and the other provisions shall nevertheless remain effective and shall remain enforceable.

11. **Conformity to Securities Laws.** The Grantee acknowledges that the Plan and this Agreement are intended to conform to the extent necessary with all provisions of the Securities Act of 1933, as amended, and the Exchange Act, and any and all regulations and rules promulgated thereunder by the U.S. Securities and Exchange Commission, including, without limitation, Rule 16b-3 under the Exchange Act. Notwithstanding anything herein to the contrary, the Plan shall be administered, and the Restricted Stock Units are granted, only in such a manner as to conform to such laws, rules and regulations. To the extent permitted by applicable law, the Plan and this Agreement shall be deemed amended to the extent necessary to conform to such laws, rules and regulations.

12. **Interpretation and Amendments.** The award of Restricted Stock Units, the vesting and delivery of Restricted Stock Units and the issuance of Shares upon vesting are subject to, and shall be administered in accordance with, the provisions of the Plan, as the same may be amended from time to time, provided that no amendment may, without the consent of the Grantee, affect the rights of the Grantee under this award of Restricted Stock Units in a materially adverse manner. For purposes of the foregoing sentence, an amendment that affects the tax treatment of the Restricted Stock Units shall not be considered as affecting the Grantee's rights in a materially adverse manner.

13. **Headings.** The captions used in the Grant Notice and this Agreement are inserted for convenience and shall not be deemed a part of the award of Restricted Stock Units for construction or interpretation.

14. **Notices.** Any notice required or permitted hereunder shall be given in writing and shall be deemed effectively given upon personal delivery or upon deposit in the United States mail by certified mail, (if the parties are within the United States) or upon deposit for delivery by an internationally recognized express mail courier service (for international delivery of notice) with postage and fees prepaid, addressed to the Grantee to his or her address shown in the Company records, and to the Company at its principal executive office.

15. **Successors and Assigns.** The Company may assign any of its rights under this Agreement to single or multiple assignees, and this Agreement shall inure to the benefit of the successors and assigns of the Company. Subject to the restrictions on transfer herein set forth, this Agreement shall be binding upon the Grantee and his or her heirs, executors, administrators, successors and assign.

16. **Severability.** In the event that any provision in this Agreement is held invalid or unenforceable, such provision will be severable from, and such invalidity or unenforceability will not be construed to have any effect on, the remaining provisions of this Agreement.

17. **Code Section 409A.** For Grantees subject to tax in the U.S., the vesting and settlement of Restricted Stock Units awarded pursuant to this Agreement are intended to qualify for the "short-term deferral" exemption from Section 409A of the Code. The Company reserves the right, to the extent the Company deems necessary or advisable in its sole discretion, to unilaterally amend or modify the Plan and/or this Agreement to ensure that the Restricted Stock Units qualify for exemption from or comply with Section 409A of the Code; *provided, however*, that the Company makes no representations that the Restricted Stock Units will be exempt from Section 409A of the Code and makes no undertaking to preclude Section 409A of the Code from applying to these Restricted Stock Units.

**18. Nature of Grant.** In accepting the grant, the Grantee hereby acknowledges that:

- (a) the Plan is established voluntarily by the Company, it is discretionary in nature and it may be modified, amended, suspended or terminated by the Company at any time;
- (b) the grant of the Restricted Stock Units is voluntary and occasional and does not create any contractual or other right to receive future grants of Restricted Stock Units, or benefits in lieu of Restricted Stock Units, even if Restricted Stock Units have been granted repeatedly in the past;
- (c) all decisions with respect to future Restricted Stock Units grants, if any, shall be at the sole discretion of the Company;
- (d) the Grantee's participation in the Plan shall not create a right to further employment with the Company or the Employer and shall not interfere with the ability of the Company or the Employer, as applicable, to terminate the Grantee's employment or other service relationship with the Company or the Employer at any time;
- (e) the Grantee is voluntarily participating in the Plan;
- (f) the Restricted Stock Units grant and the Grantee's participation in the Plan shall not be interpreted to form an employment contract or other service relationship with the Company or a Related Company;
- (g) the future value of the underlying Shares is unknown and cannot be predicted with certainty;
- (h) Neither the Company nor the Employer is providing any tax, legal or financial advice, nor is the Company or the Employer making any recommendations regarding the Grantee's participation in the Plan, or the Grantee's acquisition or sale of the underlying Shares;
- (i) the Grantee is hereby advised to consult with his or her own personal tax, legal and financial advisors regarding the Grantee's participation in the Plan before taking any action related to the Plan;
- (j) the Restricted Stock Units and the benefits, if any, under the Plan shall not automatically transfer to another company in the case of a merger, take-over or transfer of liability;
- (k) the Restricted Stock Units and the Shares subject to the Restricted Stock Units are an extraordinary item that does not constitute compensation of any kind for services of any kind rendered to the Company or any Related Company, and which is outside the scope of the Grantee's employment or other service relationship contract, if any;
- (l) the Restricted Stock Units and the Shares subject to the Restricted Stock Units are not intended to replace any pension rights or compensation;
- (m) in consideration of the grant of the Restricted Stock Units, no claim or entitlement to compensation or damages shall arise from forfeiture of the Restricted Stock Units resulting from the Grantee's Termination of Service with the Company or any Related Company (for any reason whatsoever and whether or not later found to be invalid or in breach of employment or other applicable law in the jurisdiction where the Grantee is providing services or the terms of the Grantee's employment or service agreement, if any), and the Grantee hereby irrevocably releases the Company and the Employer from any such claim that may arise; if, notwithstanding the foregoing, any such claim is found by a court of competent jurisdiction to have arisen, the Grantee shall be deemed irrevocably to have waived his or her entitlement to pursue such claim;
- (n) the Restricted Stock Units and the Shares subject to the Restricted Stock Units are not part of normal or expected compensation or salary for any purposes, including, but not limited to, calculating any severance, resignation, termination, redundancy, dismissal, end-of-service payments, bonuses, long-service awards, pension or retirement or welfare benefits or similar payments and in no event should be considered as compensation for, or relating in any way to, past services for the Company or any Related Company; and
- (o) in the event of the Grantee's Termination of Service (whether or not later found to be invalid or in breach of employment or other applicable law in the jurisdiction where the Grantee is providing services or the terms of the Grantee's employment or service agreement, if any), the Grantee's right, if any, to vest in the Restricted Stock Units under the Plan shall terminate effective as of the date that the Grantee is no longer actively employed by or in a service relationship with the Company or a Related Company and shall not be extended by any notice period mandated under local law; the Committee shall have the exclusive discretion to determine when the Grantee is no longer actively employed by or in a service relationship with the Company or a Related Company for purposes of the Restricted Stock Units granted hereunder.

**19. Data Privacy.** *Grantee hereby explicitly and unambiguously consents to the collection, use and transfer, in electronic or other form, of the Grantee's personal data as described in this Agreement, including the Addendum, and any other Restricted Stock Unit materials by and among, as applicable, the Company and any Related Company for the exclusive purposes of implementing, administering and managing the Grantee's participation in the Plan.*

*The Grantee hereby acknowledges that he or she understands that the Company may hold certain personal information about the Grantee, including, but not limited to, the Grantee's name, home address and telephone number, date of birth, social security number or other identification number, salary, nationality, job title, any Shares or directorships held in the Company, details of all Restricted Stock Units or any other entitlement to Shares awarded, canceled, exercised, vested, unvested or outstanding in favor of the Grantee ("Data"), for the exclusive purpose of implementing, administering and managing the Plan.*

*The Grantee hereby acknowledges that he or she understands that Data will be transferred to any Company authorized third party(ies) assisting in the implementation, administration and management of the Plan. The Grantee hereby acknowledges that he or she understands that the recipients of the Data may be located in the Grantee's country of residence or elsewhere, and that the recipients' country may have different data privacy laws and protections than the Grantee's country.*

*For Grantees outside the U.S., the following paragraph applies:*

*The Grantee hereby acknowledges that he or she understands that the Grantee may request a list with the names and addresses of any potential recipients of the Data by contacting the Grantee's local human resources representative. The Grantee hereby authorizes the Company and any Company authorized third party service provider(s) which may assist the Company (presently or in the future) with implementing, administering and managing the Plan to receive, possess, use, retain and transfer Data, in electronic or other form, for the purposes of implementing, administering and managing the Grantee's participation in the Plan. The Grantee hereby acknowledges that he or she understands that Data will be held only as long as is necessary to implement, administer and manage the Grantee's participation in the Plan. The Grantee hereby acknowledges that he or she understands that the Grantee may, at any time, view Data, request additional information about the storage and processing of Data, require any necessary amendments to Data or refuse or withdraw the consents herein, in any case without cost, by contacting in writing the Grantee's local human resources representative. The Grantee hereby acknowledges that he or she understands, however, that refusing or withdrawing the Grantee's consent may affect the Grantee's ability to participate in the Plan. For more information on the consequences of the Grantee's refusal to consent or withdrawal of consent, the Grantee hereby acknowledges that he or she understands that the Grantee may contact his or her local human resources representative.*

**20. Electronic Delivery and Participation.** The Company may, in its sole discretion, decide to deliver any documents related to current or future participation in the Plan by electronic means. The Grantee hereby consents to receive such documents by electronic delivery and agree to participate in the Plan through an on-line or electronic system established and maintained by the Company or a third party designated by the Company.

**21. Language.** If the Grantee has received this Agreement or any other document related to the Plan translated into a language other than English and if the meaning of the translated version is different than the English version, the English version will control.

**22. Addendum.** Notwithstanding any provisions in this Agreement, the Restricted Stock Unit grant shall be subject to any special terms and conditions set forth in any Addendum to this Agreement for the Grantee's country. Moreover, if the Grantee relocates to one of the countries included in the Addendum, the special terms and conditions for such country will apply to the Grantee, to the extent the Company determines that the application of such terms and conditions is necessary or advisable in order to comply with local law or facilitate the administration of the Plan. The Addendum constitutes part of this Agreement.

**23. Imposition of Other Requirements.** The Company reserves the right to impose other requirements on the Grantee's participation in the Plan, on the Restricted Stock Units and on any Shares acquired under the Plan, to the extent the Company determines it is necessary or advisable in order to comply with local law or facilitate the administration of the Plan, and to require the Grantee to sign any additional agreements or undertakings that may be necessary to accomplish the foregoing.

\*\*\*\*\*

**ENERGY RECOVERY, INC.  
2020 INCENTIVE PLAN**

**RESTRICTED STOCK UNIT GRANT NOTICE AND RESTRICTED STOCK UNIT AGREEMENT**

Energy Recovery, Inc., a Delaware corporation (the “**Company**”), pursuant to its 2020 Incentive Plan, as amended from time to time (the “**Plan**”), hereby grants to the individual listed below (the “**Grantee**”) an Award for the number of Restricted Stock Units set forth below. This Award of Restricted Stock Units is subject to all of the terms and conditions as set forth herein, in the Restricted Stock Unit Agreement that is attached hereto (the “**Restricted Stock Unit Agreement**”), including the special provisions for the Grantee’s country of residence, if any, set forth in the attached Addendum (the “**Addendum**”), and the Plan, each of which is incorporated herein by reference. Unless otherwise defined herein, the terms defined in the Plan shall have the same defined meanings in this Restricted Stock Unit Grant Notice (“**Grant Notice**”) and the Restricted Stock Unit Agreement, including the Addendum.

**Grantee:**

**Date of Grant:**

**Total Number of Restricted Stock Units:**

**Vesting Commencement Date:**

**Vesting Schedule:**

The Restricted Stock Units (“**RSUs**”) granted under this Award are subject to the vesting schedule attached hereto as Appendix, which sets forth each date of vesting under the column labeled “**Date**” (each, a “**Vesting Date**”) and the number of RSUs that vest on such Vesting Date under the column labeled “**Quantity**”. Additional terms and conditions also apply to the vesting of RSUs, which are described more fully in the accompanying Restricted Stock Unit Agreement.

The Grantee acknowledges receipt of a copy of the Plan, the Restricted Stock Unit Agreement, and the addendum, and represents that he or she is familiar with the terms and provisions thereof, and hereby accepts the Restricted Stock Units subject to all of the terms and provisions hereof and thereof, including, without limitation, the provision in the restricted stock unit agreement under which the grantee irrevocably authorizes and instructs the company and/or the service recipient, or their respective agents, at their discretion, to satisfy the Tax Obligations by one or a combination of the following: (i) withholding from the Grantee’s wages or other cash compensation paid to the Grantee by the Company, the service recipient and/or any Related Company; or (ii) withholding from proceeds of the sale of shares of Common Stock issued upon vesting/settlement of the Restricted Stock Units either through a voluntary sale or through a mandatory sale arranged by the Company (on Grantee’s behalf pursuant to this authorization); or (iii) withholding in shares of Common Stock to be issued upon vesting/settlement of the Restricted Stock Units. The Grantee has reviewed this Grant Notice, the Plan, the restricted Stock Unit Agreement, and the addendum, in their entirety, has had an opportunity to obtain the advice of counsel prior to executing this Grant Notice, and fully understands all provisions of this Grant Notice, the Plan, the Restricted Stock Unit Agreement, and the addendum. The Grantee hereby agrees to accept as binding, conclusive and final all decisions or interpretations of the Committee upon any questions arising under the Plan, this Grant Notice or the Restricted Stock Unit Agreement, including the addendum.

**ENERGY RECOVERY, INC.**

By:

Name:

Title:

**GRANTEE:**

By:

Name:

## Appendix

### VESTING SCHEDULE

Date	Quantity

**ENERGY RECOVERY, INC.**  
**2020 INCENTIVE PLAN**  
**RESTRICTED STOCK UNIT AGREEMENT**

**1. Award of Restricted Stock Units.**

(a) **Award.** Energy Recovery, Inc., a Delaware corporation (the "**Company**") hereby grants as of the Grant Date set forth in the Restricted Stock Unit Grant Notice (the "**Grant Notice**") to the Grantee (the "**Grantee**") named in the Grant Notice an Award with respect to the number of Restricted Stock Units set forth in the Grant Notice, subject to the terms and provisions of the Grant Notice, this Restricted Stock Unit Agreement and the Addendum (collectively this "**Agreement**"), and the Company's 2020 Incentive Plan (the "**Plan**"). Each Restricted Stock Unit represents the right to receive one share of Common Stock of the Company (a "**Share**") on the date the Restricted Stock Units vest. Unless and until the Restricted Stock Units are vested in the manner set forth in Section 2 hereof, the Grantee shall have no right to settlement of any such Restricted Stock Units. Prior to settlement of any vested Restricted Stock Units, such Restricted Stock Units represent an unsecured obligation of the Company, payable (if at all) from the general assets of the Company.

(b) **Definitions.** All capitalized terms used in this Agreement without definition shall have the meanings ascribed in the Plan and the Grant Notice.

(c) **Incorporation of Terms of Plan.** The award of Restricted Stock Units is subject to the terms and conditions of the Plan which are incorporated herein by reference. In the event of any inconsistency between the Plan and this Agreement, the terms of the Plan shall control.

**2. Vesting and Forfeiture.**

(a) **Forfeiture.** Any Restricted Stock Units which are not vested as of the date of the Grantee's Termination of Service shall thereupon be forfeited immediately and without any further action by the Company. In the event of the Grantee's Termination of Service (whether or not later found to be invalid or in breach of employment or other applicable law in the jurisdiction where the Grantee is providing services or the terms of the Grantee's employment or service agreement, if any), the Grantee's right, if any, to vest in the Restricted Stock Units under the Plan shall terminate effective as of the date that the Grantee is no longer actively providing services and shall not be extended by any notice period mandated under local law; the Committee shall have the exclusive discretion to determine when the Grantee is no longer actively providing services for purposes of the Restricted Stock Units granted hereunder.

(b) **Vesting.** Subject to Section 2(a) hereof, the Restricted Stock Units shall vest in accordance with the vesting schedule set forth on Appendix, attached hereto, provided the Grantee is employed or in a service relationship on such Vesting Date and remains in continuous service during the entire period commencing on the Vesting Commencement Date and ending on the applicable Vesting Date. The Grantee's active service does not terminate when the Grantee goes on a military leave, a sick leave or another bona fide leave of absence, if the leave was approved by the Company in writing or to the extent required by applicable local law. However, the Grantee's active service terminates when the approved leave ends, unless the Grantee immediately returns to active work. If the Grantee goes on a leave of absence, then the vesting schedule specified in the Grant Notice may be adjusted in accordance with the Company's leave of absence policy or the terms of the Grantee's leave if permissible under applicable local law. If the Grantee commences working on a part-time basis, then the vesting schedule specified in the Grant Notice may be adjusted in accordance with the Company's part-time work policy or the terms of an agreement between the Grantee and the Company pertaining to the Grantee's part-time schedule if permissible under applicable local law.

**3. Settlement.**

(a) **Time and Form of Payment.** Subject to the terms of the Plan and this Agreement, any Restricted Stock Units that vest and become nonforfeitable shall be settled in whole Shares, which shall be issued in book-entry form, registered in the Grantee's name. Such settlement shall be made as soon as practicable, but no later than 60 days, following the date of vesting. The value of any fractional Restricted Stock Units shall be paid in cash at the time the Shares are delivered in settlement of the Restricted Stock Units.

(b) **Conditions to Settlement of Restricted Stock Units.** Notwithstanding any other provision of this Agreement (including without limitation Section 2(b)):

(i) No Shares shall be issued to the Grantee or his or her legal representative unless and until the Grantee or his or her legal representative shall have satisfied all applicable tax withholding obligations pursuant to Section 4 hereof.



(ii) The Company shall not be required to issue or deliver any Shares prior to the fulfillment of all of the following conditions: (A) the admission of the Shares subject to the award to listing on all stock exchanges on which the Common Stock is then listed; (B) the completion of any subject to the Award registration or other qualification of the Shares under any applicable securities law, any U.S. state or federal or foreign law, or under rulings or regulations of the U.S. Securities and Exchange Commission or other governmental regulatory body, which the Committee shall, in its sole and absolute discretion, deem necessary and advisable, or if the offering of the Shares is not so registered, a determination by the Company that the issuance of the Shares would be exempt from any such registration or qualification requirements; (C) the obtaining of any approval or other clearance from any state or federal or foreign governmental agency that the Committee shall, in its absolute discretion, determine to be necessary or advisable; and (D) the lapse of any such reasonable period of time following the date the Restricted Stock Units vest as the Committee may from time to time establish for reasons of administrative convenience.

#### **4. Tax Obligations.**

(a) Regardless of any action the Company and/or any Related Company to whom the Grantee provides services (the **Service Recipient**) takes with respect to any or all income tax, social security contributions, social insurance, payroll tax, fringe benefits tax, payment on account or other tax-related items related to the Grantee's participation in the Plan and legally applicable to the Grantee ("**Tax Obligations**"), the Grantee hereby acknowledges that the ultimate liability for all Tax Obligations is and remains the Grantee's responsibility and may exceed the amount, if any, actually withheld by the Company and/or the Service Recipient. The Grantee further acknowledges that neither the Company nor the Service Recipient (1) makes any representations or undertakings regarding the treatment of any Tax Obligations in connection with any aspect of the Restricted Stock Units or the underlying Shares, including, but not limited to, the grant, vesting or settlement of the Restricted Stock Units, the issuance of Shares upon settlement of the Restricted Stock Units, the subsequent sale of Shares acquired pursuant to such issuance and the receipt of any dividends and/or any dividend equivalents; and (2) does not commit to and is under no obligation to structure the terms of the grant or any aspect of the Restricted Stock Units to reduce or eliminate the Grantee's liability for Tax Obligations or achieve any particular tax result. Further, if the Grantee has become subject to Tax Obligations in more than one jurisdiction between the Date of Grant and the date of any relevant taxable event, the Grantee hereby acknowledges that the Company or the Service Recipient may be required to withhold or account for Tax Obligations in more than one jurisdiction.

(b) Prior to any relevant taxable or tax withholding event, as applicable, the Grantee shall pay or make arrangements satisfactory to the Company and/or the Service Recipient to satisfy all Tax Obligations. In this regard, the Grantee authorizes the Company and/or the Service Recipient, or their respective agents, at their discretion, to satisfy any applicable withholding obligations or rights with regard to all Tax Obligations by one or a combination of the following: (i) requiring the Grantee to make a payment in a form acceptable to the Company; (ii) withholding from the Grantee's wages or other cash compensation payable to the Grantee; (iii) withholding from proceeds of the sale of shares of Common Stock acquired upon vesting/settlement of the Restricted Stock Units either through a voluntary sale or through a mandatory sale arranged by the Company (on Grantee's behalf pursuant to this authorization); (iv) withholding in shares of Common Stock to be issued upon vesting/settlement of the Restricted Stock Units; or (v) any other method of withholding determined by the Company and to the extent required by applicable law or the Plan, approved by the Committee.

(c) The Company and/or the Service Recipient may withhold or account for Tax Obligations by considering statutory or other withholding rates, including minimum or maximum rates applicable in the Grantee's jurisdiction(s) so long as such withholding or accounting does not result in adverse treatment for financial accounting purposes. In the event of over-withholding, the Grantee may receive a refund from the Company and/or the Service Recipient of any over-withheld amount in cash (with no entitlement to the equivalent in Shares), or if not refunded by the Company and/or the Service Recipient, the Grantee must seek a refund from the local tax authorities to the extent the Grantee wishes to recover the over-withheld amount in the form of a refund. If the obligation for Tax Obligations is satisfied by withholding in Shares, for tax purposes, the Grantee shall be deemed to have been issued the full number of Shares subject to the vested Restricted Stock Units, notwithstanding that a number of Shares are held back solely for the purpose of paying the Tax Obligations due as a result of any aspect of the Grantee's participation in the Plan. The Company and/or the Service Recipient may refuse to issue or deliver the Shares or the proceeds from the sale of Shares to the Grantee if the Grantee fails to comply with the Grantee's obligations in connection with the Tax Obligations.

(d) Finally, the Grantee shall pay to the Company and/or the Service Recipient any amount of Tax Obligations that the Company and/or the Service Recipient may be required to withhold or account for as a result of the Grantee's participation in the Plan that cannot be satisfied by the means previously described. The Grantee hereby acknowledges and agrees that the Company may refuse to issue or deliver the underlying Shares, any cash payments receivable at settlement or the proceeds of the sale of Shares, if the Grantee fails to comply with his or her obligations in connection with the Tax Obligations.

**5. Restricted Stock Units and Interests Not Transferable.** No Restricted Stock Units or any interest or right therein or part thereof shall be liable for the debts, contracts or engagements of the Grantee or his or her successors in interest or shall be subject to disposition by transfer, alienation, anticipation, pledge, encumbrance, assignment or any other means whether such disposition be voluntary or involuntary or by operation of law by judgment, levy, attachment, garnishment or any other legal or equitable proceedings (including bankruptcy), and any attempted disposition thereof shall be null and void and of no effect.

6. **Rights as Stockholder.** Neither the Grantee nor any person claiming under or through the Grantee shall have any of the rights or privileges of a stockholder of the Company in respect of any Shares issuable hereunder unless and until certificates representing such Shares (which may be in uncertificated form) will have been issued and recorded on the books and records of the Company or its transfer agents or registrars, and delivered to the Grantee (including through electronic delivery to a brokerage account). After such issuance, recordation and delivery, the Grantee shall have all the rights of a stockholder of the Company, including with respect to the right to vote the Shares and the right to receive any cash or share dividends or other distributions paid to or made with respect to the Shares.

7. **Restrictions on Resale.** The Grantee hereby agrees not to sell any Shares at a time when applicable laws, Company policies or an agreement between the Company and/or its underwriters prohibit a sale. This restriction (if any) will apply as long as the Grantee's service continues and for such period of time after the Grantee's Termination of Service as the Company may specify.

8. **Adjustments.** The number of Restricted Stock Units awarded pursuant to this Agreement is subject to adjustment as provided in Article 15 of the Plan. The Grantee shall be notified of such adjustment and such adjustment shall be binding upon the Company and the Grantee.

9. **NO GUARANTEE OF CONTINUED SERVICE. THE GRANTEE HEREBY ACKNOWLEDGES AND AGREES THAT THE VESTING OF RESTRICTED STOCK UNITS PURSUANT TO THE VESTING SCHEDULE HEREOF IS EARNED ONLY (1) BY CONTINUING TO PROVIDE SERVICE AS AN EMPLOYEE OR OTHER SERVICE PROVIDER AT THE WILL OF THE COMPANY OR THE EMPLOYER (AND NOT THROUGH THE ACT OF BEING HIRED, BEING AWARDED RESTRICTED STOCK UNITS, OR RECEIVING CASH OR SHARES HEREUNDER) AND, IF APPLICABLE, (2) THE ABSENCE OF AN ACCOUNTING RESTATEMENT (AS THAT TERM IS DEFINED IN THE COMPENSATION RECOVERY POLICY) . THE GRANTEE FURTHER ACKNOWLEDGES AND AGREES THAT THIS AGREEMENT, THE TRANSACTIONS CONTEMPLATED HEREUNDER AND THE VESTING SCHEDULE SET FORTH HEREIN DO NOT CONSTITUTE AN EXPRESS OR IMPLIED PROMISE OF CONTINUED ENGAGEMENT AS AN EMPLOYEE OR OTHER SERVICE PROVIDER, AS APPLICABLE, FOR THE VESTING PERIOD, FOR ANY PERIOD, OR AT ALL, AND SHALL NOT INTERFERE WITH THE GRANTEE'S RIGHT OR THE COMPANY'S OR THE EMPLOYER'S RIGHT TO TERMINATE THE GRANTEE'S RELATIONSHIP AS AN EMPLOYEE OR SERVICE PROVIDER AT ANY TIME, WITH OR WITHOUT CAUSE, AND IN ACCORDANCE WITH APPLICABLE LOCAL LAW.**

10. **Entire Agreement: Governing Law and Venue.** The Grant Notice, the Plan and this Agreement constitute the entire agreement of the parties with respect to the subject matter hereof and supersede in their entirety all prior undertakings and agreements of the Company and the Grantee with respect to the subject matter hereof, and may not be modified adversely to the Grantee's interest except by means of a writing signed by the Company and the Grantee. Nothing in the Grant Notice, the Plan and this Agreement (except as expressly provided therein) is intended to confer any rights or remedies on any persons other than the parties. The Grant Notice, the Plan and this Agreement are to be construed in accordance with and governed by the internal laws of the State of California (as permitted by Section 1646.5 of the California Civil Code, or any similar successor provision) without giving effect to any choice of law rule that would cause the application of the laws of any jurisdiction other than the internal laws of the State of California to the rights and duties of the parties. For purposes of litigating any dispute that arises directly or indirectly from the relationship of the parties evidenced by this grant or the Agreement, the parties hereby submit to and consent to the exclusive jurisdiction of the State of California and agree that such litigation shall be conducted only in the courts of Alameda County, California, or the federal courts for the United States for the Northern District of California, and no other courts, where this grant is made and/or to be performed. Should any provision of the Grant Notice, the Plan or this Agreement be determined by a court of law to be illegal or unenforceable, such provision shall be enforced to the fullest extent allowed by law and the other provisions shall nevertheless remain effective and shall remain enforceable.

11. **Conformity to Securities Laws.** The Grantee acknowledges that the Plan and this Agreement are intended to conform to the extent necessary with all provisions of the U.S. Securities Act of 1933, as amended, and the Exchange Act, and any and all regulations and rules promulgated thereunder by the U.S. Securities and Exchange Commission, including, without limitation, Rule 16b-3 under the Exchange Act. Notwithstanding anything herein to the contrary, the Plan shall be administered, and the Restricted Stock Units are granted, only in such a manner as to conform to such laws, rules and regulations. To the extent permitted by applicable law, the Plan and this Agreement shall be deemed amended to the extent necessary to conform to such laws, rules and regulations.

12. **Interpretation and Amendments.** The award of Restricted Stock Units, the vesting and delivery of Restricted Stock Units and the issuance of Shares upon vesting are subject to, and shall be administered in accordance with, the provisions of the Plan, as the same may be amended from time to time, provided that no amendment may, without the consent of the Grantee, affect the rights of the Grantee under this award of Restricted Stock Units in a materially adverse manner. For purposes of the foregoing sentence, an amendment that affects the tax treatment of the Restricted Stock Units shall not be considered as affecting the Grantee's rights in a materially adverse manner.

13. **Headings.** The captions used in the Grant Notice and this Agreement are inserted for convenience and shall not be deemed a part of the award of Restricted Stock Units for construction or interpretation.

14. **Notices.** Any notice required or permitted hereunder shall be given in writing and shall be deemed effectively given upon personal delivery or upon deposit in the United States mail by certified mail, (if the parties are within the United States) or upon deposit for delivery by an internationally recognized express mail courier service (for international delivery of notice) with postage and fees prepaid, addressed to the Grantee to his or her address shown in the Company records, and to the Company at its principal executive office.

**15. Successors and Assigns.** The Company may assign any of its rights under this Agreement to single or multiple assignees, and this Agreement shall inure to the benefit of the successors and assigns of the Company. Subject to the restrictions on transfer herein set forth, this Agreement shall be binding upon the Grantee and his or her heirs, executors, administrators, successors and assign.

**16. Severability.** In the event that any provision in this Agreement is held invalid or unenforceable, such provision will be severable from, and such invalidity or unenforceability will not be construed to have any effect on, the remaining provisions of this Agreement.

**17. Code Section 409A.** For Grantees subject to tax in the U.S., the vesting and settlement of Restricted Stock Units awarded pursuant to this Agreement are intended to qualify for the "short-term deferral" exemption from Section 409A of the Code. The Company reserves the right, to the extent the Company deems necessary or advisable in its sole discretion, to unilaterally amend or modify the Plan and/or this Agreement to ensure that the Restricted Stock Units qualify for exemption from or comply with Section 409A of the Code; *provided, however*, that the Company makes no representations that the Restricted Stock Units will be exempt from Section 409A of the Code and makes no undertaking to preclude Section 409A of the Code from applying to these Restricted Stock Units.

**18. Nature of Grant.** In accepting the Restricted Stock Units, the Grantee hereby acknowledges, understands and agrees that:

- (a) the Plan is established voluntarily by the Company, it is discretionary in nature and it may be modified, amended, suspended or terminated by the Company at any time, to the extent permitted by the Plan;
- (b) the grant of the Restricted Stock Units is exceptional, voluntary and occasional and does not create any contractual or other right to receive future grants of Restricted Stock Units, or benefits in lieu of Restricted Stock Units, even if Restricted Stock Units have been granted in the past;
- (c) all decisions with respect to future Restricted Stock Units or other awards, if any, shall be at the sole discretion of the Company;
- (d) the Grantee's participation in the Plan shall not create a right to further employment with the Company or the Service Recipient and shall not interfere with the ability of the Company or the Service Recipient, as applicable, to terminate the Grantee's employment or other service relationship with the Company or the Service Recipient at any time;
- (e) the Grantee is voluntarily participating in the Plan;
- (f) the Restricted Stock Units grant and the Grantee's participation in the Plan shall not be interpreted to form an employment contract or other service relationship with the Company or a Related Company;
- (g) the future value of the underlying Shares is unknown and cannot be predicted with certainty;
- (h) the value of the Shares acquired upon settlement of the Restricted Stock Units may increase or decrease in value;
- (i) the Grantee is hereby advised to consult with his or her own personal tax, legal and financial advisors regarding the Grantee's participation in the Plan before taking any action related to the Plan;
- (j) the Restricted Stock Units and the benefits, if any, under the Plan shall not automatically transfer to another company in the case of a merger, take-over or transfer of liability;
- (k) the Restricted Stock Units and the Shares subject to the Restricted Stock Units are an extraordinary item that does not constitute compensation of any kind for services of any kind rendered to the Company or any Related Company, and which is outside the scope of the Grantee's employment or other service relationship contract, if any;
- (l) the Restricted Stock Units and the Shares subject to the Restricted Stock Units are not intended to replace any pension rights or compensation;
- (m) in consideration of the grant of the Restricted Stock Units, no claim or entitlement to compensation or damages shall arise from forfeiture of the Restricted Stock Units resulting from the Grantee's Termination of Service with the Company, the Service Recipient or any Related Company (for any reason whatsoever whether or not later found to be invalid or in breach of employment laws in the jurisdiction where the Grantee is providing services or the terms of the Grantee's employment or service agreement, if any), and the Grantee hereby irrevocably releases the Company, the Service Recipient or any Related Company from any such claim that may arise; if, notwithstanding the foregoing, any such claim is found by a court of competent jurisdiction to have arisen, the Grantee shall be deemed irrevocably to have waived his or her entitlement to pursue such claim;
- (n) the Restricted Stock Units and the Shares subject to the Restricted Stock Units and the income from and value of same, are not part of normal or expected compensation or salary for any purposes, including, but not limited to, calculating any severance, resignation, termination, redundancy, dismissal, end-of-service payments, bonuses, holiday pay, long-service awards, pension or retirement or welfare benefits or similar payments and in no event should be considered as compensation for, or relating in any way to, past services for the Company or any Related Company;

(o) neither the Company nor the Service Recipient shall be liable for any foreign exchange rate fluctuation between the Grantee's local currency and the United States Dollar that may affect the value of the Restricted Stock Units or of any amounts due to the Grantee pursuant to the settlement of the Restricted Stock Units or the subsequent sale of any Shares acquired upon settlement.

**19. No Advice Regarding Grant.** The Company is not providing any tax, legal, or financial advice, nor is the Company making any recommendations regarding the Grantee's participation in the Plan, or the Grantee's acquisition or sale of the underlying Shares. The Grantee should consult with the Grantee's own personal tax, legal, and financial advisors regarding the Grantee's participation in the Plan before taking any action related to the Plan.

**20. Data Privacy.** *The Grantee hereby explicitly and unambiguously consents to the collection, use and transfer, in electronic or other form, of the Grantee's personal data as described in this Agreement, including the Addendum, and any other Restricted Stock Unit materials by and among, as applicable, the Company and any Related Company for the exclusive purposes of implementing, administering and managing the Grantee's participation in the Plan.*

(a) **Data Collection and Usage.** *The Grantee hereby acknowledges that he or she understands that the Company may hold certain personal information about the Grantee, including, but not limited to, the Grantee's name, home address, telephone number, email address, date of birth, social insurance number, passport or other identification number, salary, nationality, job title, any Shares or directorships held in the Company, details of all Restricted Stock Units granted under the Plan or any other entitlement to Shares awarded, canceled, exercised, vested, unvested or outstanding in favor of the Grantee ("Data"), for the legitimate purpose of implementing, administering and managing the Plan. Where required, the legal basis for the collection and processing of Data is the Grantee's consent.*

(b) **Stock Plan Administration and Stock Plan Administrator.** *The Grantee hereby acknowledges that he or she understands that Data will be transferred to any Company authorized third party(ies) assisting in the implementation, administration and management of the Plan. The Company may select a different service provider or additional service providers and share Data with such other provider(s) serving in a similar manner. The Grantee may be asked to agree on separate terms and data processing practices with the service provider, with such agreement being a condition to the ability to participate in the Plan.*

(c) **International Data Transfers.** *The Company and Company authorized third party(ies) assisting in the implementation, administration and management of the Plan are based in the United States. The Grantee's country of residence or jurisdiction may have different data privacy laws and protections than the United States. The Company's legal basis, where required for the transfer of Data is the Grantee's consent.*

(d) **Data Retention.** *The Company will hold and use Data only as long as is necessary to implement, administer and manage the Grantee's participation in the Plan, or as required to comply with legal or regulatory obligations, including under tax, exchange control, securities and labor laws. This may mean Data is retained until after the Grantee's employment or service relationship ends, plus any additional time periods necessary for compliance with law, exercise or defense of legal rights, archiving, back-up and deletion purposes.*

(e) **Voluntariness and Consequences of Consent Denial or Withdrawal** *Participation in the Plan is voluntary and the Grantee is providing the consents herein on a voluntary basis. The Grantee understands that the Grantee may request to stop the transfer and processing of the Data for purposes of the Grantee's participation in the Plan and that the Grantee's employment or service relationship with the Company (or the Service Recipient) will not be affected. The only consequence of refusing or withdrawing consent is that the Company would not be able to allow the Grantee to participate in the Plan. The Grantee understands that the Data will still be processed in relation to the Grantee's employment or service relationship for record-keeping purposes.*

(f) **Data Subject Rights.** *The Grantee may have a number of rights under data privacy laws in the Grantee's jurisdiction. Depending on where the Grantee is based, such rights may include the right to (i) request access to or copies of Data the Company processes, (ii) rectify incorrect Data, (iii) delete Data, (iv) restrict the processing of Data, (v) restrict the portability of Data, (vi) lodge complaints with competent authorities in the Grantee's jurisdiction, and/or (vii) receive a list with the names and addresses of any potential recipients of Data. To receive clarification regarding these rights or to exercise these rights, the Grantee can contact the Grantee's local human resources representative or the Company.*

**21. Electronic Delivery and Participation.** The Company may, in its sole discretion, decide to deliver any documents related to current or future participation in the Plan by electronic means. The Grantee hereby consents to receive such documents by electronic delivery and agree to participate in the Plan through an on-line or electronic system established and maintained by the Company or a third party designated by the Company.

**22. Language.** The Grantee acknowledges that he or she is sufficiently proficient in English, or has consulted with an advisor who is sufficiently proficient in English, so as to allow the Grantee to understand the terms and conditions of this Agreement. If the Grantee has received this Agreement or any other document related to the Plan translated into a language other than English and if the meaning of the translated version is different than the English version, the English version will control.

23. **Addendum.** Notwithstanding any provisions in this Agreement, the Restricted Stock Unit grant shall be subject to any additional terms and conditions set forth in any Addendum to this Agreement for the Grantee's country. Moreover, if the Grantee relocates to one of the countries included in the Addendum, the additional terms and conditions for such country will apply to the Grantee, to the extent the Company determines that the application of such terms and conditions is necessary or advisable in order to comply with local law or facilitate the administration of the Plan. The Addendum constitutes part of this Agreement.

24. **Imposition of Other Requirements.** The Company reserves the right to impose other requirements on the Grantee's participation in the Plan, on the Restricted Stock Units and on any Shares acquired under the Plan, to the extent the Company determines it is necessary or advisable in order to comply with local law or facilitate the administration of the Plan, and to require the Grantee to sign any additional agreements or undertakings that may be necessary to accomplish the foregoing.

25. **Waiver.** The Grantee acknowledges that a waiver by the Company of breach of any provision of this Agreement shall not operate or be construed as a waiver of any other provision of this Agreement, or of any subsequent breach by the Grantee or any other grantee.

26. **Insider Trading/Market Abuse.** The Grantee acknowledges that, depending on his or her country, the Grantee may be subject to insider trading restrictions and/or market abuse laws in applicable jurisdictions, which may affect his or her ability to acquire, sell or attempt to sell Shares or rights to Shares (e.g., Restricted Stock Units) under the Plan during such times as the Grantee is considered to have "inside information" regarding the Company (as defined by laws in the applicable jurisdiction or the Grantee's country). Any restrictions under these laws or regulations are separate from and in addition to any restrictions that may be imposed under any applicable Company insider trading policy. The Grantee acknowledges that it is his or her responsibility to comply with any applicable restrictions as well as any applicable Company insider trading policy, and the Grantee is advised to speak to his or her personal advisor on this matter.

27. **Exchange Control, Foreign Asset/Account and/or Tax Reporting.** Depending upon the country to which laws the Grantee is subject, the Grantee may have certain foreign asset/account and/or tax reporting requirements that may affect the Grantee's ability to acquire or hold Shares under the Plan or cash received from participating in the Plan (including from any dividends or dividend equivalents or sale proceeds arising from the sale of Shares) in a brokerage or bank account outside the Grantee's country of residence. The Grantee's country may require that the Grantee report such accounts, assets or transactions to the applicable authorities in the Grantee's country. The Grantee also may be required to repatriate cash received from participating in the Plan to Grantee's country within a certain period of time after receipt. The Grantee is responsible for knowledge of and compliance with any such regulations and should speak with the Grantee's personal tax, legal and financial advisors regarding same.

\*\*\*\*\*

## **APPENDIX A**

### **ADDENDUM TO RESTRICTED STOCK UNIT AWARD AGREEMENT FOR NON-U.S. GRANTEES UNDER THE ENERGY RECOVER, INC. 2020 INCENTIVE PLAN**

Certain capitalized terms used but not defined in this Addendum (the “**Addendum**”) shall have the meanings set forth in the Plan or the Restricted Stock Unit Award Agreement for Non-U.S. Grantees (the “**Agreement**”).

#### ***Terms and Conditions***

This Addendum includes additional terms and conditions that govern the Grantee's Restricted Stock Units if the Grantee resides and/or works in one of the countries listed below. If the Grantee is a citizen or resident of a country (or is considered as such for local law purposes) other than the country in which the Grantee is currently residing and/or working, or if the Grantee relocates to another country after the grant of the Restricted Stock Units, the Company shall, in its discretion, determine to what extent the additional terms and conditions contained herein will be applicable to the Grantee.

#### ***Notifications***

This Addendum also includes information regarding securities, exchange control, tax and certain other issues of which the Grantee should be aware with respect to the Grantee's participation in the Plan. The information is based on the exchange control, securities, tax and other laws in effect in the countries listed in this Addendum, as of November 2021. Such laws are often complex and change frequently. As a result, the Grantee should not rely on the notifications herein as the only source of information relating to the consequences of the Grantee's participation in the Plan because the information may be outdated when the Grantee vests in the Restricted Stock Units and acquires Shares, or when the Grantee subsequently sells Shares acquired under the Plan.

In addition, the information is general in nature and may not apply to the Grantee's particular situation, and the Company is not in a position to assure the Grantee of any particular result. Accordingly, the Grantee is advised to seek appropriate professional advice as to how the relevant laws in the Grantee's country may apply to the Grantee's individual situation.

Finally, if the Grantee is a citizen or resident (or is considered as such for local tax purposes) of a country other than the one in which the Grantee is currently residing and/or working, or if the Grantee moves or transfers to another country after the grant of Restricted Stock Units, the information contained herein may not be applicable to the Grantee in the same manner.

#### **INDIA**

There are no country-specific terms and conditions.

#### **POLAND**

There are no country-specific terms and conditions.



## Employee Information Supplement Restricted Stock Units

### INDIA

#### Overview

This supplement has been prepared to provide you with a summary and an example of the tax consequences and certain other issues associated with the grant of restricted stock units (“RSUs”)<sup>1</sup> by **Energy Recovery, Inc.** (the “**Company**”) under the **2020 Incentive Plan** (the “**Plan**”).

This supplement is based on the tax laws in effect in your country as of **October 2021**.

Tax laws often are complex and can change frequently. As a result, you should consult with your personal tax advisor for current information and further guidance regarding your personal tax liabilities and responsibilities associated with the grant of your RSUs, the vesting of your RSUs and issuance of Company shares, and the sale of Company shares acquired under the Plan.

Please note that this supplement is general in nature and does not discuss all of the various laws, rules and regulations that may apply. It may not apply to your particular tax or financial situation, and the Company is not in a position to assure you of any particular tax result. The information in this supplement assumes that the RSUs will be settled in shares and that the shares will be issued as soon as administratively practicable following the date of vesting. Further, the example included is hypothetical and does not reflect the RSUs granted to you or the actual share price that may apply during the life of the RSUs and at sale of the shares. **You should consult with an appropriate professional advisor as to how the tax or other laws in your country apply to your specific situation.**

If you are a citizen or resident of another country or transfer employment and/or residency after RSUs are granted to you or if you are no longer actively employed at the time of the taxable event, the information contained in this supplement may not be applicable to you.

Finally, the information in this supplement assumes that you are not a U.S. tax resident and that you have completed a Form W-8BEN to certify your status as a non-U.S. person.

**This document constitutes part of a prospectus covering securities that have been registered with the U.S. Securities and Exchange Commission under the U.S. Securities Act of 1933, as amended.**

<sup>1</sup> RSUs are an unfunded, unsecured promise to issue Company shares at no cost to you at a later time.

TAX	
<b>Grant</b>	No taxation.
<b>Vesting</b>	On the date(s) the RSUs vest and you acquire shares, you will be subject to taxation.
<i>Taxable Amount</i>	The fair market value of the shares on the date of vesting. For Indian tax purposes, the fair market value of the shares will be based on a valuation prepared by a Category 1 Merchant Bank.
<i>Nature of Taxable Amount</i>	Employment benefits.
<i>Is Income Tax Payable?</i>	Yes.
<i>Are Employee Social Insurance Contributions Payable?</i>	No.
<i>Are Other Taxes Payable?</i>	<p><u>Education and Health</u> cess. Education and health cess at 4% will be due on the income tax payable plus surcharge</p> <p><u>Surcharge.</u> Taxable income exceeding INR 5 million up to INR 10 million will be subject to a 10% surcharge. A 15% surcharge applies for taxable income exceeding INR 10 million up to INR 20 million. A 25% surcharge applies for taxable income exceeding INR 20 million up to INR 50 million. A 37% surcharge applies for taxable income exceeding INR 50 million</p>

EMPLOYER TAX WITHHOLDING AND REPORTING	
<b>Withholding</b>	
<i>Is Income Tax Withheld?</i>	Yes.
<i>Are Employee Social Insurance Contributions Withheld?</i>	Not applicable.
<i>Are Other Taxes Withheld?</i>	Yes (Education and health cess and surcharge).
<b>Reporting</b>	
<i>Does the Taxable Amount Need to be Reported?</i>	Your employer will report the taxable amount as taxable income to the local tax authorities on Form 24Q (quarterly statement of tax withholding). In addition, your employer will report the taxable amount to you on Form 12BA attached to Form 16, by June 15 following the fiscal year end (March 31) in which the taxable event occurs.



SALE OF SHARES	
<b><i>Taxation in Your Country</i></b>	<p>When you sell shares acquired under the Plan, you will be subject to capital gains tax to the extent that the sale proceeds exceed your cost basis in the shares (generally, the fair market value of the shares on the date of acquisition, as determined by a Category 1 Merchant Bank).</p> <p>If you hold the shares acquired under the Plan for more than 24 months, you will be taxed at the more favorable long-term capital gains tax rate (plus health and education cess and, if applicable, surcharge) and entitled to claim cost inflation indexation benefits on your cost of acquisition. In case of long-term capital gains, you may be eligible to certain deductions based on specified reinvestments, subject to prescribed conditions.</p> <p>If you hold the shares for 24 months <b>or less, you will be taxed at your marginal</b> income tax rate (plus education and health cess and, if applicable, surcharge).</p> <p>If your sale proceeds are lower than your cost basis in the shares, you will realize a loss. Capital losses (short-term or long-term) may be offset against other capital gains of the same nature (<i>i.e.</i>, short-term or long-term) that you realize in the same tax year or in any subsequent tax year up to a maximum of 8 years. Long-term capital loss cannot be set off against short-term capital gains. Income tax returns is required to be filed within the due date in order to be eligible to carry forward capital losses, if any.</p> <p><i>The calculation of capital gains (losses) at the time of sale is complex and you should consult with your personal tax advisor.</i></p>
<b><i>Taxation in the U.S.</i></b>	<p>Assuming you are not a U.S. tax resident and have provided the Company and/or the broker with a Form W-8BEN to certify your status as a non-U.S. person, you will not be subject to tax in the U.S. on any gain you realize when shares acquired under the Plan are sold. If you have not provided a Form W-8BEN, the broker will perform U.S. back-up withholding on the gain at a rate of 24%.</p>

YOUR TAX REPORTING AND PAYMENT OBLIGATIONS	
<b><i>Vesting</i></b>	<p>You are required to report the taxable income in your income tax return (<b>ITR</b>) based on the amount reported by your employer in Form 16 and pay any additional tax due.</p> <p>The deadline for filing the ITR is July 31.</p>
<b><i>Sale of Shares</i></b>	<p>You will be responsible for reporting and paying any tax resulting from the sale of shares.</p> <p>Capital gains tax is payable under the Advance Tax System during the fiscal year (i.e., April 1 – March 31) in four (4) installments, as follows:</p> <ul style="list-style-type: none"> <li>• On or before June 15 – not less than 15% of the tax payable for the year;</li> <li>• On or before September 15 – not less than 45% of the tax payable for the year, reduced by the amount paid in the earlier installment.</li> <li>• On or before December 15 – not less than 75% of the tax payable for the year, reduced by the amount paid in the earlier installment; and</li> <li>• On or before March 15 – the whole amount of the tax payable for the year, reduced by the amount paid in the earlier installments.</li> </ul> <p>Payments are due pursuant to the above schedule based on the date that you realize a capital gain. For example, if you realize a capital gain in October, you must pay not less than 75% of the tax due on such capital gain by December 15 and the remaining tax due by the applicable dates. If you fail to pay the required amount of capital gains tax according to the above schedule, you will be liable for interest at a rate of 1% per month on the amount of the underpayment.</p> <p>In addition, you are required to report any capital gain/loss in your ITR under <b>Income from Capital Gains</b>.</p> <p>You must also report any shares held at any time during the applicable tax year (April 1 – March 31) in Schedule Foreign Assets in the ITR.</p> <p>The deadline for filing the ITR is July 31.</p>

OTHER INFORMATION	
<b>Foreign Asset/Account Reporting</b>	<p>You are required to declare your foreign bank accounts and any foreign financial assets (including shares held outside India) in your annual tax return.</p> <p><i>As the reporting rules are stringent, you should consult with your personal tax or legal advisor regarding this reporting obligation.</i></p>
<b>Exchange Control</b>	<p>You are required to repatriate the cash proceeds received upon the sale of shares and convert such proceeds into local currency within specified timeframes as required under applicable regulations. You also are required to retain the foreign inward remittance certificate as evidence of repatriation.</p> <p><i>As exchange control regulations can change frequently and without notice, you should consult your personal tax or legal advisor before selling your shares to ensure compliance with current regulations.</i></p>
<b>U.S. Estate Tax</b>	<p>You should be aware that U.S. estate tax may be assessed at the time of death if you hold Company shares (and certain awards) at this time. U.S. estate tax law requires that, for the estates of non-U.S. citizens who reside outside the U.S. ("<b>non-resident aliens</b>"), an estate tax return must be filed if the gross estate exceeds USD 60,000, though if an estate tax treaty applies, the consequences will differ. The gross estate of a non-resident alien consists only of assets located in the U.S., which will include your Company shares (and certain awards granted under the Plan). <i>Due to the complexity of these laws, your heirs should consult with a personal tax or financial advisor.</i></p>

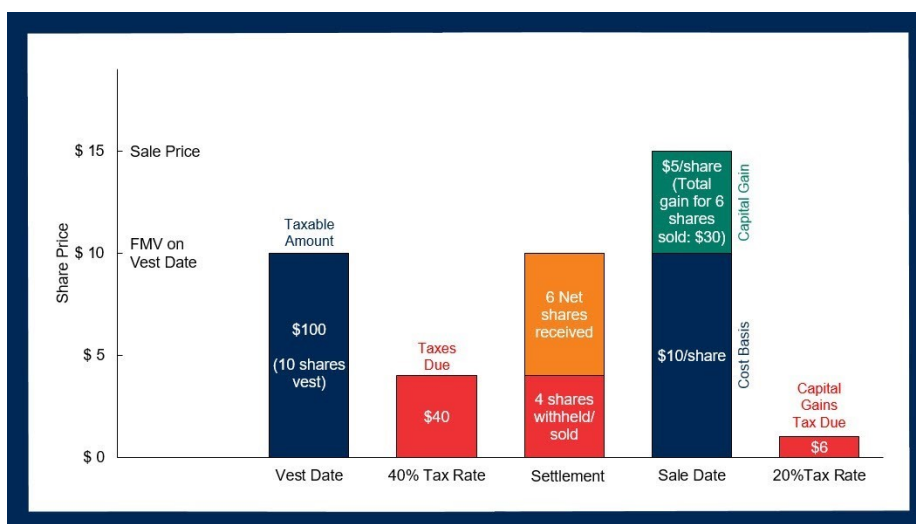
#### Example:

The following example assumes you received a grant of RSUs for 10 shares, which vest on a certain date.

On the vest date, the value of the shares subject to your RSUs is \$10. On the date you sell the shares acquired upon vesting of the RSUs, the value of the shares is \$15.

On the vest date, the Company withholds/sells shares to cover withholding taxes due at vesting. You are required to pay applicable taxes at sale.

*Note the below is a hypothetical example only and is not meant to predict the RSUs in which you may vest (if any), nor the price of the shares on the vest date or on the date of sale of the shares. The price of the shares subject to your RSUs may decrease after the vest date, in which case you would not realize a capital gain. The tax rate(s) are hypothetical and are not intended to reflect your actual tax rate(s).*



**ENERGY RECOVERY, INC.  
2020 INCENTIVE PLAN**

**STOCK APPRECIATION RIGHT GRANT NOTICE AND STOCK APPRECIATION RIGHT AGREEMENT**

Energy Recovery, Inc., a Delaware corporation (the “**Company**”), pursuant to its 2020 Incentive Plan, as amended from time to time (the “**Plan**”), hereby grants to the individual listed below (the “**Participant**”) an Award of a stock appreciation right (“**SAR**”) with respect to the shares of Common Stock of the Company set forth below and subject to the terms and conditions set forth below:

**Name of Participant:**

**Total Number of Shares of Common Stock:**

**Exercise Price per Share:**

**Grant Date:**

**Vesting Commencement Date:**

**Vesting Schedule:**

This SAR becomes exercisable in accordance with the vesting schedule attached hereto as Appendix, which sets forth each date of vesting under the column labeled “**Date**” (each, a “**Vesting Date**”) and the number of options that vest on such Vesting Date under the column labeled “**Quantity**”. Additional terms and conditions also apply to the vesting of options, which are described more fully in the accompanying Stock Appreciation Right Agreement.

**Form of Settlement**

Cash, representing the excess of the closing price of the Company's stock as reported on the Nasdaq Market on the exercise date of the shares of Common Stock when the SAR is exercised over the Exercise Price.

**Expiration Date:**

This SAR expires the earlier date of 10-years from the grant date or three (3) months from the date of Termination of Service, unless termination is for cause as defined in the Stock Appreciation Rights Agreement, in which case all vested and unvested portions of the SAR are forfeited immediately.

This SAR is granted under and governed by the terms and conditions of the Stock Appreciation Right Agreement, which is attached to and made a part of this document, and the Plan. Unless otherwise defined herein, the terms defined in the Plan shall have the same defined meanings in this Stock Appreciation Right Grant Notice and the Stock Appreciation Right Agreement.

By your signature, you agree to be bound by the terms and conditions of the Plan, the Stock Appreciation Right Agreement, and this Stock Appreciation Right Grant Notice. You hereby acknowledge that you have reviewed the Stock Appreciation Right Agreement, the Plan and this Stock Appreciation Right Grant Notice in their entirety, have had an opportunity to obtain the advice of counsel prior to executing this Stock Appreciation Right Grant Notice and fully understand all provisions of this Stock Appreciation Right Grant Notice, the Stock Appreciation Right Agreement and the Plan. You hereby agree to accept as binding, conclusive and final all decisions or interpretations of the Committee upon any questions arising under the Plan or relating to the SAR.

**PARTICIPANT:**

By:

Name:

**ENERGY RECOVERY, INC.**

By:

Name:

Title:

## Appendix

### VESTING SCHEDULE

Date	Quantity

**ENERGY RECOVERY, INC.**  
**2020 INCENTIVE PLAN**  
**STOCK APPRECIATION RIGHT AGREEMENT**

1. **Grant of Stock Appreciation Right.** Pursuant to the Stock Appreciation Right Grant Notice (the “**Grant Notice**”) to which this Stock Appreciation Right Agreement (collectively this “**Agreement**”) are attached, Energy Recovery, Inc., a Delaware corporation (the “**Company**”), has granted to the Participant a Stock Appreciation Right (“**SAR**”) under the Company’s 2020 Incentive Plan (the “**Plan**”) with respect to the shares of Common Stock indicated in the Grant Notice, and subject to the terms and conditions of this Agreement and the Plan, which is incorporated herein by reference. In the event of a conflict between the terms and conditions of the Plan and this Agreement, the terms and conditions of the Plan shall prevail.

2. **Exercise and Settlement of SAR**

(a) **Right to Exercise.** The SAR shall be exercisable during its term in accordance with the Vesting Schedule set forth on Appendix, attached hereto, provided the Grantee is employed or in a service relationship on such Vesting Date, and remains in continuous service during the entire period commencing on the Vesting Commencement Date and ending on the applicable Vesting Date and with the applicable provisions of the Plan and this Agreement.

(b) **Method of Exercise.** The vested portion of the SAR shall be exercisable by delivery of a notice of exercise in such form as may be designated by the Compensation Committee from time to time, which shall state the election to exercise the SAR, the number of shares of Common Stock with respect to which the SAR is being exercised, and such other representations and agreements as may be required by the Company (the “**Exercise Notice**”). The SAR shall be deemed to be exercised upon the Company’s receipt of the Notice of Exercise.

(c) **Settlement of SAR** As soon as practicable following the Company’s receipt of the Notice of Exercise, a cash payment equal to the excess of the closing price of the Company’s stock as reported on the Nasdaq Market on the exercise date of the shares of Common Stock when the SAR is exercised over the Exercise Price will be paid to the Participant through local payroll, subject to any Tax Obligations (as defined below).

(d) **Restrictions on Exercise.** The SAR may not be exercised if the delivery of the cash payment pursuant to the exercise of the SAR would constitute a violation of any applicable law.

(e) **Responsibility for Exercise.** The Participant is responsible for taking any and all actions as may be required to exercise the SAR in a timely manner and for properly executing any such documents as may be required for exercise in accordance with such rules and procedures as may be established from time to time. The Company and/or any Parent, Subsidiary or Related Company shall have no duty or obligation to notify the Participant of the Expiration Date of the SAR.

3. **Termination of Service: Forfeiture.**

(a) **General Rule.** Except as provided below in Sections 3(b) and 3(c) and subject to the Plan, to the extent vested on the Participant’s date of Termination of Service, the SAR may be exercised for three (3) months after the date of the Participant’s Termination of Service with the Company or a Parent, Subsidiary or Related Company. The date of Termination of Service will be the date on which the Participant ceases active employment or service (as determined by the Compensation Committee or as provided in the Plan) and will not be extended by any notice period mandated under local law. In no event shall the SAR be exercised later than the Expiration Date set forth in the Grant Notice.

(b) **Death; Disability.** Upon the date of the Participant’s Termination of Service with the Company or a Parent, Subsidiary or Related Company by reason of his or her Disability or death, the vesting of the SAR shall be accelerated effective upon the date of the Participant’s Termination of Service and the SAR may be exercised for twelve (12) months thereafter, provided that in no event shall the SAR be exercised later than the Expiration Date set forth in the Grant Notice.

(c) **Cause.** Upon the Participant’s Termination of Service by the Company or a Parent, Subsidiary or Related Company for cause (as determined by the Committee or as provided in the Plan), the SAR shall expire on the date of the Participant’s Termination of Service.

(d) **Leave of Absence and Part-Time Work** For purposes of the SAR, the Participant's active service does not terminate when the Participant goes on a military leave, a sick leave or another *bona fide* leave of absence, if the leave was approved by the Company in writing. However, the Participant's active service terminates when the approved leave ends, unless the Participant immediately returns to active work. If the Participant goes on a leave of absence, then the vesting schedule specified in the Grant Notice may be adjusted in accordance with the Company's leave of absence policy or the terms of the Participant's leave if permissible under applicable local law. If the Participant commences working on a part-time basis, then the vesting schedule specified in the Grant Notice may be adjusted in accordance with the Company's part-time work policy or the terms of an agreement between the Participant and the Company pertaining to the Participant's part-time schedule if permissible under applicable local law.

(e) **Forfeiture**. The Participant shall forfeit on the date designated by the Company ("**Designated Date**") any right to exercise the SAR if the Participant fails to deliver to the Company on or prior to the Designated Date a valid and signed original of the Grant Notice in a form acceptable to, and accepted by, the Company.

4. **Non-Transferability of SAR**. The SAR may not be transferred in any manner otherwise than by will or by the laws of descent or distribution and may be exercised during the lifetime of the Participant only by the Participant. The terms of the Plan and this Agreement shall be binding upon the executors, heirs, successors and assigns of the Participant. Regardless of any marital property settlement agreement, the Company is not obligated to honor a notice of exercise from the Participant's former spouse, nor is the Company obligated to recognize the Participant's former spouse's interest in the SAR in any other way.

5. **Term of SAR**. The SAR may be exercised only within the term set out in the Grant Notice, and may be exercised during such term only in accordance with the Plan and the terms of this Agreement.

6. **Tax Obligations**.

(a) Regardless of any action the Company and/or the Participant's employer (the "**Employer**") take with respect to any or all income tax, social insurance, payroll tax, payment on account or other tax-related items arising out of participation in the Plan and legally applicable or deemed applicable to the Participant ("**Tax Obligations**"), the Participant acknowledges that the ultimate liability for all Tax Obligations is and remains the Participant's responsibility and may exceed the amount actually withheld by the Company and/or the Employer. The Participant further acknowledges that the Company and/or the Employer (i) make no representations or undertakings regarding the treatment of any Tax Obligations in connection with any aspect of the SAR, including, but not limited to, the grant, vesting or exercise of the SAR or the receipt of any cash; and (ii) do not commit and are under no obligation to structure the terms of the grant or any aspect of the SAR to reduce or eliminate the Participant's liability for Tax Obligations or achieve any particular tax result. Furthermore, if the Participant has become subject to Tax Obligations in more than one jurisdiction between the Grant Date and the date of any relevant taxable event, the Participant acknowledges that the Company and/or the Employer (or former employer, as applicable) may be required to withhold or account for Tax Obligations in more than one jurisdiction.

(b) Prior to the relevant taxable or tax withholding event, as applicable, the Participant shall pay or make arrangements satisfactory to the Company and/or the Employer to satisfy all Tax Obligations. In this regard, the Participant authorizes the Company and/or the Employer, or their respective agents, at their discretion, to satisfy the Tax Obligations by: (i) withholding from the Participant's wages or other cash compensation paid to the Participant by the Company, the Employer and/or any Related Company; or (ii) withholding from the cash payment due to the Participant upon exercise.

(c) The Participant shall pay to the Company or the Employer any amount of Tax Obligations that the Company or the Employer may be required to withhold or account for as a result of the Participant's participation in the Plan that cannot be satisfied by the means previously described in this Section. The Company may refuse to deliver the cash payment at exercise, if the Participant fails to comply with the Tax Obligation.

7. **Retention Rights**. The Participant acknowledges and agrees that the vesting of the SAR pursuant to the Vesting Schedule hereof is earned only by continuing service and not through the act of being hired or being granted the SAR. The Participant further acknowledges and agrees that this Agreement, the transactions contemplated hereunder and the Vesting Schedule set forth herein do not constitute an express or implied promise of continued engagement by the Company or the Employer in any capacity for the vesting period or for any period, or at all, and shall not interfere in any way with the Participant's right or the right of the Company or the Employer to terminate the Participant's service at any time, with or without cause subject to applicable law.

8. **Stockholder Rights**. The Participant, or the Participant's estate or heirs, have no rights as a stockholder of the Company and no rights with respect to any shares of the Company's Common Stock underlying the SAR. The Participant is not entitled to receive shares of Company's Common Stock.

9. **Nature of Grant**. In accepting the SAR, the Participant acknowledges that:

(a) the Plan is established voluntarily by the Company, is discretionary in nature, and may be amended, suspended or terminated by the Company at any time;

- (b) the grant of the SAR is exceptional, voluntary and occasional and does not create any contractual or other right to receive future grants of stock appreciation rights, or benefits in lieu of stock appreciation rights, even if stock appreciation rights have been granted repeatedly in the past;
- (c) all decisions with respect to future stock appreciation rights grants, if any, will be at the sole discretion of the Company;
- (d) the Participant's participation in the Plan is voluntary;
- (e) the grant of the SAR and the Participant's participation in the Plan shall not create a right to further employment with the Company or the Employer and shall not interfere with the ability of the Company or the Employer to terminate the Participant's employment or service relationship (if any);
- (f) the future value of the shares of Common Stock underlying the SAR is unknown and cannot be predicted with certainty;
- (g) if the underlying shares of Common Stock do not increase in value, the SAR will have no value;
- (h) the Company is not providing any tax, legal or financial advice, nor is the Company making any recommendations regarding the Participant's participation in the Plan;
- (i) the Participant is advised to consult with his or her own personal tax, legal and financial advisors regarding participation in the Plan before taking any action related to the Plan;
- (j) the Participant and the benefits under the Plan, if any, will not necessarily transfer to another company in the case of a merger, take-over or transfer of liability;
- (k) the SAR and any income from and value of same are extraordinary items that do not constitute compensation of any kind for services of any kind rendered to the Company, the Employer, or any Parent, Subsidiary or Related Company, and that are outside the scope of the Participant's employment or service contract, if any;
- (l) the SAR and any income from and value of same are not intended to replace any pension rights or compensation;
- (m) the SAR and any income from and value of same are not part of normal or expected compensation or salary for any purposes, including, but not limited to, calculating any severance, resignation, termination, redundancy, end of service payments, bonuses, holiday pay, long-service awards, pension or retirement or welfare benefits or similar payments and in no event should be considered as compensation for, or relating in any way to, past services for the Company, the Employer, or any Parent, Subsidiary or Related Company;
- (n) in consideration of the grant of the SAR, no claim or entitlement to compensation or damages shall arise from termination of the SAR or diminution in value of the SAR or cash payments made upon exercise of the SAR resulting from termination of the Participant's service (for any reason whatsoever and whether or not in breach of local labor laws); and
- (o) neither the Company, the Employer nor any Parent, Subsidiary or Related Company shall be liable for any foreign exchange rate fluctuation between the Participant's local currency and the United States Dollar that may affect the value of the SAR or of any cash amounts due to the Participant pursuant to the exercise of the SAR.

**10. Data Privacy Notice and Consent** *The Participant hereby explicitly and unambiguously consents to the collection, use and transfer, in electronic or other form, of the Participant's personal data as described in this Agreement by and among, as applicable, the Company, the Employer, and any Parent, Subsidiary or Related Company for the exclusive purpose of implementing, administering and managing the Participant's participation in the Plan.*

*The Participant hereby acknowledges that he or she understands that the Company and the Employer may hold certain personal information about the Participant, including, but not limited to, the Participant's name, home and email address and telephone number, date of birth, social insurance or other identification number, salary, nationality, job title, any shares of Common Stock or directorships held in the Company or any Parent, Subsidiary or Related Company, details of all stock appreciation rights or any other entitlement to shares of Common Stock awarded, canceled, exercised, vested, unvested or outstanding in the Participant's favor ("Data"), for the exclusive purpose of implementing, administering and managing the Plan.*

*The Participant hereby acknowledges that he or she understands that Data will be transferred to any Company authorized third party(ies) assisting in the implementation, administration and management of the Plan. The Participant understands that the recipients of the Data may be located in the Participant's country of residence or elsewhere, and that the recipient's country may have different data privacy laws and protections than the Participant's country.*



*For the Optionee outside the U.S., the following paragraph applies:*

*The Participant hereby acknowledges that he or she understands that he or she may request a list with the names and addresses of any potential recipients of Data by contacting the Participant's local human resources representative. The Participant authorizes the Company and any Company authorized third party(ies) service provider which may assist the Company (presently or in the future) with implementing, administering and managing the Plan to receive, possess, use, retain and transfer Data, in electronic or other form, for the purposes of implementing, administering and managing the Participant's participation in the Plan. The Participant understands that Data will be held only as long as is necessary to implement, administer and manage the Participant's participation in the Plan. The Participant understands that he or she may, at any time, view Data, request information about the storage and processing of Data, require any necessary amendments to Data or refuse or withdraw the consents herein, in any case without cost, by contacting in writing the Participant's local human resources representative. The Participant understands that refusal or withdrawal of consent may affect the Participant's ability to participate in the Plan. For more information on the consequences of the Participant's refusal to consent or withdrawal of consent, the Participant understands that he or she may contact his or her local human resources representative.*

**11. Section 409A.** For Participants subject to tax in the U.S., notwithstanding any other provision of the Plan, this Agreement or the Grant Notice, the Plan, this Agreement and the Grant Notice shall be interpreted in accordance with, and incorporate the terms and conditions required by, Section 409A of the U.S. Internal Revenue Code of 1986, as amended (together with any Department of Treasury regulations and other interpretive guidance issued thereunder, including without limitation any such regulations or other guidance that may be issued after the date hereof, "Section 409A"). The Company reserves the right, to the extent the Company deems necessary or advisable in its sole discretion, to unilaterally amend or modify the Plan, this Agreement or the Grant Notice or adopt other policies and procedures (including amendments, policies and procedures with retroactive effect), or take any other actions, as the Committee determines are necessary or appropriate to ensure that the SAR qualifies for exemption from, or complies with the requirements of, Section 409A; provided, however, that the Company makes no representation that the SAR will be exempt from, or will comply with, Section 409A, and makes no undertakings to preclude Section 409A of the Code from applying to the SAR or to ensure that it complies with Section 409A.

**12. Entire Agreement; Governing Law.** The Plan, the Grant Notice and this Agreement constitute the entire agreement of the parties with respect to the subject matter hereof and supersede in their entirety all prior undertakings and agreements of the Company and the Participant with respect to the subject matter hereof. This Agreement may not be modified adversely to the Optionee's interest except by means of a writing signed by the Company and the Optionee. Nothing in the Plan and this Agreement (except as expressly provided therein) is intended to confer any rights or remedies on any persons other than the parties. The Plan and this Agreement are to be construed in accordance with and governed by the internal laws of the State of California (as permitted by Section 1646.5 of the California Civil Code, or any similar successor provision) without giving effect to any choice of law rule that would cause the application of the laws of any jurisdiction other than the internal laws of the State of California to the rights and duties of the parties. For purposes of litigating any dispute that arises directly or indirectly from the relationship of the parties evidenced by this grant or the Agreement, the parties hereby submit to and consent to the exclusive jurisdiction of the State of California and agree that such litigation shall be conducted only in the courts of Alameda county, California, or the federal courts for the United States for the Northern District of California, and no other courts, where this grant is made and/or to be performed. Should any provision of the Plan or this Agreement be determined by a court of law to be illegal or unenforceable, such provision shall be enforced to the fullest extent allowed by law and the other provisions shall nevertheless remain effective and shall remain enforceable.

**13. Electronic Delivery and Participation.** The Company may, in its sole discretion, decide to deliver any documents related to the SAR or future stock appreciation rights that may be granted under the Plan by electronic means or request the Participant's consent to participate in the Plan by electronic means. The Participant hereby consents to receive such documents by electronic delivery and, if requested, to agree to participate in the Plan through an on-line or electronic system established and maintained by the Company or a third party designated by the Company.

**14. Language.** The Participant acknowledges that he or she is proficient in the English language, or has consulted with an advisor who is proficient in the English language, so as to enable the Participant to understand the provisions of this Agreement and the Plan. If the Participant has received this Agreement, or any other document related to the SAR and/or the Plan translated into a language other than English and if the translated version is different than the English version, the English version will control, unless otherwise prescribed by local law.

**15. Severability.** The provisions of this Agreement are severable and if any one or more provisions are determined to be illegal or otherwise unenforceable, in whole or in part, the remaining provisions shall nevertheless be binding and enforceable.

**16. Imposition of Other Requirements.** The Company reserves the right to impose other requirements on the SAR, to the extent the Company determines it is necessary or advisable in order to comply with local laws or facilitate the administration of the Plan, and to require the Participant to sign any additional agreements or undertakings that may be necessary to accomplish the foregoing.

**17. Waiver.** The Participant acknowledges that a waiver by the Company of breach of any provision of this Agreement shall not operate or be construed as a waiver of any other provision of this Agreement, or of any subsequent breach by the Participant or any other participant.

\* \* \* \* \*

**Energy Recovery, Inc.**

**LIST OF REGISTRANT'S SUBSIDIARIES**

<b>Subsidiaries of Registrant (All 100% Owned)</b>	<b>Country/State of Incorporation/Formation</b>
Energy Recovery Iberia, S.L.	Spain
Energy Recovery Canada, Corp.	Canada

**CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

We consent to the incorporation by reference in Registration Statement No. 333-267383 on Form S-3 and Registration Statement Nos. 333-152142, 333-165559, 333-180076, 333-212707 and 333-254911 on Form S-8 of our reports dated February 21, 2024, relating to the financial statements of Energy Recovery, Inc., and the effectiveness of Energy Recovery, Inc.'s internal control over financial reporting appearing in this Annual Report on Form 10-K for the year ended December 31, 2023.

/s/ Deloitte & Touche LLP

San Francisco, California  
February 21, 2024

**CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER  
PURSUANT TO EXCHANGE ACT RULE 13a-14(a) OR 15d-14(a), AS ADOPTED PURSUANT TO  
SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, David W. Moon, certify that:

1. I have reviewed this Annual Report on Form 10-K of Energy Recovery, Inc. for the period ended December 31, 2023;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. I am responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. I have disclosed, based on my most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's Board of Directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: February 21, 2024

/s/ DAVID W. MOON

Name: David W. Moon

Title: President and Chief Executive Officer  
(Principal Executive Officer)

**CERTIFICATION OF PRINCIPAL FINANCIAL OFFICER**  
**PURSUANT TO EXCHANGE ACT RULE 13a-14(a) OR 15d-14(a), AS ADOPTED PURSUANT TO**  
**SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Joshua Ballard, certify that:

1. I have reviewed this Annual Report on Form 10-K of Energy Recovery, Inc. for the period ended December 31, 2023;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. I am responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. I have disclosed, based on my most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's Board of Directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: February 21, 2024

/s/ JOSHUA BALLARD

Name: Joshua Ballard

Title: Chief Financial Officer

*(Principal Financial and Accounting Officer)*

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

Pursuant to the requirement set forth in Rule 13a-14(b) of the Securities and Exchange Act of 1934, as amended (the "Exchange Act"), and Section 1350 of Chapter 63 of Title 18 of the United States Code, David W. Moon, President and Chief Executive Officer of Energy Recovery, Inc., and Joshua Ballard, Chief Financial Officer of Energy Recovery, Inc., each hereby certify that, to the best of his knowledge:

1. The Company's Annual Report on Form 10-K for the period ended December 31, 2023, to which this Certification is attached as Exhibit 32.1 (the "Annual Report"), fully complies with the requirements of Section 13(a) or Section 15(d) of the Exchange Act, and
2. The information contained in the Annual Report fairly presents, in all material respects, the financial condition of the Company at the end of the period covered by the Annual Report and results of operations of the Company for the period covered by the Annual Report.

IN WITNESS WHEREOF, the undersigned has set his hand hereto:

Date: February 21, 2024

/s/ DAVID W. MOON

David W. Moon

*President and Chief Executive Officer*

Date: February 21, 2024

/s/ JOSHUA BALLARD

Joshua Ballard

*Chief Financial Officer*

- \* This certification accompanies the Form 10-K to which it relates, is not deemed filed with the Securities and Exchange Commission and is not to be incorporated by reference into any filing of Energy Recovery, Inc. under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended (whether made before or after the date of the Form 10-K), irrespective of any general incorporation language contained in such filing.



**ENERGY RECOVERY, INC.**

COMPENSATION RECOVERY POLICY  
(effective July 25, 2023)

---



TABLE OF CONTENTS

	Page
1. Purpose	1
2. Requirement to Recover Compensation	1
3. Definitions	1
4. Exceptions	3
5. Manner of Recovery	4
6. Other Provision	5
7. Other Recovery Rights	5

---

1. **Purpose.** In accordance with the applicable rules of the Nasdaq Stock Market (the “Nasdaq”) and Section 10D and Rule 10D-1 of the Securities Exchange Act of 1934, as amended (the “Exchange Act”) (“Rule 10D-1”), the Board of Directors of Energy Recovery, Inc. (the “Company”) has adopted this Compensation Recovery Policy (this “Policy”). The purpose of this Policy is to describe the circumstances under which the Company is required to recover certain compensation paid to certain executive officers. Any references in compensation plans, agreements, equity awards, or other policies to the Company’s “recoupment,” “clawback,” or similarly named policy will mean this Policy.
2. **Requirement to Recover Compensation.** In the event that the Company is required to prepare an Accounting Restatement, the Company, through its Board of Directors (the “Board”) or its Compensation Committee (if such committee is comprised entirely of independent directors (the “Committee”)) will recover reasonably promptly from any Executive Officer the amount of Erroneously Awarded Compensation Received during the Recovery Period.
3. **Definitions.** For purposes of this Policy, the following terms, when capitalized, will have the meanings set forth below:
  - (a) “*Accounting Restatement*” means any accounting restatement required due to the Company’s material noncompliance with any financial reporting requirement under the securities law, including any required accounting restatement to correct an error in previously issued financial statements that is material to the previously issued financial statements, or that would result in a material misstatement if the error were corrected in the current period or left uncorrected in the current period.
  - (b) “*Executive Officer*” means each individual who is currently or was previously designated as an “officer” of the Company as defined in Rule 16a-1(f) under the Exchange Act. For the avoidance of doubt, the identification of an Executive Officer for purposes of this Policy will include each executive officer who is or was identified pursuant to Item 401(b) of Regulation S-K, as well as the Company’s principal executive officer; principal financial officer; principal accounting officer (or if there is no such accounting officer, the controller); any vice-president of the Company in charge of a principal business unit, division, or function (such as sales, administration, or finance); any other officer who performs a significant policy-making function; or any other person who performs similar significant policy-making functions for the Company; provided, that such person was an Executive Officer in both the fiscal period for which the Accounting Restatement is required and at the time the Erroneously Awarded Compensation was Received. An executive officer of the Company’s parent(s) or subsidiaries will be deemed an “Executive Officer” if he or she performs such policy-making functions for the Company.
  - (c) “*Erroneously Awarded Compensation*” means the amount of Incentive-Based Compensation Received by an Executive Officer that exceeds the amount of Recalculated Compensation, provided such compensation was Received while the Company has a class of securities listed on the Nasdaq.

- (d) *"Incentive-Based Compensation"* means any compensation that is granted, earned, or vested based wholly or in part upon the attainment of a financial reporting measure. A financial reporting measure is a measure that is determined and presented in accordance with the accounting principles used in preparing the Company's financial statements, and any measures that are derived wholly or in part from such measures, regardless of whether any such measure is presented within the financial statements or included in a filing with the Securities and Exchange Commission (the "SEC"). For these purposes, stock price and total shareholder return are considered financial reporting measures. For the avoidance of doubt, incentive-based compensation subject to this Policy does not include salaries, bonuses paid solely at the discretion of the Board or the Committee that are not paid from a "bonus pool" that is determined by satisfying a financial reporting measure performance goal, bonuses paid solely upon satisfying one or more subjective standards (for example, demonstrated leadership) and/or completion of a specified employment period, non-equity incentive plan awards earned solely upon satisfying one or more strategic measures (for example, consummating a merger or divestiture), or operational measures (for example, opening a specified number of stores, completion of a project, increase in market share); and equity awards (stock options, restricted stock awards, restricted stock unit awards, or similar equity-based awards) for which the grant is not contingent upon achieving any financial reporting measure performance goal and vesting is contingent solely upon completion of a specified employment or service period, the passage of time, and/or attaining one or more non-financial reporting measures.
- (e) *"Recalculated Compensation"* means the Incentive-Based Compensation that otherwise would have been Received had it been determined based on the Accounting Restatement, computed without regard to any taxes paid. For Incentive-Based Compensation based on stock price or total shareholder return, where the amount of the Erroneously Awarded Compensation is not subject to mathematical recalculation directly from the information in an Accounting Restatement, the amount of the Recalculated Compensation must be based on a reasonable estimate of the effect of the Accounting Restatement on the stock price or total shareholder return, as the case may be, upon which the Incentive-Based Compensation was Received. The Company must maintain documentation of the determination of that reasonable estimate and provide such documentation to the Nasdaq.
- (f) Incentive-Based Compensation is deemed *"Received"* in the Company's fiscal period during which the financial reporting measure specified in the award of such Incentive-Based Compensation is attained, even if the payment or grant of the Incentive-Based Compensation occurs after the end of that period.
- (g) *"Recovery Period"* means the three completed fiscal years of the Company immediately preceding the date the Company is required to prepare an Accounting Restatement; provided that the Recovery Period will not begin before October 2, 2023. For purposes of determining the Recovery Period, the Company is considered to be "required to prepare an Accounting Restatement" on the earlier to occur of:

- (i) the date the Company's Board of Directors, a committee of the Company's Board of Directors, or the officer or officers of the Company authorized to take such action if Board of Directors' action is not required, concludes, or reasonably should have concluded, that the Company is required to prepare an Accounting Restatement; or
- (ii) the date a court, regulator, or other legally authorized body directs the Company to prepare an Accounting Restatement.

If the Company changes its fiscal year, then the transition period within or immediately following such three completed fiscal years also will be included in the Recovery Period, provided, however, that if the transition period between the last day of the Company's previous fiscal year end and the first day of its new fiscal year comprises a period of nine to 12 months, then such transition period will be deemed a completed fiscal year and one of the three completed fiscal years and will not extend the length of the Recovery Period.

4. **Exceptions.** Notwithstanding anything to the contrary in this Policy, recovery of Erroneously Awarded Compensation will not be required to the extent the Committee, or in the absence of such a committee, a majority of the independent directors serving on the Board, has made a determination that such recovery would be impracticable and one of the following conditions have been satisfied:
- (a) The direct expense paid to a third party to assist in enforcing this Policy would exceed the amount to be recovered; provided, however, that, before concluding that it would be impracticable to recover any amount of Erroneously Awarded Compensation that was Incentive-Based Compensation based on the expense of enforcement, the Company must make a reasonable attempt to recover such Erroneously Awarded Compensation, document such reasonable attempt(s) to recover, and provide that documentation to the Nasdaq.
  - (b) Recovery would violate home country law where, with respect to Incentive-Based Compensation, that law was adopted prior to November 28, 2022; provided, however, that, before concluding that it would be impracticable to recover any amount of Erroneously Awarded Compensation that was Incentive-Based Compensation based on violation of home country law, the Company must obtain an opinion of home country counsel, acceptable to the national securities exchange or national securities association on which its class of securities are listed, that recovery would result in such a violation, and must provide such opinion to the Nasdaq.
  - (c) Recovery would likely cause an otherwise tax-qualified retirement plan, under which benefits are broadly available to employees of the Company, to fail to meet the requirements of 26 U.S.C. 401(a)(13) or 26 U.S.C. 411(a) and the regulations thereunder.

5. **Manner of Recovery.** After an Accounting Restatement, the Company's Board of Directors or the Committee will determine the amount of any Erroneously Awarded Compensation Received by each Executive Officer and will promptly notify each Executive Officer with a written notice containing the amount of any Erroneously Awarded Compensation and a demand for repayment or return of such compensation, as applicable.
- (a) The Company's Board of Directors or the Committee will have discretion to determine the appropriate means of recovering Erroneously Awarded Compensation based on the particular facts and circumstances. Notwithstanding the foregoing, except as set forth in Section 4 above, in no event may the Company accept an amount that is less than the amount of Erroneously Awarded Compensation in satisfaction of an Executive Officer's obligations hereunder.
  - (b) To the extent that the Executive Officer has already reimbursed the Company for any Erroneously Awarded Compensation Received under any duplicative recovery obligations established by the Company or applicable law, it will be appropriate for any such reimbursed amount to be credited to the amount of Erroneously Awarded Compensation that is subject to recovery under this Policy.
  - (c) In addition to any other actions permitted by law or contract, the Company's Board of Directors or the Committee may take any or all of the following actions to recover any Erroneously Awarded Compensation:
    - (i) require the Executive Officer to repay such amount;
    - (ii) offset such amount from any other compensation owed by the Company or any of its affiliates to the Executive Officer, regardless of whether the contract or other documentation governing such other compensation specifically permits or specifically prohibits such offsets; and
    - (iii) to the extent the Erroneously Awarded Compensation was deferred into a plan of deferred compensation, whether or not qualified, forfeit such amount (as well as the earnings on such amounts) from the Executive Officer's balance in such plan, regardless of whether the plan specifically permits or specifically prohibits such forfeiture.
- If the Erroneously Awarded Compensation consists of shares of the Company's common stock, and the Executive Officer still owns such shares, then the Company may satisfy its recovery obligations by requiring the Executive Officer to transfer such shares back to the Company.
- (d) To the extent that an Executive Officer fails to repay all Erroneously Awarded Compensation to the Company when due, the Company's Board of Directors or the Company will take all actions reasonable and appropriate to recover such Erroneously Awarded Compensation from the applicable Executive Officer. The applicable Executive Officer will be required to reimburse the Company for any and all expenses reasonably incurred (including legal fees) by the Company in recovering such Erroneously Awarded Compensation in accordance with the immediately preceding sentence.

6. **Other Provisions.**

- (a) This Policy will be administered and interpreted, and may be amended from time to time, by the Company's Board of Directors or the Committee, and the determinations of the Board of Directors or the Committee will be binding on all Executive Officers.
- (b) The Company will not be permitted to insure or indemnify any Executive Officer (or former Executive Officer) against the loss of Erroneously Awarded Compensation that is repaid, returned, or recovered pursuant to the terms of this Policy, or any claims relating to the Company's enforcement of its rights under this Policy. Further, the Company will not enter into any agreement that exempts any Incentive-based Compensation that is granted, paid, or awarded to an Executive Officer from the application of this Policy or that waives the Company's right to recovery of any Erroneously Awarded Compensation, and this Policy will supersede any such agreement (whether entered into before, on, or after the Effective Date of this Policy).
- (c) The Company will file all disclosures with respect to this Policy in accordance with the requirements of the Federal securities laws, including the disclosure required by the applicable SEC filings.
- (d) Any right to recovery under this Policy will be in addition to, and not in lieu of, any other rights of recovery that may be available to the Company; provided, however, that any determination by the Company's Board of Directors or the Committee to recover or forfeit awards made or amounts received due to an Accounting Restatement will be made in a manner consistent with this Policy.
- (e) The Company's Board of Directors or the Committee may amend this Policy from time to time in its discretion and will amend this Policy as it deems necessary. Notwithstanding anything in this Section 6 to the contrary, no amendment or termination of this Policy will be effective if such amendment or termination would (after taking into account any actions taken by the Company contemporaneously with such amendment or termination) cause the Company to violate any Federal securities laws, SEC rule, or Nasdaq rule.

7. **Other Recovery Rights.** This Policy will be binding and enforceable against all Executive Officers and, to the extent required by applicable law or guidance from the SEC or the Nasdaq, their beneficiaries, heirs, executors, administrators, or other legal representatives. The Company's Board of Directors and the Committee intend that this Policy will be applied to the fullest extent required by applicable law. Any employment agreement, equity award agreement, compensatory plan, or any other agreement or arrangement with an Executive Officer will be deemed to include, as a condition to the grant of any benefit thereunder, an agreement by the Executive Officer to abide by the terms of this Policy. Any right of recovery under this Policy is in addition to, and not in lieu of, any other remedies or rights of recovery that may be available to the Company under applicable law, regulation, or rule or pursuant to the terms of any policy of the Company or any provision in any employment agreement, equity award agreement, compensatory plan, agreement, or other arrangement.