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

**FORM S-8
REGISTRATION STATEMENT**
*UNDER
THE SECURITIES ACT OF 1933*

Energy Vault Holdings, Inc.
(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

85-3230987 (I.R.S. Employer
Identification No.)

4360 Park Terrace Drive
Suite 100
Westlake Village, California 91361
(Address of Principal Executive Offices)

ENERGY VAULT, INC. 2017 STOCK INCENTIVE PLAN
ENERGY VAULT, INC. 2020 STOCK PLAN
ENERGY VAULT HOLDINGS, INC. 2022 EQUITY INCENTIVE PLAN
ENERGY VAULT, INC. STOCK OPTION AGREEMENT WITH CONSULTANT
(Full title of the plan)

Josh McMorrow
Chief Legal Officer
4360 Park Terrace Drive
Suite 100
Westlake Village, California 91361
(Name and address of agent for service)

(805) 852-0000
(Telephone number, including area code, of agent for service)

Copies to:

David Hitchcock
Interim Chief Financial Officer
4360 Park Terrace Drive
Suite 100
Westlake Village, California 91361
Tel: (805) 852-0000

Michael H. Irvine
Jeffrey R. Vetter
Daniel Reichert
Gunderson Dettmer Stough Villeneuve
Franklin & Hachigian, LLP
One Bush Plaza, 12th Floor
San Francisco, California 94104
Tel: (415) 801-4880

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

Large accelerated filer

Accelerated filer

Non-accelerated

Smaller reporting company

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 7(a)(2)(B) of the Securities Act.

PART I

INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The following documents previously filed by the Company with the Commission are incorporated by reference into this Registration Statement:

- (1) [The Company's prospectus dated May 6, 2022 filed on May 9, 2022](#) pursuant to Rule 424(b) under the Securities Act, relating to the [Registration Statement on Form S-1, as amended \(File No. 333-262720\)](#), which contains the Company's audited financial statements for the latest fiscal year for which such statements have been filed;
- (2) [The Company's Annual Report on Form 10-K for the year ended December 31, 2021, filed with the Commission on February 10, 2022](#)
- (3) [The Company's Quarterly Report on Form 10-Q for the quarter ended March 31, 2022, filed with the Commission on May 16, 2022](#)
- (4) The Company's Current Reports on Form 8-K, filed with the Commission on [January 4, 2022](#), [February 1, 2022](#), [February 10, 2022](#), [February 14, 2022](#), as amended on [March 31, 2022](#), [April 20, 2022](#), [May 17, 2022](#), [July 1, 2022](#) and [July 12, 2022](#), respectively; and
- (5) the description of the Company's common stock contained in the Company's Registration Statement on [Form 8-A \(File No. 001-39982\), filed with the SEC on February 2, 2021](#), including any amendments or reports filed for the purpose of updating such description.

All documents subsequently filed by the Company with the Commission pursuant to Sections 13(a), 13(c), 14, or 15(d) of the Exchange Act, prior to the filing of a post-effective amendment to the Registration Statement, which indicates that all securities offered have been sold or which deregisters all securities then remaining unsold, shall be deemed incorporated by reference into this Registration Statement and to be a part hereof from the date of the filing of such documents, except that information furnished to the Commission under Item 2.02 or Item 7.01 in Current Reports on Form 8-K and any exhibit relating to such information, shall not be deemed to be incorporated by reference in this Registration Statement.

Any statement contained herein or in a document incorporated or deemed to be incorporated by reference in this Registration Statement shall be deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement contained in this Registration Statement, or in any other subsequently filed document which also is or is deemed to be incorporated by reference in this Registration Statement, modifies or supersedes such earlier statement. Any statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement.

Item 4. Description of Securities.

Not applicable.

Item 5. Interests of Named Experts and Counsel.

Not applicable.

Item 6. Indemnification of Directors and Officers.

Section 145 of the Delaware General Corporation Law authorizes a court to award, or a corporation's board of directors to grant, indemnity to directors and officers under certain circumstances and subject to certain limitations. The terms of Section 145 of the Delaware General Corporation Law are sufficiently broad to permit indemnification under certain circumstances for liabilities, including reimbursement of expenses incurred, arising under the Securities Act of 1933, as amended, or Securities Act.

Our Certificate of Incorporation contains provisions limiting the liability of directors, and our Bylaws provide that we will indemnify each of our directors to the fullest extent permitted under Delaware law. The Certificate of Incorporation and Bylaws also provide us with discretion to indemnify officers and employees when determined appropriate by the Board of Directors.

We intend to enter into indemnification agreements with each of our directors and executive officers. The indemnification agreements provide that we indemnify each of our directors and executive officers against any and all expenses incurred by that director or executive officer because of his or her status as one of our directors, executive officers or other key employees, to the fullest extent permitted by Delaware law, our Certificate of Incorporation and our Bylaws. In addition, the indemnification agreements provide that, to the fullest extent permitted by Delaware law, we will advance all expenses incurred by our directors, executive officers, and other key employees in connection with a legal proceeding involving his or her status as a director or executive officer.

Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits.

Exhibit No.	Description
4.1	Amended and Restated Certificate of Incorporation of Energy Vault Holdings, Inc. (incorporated by reference to Exhibit 3.2 to Energy Vault Holdings, Inc.'s Current Report on Form 8-K (File No. 001-39982), filed with the SEC on February 14, 2022).

4.2	Amended and Restated Bylaws of Energy Vault Holdings, Inc. (incorporated by reference to Exhibit 3.1 to Energy Vault Holdings, Inc.'s Current Report on Form 8-K (File No. 001-39982), filed with the SEC on February 14, 2022).
5.1*	Opinion of Gunderson Dettmer Stough Villeneuve Franklin & Hachigian, LLP.
23.1*	Consent of Gunderson Dettmer Stough Villeneuve Franklin & Hachigian, LLP (included as part of Exhibit 5.1 hereto).
23.2*	Consent of Marcum LLP, independent registered public accounting firm.
23.3*	Consent of BDO USA, LLP, independent registered accounting firm.
99.1	Energy Vault Holdings, Inc. 2022 Equity Incentive Plan (10.4 to Energy Vault Holdings, Inc.'s Quarterly Report on Form 10-Q (File No. 001-39982), filed with the SEC on May 16, 2022).
99.2	Energy Vault, Inc. 2020 Stock Plan (incorporated by reference to Exhibit 10.16 to Energy Vault Holdings, Inc.'s Form S-4 (File No. 333-260307), filed with the SEC on October 18, 2021).
99.3	Energy Vault, Inc. 2017 Stock Incentive Plan (incorporated by reference to Exhibit 10.15 to Energy Vault Holdings, Inc.'s Form S-4 (File No. 333-260307), filed with the SEC on October 18, 2021).
99.4*	Form of Stock Option Agreement, by and between Energy Vault, Inc. and West Investments VIII, LLC
107*	Calculation of Filing Fee Table

* Filed herewith.

Item 9. Undertakings.

(a) The undersigned Company hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this Registration Statement:

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act;

(ii) To reflect in the prospectus any facts or events arising after the effective date of the Registration Statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the Registration Statement; and

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the Registration Statement or any material change to such information in the Registration Statement; *provided, however*, that paragraphs (a)(1)(i) and (a)(1)(ii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Commission by the Company pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporated by reference in the Registration Statement.

(2) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(b) The undersigned Company hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the Company's annual report pursuant to Section 13(a) or Section 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Exchange Act) that is incorporated by reference in the Registration Statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

(c) Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the Company pursuant to the foregoing provisions, or otherwise, the Company has been advised that in the opinion of the Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Company of expenses incurred or paid by a director, officer or controlling person of the Company in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Company will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Westlake Village, in the State of California, on July 29, 2022.

ENERGY VAULT HOLDINGS, INC.

By /s/ Robert Piconi
Name: Robert Piconi
Title: Chief Executive Officer

POWER OF ATTORNEY

Each person whose signature appears below constitutes and appoints Robert Piconi as his or her true and lawful attorney-in-fact and agent, with full power of substitution and resubstitution, for such person and in his or her name, place and stead, in any and all capacities, to sign any or all further amendments (including post-effective amendments) to this registration statement (and any additional registration statement related hereto permitted by Rule 462(b) promulgated under the Securities Act (and all further amendments, including post-effective amendments, thereto)), and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorney-in-fact and agent full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises, as fully to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorney-in-fact and agent, or his or her substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

Signature	Title	Date
<u>/s/ Robert Piconi</u> Robert Piconi	Chief Executive Officer and Director (Principal Executive Officer)	July 29, 2022
<u>/s/ David Hitchcock</u> David Hitchcock	Interim Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer)	July 29, 2022
<u>/s/ Larry Paulson</u> Larry Paulson	Director	July 29, 2022
<u>/s/ Bill Gross</u> Bill Gross	Director	July 29, 2022
<u>/s/ Henry Elkus</u> Henry Elkus	Director	July 29, 2022
<u>/s/ Zia Huque</u> Zia Huque	Director	July 29, 2022
<u>/s/ Thomas Ertel</u> Thomas Ertel	Director	July 29, 2022
<u>/s/ Mary Beth Mandanas</u> Mary Beth Mandanas	Director	July 29, 2022



SILICON VALLEY
ANN ARBOR
AUSTIN
BEIJING
BOSTON
LOS ANGELES
NEW YORK
SAN DIEGO
SAN FRANCISCO
SÃO PAULO
SINGAPORE

July 29, 2022

Energy Vault Holdings, Inc.
4360 Park Terrace Drive, Suite 100
Westlake Village, California 91361

Ladies and Gentlemen:

We refer to the registration statement on Form S-8 (the "Registration Statement") to be filed by Energy Vault Holdings, Inc., a Delaware corporation (the "Company"), with the Securities and Exchange Commission (the "Commission") in connection with the registration under the Securities Act of 1933, as amended (the "Act"), of an aggregate of 29,220,196 shares of the Company's common stock, \$0.0001 par value per share (the "Shares"), that are subject to issuance by the Company (i) upon the exercise or settlement of awards granted or to be granted under the Energy Vault Holdings, Inc. 2022 Equity Incentive Plan (the "2022 EIP"); (ii) upon the exercise or settlement of awards granted under the Energy Vault, Inc. 2020 Plan (the "2020 Plan"), the Energy Vault, Inc. 2017 Stock Incentive Plan (the "2017 Plan") and the Stock Option Agreement by and between Energy Vault, Inc. and West Investments VIII, LLC (the "Consultant Option," and together with the 2017 Plan, 2020 Plan and the 2022 EIP, the "Plans").

In connection with this opinion, we have reviewed the actions proposed to be taken by you in connection with the issuance and sale of the Shares to be issued under the Plans. We have also examined and relied upon the Registration Statement and the originals or copies certified to our satisfaction of such other documents, records, certificates, memoranda and other instruments as in our judgment are necessary or appropriate to enable us to render the opinion expressed below. With your consent, we have relied upon certificates and other assurances of officers of the Company as to factual matters without having independently verified such factual matters. We have assumed the genuineness and authenticity of all documents submitted to us as originals, and the conformity to originals of all documents submitted to us as copies thereof and the due execution and delivery of all documents where due execution and delivery are a prerequisite to the effectiveness thereof.

This opinion is being furnished in connection with the requirements of Item 601(b)(5) of Regulation S-K under the Act, and no opinion is expressed herein as to any matter pertaining to the contents of the Registration Statement, other than as expressly stated herein. Our opinion is limited to the matters stated herein and no opinion is implied or may be inferred beyond the matters expressly stated. Our opinion herein is expressed solely with respect to the federal laws of the United States and the General Corporation Law of the State of Delaware. Our opinion is based on these laws as in effect on the date hereof, and we disclaim any obligation to advise you of facts, circumstances, events or developments which hereafter may be brought to our attention and which may alter, affect or modify the opinion expressed herein. We are not rendering any opinion as to compliance with any federal or state antifraud law, rule or regulation relating to securities, or to the sale or issuance thereof.

Based upon and subject to the foregoing and the other matters set forth herein, we advise you that, in our opinion, when the Shares have been issued and sold by the Company pursuant to the applicable provisions of the Plans and pursuant to the agreements which accompany the Plans, and in accordance with the Registration Statement, such Shares will be validly issued, fully paid and nonassessable.

GUNDERSON DETTMER STOUGH VILLENEUVE FRANKLIN & HACHIGIAN, LLP
550 Allerton Street | Redwood City, CA 94063 | gunder.com

We hereby consent to the reference to our firm under the caption "Legal Matters" in the prospectus included in the Registration Statement and to the filing of this opinion as an exhibit to the Registration Statement. In giving such consent, we do not thereby admit that we are in the category of persons whose consent is required under Section 7 of the Act or the rules and regulations of the Commission thereunder.

Sincerely,

/s/ Gunderson Dettmer Stough Villeneuve Franklin & Hachigian, LLP

GUNDERSON DETTMER STOUGH
VILLENEUVE FRANKLIN & HACHIGIAN, LLP

INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM'S CONSENT

We consent to the incorporation by reference in this Registration Statement of Energy Vault Holdings, Inc. (f/k/a Novus Capital Corporation II) on Form S-8 of our report dated February 10, 2022, which includes an explanatory paragraph as to Novus Capital Corporation II's (now known as Energy Vault Holdings, Inc.) ability to continue as a going concern, with respect to our audits of the financial statements of Novus Capital Corporation II (now known as Energy Vault Holdings, Inc.) as of December 31, 2021 and 2020, for the year ended December 31, 2021 and for the period from September 29, 2020 (inception) through December 31, 2020, appearing in the Annual Report on Form 10-K of Novus Capital Corporation II for the year ended December 31, 2021.

We were dismissed as auditors on February 14, 2022 and, accordingly, we have not performed any audit or review procedures with respect to any financial statements for the periods after the date of our dismissal.

/s/ Marcum llp

Marcum llp
Boston, MA
July 28, 2022

Consent of Independent Registered Public Accounting Firm

Energy Vault Holdings, Inc.
Westlake Village, CA

We hereby consent to the incorporation by reference in the Prospectus constituting a part of this Registration Statement of our report dated March 7, 2022, relating to the consolidated financial statements of Energy Vault Inc. appearing in the Prospectus filed pursuant to Rule 424(b) of the Securities Act of 1933 on May 9, 2022.

/s/ BDO USA, LLP
Melville, New York
July 28, 2022

Energy Vault, Inc.

Notice of Stock Option Grant
(Installment Exercise, Non-Plan)

The Optionee has been granted the following option to purchase shares of the common stock of Energy Vault, Inc.:

Name of Optionee:	West Investments VIII, LLC
Total Number of Shares:	21,500
Type of Option:	Nonstatutory Stock Option (NSO)
Exercise Price per Share:	\$10.00
Date of Grant:	«DateGrant»
Date Exercisable:	Provided the Optionee remains in Continuous Service Status through either such vesting event; this option shall vest and become exercisable with respect to the first 50% of the Shares upon the issuance of the initial Press Release (as defined in the Consulting Agreement). The remaining 50% of the Shares subject to this option shall vest in twelve equal quarterly installments commencing on the twelve-month anniversary of the Vesting Commencement Date. If the Company consummates a Change of Control, then 100% of the unvested Shares shall immediately become fully vested and exercisable.
Vesting Commencement Date:	«VestComDate»
Expiration Date:	«ExpDate». ¹

By signing below, the Optionee and the Company agree that 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 Notice of Stock Option Grant. **Section 13 of the Stock Option Agreement includes important acknowledgements of the Optionee**

¹ Note: The expiration date should be the 10-year anniversary of the date of grant.

Optionee:	Energy Vault, Inc.
_____	By: _____
Entity: West Investments VIII, LLC	Title: _____
Name: _____	_____
Title: _____	_____

THE OPTION GRANTED PURSUANT TO THIS AGREEMENT AND THE SHARES ISSUABLE UPON THE EXERCISE THEREOF HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND MAY NOT BE SOLD, PLEDGED, OR OTHERWISE TRANSFERRED WITHOUT AN EFFECTIVE REGISTRATION THEREOF UNDER SUCH ACT OR AN OPINION OF COUNSEL, SATISFACTORY TO THE COMPANY AND ITS COUNSEL, THAT SUCH REGISTRATION IS NOT REQUIRED.

Energy Vault, Inc.
Stock Option Agreement (Installment Exercise, Non-Plan)

SECTION 1. GRANT OF OPTION.

(a) **Option.** On the terms and conditions set forth in the Notice of Stock Option Grant and this Agreement, the Company grants to the Optionee on the Date of Grant the option to purchase at the Exercise Price the number of Shares set forth in the Notice of Stock Option Grant. The Exercise Price is agreed to be at least 100% of the Fair Market Value per Share on the Date of Grant. This option is intended to be an NSO, as provided in the Notice of Stock Option Grant.

(b) **Defined Terms.** Capitalized terms are defined in Section 14 of this Agreement.

SECTION 2. RIGHT TO EXERCISE.

All or part of this Option may be exercised prior to its expiration at the time or times set forth in the Notice of Stock Option Grant.

SECTION 3. NO TRANSFER OR ASSIGNMENT OF OPTION.

Except as otherwise provided in this Agreement, this option and the rights and privileges conferred hereby shall not be sold, pledged or otherwise transferred (whether by operation of law or otherwise) and shall not be subject to sale under execution, attachment, levy or similar process. In addition, this option shall comply with all conditions of Rule 12h-1(f)(1) under the Exchange Act until the Company becomes subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act. Such conditions include, without limitation, the transferability restrictions set forth in Rule 12h-1(f)(1)(iv) and (v) under the Exchange Act, which shall apply to this option and, prior

to exercise, to the Shares to be issued upon exercise of this option during the period commencing on the Date of Grant and ending on the earlier of (i) the date when the Company becomes subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act or (ii) the date when the Company makes a determination that it will cease to rely on the exemption afforded by Rule 12h-1(f)(1) under the Exchange Act. During such period, this option and, prior to exercise, the Shares to be issued upon exercise of this option shall be restricted as to any pledge, hypothecation or other transfer by the Optionee, including any short position, any "put equivalent position" (as defined in Rule 16a-1(h) under the Exchange Act) or any "call equivalent position" (as defined in Rule 16a-1(b) under the Exchange Act).

SECTION 4. EXERCISE PROCEDURES.

(a) **Notice of Exercise.** The Optionee or the Optionee's representative may exercise this option by giving written notice to the Company pursuant to Section 12(b). The notice shall specify the election to exercise this option, the number of Shares for which it is being exercised and the form of payment. The person exercising this option shall sign the notice. In the event that this option is being exercised by the representative of the Optionee, the notice shall be accompanied by proof (satisfactory to the Company) of the representative's right to exercise this option. The Optionee or the Optionee's representative shall deliver to the Company, at the time of giving the notice, payment in a form permissible under Section 5 for the full amount of the Purchase Price.

(b) **Issuance of Shares.** After receiving a proper notice of exercise, the Company shall cause to be issued one or more certificates evidencing the Shares for which this option has been exercised. Such Shares shall be registered (i) in the name of the Optionee or, if the Optionee is not a natural person, the Optionee's representative, (ii) if the person exercising this option is a natural person, in the names of such person and his or her spouse as community property or as joint tenants with the right of survivorship or (iii) with the Company's consent, if the person exercising this option is a natural person, in the name of a revocable trust. The Company shall cause such certificates to be delivered to or upon the order of the person exercising this option.

(c) **Withholding Taxes.** In the event that the Company determines that it is required to withhold any tax as a result of the exercise of this option, the Optionee, as a condition to the exercise of this option, shall make arrangements satisfactory to the Company to enable it to satisfy all withholding requirements. The Optionee shall also make arrangements satisfactory to the Company to enable it to satisfy any withholding requirements that may arise in connection with the disposition of Shares purchased by exercising this option.

SECTION 5. PAYMENT FOR STOCK.

(a) **Cash.** All or part of the Purchase Price may be paid in cash or cash equivalents.

(b) **Surrender of Stock.** At the discretion of the Board of Directors, all or any part of the Purchase Price may be paid by surrendering, or attesting to the ownership of, Shares that are already owned by the Optionee. Such Shares shall be surrendered to the Company in good form for transfer and shall be valued at their Fair Market Value as of the date when this option is exercised.

(c) **Exercise/Sale.** All or part of the Purchase Price and any withholding taxes may be paid by the delivery (on a form prescribed by the Company) of an irrevocable direction to a securities broker approved by the Company to sell Shares and to deliver all or part of the sales proceeds to the Company. However, payment pursuant to this Subsection (c) shall be permitted only if (i) Stock then is publicly traded and (ii) such payment does not violate applicable law.

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SECTION 6. TERM AND EXPIRATION.

(a) **Basic Term.** This option shall in any event expire on the expiration date set forth in the Notice of Stock Option Grant, which date is 10 years after the Date of Grant.

The Optionee may exercise all or part of this option at any time before its expiration under the preceding sentence.

SECTION 7. RIGHT OF FIRST REFUSAL.

(a) **Right of First Refusal.** In the event that the Optionee proposes to sell, pledge or otherwise transfer to a third party any Shares acquired under this Agreement, or any interest in such Shares, the Company shall have the Right of First Refusal with respect to all (and not less than all) of such Shares. If the Optionee desires to transfer Shares acquired under this Agreement, the Optionee shall give a written Transfer Notice to the Company describing fully the proposed transfer, including the number of Shares proposed to be transferred, the proposed transfer price, the name and address of the proposed Transferee and proof satisfactory to the Company that the proposed sale or transfer will not violate any applicable federal, State or foreign securities laws. The Transfer Notice shall be signed by both the Optionee and the proposed Transferee and must constitute a binding commitment of both parties to the transfer of the Shares. The Company shall have the right to purchase all, and not less than all, of the Shares on the terms of the proposal described in the Transfer Notice (subject, however, to any change in such terms permitted under Subsection (b) below) by delivery of a notice of exercise of the Right of First Refusal within 30 days after the date when the Transfer Notice was received by the Company.

(b) **Transfer of Shares.** If the Company fails to exercise its Right of First Refusal within 30 days after the date when it received the Transfer Notice, the Optionee may, not later than 90 days following receipt of the Transfer Notice by the Company, conclude a transfer of the Shares subject to the Transfer Notice on the terms and conditions described in the Transfer Notice, provided that any such sale is made in compliance with applicable federal, State and foreign securities laws and not in violation of any other contractual restrictions to which the Optionee is bound. Any proposed transfer on terms and conditions different from those described in the Transfer Notice, as well as any subsequent proposed transfer by the Optionee, shall again be subject to the Right of First Refusal and shall require compliance with the procedure described in Subsection (a) above. If the Company exercises its Right of First Refusal, the parties shall consummate the sale of the Shares on the terms set forth in the Transfer Notice within 60 days after the date when the Company received the Transfer Notice (or within such longer period as may have been specified in the Transfer Notice); provided, however, that in the event the Transfer Notice provided that payment for the Shares was to be made in a form other than cash or cash equivalents paid at the time of transfer, the Company shall have the option of paying for the Shares with cash or cash equivalents equal to the present value of the consideration described in the Transfer Notice.

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(c) **Additional or Exchanged Securities and Property.** In the event of a merger or consolidation of the Company with or into another entity, any other corporate reorganization, a stock split, the declaration of a stock dividend, the declaration of an extraordinary dividend payable in a form other than stock, a spin-off, an

adjustment in conversion ratio, a recapitalization or a similar transaction affecting the Company's outstanding securities, any securities or other property (including cash or cash equivalents) that are by reason of such transaction exchanged for, or distributed with respect to, any Shares subject to this Section 7 shall immediately be subject to the Right of First Refusal. Appropriate adjustments to reflect the exchange or distribution of such securities or property shall be made to the number and/or class of the Shares subject to this Section 7.

(d) **Termination of Right of First Refusal.** Any other provision of this Section 7 notwithstanding, in the event that the Stock is readily tradable on an established securities market when the Optionee desires to transfer Shares, the Company shall have no Right of First Refusal, and the Optionee shall have no obligation to comply with the procedures prescribed by Subsections (a) and (b) above.

(e) **Permitted Transfers.** If the Optionee is a natural person, this Section 7 shall not apply to (i) a transfer by beneficiary designation, will or intestate succession or (ii) a transfer to one or more members of the Optionee's Immediate Family or to a trust established by the Optionee for the benefit of the Optionee and/or one or more members of the Optionee's Immediate Family, provided in either case that the Transferee agrees in writing on a form prescribed by the Company to be bound by all provisions of this Agreement. If the Optionee transfers any Shares acquired under this Agreement, either under this Subsection (e) or after the Company has failed to exercise the Right of First Refusal, then this Agreement shall apply to the Transferee to the same extent as to the Optionee.

(f) **Termination of Rights as Stockholder.** If the Company makes available, at the time and place and in the amount and form provided in this Agreement, the consideration for the Shares to be purchased in accordance with this Section 7, then after such time the person or entity (as applicable) from whom such Shares are to be purchased shall no longer have any rights as a holder of such Shares (other than the right to receive payment of such consideration in accordance with this Agreement). Such Shares shall be deemed to have been purchased in accordance with the applicable provisions hereof, whether or not the certificate(s) therefor have been delivered as required by this Agreement.

(g) **Assignment of Right of First Refusal.** The Board of Directors may freely assign the Company's Right of First Refusal, in whole or in part. Any person or entity (as applicable) who accepts an assignment of the Right of First Refusal from the Company shall assume all of the Company's rights and obligations under this Section 7.

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SECTION 8. LEGALITY OF INITIAL ISSUANCE.

No Shares shall be issued upon the exercise of this option unless and until the Company has determined that:

- (a) It and the Optionee have taken any actions required to register the Shares under the Securities Act or to perfect an exemption from the registration requirements thereof;
- (b) Any applicable listing requirement of any stock exchange or other securities market on which Stock is listed has been satisfied; and
- (c) Any other applicable provision of federal, State or foreign law has been satisfied.

SECTION 9. NO REGISTRATION RIGHTS.

The Company may, but shall not be obligated to, register or qualify the sale of Shares under the Securities Act or any other applicable law. The Company shall not be obligated to take any affirmative action in order to cause the sale of Shares under this Agreement to comply with any law.

SECTION 10. RESTRICTIONS ON TRANSFER OF SHARES.

(a) **Securities Law Restrictions.** Regardless of whether the offering and sale of Shares subject to this option have been registered under the Securities Act or have been registered or qualified under the securities laws of any State, the Company at its discretion may impose restrictions upon the sale, pledge or other transfer of such Shares (including the placement of appropriate legends on stock certificates or the imposition of stop-transfer instructions) if, in the judgment of the Company, such restrictions are necessary or desirable in order to achieve compliance with the Securities Act, the securities laws of any State or any other law.

(b) **Market Stand-Off.** In connection with any underwritten public offering by the Company of its equity securities pursuant to an effective registration statement filed under the Securities Act, including the Company's initial public offering, the Optionee or a Transferee shall not directly or indirectly sell, make any short sale of, loan, hypothecate, pledge, offer, grant or sell any option or other contract for the purchase of, purchase any option or other contract for the sale of, or otherwise dispose of or transfer, or agree to engage in any of the foregoing transactions with respect to, any Shares acquired under this Agreement without the prior written consent of the Company or its managing underwriter. Such restriction (the "Market Stand-Off") shall be in effect for such period of time following the date of the final prospectus for the offering as may be requested by the Company or such underwriter. In no event, however, shall such period exceed 180 days plus such additional period as may reasonably be requested by the Company or such underwriter to accommodate regulatory restrictions on (i) the publication or other distribution of research reports or (ii) analyst recommendations and opinions, including (without limitation) the restrictions set forth in Rule 2711(f)(4) of the National Association of Securities Dealers and Rule 472(f)(4) of the New York Stock Exchange, as amended, or any similar successor rules. The Market Stand-Off shall in any event terminate two years after the date of the Company's initial public offering. In the event of the declaration of a stock dividend, a spin-off, a stock split, an adjustment in conversion ratio, a recapitalization or a similar transaction affecting the Company's outstanding securities without receipt of consideration, any new, substituted or additional securities which are by reason of such transaction distributed with respect to any Shares subject to the Market Stand-Off, or into which such Shares thereby become convertible, shall immediately be subject to the Market Stand-Off. In order to enforce the Market Stand-Off, the Company may impose stop-transfer instructions with respect to the Shares acquired under this Agreement until the end of the applicable stand-off period. The Company's underwriters shall be beneficiaries of the agreement set forth in this Subsection (b). This Subsection (b) shall not apply to Shares registered in the public offering under the Securities Act.

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(c) **Investment Intent at Grant.** The Optionee represents and agrees that the Shares to be acquired upon exercising this option will be acquired for investment, and not with a view to the sale or distribution thereof.

(d) **Investment Intent at Exercise.** In the event that the sale of Shares subject to this option is not registered under the Securities Act but an exemption is available that requires an investment representation or other representation, the Optionee shall represent and agree at the time of exercise that the Shares being acquired upon exercising this option are being acquired for investment, and not with a view to the sale or distribution thereof, and shall make such other representations as are deemed necessary or appropriate by the Company and its counsel.

(e) **Legends.** All certificates evidencing Shares purchased under this Agreement shall bear the following legend:

“THE SHARES REPRESENTED HEREBY MAY NOT BE SOLD, ASSIGNED, TRANSFERRED, ENCUMBERED OR IN ANY MANNER DISPOSED OF, EXCEPT IN COMPLIANCE WITH THE TERMS OF A WRITTEN AGREEMENT BETWEEN THE COMPANY AND THE REGISTERED HOLDER OF THE SHARES (OR THE PREDECESSOR IN INTEREST TO THE SHARES). SUCH AGREEMENT GRANTS TO THE COMPANY CERTAIN RIGHTS OF FIRST REFUSAL UPON AN ATTEMPTED TRANSFER OF THE SHARES. THE SECRETARY OF THE COMPANY WILL UPON WRITTEN REQUEST FURNISH A COPY OF SUCH AGREEMENT TO THE HOLDER HEREOF WITHOUT CHARGE.”

All certificates evidencing Shares purchased under this Agreement in an unregistered transaction shall bear the following legend (and such other restrictive legends as are required or deemed advisable under the provisions of any applicable law):

“THE SHARES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND MAY NOT BE SOLD, PLEDGED, OR OTHERWISE TRANSFERRED WITHOUT AN EFFECTIVE REGISTRATION THEREOF UNDER SUCH ACT OR AN OPINION OF COUNSEL, SATISFACTORY TO THE COMPANY AND ITS COUNSEL, THAT SUCH REGISTRATION IS NOT REQUIRED.”

“THE SHARES REPRESENTED HEREBY ARE SUBJECT TO A LOCK-UP PERIOD AFTER THE EFFECTIVE DATE OF THE COMPANY’S REGISTRATION STATEMENT FILED UNDER THE ACT, AS AMENDED, AS SET FORTH IN AN AGREEMENT BETWEEN THE COMPANY AND THE ORIGINAL HOLDER OF THESE SHARES, A COPY OF WHICH MAY BE OBTAINED AT THE COMPANY’S PRINCIPAL OFFICE. SUCH LOCK-UP PERIOD IS BINDING ON TRANSFEREES OF THESE SHARES.

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(f) **Removal of Legends.** If, in the opinion of the Company and its counsel, any legend placed on a stock certificate representing Shares sold under this Agreement is no longer required, the holder of such certificate shall be entitled to exchange such certificate for a certificate representing the same number of Shares but without such legend.

(g) **Administration.** Any determination by the Company and its counsel in connection with any of the matters set forth in this Section 10 shall be conclusive and binding on the Optionee and all other persons.

SECTION 11. ADJUSTMENT OF SHARES.

(a) **General.** In the event of a subdivision of the outstanding Stock, a declaration of a dividend payable in Shares, a combination or consolidation of the outstanding Stock into a lesser number of Shares, a reclassification, or any other increase or decrease in the number of issued shares of Stock effected without receipt of consideration by the Company, proportionate adjustments shall automatically be made in each of (i) the number and kind of Shares covered by this option (to the extent this option is outstanding), and (iii) the Exercise Price (to the extent this option is outstanding). In the event of a declaration of an extraordinary dividend payable in a form other than Shares in an amount that has a material effect on the Fair Market Value of the Stock, a recapitalization, a spin-off, or a similar occurrence, the Board of Directors at its sole discretion may make appropriate adjustments in one or more of the items listed in clauses (i) and (ii) above. No fractional Shares shall be issued under this Agreement as a result of an adjustment under this Section 11(a), although the Board of Directors in its sole discretion may make a cash payment in lieu of fractional Shares.

(b) **Corporate Transactions.** In the event of a Change in Control, all Shares acquired under this option and any Shares outstanding as of the effective date of such Change in Control shall be treated as determined by the Board of Directors in its sole discretion, including (without limitation) one or more of the following:

(i) The continuation of this option by the Company (if the Company is the surviving corporation).

(ii) The assumption of this option by the surviving corporation or its parent in a manner that complies with Section 424(a) of the Code.

(iii) The substitution by the surviving corporation or its parent of a new option for this option in a manner that complies with Section 424(a) of the Code.

(iv) The cancellation of this option and a payment to the Optionee equal to the excess of (A) the Fair Market Value of the Shares subject to this option, to the extent such Shares are vested (or become vested) as of the effective date of such corporate transaction, over (B) the Exercise Price of this option. Such payment shall be made in the form of cash, cash equivalents, or securities of the surviving corporation or its parent with a Fair Market Value equal to the required amount. Any escrow, holdback, earnout or similar provisions in the definitive agreement governing the corporate transaction may apply to such payment to the same extent and in the same manner as such provisions apply to the holders of Shares. If the Exercise Price of the Shares subject to this option exceeds the Fair Market Value of such Shares, then this option may be cancelled without making a payment to the Optionee.

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(v) The cancellation of this option without the payment of any consideration. In the event this Subparagraph (v) applies, the Optionee shall be notified and given an opportunity to exercise this option during a period of not less than five full business days preceding the effective date of such Change in Control, unless (A) a shorter period is required to permit a timely closing of the transaction and (B) such shorter period still offers the Optionee a reasonable opportunity to exercise this option. Any exercise of this option during such period may be contingent on the closing of the transaction.

For the avoidance of doubt, the Board of Directors has discretion to accelerate, in whole or part, the vesting and exercisability of this option in connection with a corporate transaction covered by this Section 11(b).

(c) **Reservation of Rights.** Except as provided in this Section 11, the Optionee shall have no rights by reason of (i) any subdivision or consolidation of shares of stock of any class, (ii) the payment of any dividend or (iii) any other increase or decrease in the number of shares of stock of any class. Any issuance by the Company of shares of stock of any class, or securities convertible into shares of stock of any class, shall not affect, and no adjustment by reason thereof shall be made with respect to, the number or Exercise Price of Shares subject to this option. The grant of this option shall not affect in any way the right or power of the Company to make adjustments, reclassifications, reorganizations or changes of its capital or business structure, to merge or consolidate or to dissolve, liquidate, sell or transfer all or any part of its business or assets.

SECTION 12. MISCELLANEOUS PROVISIONS.

(a) **Rights as a Stockholder.** Neither the Optionee nor the Optionee’s representative (if applicable) shall have any rights as a stockholder with respect to any Shares subject to this option until the Optionee or the Optionee’s representative (if applicable) becomes entitled to receive such Shares by filing a notice of exercise and paying the Purchase Price pursuant to Sections 4 and 5.

(b) **Notice.** Any notice required by the terms of this Agreement shall be given in writing. It shall be deemed effective upon (i) personal delivery, (ii) deposit with the United States Postal Service, by registered or certified mail, with postage and fees prepaid or (iii) deposit with Federal Express Corporation, with shipping charges prepaid. Notice shall be addressed to the Company at its principal executive office and to the Optionee at the address that he or she most recently provided to the Company in accordance with this Subsection (b).

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(c) **No Retention Rights.** Nothing in this option or in the Plan shall confer upon the Optionee any right to continue in Service for any period of specific duration or interfere with or otherwise restrict in any way the rights of the Company (or any Parent or Subsidiary employing or retaining the Optionee) or of the Optionee, which rights are hereby expressly reserved by each, to terminate Service at any time and for any reason, with or without cause.

(d) **Modifications and Waivers.** No provision of this Agreement shall be modified, waived or discharged unless the modification, waiver or discharge is agreed to in writing and signed by the Optionee and by an authorized officer of the Company (other than the Optionee). No waiver by either party of any breach of, or of compliance with, any condition or provision of this Agreement by the other party shall be considered a waiver of any other condition or provision or of the same condition or provision at another time.

(e) **Entire Agreement.** The Notice of Stock Option Grant and this Agreement constitute the entire contract between the parties hereto with regard to the subject matter hereof. They supersede any other agreements, representations or understandings (whether oral or written and whether express or implied) that relate to the subject matter hereof.

(f) **Choice of Law.** This Agreement shall be governed by, and construed in accordance with, the laws of the State of Delaware, as such laws are applied to contracts entered into and performed in such State.

SECTION 13. ACKNOWLEDGEMENTS OF THE OPTIONEE.

(a) **Tax Consequences.** The Optionee agrees that the Company does not have a duty to design or administer this option or its other compensation programs in a manner that minimizes the Optionee's tax liabilities. The Optionee shall not make any claim against the Company or its Board of Directors, officers or employees related to tax liabilities arising from this option or the Optionee's other compensation. In particular, the Optionee acknowledges that this option is exempt from Section 409A of the Code only if the Exercise Price is at least equal to the Fair Market Value per Share on the Date of Grant. Since Shares are not traded on an established securities market, the determination of their Fair Market Value is made by the Board of Directors or by an independent valuation firm retained by the Company. The Optionee acknowledges that there is no guarantee in either case that the Internal Revenue Service will agree with the valuation, and the Optionee shall not make any claim against the Company or its Board of Directors, officers or employees in the event that the Internal Revenue Service asserts that the valuation was too low.

(b) **Electronic Delivery of Documents.** The Optionee agrees to accept by email all documents relating to the Company or this option and all other documents that the Company is required to deliver to its security holders (including, without limitation, disclosures that may be required by the Securities and Exchange Commission). The Optionee also agrees that the Company may deliver these documents by posting them on a website maintained by the Company or by a third party under contract with the Company. If the Company posts these documents on a website, it shall notify the Optionee by email of their availability. The Optionee acknowledges that he or she may incur costs in connection with electronic delivery, including the cost of accessing the internet and printing fees, and that an interruption of internet access may interfere with his or her ability to access the documents. This consent shall remain in effect until this option expires or until the Optionee gives the Company written notice that it should deliver paper documents.

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(c) **No Notice of Expiration Date.** The Optionee agrees that the Company and its officers, employees, attorneys and agents do not have any obligation to notify him, her or it prior to the expiration of this option pursuant to Section 6. The Optionee further agrees that he, she or it has the sole responsibility for monitoring the expiration of this option and for exercising this option, if at all, before it expires. This Subsection (c) shall supersede any contrary representation that may have been made, orally or in writing, by the Company or by an officer, employee, attorney or agent of the Company.

SECTION 14. DEFINITIONS.

(a) **"Agreement"** shall mean this Stock Option Agreement.

(b) **"Board of Directors"** shall mean the board of directors of the Company, as constituted from time to time or, if a Committee has been appointed, such Committee.

(c) **"Change in Control"** shall mean (A) a transfer of all or substantially all of the Company's assets, (B) a merger, consolidation or other capital reorganization or business combination transaction of the Company with or into another corporation, entity or person except any such merger or consolidation involving the Company in which the shares of capital stock of the Company outstanding immediately prior to such merger or consolidation continue to represent, or are converted into or exchanged for shares of capital stock that represent, immediately following such merger or consolidation, at least a majority, by voting power, of the capital stock of (1) the surviving or resulting corporation; or (2) if the surviving or resulting corporation is a wholly owned subsidiary of another corporation immediately following such merger or consolidation, the parent corporation of such surviving or resulting corporation or (C) the consummation of a transaction, or series of related transactions, in which any "person" (as such term is used in Sections 13(d) and 14(d) of the Exchange Act) becomes the "beneficial owner" (as defined in Rule 13d-3 of the Exchange Act), directly or indirectly, of more than 50% of the Company's then outstanding capital stock.

(d) **"Code"** shall mean the Internal Revenue Code of 1986, as amended.

(e) **"Committee"** shall mean a committee of the Board of Directors. A committee shall consist of one or more members of the Board of Directors who have been appointed by the Board of Directors. A Committee shall have such authority and be responsible for such functions as the Board of Directors has assigned to it. Any reference to the Board of Directors in this Agreement shall be construed as a reference to the committee (if any) to whom the Board of Directors has assigned a particular function.

(f) **"Company"** shall mean Energy Vault, Inc., a Delaware corporation.

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- (g) **“Consultant”** shall mean a person, excluding Employees and Outside Directors, who performs bona fide services to the Company, a Parent or a Subsidiary as a consultant or advisor.
- (h) **“Consulting Agreement”** shall mean the agreement entered into by and between the Optionee and the Company dated [_____].
- (i) **“Continuous Service Status”** shall mean the absence of any termination of the Services.
- (j) **“Date of Grant”** shall mean the date of grant specified in the Notice of Stock Option Grant, which date shall be the date on which the Board of Directors resolved to grant this option.
- (k) **“Disability”** shall mean, for any Optionee that is a natural person, that the Optionee is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment.
- (l) **“Employee”** shall mean any individual who is a common law employee of the Company, a Parent or a Subsidiary.
- (m) **“Exchange Act”** shall mean the Securities Exchange Act of 1934, as amended.
- (n) **“Exercise Price”** shall mean the amount for which one Share may be purchased upon exercise of this option, as specified in the Notice of Stock Option Grant.
- (o) **“Fair Market Value”** shall mean the fair market value of a Share, as determined by the Board of Directors in good faith. Such determination shall be conclusive and binding on all persons.
- (p) **“Immediate Family”** shall mean any child, stepchild, grandchild, parent, stepparent, grandparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law or sister-in-law and shall include adoptive relationships.
- (q) **“Notice of Stock Option Grant”** shall mean the document so entitled to which this Agreement is attached.
- (r) **“NSO”** shall mean a stock option not described in Section 422(b) or 423(b) of the Code.
- (s) **“Optionee”** shall mean the person or entity named in the Notice of Stock Option Grant.
- (t) **“Outside Director”** shall mean a member of the Board of Directors who is not an Employee.

- (u) **“Parent”** shall mean 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.
- (v) **“Purchase Price”** shall mean the Exercise Price multiplied by the number of Shares with respect to which this option is being exercised.
- (w) **“Right of First Refusal”** shall mean the Company’s right of first refusal described in Section 7.
- (x) **“Securities Act”** shall mean the Securities Act of 1933, as amended.
- (y) **“Service”** shall mean Optionee’s service as described in the Consulting Agreement.
- (z) **“Share”** shall mean one share of Stock, as adjusted in accordance with Section 12 of this Agreement (if applicable).
- (aa) **“Stock”** shall mean the common stock of the Company.
- (bb) **“Subsidiary”** shall mean 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.
- (cc) **“Transferee”** shall mean any person to whom the Optionee has directly or indirectly transferred any Share acquired under this Agreement.
- (dd) **“Transfer Notice”** shall mean the notice of a proposed transfer of Shares described in Section 7.

Calculation of Filing Fee Tables
Form S-8
 (Form Type)

Energy Vault Holdings, Inc.
 (Exact name of Registrant as Specified in its Charter)

Table 1: Newly Registered Securities

	Security Type	Security Class Title	Fee Calculation or Carry Forward Rule	Amount Registered (1)	Proposed Maximum Offering Price Per Unit	Maximum Aggregate Offering Price	Fee Rate	Amount of Registration Fee
Fees to be Paid	Equity	Common Stock, par value \$0.0001 per share	Other	20,862,091 (2)	\$4.94 (7)	\$103,058,730.00	0.0000927	\$9,553.54
	Equity	Common Stock, par value \$0.0001 per share	Other	7,081,307 (3)	\$4.94 (7)	\$34,981,657.00	0.0000927	\$3,242.80
	Equity	Common Stock, par value \$0.0001 per share	Other	927,963 (4)	\$0.81 (8)	\$751,651.00	0.0000927	\$69.68
	Equity	Common Stock, par value \$0.0001 per share	Other	203,205 (5)	\$0.24 (9)	\$48,770.00	0.0000927	\$4.52
	Equity	Common Stock, par value \$0.0001 per share	Other	145,630 (6)	\$1.48 (10)	\$215,533.00	0.0000927	\$19.98
	Total Offering Amounts					\$139,056,341.00		\$12,890.52
	Total Fees Previously Paid							—
	Total Fee Offsets							—
	Net Fee Due							\$12,890.52

- (1) Pursuant to Rule 416(a) under the Securities Act of 1933, as amended (the “Securities Act”), the Registration Statement also covers any additional and indeterminate number of securities as may become issuable pursuant to the provisions of the Registrant’s 2022 Equity Incentive Plan (the “2022 EIP”), the Energy Vault, Inc. 2020 Stock Plan (the “2020 Plan”) and the Energy Vault, Inc. 2017 Equity Incentive Plan (the “2017 Plan”) and together with the 2020 Plan, the “Predecessor Plans”), as a result of any stock dividend, stock split, recapitalization, or other similar transaction effected without the receipt of consideration that results in an increase to the number of outstanding shares of Registrant’s common stock, par value \$0.0001 per share (the “Common Stock”).
- (2) Represents 20,862,091 shares of Common Stock reserved for issuance under the 2022 EIP, including 5,345,331 shares that were automatically added to the shares reserved for issuance under the 2022 EIP on March 1, 2022 pursuant to an “evergreen” provision contained in the 2022 EIP. The number of shares of Common Stock available for issuance under the 2022 EIP is subject to an automatic annual increase on the first day of each March through March 1, 2031, equal to the lesser of (a) 4% of the total number of shares of Common Stock actually issued and outstanding on the last day of the preceding month or (b) the number of shares of Common Stock determined by the Registrant’s Board of Directors.
- To the extent that shares previously issued pursuant to awards granted under the Predecessor Plans are reacquired by the Registrant after the date of this Registration Statement pursuant to a forfeiture provision, repurchase right or for any other reason, or if outstanding awards granted under each of the Predecessor Plans are forfeited, cancelled, expire or lapse unexercised for any reason before being exercised or settled in full after the date of this Registration Statement, the shares of Common Stock subject to such awards instead will become available for future issuance under the 2022 EIP, up to a maximum of 8,251,906 shares.
- (3) Represents 7,081,307 shares of Common Stock that are subject to restricted stock units outstanding under the 2020 Plan.
- (4) Represents 927,963 shares of Common Stock that may be issued pursuant to the exercise of outstanding stock options under the 2020 Plan.
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- (5) Represents 203,205 shares of Common Stock that may be issued pursuant to the exercise of outstanding stock options under the 2017 Plan.
- (6) Represents 145,630 shares of Common Stock that may be issued pursuant to the exercise of the outstanding stock option (the “Consultant Option”) granted to West Investments VIII, LLC.
- (7) Estimated in accordance with Rule 457(h) under the Securities Act solely for the purpose of calculating the registration fee and based on the average of the high and low prices of the Common Stock on July 26, 2022, as reported on the New York Stock Exchange, which date is within five business days prior to the filing of this Registration Statement.

- (8) Estimated pursuant to Rule 457(h) under the Securities Act solely for the purpose of calculating the registration fee. The price of \$0.81 per share represents the weighted average exercise price per share of outstanding awards under the 2020 Plan.
 - (9) Estimated pursuant to Rule 457(h) under the Securities Act solely for the purpose of calculating the registration fee. The price of \$0.24 per share represents the weighted average exercise price per share of outstanding awards under the 2017 Plan.
 - (10) Estimated pursuant to Rule 457(h) under the Securities Act solely for the purpose of calculating the registration fee. The price of \$1.48 per share represents the exercise price per share of the outstanding awards under Consultant Option.
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