

Form S-8: Registration Statement

Sunnyvale, California; 29 October 2024: EBR Systems, Inc. (ASX: "EBR", "EBR Systems", or the "Company"), developer of the world's only wireless cardiac pacing device for heart failure, announce that it has filed the attached Registration Statement on Form S-8 with the U.S. Securities and Exchange Commission ("SEC") to register the following shares under the U.S. Securities Act of 1933 for purchases under the 2013 Equity Incentive Plan and 2021 Equity Incentive Plan.

2013 Equity Incentive Plan	20,825,312 common shares (1:1 ratio CDIs)
2021 Equity Incentive Plan	37,733,732 common shares (1:1 ratio CDIs)

ENDS

This announcement has been authorised for release by the Routine Notifications Committee, a Committee of the Board.

For more information, please contact:

Company

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Investors

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About EBR Systems

(ASX: EBR) Silicon Valley-based EBR Systems (ASX: EBR) is dedicated to superior treatment of cardiac rhythm disease by providing more physiologically effective stimulation through wireless cardiac pacing. The patented proprietary Wireless Stimulation Endocardially (WiSE) technology was developed to eliminate the need for cardiac pacing leads, historically the major source of complications, effectiveness and reliability issues in cardiac rhythm disease management. The initial product is designed to eliminate the need for coronary sinus leads to stimulate the left ventricle in heart failure patients requiring Cardiac Resynchronisation Therapy (CRT). Future products potentially address wireless endocardial stimulation for bradycardia and other non-cardiac indications.

EBR Systems' WiSE Technology

EBR Systems' WiSE technology is the world's only wireless, endocardial (inside the heart) pacing system in clinical use for stimulating the heart's left ventricle. This has long been a goal of cardiac pacing companies since internal stimulation of the left ventricle is thought to be a potentially superior, more anatomically correct pacing location. WiSE technology enables cardiac pacing of the left ventricle with a novel cardiac implant that is roughly the size of a large grain of rice. The need for a pacing wire on the outside of the heart's left ventricle – and the attendant problems – are potentially eliminated. WiSE is an investigational device and is not currently available for sale in the US.

Forward-Looking Statements

This announcement contains or may contain forward-looking statements that are based on management's beliefs, assumptions, and expectations and on information currently available to management. Forward-looking statements involve known and unknown risks, uncertainties, contingencies and other factors, many of which are beyond the Company's control, subject to change without notice and may involve significant elements of subjective judgment and assumptions as to future events which may or may not be correct.

All statements that address operating performance, events or developments that we expect or anticipate will occur in the future are forward-looking statements, including without limitation our expectations with respect to our ability to commercialize our products including our estimates of potential revenues, costs, profitability and financial performance; our ability to develop and commercialize new products including our ability to obtain reimbursement for our products; our expectations with respect to our clinical trials, including enrolment in or completion of our clinical trials and our associated regulatory applications and approvals; our expectations with respect to the integrity or capabilities of our intellectual property position.

Management believes that these forward-looking statements are reasonable as and when made. You should not place undue reliance on forward-looking statements because they speak only as of the date when made. EBR does not assume any obligation to publicly update or revise any forward-looking statements, whether as a result of new information, future events or otherwise. EBR may not actually achieve the plans, projections or expectations disclosed in forward-looking statements, and actual results, developments or events could differ materially from those disclosed in the forward-looking statements.

Foreign Ownership Restriction

EBR's CHES Depository Interests (CDIs) are issued in reliance on the exemption from registration contained in Regulation S of the US Securities Act of 1933 (Securities Act) for offers or sales which are made outside the US. Accordingly, the CDIs have not been, and will not be, registered under the Securities Act or the laws of any state or other jurisdiction in the US. The holders of EBR's CDIs are unable to sell the CDIs into the US or to a US person unless the re-sale of the CDIs is registered under the Securities Act or an exemption is available. Hedging transactions with regard to the CDIs may only be conducted in accordance with the Securities Act.

As filed with the Securities and Exchange Commission on October 25, 2024

Registration No. 333-282848

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

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

EBR SYSTEMS, INC.
(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

51-1164669
(I.R.S. Employer
Identification No.)

**480 Oakmead Parkway
Sunnyvale, CA**
(Address of Principal Executive Offices)

94085
(Zip Code)

**EBR Systems, Inc. 2013 Equity Incentive Plan
EBR Systems, Inc. 2021 Equity Incentive Plan**
(Full titles of the plans)

John McCutcheon
President and Chief Executive Officer
EBR Systems, Inc.
480 Oakmead Parkway
Sunnyvale, CA 94085
(408) 720-1906
(Name, address, including zip code, and telephone number, including area code, of agent for service)

Copies to:

John H. Sellers
Cooley LLP
3175 Hanover Street
Palo Alto, CA 94304

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Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, 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	<input type="checkbox"/>	Accelerated filer	<input type="checkbox"/>
Non-accelerated filer	<input checked="" type="checkbox"/>	Smaller reporting company	<input checked="" type="checkbox"/>
		Emerging growth company	<input checked="" type="checkbox"/>

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

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PART I

INFORMATION REQUIRED IN THE SECTION 10(A) PROSPECTUS

The information called for by Part I of Form S-8 is omitted from this Registration Statement in accordance with Rule 428 of the Securities Act of 1933, as amended (the “Securities Act”) and the instructions to Form S-8. In accordance with the rules and regulations of the Securities and Exchange Commission (the “Commission”) and the instructions to Form S-8, such documents are not being filed with the Commission either as part of this Registration Statement or as prospectuses or prospectus supplements pursuant to Rule 424 of the Securities Act.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The following documents filed by EBR Systems, Inc. (the “Registrant”) with the Commission pursuant to the Securities Exchange Act of 1934, as amended (the “Exchange Act”) are incorporated by reference into this Registration Statement:

(a) The Registrant’s Registration Statement on [Form 10-12G](#) filed on July 30, 2024, as amended by [Amendment No. 1](#), filed on September 18, 2024, and [Amendment No. 2](#), filed on October 23, 2024, and effective as of September 30, 2024, which contains audited consolidated financial statements for the most recent fiscal year for which such statements have been filed.

(b) The description of the Registrant’s Common Stock contained in Item 11 of the Registrant’s Form 10-12G, including any amendment or report filed for the purpose of updating such description.

(c) All documents, reports and definitive proxy or information statements filed by the Registrant pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act (other than Current Reports furnished under Item 2.02 or Item 7.01 of Form 8-K and exhibits furnished on such form that relate to such items) on or after the date of this Registration Statement and prior to the filing of a post-effective amendment to this Registration Statement that indicates that all securities offered have been sold or that deregisters all securities then remaining unsold shall be deemed to be incorporated by reference in this Registration Statement and to be part hereof from the date of filing of such documents. Any statement contained in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement contained herein or in any subsequently filed document that also is deemed to be incorporated by reference herein modifies or supersedes such statement. Any such 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.

As permitted by Sections 102 and 145 of the Delaware General Corporation Law, the Registrant has adopted provisions in its Amended and Restated Certificate of Incorporation and Amended and Restated Bylaws that limit or eliminate the personal liability of its directors for a breach of their fiduciary duty of care as a director. The duty of

care generally requires that, when acting on behalf of the corporation, directors exercise an informed business judgment based on all material information reasonably available to them. Consequently, a director will not be personally liable to the Registrant or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability for:

- any breach of the director's duty of loyalty to the Registrant or its stockholders;
- any act or omission not in good faith or that involves intentional misconduct or a knowing violation of law;
- any act related to unlawful stock repurchases, redemptions or other distributions or payment of dividends;
- or
- any transaction from which the director derived an improper personal benefit.

These limitations of liability do not affect the availability of equitable remedies such as injunctive relief or rescission. The Registrant's Amended and Restated Certificate of Incorporation also authorizes it to indemnify its officers, directors and other agents to the fullest extent permitted under Delaware law.

As permitted by Section 145 of the Delaware General Corporation Law, the Registrant's Amended and Restated Bylaws provide that:

- the Registrant may indemnify its directors, officers, employees and other agents to the fullest extent permitted by the Delaware General Corporation Law, subject to limited exceptions;
- the Registrant may advance expenses to its directors, officers and employees in connection with a legal proceeding to the fullest extent permitted by the Delaware General Corporation Law, subject to limited exceptions; and
- the rights provided in the Registrant's Amended and Restated Bylaws are not exclusive.

The Registrant's Amended and Restated Certificate of Incorporation and its Amended and Restated Bylaws, as amended, provide for the indemnification provisions described above. The Registrant has entered into, and intends to continue to enter into, separate indemnification agreements with its directors and officers that may be broader than the specific indemnification provisions contained in the Delaware General Corporation Law. These indemnification agreements generally require the Registrant, among other things, to indemnify its officers and directors against certain liabilities that may arise by reason of their status or service as directors or officers, other than liabilities arising from willful misconduct. These indemnification agreements also generally require the Registrant to advance any expenses incurred by the directors or officers as a result of any proceeding against them as to which they could be indemnified. These indemnification provisions and the indemnification agreements may be sufficiently broad to permit indemnification of the Registrant's officers and directors for liabilities, including reimbursement of expenses incurred, arising under the Securities Act.

The Registrant has purchased and currently intends to maintain insurance on behalf of each and every person who is one of its directors or officers, within the limits and subject to the terms and conditions thereof, against any loss arising from any claim asserted against him or her and incurred by him or her in any such capacity, subject to certain exclusions.

Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits.

The exhibits to this Registration Statement are listed below:

Exhibit Number	Description
4.1	<u>Amended and Restated Certificate of Incorporation, as currently in effect (incorporated herein by reference to Exhibit 3.1 to the Registrant's Registration Statement on Form 10 (File No. 000-56671, filed with the Commission on July 29, 2024).</u>
4.2	<u>Amended and Restated Bylaws, as currently in effect (incorporated herein by reference to Exhibit 3.2 to the Registrant's Registration Statement on Form 10, as amended (File No. 000-56671), filed with the Commission on July 29, 2024).</u>
5.1*	Opinion of Cooley LLP.
23.1*	Consent of Independent Registered Public Accounting Firm.
23.2*	Consent of Cooley LLP (included in Exhibit 5.1).
24.1*	Power of Attorney (included on signature page).
99.1	<u>2021 Equity Incentive Plan, as amended (incorporated herein by reference to Exhibit 10.11 to the Registrant's Registration Statement on Form 10, as amended (File No. 000-56671), filed with the Commission on July 29, 2024).</u>
99.2	<u>2013 Equity Incentive Plan, as amended (incorporated herein by reference to Exhibit 10.16 to the Registrant's Registration Statement on Form 10, as amended (File No. 000-56671), filed with the Commission on July 29, 2024).</u>
99.3	<u>Australian Sub-Plan under the 2021 Equity Incentive Plan, as amended (incorporated herein by reference to Exhibit 10.14 to the Registrant's Registration Statement on Form 10, as amended (File No. 000-56671), filed with the Commission on July 29, 2024).</u>
99.4	<u>United Kingdom Sub-Plan under the 2021 Equity Incentive Plan, as amended (incorporated herein by reference to Exhibit 10.15 to the Registrant's Registration Statement on Form 10, as amended (File No. 000-56671), filed with the Commission on July 29, 2024).</u>
99.5	<u>Form of Stock Option Grant Notice and Stock Option Agreement under the 2021 Equity Incentive Plan (Australian Grants) (incorporated herein by reference to Exhibit 10.12 to the Registrant's Registration Statement on Form 10, as amended (File No. 000-56671), filed with the Commission on July 29, 2024).</u>
99.6	<u>Form of Stock Option Grant Notice and Stock Option Agreement under the 2021 Equity Incentive Plan (United Kingdom Grants) (incorporated herein by reference to Exhibit 10.13 to the Registrant's Registration Statement on Form 10, as amended (File No. 000-56671), filed with the Commission on July 29, 2024).</u>
99.8	<u>Form of Stock Option Grant Notice and Stock Option Agreement under the 2013 Equity Incentive Plan (incorporated herein by reference to Exhibit 10.17 to the Registrant's Registration Statement on Form 10, as amended (File No. 000-56671), filed with the Commission on July 29, 2024).</u>
107*	Filing Fee Disclosure and Payment Methods.

* Filed herewith.

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Item 9. Undertakings.

(a) The undersigned Registrant 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. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective 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 Registration Statement is on Form S-8, and 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 Registrant 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 Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the Registrant'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 herein, 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 Registrant pursuant to the foregoing provisions, or otherwise, the Registrant 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 Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant 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 Registrant 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, as amended, 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 Sunnyvale, State of California, on October 25, 2024.

EBR SYSTEMS, INC.

By: /s/ John McCutcheon
John McCutcheon
President and Chief Executive Officer

POWER OF ATTORNEY

KNOW ALL BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints John McCutcheon and Gary W. Doherty and each of them, as his or her true and lawful attorneys-in-fact and agents, and each of them, with the full power of substitution, for him or her and in his or her name, place or stead, in any and all capacities, to sign any and all amendments to this registration statement (including post-effective amendments), and to file the same, with exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, 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 or she might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, 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, as amended, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ John McCutcheon</u> John McCutcheon	President, Chief Executive Officer and Director <i>(Principal Executive Officer)</i>	October 25, 2024
<u>/s/ Gary W. Doherty</u> Gary W. Doherty	Chief Financial Officer <i>(Principal Financial and Accounting Officer)</i>	October 25, 2024
<u>/s/ Allan Will</u> Allan Will	Chairman of the Board of Directors	October 25, 2024
<u>/s/ Karen Drexler</u> Karen Drexler	Director	October 25, 2024
<u>/s/ Bronwyn Evans AM</u> Bronwyn Evans AM	Director	October 25, 2024

/s/ Trevor Moody
Trevor Moody

Director

October 25, 2024

/s/ Chris Nave
Chris Nave

Director

October 25, 2024

/s/ David Steinhaus, M.D.
David Steinhaus, M.D.

Director

October 25, 2024

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John H. Sellers
+1 650 843 5070
jsellers@cooley.com

October 25, 2024

EBR Systems, Inc.
480 Oakmead Parkway
Sunnyvale, CA 94085

Ladies and Gentlemen:

We have acted as counsel to EBR Systems, Inc., a Delaware corporation (the "**Company**"), in connection with the filing by the Company of a Registration Statement on Form S-8 (the "**Registration Statement**") with the Securities and Exchange Commission (the "**Commission**") covering the offering of up to 58,559,044 shares (the "**Shares**") of the Company's Common Stock, par value \$0.0001 per share ("**Common Stock**"), consisting of (a) 20,825,312 shares of Common Stock issuable pursuant to the Company's 2013 Equity Incentive Plan (the "**2013 Plan**"), and (b) 37,733,732 shares of Common Stock issuable pursuant to the Company's 2021 Equity Incentive Plan (the "**2021 Plan**", together with the 2013 Plan, the "**Plans**").

In connection with this opinion, we have examined and relied upon (a) the Registration Statement and the related prospectuses, (b) the Company's certificate of incorporation and bylaws, each as currently in effect, (c) the Plans, and (d) such other records, documents, opinions, certificates, memoranda and instruments as in our judgment are necessary or appropriate to enable us to render the opinion expressed below. We have assumed the genuineness of all signatures, the authenticity of all documents submitted to us as originals, the conformity to originals of all documents submitted to us as copies, the accuracy, completeness and authenticity of certificates of public officials and the due authorization, execution and delivery of all documents by all persons other than the Company where authorization, execution and delivery are prerequisites to the effectiveness thereof. As to certain factual matters, we have relied upon a certificate of an officer of the Company and have not independently verified such matters.

Our opinion is expressed only with respect to the General Corporation Law of the State of Delaware. We express no opinion to the extent that any other laws are applicable to the subject matter hereof and express no opinion and provide no assurance as to compliance with any federal or state securities law, rule or regulation.

On the basis of the foregoing, and in reliance thereon, we are of the opinion that the Shares, when sold and issued in accordance with the Plans, the Registration Statement and the related prospectuses, will be validly issued, fully paid, and nonassessable (except as to shares issued pursuant to deferred payment arrangements, which will be fully paid and nonassessable when such deferred payments are made in full).

This opinion is limited to the matters expressly set forth in this letter, and no opinion has been or should be implied, or may be inferred, beyond the matters expressly stated. This opinion speaks only as to law and facts in effect or existing as of the date hereof and we have no obligation or responsibility to update or supplement this opinion to reflect any facts or circumstances that may hereafter come to our attention or any changes in law that may hereafter occur.



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We consent 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 Securities Act of 1933, as amended, or the rules and regulations of the Commission thereunder.

Sincerely,

Cooley LLP

By: /s/ John H. Sellers
John H. Sellers

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CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in this Registration Statement on Form S-8 of our report dated February 27, 2024 (October 22, 2024, as to the correction and reclassification described in Note 2) relating to the financial statements of EBR Systems, Inc., appearing in the Registration Statement No. 000-56671 on Form 10 of EBR Systems, Inc. for the years ended December 31, 2023 and 2022.

/s/ Deloitte & Touche LLP

Tempe, AZ

October 25, 2024

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CALCULATION OF FILING FEE TABLES

S-8

EBR Systems, Inc.

Table 1: Newly Registered and Carry Forward Securities

Line Item Type	Security Type	Security Class Title	Notes	Fee Calculation Rule	Amount Registered	Proposed Maximum Offering Price Per Unit	Maximum Aggregate Offering Price	Fee Rate	Amount of Registration Fee
<i>Newly Registered Securities</i>									
Fees to be Paid	Equity	Common Stock, \$0.0001 par value per share, issuable upon the exercise of outstanding options granted under the 2013 Equity Incentive Plan	(1)	Other	20,825,312	\$ 0.14	\$ 2,915,543.68	0.0001531	\$ 446.37
Fees to be Paid	Equity	Common Stock, \$0.0001 par value per share, issuable upon the exercise of outstanding options granted under the 2021 Equity Incentive Plan	(2)	Other	20,583,838	0.58	11,938,626.04	0.0001531	1,827.80
Fees to be Paid	Equity	Common Stock, \$0.0001 par value per share, reserved for issuance pursuant to the 2021 Equity Incentive Plan	(3)	Other	17,149,894	\$ 0.69	\$ 11,833,426.86	0.0001531	\$ 1,811.70
Total Offering Amounts:							\$ 26,687,596.58		4,085.87
Total Fees Previously Paid:									
Total Fee Offsets:									0.00
Net Fee Due:									<u>\$ 4,085.87</u>

Offering Note(s)

- (1) Pursuant to Rule 416(a) under the Securities Act of 1933, as amended (the “Securities Act”), this Registration Statement shall also cover any additional shares of Common Stock (“Common Stock”) of EBR Systems, Inc. (the “Registrant”) that become issuable under the Registrant’s 2013 Equity Incentive Plan (the “2013 Plan”), by reason of any stock dividend, stock split, recapitalization or other similar transaction. Represents shares of Common Stock reserved for issuance upon the exercise of outstanding stock options granted under the 2013 Plan. No additional stock awards will be granted under the 2013 Plan. Estimated solely for the purpose of calculating the amount of the registration fee pursuant to Rule 457(h) of the Securities Act. The offering price per share and the aggregate offering price are based on \$0.14 with respect to outstanding options granted under the 2013 Plan, which is the weighted-average exercise price for outstanding options granted under the 2013 Plan.
- (2) Pursuant to Rule 416(a) under the Securities Act of 1933, as amended (the “Securities Act”), this Registration Statement shall also cover any additional shares of Common Stock (“Common Stock”) of EBR Systems, Inc. (the “Registrant”) that become issuable under the Registrant’s 2021 Equity Incentive Plan (the “2021 Plan”), by reason of any stock dividend, stock split, recapitalization or other similar transaction. Represents shares of Common Stock reserved for issuance upon the exercise of outstanding stock options granted under the 2021 Plan. Estimated solely for the purpose of calculating the amount of the registration fee pursuant to Rule 457(h) of the Securities Act. The offering price per share and the aggregate offering price are based on \$0.58 with respect to outstanding options granted under the 2021 Plan, which is the weighted-average exercise price for outstanding options granted under the 2021 Plan.

(3) Pursuant to Rule 416(a) under the Securities Act of 1933, as amended (the “Securities Act”), this Registration Statement shall also cover any additional shares of Common Stock (“Common Stock”) of EBR Systems, Inc. (the “Registrant”) that become issuable under the Registrant’s 2021 Equity Incentive Plan (the “2021 Plan”), by reason of any stock dividend, stock split, recapitalization or other similar transaction. Estimated solely for the purpose of calculating the amount of the registration fee pursuant to Rule 457(h) of the Securities Act. The offering price per share and the aggregate offering price are based on \$0.69, with respect to shares reserved for future grant under the 2021 Plan, which is the average of the high and low sale prices per share of the Common Stock on the Australian Securities Exchange (the “ASX”) in equivalent U.S. dollars as of a date October 21, 2024, within 5 business days prior to filing this Registration Statement.