
**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

FORM 10-Q

(Mark One)

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

FOR THE QUARTERLY PERIOD ENDED September 30, 2022

OR

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

FOR THE TRANSITION PERIOD FROM TO

Commission File Number: 1-34392

PLUG POWER INC.

(Exact name of registrant as specified in its charter)

Delaware

(State or Other Jurisdiction of
Incorporation or Organization)

22-3672377

(I.R.S. Employer
Identification Number)

968 ALBANY SHAKER ROAD, LATHAM, NEW YORK 12110

(Address of Principal Executive Offices, including Zip Code)

(518) 782-7700

(Registrant's telephone number, including area code)

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

Title of Each Class	Trading Symbol(s)	Name of Each Exchange on Which Registered
Common Stock, par value \$.01 per share	PLUG	The NASDAQ Capital Market

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes ☒ No ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, 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 filer ☐ Smaller reporting company ☐ Emerging growth company ☐

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

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

The number of shares of common stock, par value of \$0.01 per share, outstanding as of November 4, 2022 was 582,904,421 shares.

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PART I. FINANCIAL INFORMATION

Item 1 — Interim Financial Statements (Unaudited)

Plug Power Inc. and Subsidiaries
Condensed Consolidated Balance Sheets
(In thousands, except share and per share amounts)
(Unaudited)

	September 30, 2022	December 31, 2021
Assets		
Current assets:		
Cash and cash equivalents	\$ 1,747,753	\$ 2,481,269
Restricted cash	156,686	118,633
Available-for-sale securities, at fair value (amortized cost \$845,509 and allowance for credit losses of \$0 at September 30, 2022 and amortized cost \$1,242,933 and allowance for credit losses of \$0 at December 31, 2021)	819,440	1,240,265
Equity securities	130,121	147,995
Accounts receivable	95,472	92,675
Inventory	516,280	269,163
Contract assets	50,394	38,637
Prepaid expenses and other current assets	135,506	59,888
Total current assets	3,651,652	4,448,525
Restricted cash	650,651	532,292
Property, plant, and equipment, net	607,268	255,623
Right of use assets related to finance leases, net	49,603	32,494
Right of use assets related to operating leases, net	311,878	212,537
Equipment related to power purchase agreements and fuel delivered to customers, net	88,490	72,902
Contract assets	20,485	120
Goodwill	230,719	220,436
Intangible assets, net	195,647	158,208
Investments in non-consolidated entities and non-marketable equity securities	41,162	12,892
Other assets	11,249	4,047
Total assets	\$ 5,858,804	\$ 5,950,076
Liabilities and Stockholders' Equity		
Current liabilities:		
Accounts payable	\$ 199,865	\$ 92,307
Accrued expenses	157,479	79,237
Deferred revenue and other contract liabilities	108,026	116,377
Operating lease liabilities	43,363	30,822
Finance lease liabilities	7,216	4,718
Finance obligations	53,236	42,040
Current portion of long-term debt	937	15,252
Contingent consideration, loss accrual for service contracts, and other current liabilities	29,269	39,800
Total current liabilities	599,391	420,553
Deferred revenue and other contract liabilities	81,119	66,713
Operating lease liabilities	245,715	175,635
Finance lease liabilities	35,864	24,611
Finance obligations	250,358	211,644
Convertible senior notes, net	193,592	192,633
Long-term debt	65,325	112,794
Contingent consideration, loss accrual for service contracts, and other liabilities	163,864	139,797
Total liabilities	1,635,228	1,344,380
Stockholders' equity:		
Common stock, \$0.01 par value per share; 1,500,000,000 shares authorized; Issued (including shares in treasury): 598,777,468 at September 30, 2022 and 594,729,610 at December 31, 2021	5,988	5,947
Additional paid-in capital	7,245,396	7,070,710
Accumulated other comprehensive loss	(35,025)	(1,532)
Accumulated deficit	(2,897,446)	(2,396,903)
Less common stock in treasury: 18,015,881 at September 30, 2022 and 17,074,710 at December 31, 2021	(95,337)	(72,526)
Total stockholders' equity	4,223,576	4,605,696
Total liabilities and stockholders' equity	\$ 5,858,804	\$ 5,950,076

The accompanying notes are an integral part of these unaudited interim condensed consolidated financial statements

Plug Power Inc. and Subsidiaries
Condensed Consolidated Statements of Operations
(In thousands, except share and per share amounts)
(Unaudited)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2022	2021	2022	2021
Net revenue:				
Sales of fuel cell systems, related infrastructure and equipment	\$ 157,985	\$ 115,999	\$ 383,065	\$ 262,049
Services performed on fuel cell systems and related infrastructure	8,406	6,677	25,468	18,397
Power purchase agreements	9,524	9,321	30,730	25,508
Fuel delivered to customers and related equipment	12,389	11,556	40,289	33,804
Other	324	369	1,146	679
Net revenue	188,628	143,922	480,698	340,437
Cost of revenue:				
Sales of fuel cell systems, related infrastructure and equipment	127,381	89,235	310,362	198,122
Services performed on fuel cell systems and related infrastructure	12,619	18,697	38,106	47,258
Provision for loss contracts related to service	5,727	7,462	8,843	15,641
Power purchase agreements	35,549	31,199	102,194	71,776
Fuel delivered to customers and related equipment	53,129	27,857	134,008	90,331
Other	286	550	1,063	856
Total cost of revenue	234,691	175,000	594,576	423,984
Gross loss	(46,063)	(31,078)	(113,878)	(83,547)
Operating expenses:				
Research and development	28,105	16,634	72,123	37,623
Selling, general and administrative	85,578	42,421	262,420	106,652
Change in fair value of contingent consideration	—	8,530	(2,605)	8,760
Total operating expenses	113,683	67,585	331,938	153,035
Operating loss	(159,746)	(98,663)	(445,816)	(236,582)
Interest income	13,429	4,151	19,321	5,664
Interest expense	(9,020)	(9,512)	(28,871)	(33,559)
Other expense, net	(5,399)	(50)	(9,164)	(318)
Realized loss on investments, net	—	(254)	(1,315)	(236)
Change in fair value of equity securities	(4,221)	(607)	(22,864)	(284)
Loss on equity method investments	(4,280)	(1,736)	(10,304)	(1,736)
Loss before income taxes	\$ (169,237)	\$ (106,671)	\$ (499,013)	\$ (267,051)
Income tax expense	1,521	—	1,530	—
Net loss	\$ (170,758)	\$ (106,671)	\$ (500,543)	\$ (267,051)
Net loss per share:				
Basic and diluted	\$ (0.30)	\$ (0.19)	\$ (0.87)	\$ (0.48)
Weighted average number of common stock outstanding	578,043,278	574,520,806	578,217,636	551,894,779

The accompanying notes are an integral part of these unaudited interim condensed consolidated financial statements

Plug Power Inc. and Subsidiaries
Condensed Consolidated Statements of Comprehensive Loss
(In thousands)
(Unaudited)

	Three months ended September 30,		Nine months ended September 30,	
	2022	2021	2022	2021
Net loss	\$ (170,758)	\$ (106,671)	\$ (500,543)	\$ (267,051)
Other comprehensive loss:				
Foreign currency translation loss	(1,044)	(172)	(10,092)	(714)
Change in net unrealized loss on available-for-sale securities	(4,992)	(2,200)	(23,401)	(4,075)
Comprehensive loss attributable to the Company	<u>\$ (176,794)</u>	<u>\$ (109,043)</u>	<u>\$ (534,036)</u>	<u>\$ (271,840)</u>

The accompanying notes are an integral part of these unaudited interim condensed consolidated financial statements

Plug Power Inc. and Subsidiaries
Condensed Consolidated Statements of Stockholders' Equity
(In thousands, except share amounts)
(Unaudited)

	Common Stock		Additional	Accumulated	Treasury Stock		Accumulated	Total
	Shares	Amount	Paid-in Capital	Other Comprehensive Income (Loss)	Shares	Amount	Deficit	Stockholders' Equity
December 31, 2021	594,729,610	\$ 5,947	\$ 7,070,710	\$ (1,532)	17,074,710	\$ (72,526)	\$ (2,396,903)	\$ 4,605,696
Net loss	—	—	—	—	—	—	(156,489)	(156,489)
Other comprehensive loss	—	—	—	(16,930)	—	—	—	(16,930)
Stock-based compensation	226,221	2	43,384	—	—	—	—	43,386
Stock option exercises and issuance of shares of restricted common stock	253,525	3	288	—	—	—	—	291
Treasury stock acquired from employees upon exercise of stock options and vesting of restricted stock	—	—	—	—	71,627	(1,465)	—	(1,465)
Provision for common stock warrants	—	—	1,743	—	—	—	—	1,743
March 31, 2022	595,209,356	\$ 5,952	\$ 7,116,125	\$ (18,462)	17,146,337	\$ (73,991)	\$ (2,553,392)	\$ 4,476,232
Net loss	—	—	—	—	—	—	(173,296)	(173,296)
Other comprehensive loss	—	—	—	(10,527)	—	—	—	(10,527)
Stock-based compensation	108,216	2	44,857	—	—	—	—	44,859
Stock option exercises and issuance of shares of restricted common stock	391,967	4	525	—	—	—	—	529
Treasury stock acquired from employees upon exercise of stock options and vesting of restricted stock	—	—	—	—	63,712	(1,195)	—	(1,195)
Provision for common stock warrants	—	—	1,979	—	—	—	—	1,979
June 30, 2022	595,709,539	\$ 5,958	\$ 7,163,486	\$ (28,989)	17,210,049	\$ (75,186)	\$ (2,726,688)	\$ 4,338,581
Net loss	—	—	—	—	—	—	(170,758)	(170,758)
Other comprehensive loss	—	—	—	(6,036)	—	—	—	(6,036)
Stock-based compensation	113,352	1	46,738	—	—	—	—	46,739
Stock option exercises and issuance of shares of restricted common stock	2,954,577	29	1,286	—	—	—	—	1,315
Treasury stock acquired from employees upon exercise of stock options and vesting of restricted stock	—	—	—	—	805,832	(20,151)	—	(20,151)
Provision for common stock warrants	—	—	33,886	—	—	—	—	33,886
September 30, 2022	598,777,468	\$ 5,988	\$ 7,245,396	\$ (35,025)	18,015,881	\$ (95,337)	\$ (2,897,446)	\$ 4,223,576
December 31, 2020	473,977,469	\$ 4,740	\$ 3,446,650	\$ 2,451	15,926,068	\$ (40,434)	\$ (1,946,488)	\$ 1,466,919
Net loss	—	—	—	—	—	—	(60,746)	(60,746)
Cumulative impact of Accounting Standards Update 2020-06 adoption	—	—	(130,249)	—	—	—	9,550	(120,699)
Other comprehensive gain	—	—	—	(1,031)	—	—	—	(1,031)
Stock-based compensation	15,166	—	9,695	—	—	—	—	9,695
Public offerings, common stock, net	32,200,000	322	2,022,866	—	—	—	—	2,023,188
Private offerings, common stock, net	54,966,188	549	1,564,088	—	—	—	—	1,564,637
Stock option exercises	1,758,375	18	4,691	—	—	—	—	4,709
Exercise of warrants	16,308,978	163	15,282	—	—	—	—	15,445
Provision for common stock warrants	—	—	1,601	—	—	—	—	1,601
Conversion of 3.75% Convertible Senior Notes	3,016,036	30	15,155	—	—	—	—	15,185
Repurchase of 5.5% Convertible Senior Notes, net of income tax benefit	69,808	1	159	—	—	—	—	160
March 31, 2021	582,312,020	\$ 5,823	\$ 6,949,938	\$ 1,420	15,926,068	\$ (40,434)	\$ (1,997,684)	\$ 4,919,063
Net loss	—	—	—	—	—	—	(99,634)	(99,634)
Cumulative impact of Accounting Standards Update 2020-06 adoption	—	—	64	—	—	—	(1)	63
Other comprehensive gain	—	—	—	(1,386)	—	—	—	(1,386)
Stock-based compensation	—	—	11,120	—	—	—	—	11,120
Stock option exercises	2,075	—	(4)	—	—	—	—	(4)
Exercise of warrants	4,534,130	45	(40)	—	—	—	—	5
Provision for common stock warrants	—	—	1,642	—	—	—	—	1,642
June 30, 2021	586,848,225	\$ 5,868	\$ 6,962,720	\$ 34	15,926,068	\$ (40,434)	\$ (2,097,319)	\$ 4,830,869
Net loss	—	—	—	—	—	—	(106,671)	(106,671)
Cumulative impact of Accounting Standards Update 2020-06 adoption	—	—	—	—	—	—	1	1
Other comprehensive gain	—	—	—	(2,372)	—	—	—	(2,372)
Stock-based compensation	46,242	—	13,998	—	—	—	—	13,998
Public offerings, common stock, net	—	—	5	—	—	—	—	5
Stock option exercises	2,815,652	28	583	—	1,106,580	(30,734)	—	(30,123)
Exercise of warrants	3,367,876	34	(39)	—	—	—	—	(5)
Provision for common stock warrants	—	—	1,187	—	—	—	—	1,187
September 30, 2021	593,077,995	\$ 5,930	\$ 6,978,454	\$ (2,338)	17,032,648	\$ (71,168)	\$ (2,203,989)	\$ 4,706,889

The accompanying notes are an integral part of these unaudited interim condensed consolidated financial statements

Plug Power Inc. and Subsidiaries
Condensed Consolidated Statements of Cash Flows
(In thousands)
(Unaudited)

	Nine months ended September 30,	
	2022	2021
Operating activities		
Net loss	\$ (500,543)	\$ (267,051)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation of long-lived assets	20,201	15,903
Amortization of intangible assets	15,238	1,095
Stock-based compensation	134,984	34,813
Amortization of debt issuance costs and discount on convertible senior notes	1,969	2,371
Provision for common stock warrants	12,513	4,746
Deferred income tax expense	699	—
Impairment of long-lived assets	763	1,329
(Benefit)/loss on service contracts	(21,984)	9,586
Fair value adjustment to contingent consideration	(2,605)	(8,760)
Net realized loss on investments	1,315	236
Amortization of premium on available-for-sale securities	6,383	—
Lease origination costs	(5,991)	(7,889)
Loss on disposal of assets	268	—
Change in fair value for equity securities	22,864	284
Loss on equity method investments	10,304	1,736
Changes in operating assets and liabilities that provide (use) cash:		
Accounts receivable	(1,980)	(89,329)
Inventory	(245,770)	(90,428)
Contract assets	(7,027)	—
Prepaid expenses and other assets	(82,657)	(28,465)
Accounts payable, accrued expenses, and other liabilities	112,952	28,992
Deferred revenue and other contract liabilities	6,055	42,330
Net cash used in operating activities	(522,049)	(348,501)
Investing activities		
Purchases of property, plant and equipment	(317,553)	(91,384)
Purchases of equipment related to power purchase agreements and equipment related to fuel delivered to customers	(22,785)	(17,900)
Purchase of available-for-sale securities	(295,329)	(1,862,951)
Proceeds from sales of available-for-sale securities	475,676	1,105,874
Proceeds from maturities of available-for-sale securities	209,379	21,780
Purchase of equity securities	(4,990)	(169,713)
Net cash paid for acquisitions	(26,473)	—
Cash paid for non-consolidated entities and non-marketable equity securities	(38,574)	—
Net cash used in investing activities	(20,649)	(1,014,294)
Financing activities		
Proceeds from exercise of warrants, net of transaction costs	—	15,445
Payments of contingent consideration	(2,667)	—
Proceeds from public and private offerings, net of transaction costs	—	3,587,830
Payments of tax withholding on behalf of employees for net stock settlement of stock-based compensation	(22,811)	(30,734)
Proceeds from exercise of stock options	2,135	5,316
Principal payments on long-term debt	(62,794)	(29,129)
Proceeds from finance obligations	83,980	53,447
Principal repayments of finance obligations and finance leases	(39,156)	(20,413)
Net cash (used in) provided by financing activities	(41,313)	3,581,762
Effect of exchange rate changes on cash	6,907	(59)
(Decrease)/increase in cash and cash equivalents	(733,516)	2,059,558
Increase in restricted cash	156,412	159,350
Cash, cash equivalents, and restricted cash beginning of period	3,132,194	1,634,284
Cash, cash equivalents, and restricted cash end of period	<u>\$ 2,555,090</u>	<u>\$ 3,853,192</u>
Supplemental disclosure of cash flow information		
Cash paid for interest, net of capitalized interest of \$9.8 million	<u>\$ 24,392</u>	<u>\$ 10,341</u>
Summary of non-cash activity		
Recognition of right of use asset - finance leases	\$ 20,807	\$ 16,961
Recognition of right of use asset - operating leases	119,012	65,083
Net tangible liabilities assumed in a business combination	(5,124)	—
Intangible assets acquired in a business combination	60,522	—
Conversion of convertible senior notes to common stock	—	15,345
Net transfers between inventory and long-lived assets	1,322	—
Accrued purchase of fixed assets, cash to be paid in subsequent period	61,814	8,832

The accompanying notes are an integral part of these unaudited interim condensed consolidated financial statements

1. Nature of Operations

Plug Power Inc. (the “Company,” “Plug,” “we” or “our”) is facilitating the paradigm shift to an increasingly electrified world by innovating cutting-edge hydrogen and fuel cell solutions. While we continue to develop commercially-viable hydrogen and fuel cell product solutions to replace lead-acid and lithium batteries in electric material handling vehicles and industrial trucks for some of the world’s largest retail-distribution and manufacturing businesses, we have expanded our offerings to support a variety of commercial operations that can be powered with green hydrogen. We also provide electrolyzers that allow customers — such as refineries, producers of chemicals, steel, fertilizer and commercial refueling stations — to generate hydrogen on-site. Additionally, we intend for our electrolyzers to be used to generate green hydrogen within Plug’s own plants that will then be sold to customers. We are focusing our efforts on industrial mobility applications, including electric forklifts and electric industrial vehicles, at multi-shift high volume manufacturing and high throughput distribution sites where we believe our products and services provide a unique combination of productivity, flexibility, and environmental benefits. Additionally, we manufacture and sell fuel cell products to replace batteries and diesel generators in stationary back-up power applications for telecommunications, transportation, and utility customers. Plug supports these markets with an ecosystem of integrated products that make, transport, handle, dispense and use hydrogen.

During the three months ended September 30, 2022, our wholly-owned subsidiary, Plug Power LA JV, LLC, created a joint venture with Niloco Hydrogen Holdings LLC, a wholly-owned subsidiary of Olin Corporation (“Olin”), named “Hidrogenii”. We believe Hidrogenii will support reliability of supply and speed to market for hydrogen throughout North America, and set the foundation for broader collaboration between Plug and Olin. Hidrogenii plans to begin with the construction of a 15-ton-per-day hydrogen plant in St. Gabriel, Louisiana. Hidrogenii is owned 50% by Plug Power LA JV, LLC and 50% by Niloco Hydrogen Holdings LLC. As of September 30, 2022, there has been no activity related to this joint venture.

2. Summary of Significant Accounting Policies

Principles of Consolidation

The unaudited interim condensed consolidated financial statements include the financial statements of the Company and its wholly-owned subsidiaries. Intercompany balances and transactions have been eliminated in consolidation. In addition, we include our share of the results of our joint venture with Renault SAS (“Renault”) named HyVia SAS, a French société par actions simplifiée (“HyVia”), AccionaPlug S.L., and SK Plug Hyverse Co., Ltd., using the equity method based on our economic ownership interest and our ability to exercise significant influence over the operating and financial decisions of HyVia, AccionaPlug S.L., and SK Plug Hyverse Co., Ltd.

Interim Financial Statements

The accompanying unaudited interim condensed consolidated financial statements have been prepared pursuant to the rules and regulations of the Securities and Exchange Commission (“SEC”). In the opinion of management, all adjustments, which consist solely of normal recurring adjustments, necessary to present fairly, in accordance with U.S. generally accepted accounting principles (“GAAP”), the financial position, results of operations and cash flows for all periods presented, have been made. The results of operations for the interim periods presented are not necessarily indicative of the results that may be expected for the full year.

Certain information and footnote disclosures normally included in annual consolidated financial statements prepared in accordance with GAAP have been condensed or omitted. These unaudited interim condensed consolidated financial statements should be read in conjunction with the Company’s audited consolidated financial statements and notes thereto included in the Company’s Annual Report on Form 10-K for the fiscal year ended December 31, 2021 (the “2021 Form 10-K”).

The information presented in the accompanying unaudited interim condensed consolidated balance sheets as of December 31, 2021 has been derived from the Company’s December 31, 2021 audited consolidated financial statements.

The unaudited interim condensed consolidated financial statements contained herein should be read in conjunction with our 2021 Form 10-K.

Recent Accounting Pronouncements

Recently Adopted Accounting Guidance

Other than the adoption of the accounting guidance mentioned in our 2021 Form 10-K, there have been no other significant changes in our reported financial position or results of operations and cash flows resulting from the adoption of new accounting pronouncements.

Recent Accounting Guidance Not Yet Effective

All issued but not yet effective accounting and reporting standards as of September 30, 2022 are either not applicable to the Company or are not expected to have a material impact on the Company.

3. Acquisitions

Joule Processing LLC

On January 14, 2022, the Company acquired Joule Processing LLC (“Joule”), an engineered modular equipment, process design and procurement company founded in 2009.

The fair value of consideration paid by the Company in connection with the Joule acquisition was as follows (in thousands):

Cash	\$	28,140
Contingent consideration		41,732
Total consideration	\$	<u>69,872</u>

The contingent consideration represents the estimated fair value associated with earn-out payments of up to \$130 million that the sellers are eligible to receive in cash or shares of the Company’s common stock (at the Company’s election). Of the total earnout consideration, \$90 million is related to the achievement of certain financial performance and \$40 million is related to the achievement of certain internal operational milestones.

The following table summarizes the preliminary allocation of the purchase price to the estimated fair value of the net assets acquired, excluding goodwill (in thousands):

Current assets	\$	2,672
Property, plant and equipment		493
Right of use asset		182
Identifiable intangible assets		60,522
Lease liability		(374)
Current liabilities		(2,612)
Contract liability		(3,818)
Total net assets acquired, excluding goodwill	\$	<u>57,065</u>

The preliminary allocation of the purchase price is still considered provisional due to the finalization of the valuation for the assets acquired and liabilities assumed in relation to the Joule acquisition. Therefore, the fair values of the assets acquired and liabilities assumed are subject to change as we obtain additional information for valuation assumptions such as market demand for Joule product lines to support forecasted revenue growth and the likelihood of

achieving earnout milestones during the measurement period, which will not exceed 12 months from the date of acquisition. During the three and nine months ended September 30, 2022, the Company recorded an adjustment to goodwill of \$0 and \$0.1 million, respectively, due to the payment of a hold back liability related to the Joule acquisition, which was recorded in accrued expenses in the unaudited interim condensed consolidated balance sheet.

The fair value of the developed technology totaling \$59.2 million included in the identifiable intangible assets was calculated using the multi-period excess earnings method (“MPEEM”) approach which is a variant of the income approach. The basic principle of the MPEEM approach is that a single asset, in isolation, is not capable of generating cash flow for an enterprise. Several assets are brought together and exploited to generate cash flow. Therefore, to determine cash flow from the developed technology over its useful life of 15 years, one must deduct the related expenses incurred for the exploitation of other assets used for the generation of overall cash flow. The fair value of the tradename totaling \$0.8 million was calculated using the relief from royalty approach which is a variant of the income approach, and was assigned a useful life of four years. The fair value of the non-compete agreements was \$0.5 million with a useful life of six years.

In addition to identifiable intangible assets, the fair value of acquired work in process and finished goods inventory, included in inventory, was estimated based on the estimated selling price less costs to be incurred and a market participant profit rate.

In connection with the acquisition, the Company recorded on its consolidated balance sheet a liability of \$41.7 million representing the fair value of contingent consideration payable, and is recorded in the unaudited interim condensed consolidated balance sheet in the loss accrual for service contracts and other liabilities. The fair value of this contingent consideration was \$36.9 million as of September 30, 2022, and as a result \$0 and \$4.8 million reduction was recorded in the unaudited interim condensed consolidated statement of operations for the three and nine months ended September 30, 2022.

Included in the purchase price consideration are contingent earn-out payments as described above. Due to the nature of the earn-outs, a scenario based analysis using the probability of achieving the milestone expectations was used to determine the fair value of the contingent consideration. These fair value measurements were based on unobservable inputs and are considered to be level 3 financial instruments.

The goodwill was primarily attributed to the value of synergies created with the Company’s current and future offerings and the value of the assembled workforce. Goodwill and intangible assets are not deductible for income tax purposes. Goodwill associated with the Joule acquisition was calculated as follows (in thousands):

Consideration paid	\$	28,140
Contingent consideration		41,732
Less: net assets acquired		(57,065)
Total goodwill recognized	\$	<u>12,807</u>

The acquisition of Joule contributed \$0.6 million and \$3.9 million to total consolidated revenue for the three and nine months ended September 30, 2022, respectively. The Company determined it impractical to report net loss for the Joule acquisition for the three and nine months ended September 30, 2022.

Applied Cryo Technologies Acquisition

On November 22, 2021, the Company acquired 100% of the outstanding shares of Applied Cryo Technologies, Inc. (“Applied Cryo”). Applied Cryo is a manufacturer of engineered equipment servicing multiple applications, including cryogenic trailers and mobile storage equipment for the oil and gas markets and equipment for the distribution of liquified hydrogen, oxygen, argon, nitrogen, and other cryogenic gases.

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The fair value of consideration paid by the Company in connection with the Applied Cryo acquisition was as follows (in thousands):

Cash	\$ 98,559
Plug Power Inc. Common Stock	46,697
Contingent consideration	14,000
Settlement of preexisting relationship	2,837
Total consideration	<u>\$ 162,093</u>

Included in the \$98.6 million of cash consideration above, \$5.0 million is consideration held by our paying agent in connection with the acquisition and is reported as restricted cash, with a corresponding accrued liability as of September 30, 2022 on the Company's unaudited interim condensed consolidated balance sheet. We expect that this will be settled in 2022.

The contingent consideration represents the estimated fair value associated with earn-out payments of up to \$30.0 million that the sellers are eligible to receive in cash or shares of the Company's common stock (at the Company's election). Of the total earnout consideration, \$15.0 million is related to financial performance, and \$15.0 million is related to internal operational milestones.

The following table summarizes the preliminary allocation of the purchase price to the estimated fair value of the net assets acquired, excluding goodwill (in thousands):

Cash	\$ 1,180
Accounts receivable	4,123
Inventory	24,655
Prepaid expenses and other assets	1,506
Property, plant and equipment	4,515
Right of use asset	2,788
Identifiable intangible assets	70,484
Lease liability	(2,672)
Accounts payable, accrued expenses and other liabilities	(7,683)
Deferred tax liability	(16,541)
Deferred revenue	(12,990)
Total net assets acquired, excluding goodwill	<u>\$ 69,365</u>

The preliminary allocation of the purchase price is still considered provisional due to the tradename, technology, and customer relationship valuations. The Company continues to evaluate valuation assumptions such as the market demand for the Applied Cryo existing product lines to support forecasted revenue growth. Additionally, the Company continues to research the technology and buying power of Applied Cryo and evaluate the likelihood of achieving the additional production capacity needed in time to meet earnout milestones. During the three and nine months ended September 30, 2022, the Company recorded a measurement period adjustment to goodwill of \$0 and \$0.5 million, respectively, due to a release of escrow, which was recorded to accrued expenses in the unaudited interim condensed consolidated balance sheet. Any necessary adjustments will be finalized within one year from the date of acquisition.

Identifiable intangible assets consisted of developed technology, tradename, acquired customer relationships, non-compete agreements and backlog. The fair value of the developed technology totaling \$26.3 million was calculated using the relief from royalty approach which is a variant of the income approach. The application of the relief from royalty approach involves estimating the value of an intangible asset by quantifying the present value of the stream of market derived royalty payments that the owner of the intangible asset is exempted or 'relieved' from paying. The developed technology has a useful life of 15 years. The fair value of the tradename totaling \$13.7 million was calculated using the relief from royalty approach with a useful life of 15 years. The fair value of the acquired customer relationships totaling \$26.6 million was calculated using the MPEEM approach and has a useful life of 15 years. The fair value of the acquired

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customer relationships was estimated by discounting the net cash flow derived from the expected revenues attributable to the acquired customer relationships. The fair value of the non-compete agreements was \$1.0 million with a useful life of three years. The fair value of the customer backlog was \$2.9 million with a useful life of one year.

In addition to identifiable intangible assets, the fair value of acquired work in process and finished goods inventory, included in inventory, was estimated based on the estimated selling price less costs to be incurred and a market participant profit rate.

Included in the purchase price consideration are contingent earn-out payments described above. Due to the nature of the earn-outs, a scenario based analysis using the probability of achieving the milestone expectations was used to value these contingent payments. These fair value measurements were based on unobservable inputs and are considered to be level 3 financial instruments.

In connection with the acquisition, the Company recorded on its consolidated balance sheet a liability of \$14.0 million representing the fair value of contingent consideration payable. The fair value of this contingent consideration was \$13.7 million as of September 30, 2022, and reductions of \$0 and \$0.3 million were recorded in the unaudited interim condensed consolidated statement of operations for the three and nine months ended September 30, 2022, respectively.

Included in Applied Cryo's total net assets acquired, excluding goodwill, were net deferred tax liabilities of \$16.5 million. In connection with the acquisition of these net deferred tax liabilities, the Company reduced its valuation allowance by \$16.5 million and recognized a tax benefit \$16.5 million during the year ended December 31, 2021.

The goodwill was primarily attributed to the value of synergies created with the Company's current and future offerings and the value of the assembled workforce. Goodwill and intangible assets are not deductible for income tax purposes. Goodwill associated with the Applied Cryo acquisition was calculated as follows (in thousands):

Consideration paid	\$ 162,093
Less: net assets acquired	(69,365)
Total goodwill recognized	<u>\$ 92,728</u>

The acquisition of Applied Cryo contributed \$11.7 million and \$44.7 million to total consolidated revenue for the three and nine months ended September 30, 2022, respectively. The Company determined it impractical to report net loss for the Applied Cryo acquisition for the three and nine months ended September 30, 2022.

Frames Holding B.V. Acquisition

On December 9, 2021, the Company acquired 100% of the outstanding shares of Frames Holding B.V. ("Frames"). Frames, a leading provider of turnkey hydrogen solutions.

The fair value of consideration paid by the Company in connection with the Frames acquisition was as follows (in thousands):

Cash	\$ 94,541
Contingent consideration	29,057
Settlement of preexisting relationship	4,263
Total consideration	<u>\$ 127,861</u>

The contingent consideration represents the estimated fair value associated with earn-out payments of up to €30.0 million that the sellers are eligible to receive in the form of cash. The contingent consideration is related to the achievement of certain internal operational targets during the four years following the closing date and is payable in two equal installments.

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The following table summarizes the preliminary allocation of the purchase price to the estimated fair value of the total net assets acquired, excluding goodwill (in thousands):

Cash	\$	45,394
Accounts receivable		17,910
Inventory		34
Prepaid expenses and other assets		3,652
Property, plant and equipment		709
Right of use asset		1,937
Contract asset		9,960
Identifiable intangible assets		50,478
Lease liability		(1,937)
Contract liability		(22,737)
Accounts payable, accrued expenses and other liabilities		(18,465)
Deferred tax liability		(11,259)
Provision for loss contracts		(2,636)
Warranty provisions		(7,566)
Total net assets acquired, excluding goodwill	\$	65,474

The preliminary allocation of the purchase price is still considered provisional due to outstanding customer valuation analysis. Identifiable intangible assets consisted of developed technology, tradename, acquired customer relationships, non-compete agreements and backlog. Any necessary adjustments will be finalized within one year from the date of acquisition. During the three and nine months ended September 30, 2022, the Company recorded a measurement period adjustment to goodwill of \$0 and \$7.2 million, respectively, due to the recording of the deferred tax treatment surrounding the tangible and intangible assets acquired.

The fair value of the developed technology totaling \$5.3 million was calculated using the relief from royalty approach which is a variant of the income approach, and it has a useful life of eight years. The fair value of the tradename totaling \$11.6 million was calculated using the relief from royalty approach, and it has a useful life of eight years. The fair value of the acquired customer relationships totaling \$27.2 million was calculated using the MPEEM approach which is a variant of the income approach, and it has a useful life of 17 years. The fair value of the customer relationships was estimated by discounting the net cash flow derived from the expected revenues attributable to the acquired customer relationships. The fair value of the non-compete agreements totaling \$4.9 million was calculated using the with and without income approach, and it has a useful life of approximately four years. The fair value of the backlog was \$1.4 million, and it has a useful life of one year.

Included in the purchase price consideration are contingent earn-out payments described above. Due to the nature of the earn-outs, a scenario based analysis using the probability of achieving the milestone expectations was used to determine the fair value of the contingent consideration. These fair value measurements were based on unobservable inputs and are considered to be level 3 financial instruments.

In connection with the acquisition, the Company recorded on its consolidated balance sheet a liability of \$29.1 million representing the fair value of contingent consideration payable. The fair value of this contingent consideration was \$26.2 million as of September 30, 2022. The change in fair value compared to December 31, 2021 was due to a change in the foreign currency translation, partially offset by an increase in the liability. The Company recorded an adjustment of \$0 and \$1.1 million for the three and nine months ended September 30, 2022 in the unaudited interim condensed consolidated statement of operations.

Included in Frames' total net assets acquired, excluding goodwill, are net deferred tax liabilities of \$4.1 million.

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The goodwill was primarily attributed to the value of synergies created with the Company's current and future offerings and the value of the assembled workforce. Goodwill and intangible assets are not deductible for income tax purposes. Goodwill associated with the Frames acquisition was calculated as follows (in thousands):

Consideration paid	\$ 127,861
Less: net assets acquired	(65,474)
Total goodwill recognized	<u>\$ 62,387</u>

The above estimates are preliminary in nature and subject to adjustments. Any necessary adjustments will be finalized within one year from the date of acquisition. Substantially all the receivables acquired are expected to be collectable. Purchased goodwill is not expected to be deductible for tax purposes.

The acquisition of Frames contributed \$25.4 million and \$76.0 million to total consolidated revenue for the three and nine months ended September 30, 2022, respectively. The following table reflects the unaudited pro forma results of operations for the three and nine months ended September 30, 2021 assuming that the Frames acquisition had occurred on January 1, 2021 (in thousands):

	Three Months Ended September 30, 2021	Nine Months Ended September 30, 2021
Revenue	\$ 159,304	\$ 387,623
Net loss	\$ (105,294)	\$ (264,640)

The unaudited pro forma net income for the three and nine months ended September 30, 2021 has been adjusted to reflect increased amortization of intangibles as if the acquisition had occurred on January 1, 2021. The unaudited pro forma information is presented for informational purposes only and is not necessarily indicative of the actual results that would have been achieved had the Frames acquisition occurred as of January 1, 2021 or indicative of the results that may be achieved in future periods.

None of the Joule and Applied Cryo Technologies acquisition was material to our consolidated results of operations or financial position and, therefore, pro forma financial information is not presented.

4. Extended Maintenance Contracts

On a quarterly basis, we evaluate any potential losses related to our extended maintenance contracts for fuel cell systems and related infrastructure that have been sold. The following table shows the rollforward of balance in the accrual for loss contracts, including changes due to the provision for loss accrual, loss accrual from acquisition, releases to service cost of sales, and releases due to the provision for warrants (in thousands):

	Nine months ended September 30, 2022	Year ended December 31, 2021
Beginning balance	\$ 89,773	\$ 24,013
Provision for loss accrual	4,683	71,988
Loss accrual acquired from acquisition	—	2,636
Releases to service cost of sales	(30,827)	(8,864)
Increase to loss accrual related to customer warrants	4,160	—
Foreign currency translation adjustment	(189)	—
Ending balance	<u>\$ 67,600</u>	<u>\$ 89,773</u>

5. Earnings Per Share

Basic earnings per common stock are computed by dividing net loss attributable to common stockholders by the weighted average number of common stock outstanding during the reporting period. In periods when we have net income, the shares of our common stock subject to the convertible notes outstanding during the period will be included in our

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diluted earnings per share under the if-converted method. Since the Company is in a net loss position, all common stock equivalents would be considered anti-dilutive and are therefore not included in the determination of diluted earnings per share. Accordingly, basic and diluted loss per share are the same.

The potentially dilutive securities are summarized as follows:

	At September 30,	
	2022	2021
Stock options outstanding (1)	25,549,257	24,784,288
Restricted stock outstanding (2)	3,737,292	4,960,376
Common stock warrants (3)	96,017,181	80,017,181
Convertible Senior Notes (4)	39,170,766	39,170,766
Number of dilutive potential shares of common stock	164,474,496	148,932,611

- (1) During the three months ended September 30, 2022 and 2021, the Company granted options for 1,838,123 and 15,732,335 shares of common stock, respectively. During the nine months ended September 30, 2022 and 2021, the Company granted options for 2,597,974 and 16,430,835 shares of common stock, respectively.
- (2) During the three months ended September 30, 2022 and 2021, the Company granted 295,661 shares of restricted stock awards and 54,000 shares of restricted stock units and 1,159,856 restricted stock awards, respectively. During the nine months ended September 30, 2022 and 2021, the Company granted 399,512 shares of restricted stock awards and 1,076,640 shares of restricted stock units and 1,812,856 restricted stock awards, respectively.
- (3) In August 2022, the Company issued a warrant to acquire up to 16,000,000 shares of the Company's common stock as part of a transaction agreement with Amazon, subject to certain vesting events, as described in Note 12, "Warrant Transaction Agreements." The warrant had no shares exercised of the Company's common stock as of September 30, 2022.

In April 2017, the Company issued a warrant to acquire up to 55,286,696 shares of the Company's common stock as part of a transaction agreement with Amazon, subject to certain vesting events, as described in Note 12, "Warrant Transaction Agreements." The warrant had been exercised with respect to 17,461,994 shares of the Company's common stock as of September 30, 2022 and 2021, respectively.

In July 2017, the Company issued a warrant to acquire up to 55,286,696 shares of the Company's common stock as part of a transaction agreement with Walmart, subject to certain vesting events, as described in Note 12, "Warrant Transaction Agreements." The warrant had been exercised with respect to 13,094,217 shares of the Company's common stock as of September 30, 2022 and 2021, respectively.

- (4) In March 2018, the Company issued \$100.0 million in aggregate principal amount of the 5.5% Convertible Senior Notes due 2023 (the "5.5% Convertible Senior Notes"). In May 2020, the Company repurchased \$66.3 million of the 5.5% Convertible Senior Notes and in the fourth quarter of 2020, \$33.5 million of the 5.5% Convertible Senior Notes were converted into approximately 14.6 million shares of common stock. The remaining \$0.2 million aggregate principal amount of the 5.5% Convertible Senior Notes were converted into 69,808 shares of common stock in January 2021. In September 2019, the Company issued \$40.0 million in aggregate principal amount of the 7.5% Convertible Senior Note due 2023 (the "7.5% Convertible Senior Note"), which was fully converted into 16.0 million shares of common stock on July 1, 2020. In May 2020, the Company issued \$212.5 million in aggregate principal amount of the 3.75% Convertible Senior Notes due 2025 (the "3.75% Convertible Senior Notes"). There were no conversions for the three and nine months ended September 30, 2022. There were no conversions for the three months ended September 30, 2021. For the nine months ended September 30, 2021, \$15.2 million of the 3.75% Convertible Senior Notes were converted, resulting in the issuance of 3,016,036 shares of common stock.

6. Inventory

Inventory as of September 30, 2022 and December 31, 2021 consisted of the following (in thousands):

	September 30, 2022	December 31, 2021
Raw materials and supplies - production locations	\$ 384,397	\$ 187,449
Raw materials and supplies - customer locations	17,482	16,294
Work-in-process	98,179	58,341
Finished goods	16,222	7,079
Inventory	<u>\$ 516,280</u>	<u>\$ 269,163</u>

7. Property, Plant and Equipment

Property, plant and equipment at September 30, 2022 and December 31, 2021 consisted of the following (in thousands):

	September 30, 2022	December 31, 2021
Land	\$ 1,165	\$ 1,165
Construction in progress	473,429	169,415
Leasehold improvements	18,213	2,099
Software, machinery, and equipment	157,018	112,068
Property, plant, and equipment	649,825	284,747
Less: accumulated depreciation	(42,557)	(29,124)
Property, plant, and equipment, net	<u>\$ 607,268</u>	<u>\$ 255,623</u>

Construction in progress is primarily comprised of construction of five hydrogen production plants, the Gigafactory in Rochester, NY, and our facility in the Slingerlands, NY. Completed assets are transferred to their respective asset classes, and depreciation begins when an asset is ready for its intended use. Interest on outstanding debt is capitalized during periods of capital asset construction and amortized over the useful lives of the related assets. During the three and nine months ended September 30, 2022, the Company capitalized \$4.0 million and \$9.8 million of interest, respectively.

Depreciation expense related to property, plant and equipment was \$5.4 million and \$1.9 million for the three months ended September 30, 2022 and 2021, respectively. Depreciation expense related to property, plant and equipment was \$13.5 million and \$5.2 million for the nine months ended September 30, 2022 and 2021, respectively.

8. Intangible Assets and Goodwill

The gross carrying amount and accumulated amortization of the Company's acquired identifiable intangible assets as of September 30, 2022 were as follows (in thousands):

	Weighted Average Amortization Period	Gross Carrying Amount	Accumulated Amortization	Total
Acquired technology	14 years	\$ 103,414	\$ (10,534)	\$ 92,880
Dry stack electrolyzer technology	10 years	29,000	(1,692)	27,308
Customer relationships, Non-compete agreements, Backlog & Trademark	12 years	85,291	(9,832)	75,459
		<u>\$ 217,705</u>	<u>\$ (22,058)</u>	<u>\$ 195,647</u>

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The gross carrying amount and accumulated amortization of the Company's acquired identifiable intangible assets as of December 31, 2021 were as follows (in thousands):

	Weighted Average Amortization Period	Gross Carrying Amount	Accumulated Amortization	Total
Acquired technology	13 years	\$ 45,530	\$ (5,392)	\$ 40,138
Customer relationships, Non-compete agreements, Backlog & Trademark	12 years	90,497	(1,427)	89,070
In process research and development	Indefinite	29,000	—	29,000
		<u>\$ 165,027</u>	<u>\$ (6,819)</u>	<u>\$ 158,208</u>

The change in the gross carrying amount of the acquired technology from December 31, 2021 to September 30, 2022, was primarily due to the acquisition of Joule, the addition of the dry build electrolyzer stack related to the Giner ELX acquisition, and changes in foreign currency translation.

Amortization expense for acquired identifiable intangible assets for the three months ended September 30, 2022 and 2021 was \$4.9 million and \$0.4 million, respectively. Amortization expense for acquired identifiable intangible assets for the nine months ended September 30, 2022 and 2021 was \$15.2 million and \$1.1 million, respectively.

The estimated amortization expense for subsequent years is as follows (in thousands):

Remainder of 2022	\$ 5,064
2023	17,631
2024	17,570
2025	16,839
2026	15,441
2027 and thereafter	123,102
Total	<u>\$ 195,647</u>

The change in the carrying amount of goodwill for the nine month period ended September 30, 2022 was as follows (in thousands):

Beginning balance at December 31, 2021	\$ 220,436
Acquisitions	12,943
Measurement period adjustments	6,496
Foreign currency translation adjustment	(9,156)
Ending balance at September 30, 2022	<u>\$ 230,719</u>

9. Long-Term Debt

In March 2019, the Company entered into a loan and security agreement, as amended (the "Loan Agreement"), with Generate Lending, LLC ("Generate Capital"), providing for a secured term loan facility in the amount of \$100 million (the "Term Loan Facility"). On September 30, 2022, the outstanding balance under the Term Loan Facility was \$57.3 million. The carrying value of the Term Loan Facility approximates fair value.

The Loan Agreement includes covenants, limitations, and events of default customary for similar facilities. Interest and a portion of the principal amount is payable on a quarterly basis. Principal payments are funded in part by releases of restricted cash, as described in Note 19, "Commitments and Contingencies." Based on the amortization schedule as of September 30, 2022, the aforementioned loan balance under the Term Loan Facility will be fully paid by October 31, 2025. At September 30, 2022, the Company was in compliance with all debt covenants under the Term Loan Facility.

10. Convertible Senior Notes*3.75% Convertible Senior Notes*

On May 18, 2020, the Company issued \$200.0 million in aggregate principal amount of 3.75% Convertible Senior Notes due June 1, 2025, in a private placement to qualified institutional buyers pursuant to Rule 144A under the Securities Act of 1933, as amended (the “Securities Act”). On May 29, 2020, the Company issued an additional \$12.5 million in aggregate principal amount of 3.75% Convertible Senior Notes. During the three and nine months ended September 30, 2022, there were no conversions of the 3.75% Convertible Senior Notes.

The 3.75% Convertible Senior Notes consisted of the following (in thousands):

	September 30, 2022
Principal amounts:	
Principal	\$ 197,278
Unamortized debt issuance costs (1)	(3,686)
Net carrying amount	<u>\$ 193,592</u>

- 1) Included in the unaudited interim condensed consolidated balance sheets within the 3.75% Convertible Senior Notes, net and amortized over the remaining life of the notes using the effective interest rate method.

The following table summarizes the total interest expense and effective interest rate related to the 3.75% Convertible Senior Notes (in thousands, except for effective interest rate):

	September 30, 2022	September 30, 2021
Interest expense	\$ 1,849	\$ 1,849
Amortization of debt issuance costs	323	306
Total	<u>2,172</u>	<u>2,155</u>
Effective interest rate	4.5%	4.5%

Based on the closing price of the Company’s common stock of \$21.01 on September 30, 2022, the if-converted value of the notes was greater than the principal amount. The estimated fair value of the note at September 30, 2022 was approximately \$849 million. The fair value estimation was primarily based on an active stock exchange trade on October 5, 2022 of the 3.75% Convertible Senior Notes. See Note 15, “Fair Value Measurements,” for a description of the fair value hierarchy.

Capped Call

In conjunction with the pricing of the 3.75% Convertible Senior Notes, the Company entered into privately negotiated capped call transactions (the “3.75% Notes Capped Call”) with certain counterparties at a price of \$16.2 million. The 3.75% Notes Capped Call covers, subject to anti-dilution adjustments, the aggregate number of shares of the Company’s common stock that underlie the initial 3.75% Convertible Senior Notes and is generally expected to reduce potential dilution to the Company’s common stock upon any conversion of the 3.75% Convertible Senior Notes and/or offset any cash payments the Company is required to make in excess of the principal amount of the converted notes, as the case may be, with such reduction and/or offset subject to a cap based on the cap price. The cap price of the 3.75% Notes Capped Call is initially \$6.7560 per share, which represents a premium of approximately 60% over the last then-reported sale price of the Company’s common stock of \$4.11 per share on the date of the transaction and is subject to certain adjustments under the terms of the 3.75% Notes Capped Call. The 3.75% Notes Capped Call becomes exercisable if the conversion option is exercised.

The net cost incurred in connection with the 3.75% Notes Capped Call were recorded as a reduction to additional paid-in capital in the unaudited interim condensed consolidated balance sheets. The book value of the 3.75% Notes Capped Call is not remeasured.

Common Stock Forward

In March 2018, the Company issued \$100.0 million in aggregate principal amount of the 5.5% Convertible Senior Notes due on March 15, 2023, in a private placement to qualified institutional buyers pursuant to Rule 144A under the Securities Act, which have been fully converted into shares of common stock. In connection with the issuance of the 5.5% Convertible Senior Notes, the Company entered into a forward stock purchase transaction (the “Common Stock Forward”), pursuant to which the Company agreed to purchase 14,397,906 shares of its common stock for settlement on or about March 15, 2023. On May 18, 2020, the Company amended and extended the maturity of the Common Stock Forward to June 1, 2025. The number of shares of common stock that the Company will ultimately repurchase under the Common Stock Forward is subject to customary anti-dilution adjustments. The Common Stock Forward is subject to early settlement or settlement with alternative consideration in the event of certain corporate transactions.

The net cost incurred in connection with the Common Stock Forward of \$27.5 million was recorded as an increase in treasury stock in the unaudited interim condensed consolidated balance sheets. The related shares were accounted for as a repurchase of common stock. The book value of the Common Stock Forward is not remeasured.

There were no shares of common stock settled in connection with the Common Stock Forward during the three and nine months ended September 30, 2022. During the three and nine months ended September 30, 2021, the Common Stock Forward was partially settled and 0 shares and 8.1 million shares were received by the Company, respectively.

11. Stockholders’ Equity

Common Stock and Warrants

On August 24, 2022, a warrant to purchase up to 16,000,000 shares of common stock was issued in connection with a transaction agreement with Amazon, as discussed in Note 12, “Warrant Transaction Agreements.” This warrant is measured at fair value at the time of grant or modification and is classified as an equity instrument on the unaudited interim condensed consolidated balance sheets.

In February 2021, the Company completed a sale of its common stock in connection with a strategic partnership with SK Holdings Co., Ltd. (“SK Holdings”) to accelerate the use of hydrogen as an alternative energy source in Asian markets. The Company sold 54,966,188 shares of its common stock to a subsidiary of SK Holdings at a purchase price of \$29.2893 per share, or an aggregate purchase price of approximately \$1.6 billion.

In January and February 2021, the Company issued and sold in a registered equity offering an aggregate of 32.2 million shares of its common stock at a purchase price of \$65.00 per share for net proceeds of approximately \$2.0 billion.

In November 2020, the Company issued and sold in a registered equity offering an aggregate of 43,700,000 shares of its common stock at a purchase price of \$22.25 per share for net proceeds of approximately \$927.3 million.

In August 2020, the Company issued and sold in a registered equity offering an aggregate of 35,276,250 shares of its common stock at a purchase price of \$10.25 per share for net proceeds of approximately \$344.4 million.

Accumulated Other Comprehensive Income

Accumulated Other Comprehensive Income comprises the following (in thousands):

	Total Pre-Tax Amount	Tax	Net-of-Tax Amount
June 30, 2022	\$ (28,989)	\$ —	\$ (28,989)
Net unrealized loss on available-for-sale securities	(4,992)	—	(4,992)
Foreign currency translation loss	(1,044)	—	(1,044)
September 30, 2022	<u>\$ (35,025)</u>	<u>\$ —</u>	<u>\$ (35,025)</u>
December 31, 2021	\$ (1,532)	\$ —	\$ (1,532)
Net unrealized loss on available-for-sale securities	(23,401)	—	(23,401)
Foreign currency translation loss	(10,092)	—	(10,092)
September 30, 2022	<u>\$ (35,025)</u>	<u>\$ —</u>	<u>\$ (35,025)</u>

	Total Pre-Tax Amount	Tax	Net-of-Tax Amount
June 30, 2021	\$ 34	\$ —	\$ 34
Net unrealized loss on available-for-sale securities	(2,200)	—	(2,200)
Foreign currency translation loss	(172)	—	(172)
September 30, 2021	<u>\$ (2,338)</u>	<u>\$ —</u>	<u>\$ (2,338)</u>
December 31, 2020	\$ 2,451	\$ —	\$ 2,451
Net unrealized loss on available-for-sale securities	(4,075)	—	(4,075)
Foreign currency translation loss	(714)	—	(714)
September 30, 2021	<u>\$ (2,338)</u>	<u>\$ —</u>	<u>\$ (2,338)</u>

12. Warrant Transaction Agreements

Amazon Transaction Agreement in 2022

On August 24, 2022, the Company and Amazon.com, Inc. (“Amazon”) entered into a Transaction Agreement (the “2022 Transaction Agreement”), under which the Company concurrently issued to Amazon.com NV Investment Holdings LLC, a wholly owned subsidiary of Amazon, a warrant (the “Amazon Warrant”) to acquire up to 16,000,000 shares (the “Amazon Warrant Shares”) of the Company’s common stock, subject to certain vesting events described below. The Company and Amazon entered into the 2022 Transaction Agreement in connection with a concurrent commercial arrangement under which Amazon agreed to purchase hydrogen fuel from the Company through August 24, 2029.

Warrant

1,000,000 of the Amazon Warrant Shares vested immediately upon issuance of the Amazon Warrant. 15,000,000 of the Amazon Warrant Shares will vest in multiple tranches over the 7- year term of the Amazon Warrant based on payments made to the Company directly by Amazon or its affiliates, or indirectly through third parties, with 15,000,000 of the Amazon Warrant Shares fully vesting if Amazon-related payments of \$2.1 billion are made in the aggregate. The exercise price for the first 9,000,000 Amazon Warrant Shares is \$22.9841 per share and the fair value on the grant date was \$20.36. The exercise price for the remaining 7,000,000 Amazon Warrant Shares will be an amount per share equal to 90% of the 30-day volume weighted average share price of the Company’s common stock as of the final vesting event that results in full vesting of the first 9,000,000 Amazon Warrant Shares. The Amazon Warrant is exercisable through August 24, 2029.

Upon the consummation of certain change of control transactions (as defined in the applicable warrant) prior to the vesting of at least 60% of the aggregate Amazon Warrant Shares, the Amazon Warrant will automatically vest and become exercisable with respect to an additional number of Amazon Warrant Shares such that 60% of the aggregate Amazon Warrant Shares shall have vested. If a change of control transaction is consummated after the vesting of at least 60% of the aggregate Amazon Warrant Shares, then no acceleration of vesting will occur with respect to any of the unvested Amazon Warrant Shares as a result of the transaction. The exercise price and the Amazon Warrant Shares issuable upon exercise of the Amazon Warrant are subject to customary antidilution adjustments.

At September 30, 2022, 1,000,000 of the Amazon Warrant Shares issued pursuant to the 2022 Transaction Agreement had vested upon issuance. The warrant charge associated with the vested shares of \$20.4 million was capitalized to contract assets in our condensed consolidated unaudited interim financial statements based on the grant date fair value and is subsequently amortized ratably as a reduction to revenue based on the Company's estimate of revenue over the term of the agreement. The grant date fair value of tranches 2 and 3 will also be amortized ratably as a reduction to revenue based on the Company's estimate of revenue over the term of the agreement. Because the exercise price has yet to be determined, the fair value of tranche 4 will be remeasured at each reporting period end and amortized ratably as a reduction to revenue based on the Company's estimate of revenue over the term of the agreement. The total amount of provision for common stock warrants recorded as a reduction of revenue for the Amazon Warrant during the three and nine months ended September 30, 2022 was \$1.8 million.

The assumptions used to calculate the valuations as of August 24, 2022 and September 30, 2022 are as follows:

	Tranches 1-3 August 24, 2022	Tranche 4 September 30, 2022
Risk-free interest rate	3.15%	3.90%
Volatility	75.00%	75.00%
Expected average term	7 years	4 years
Exercise price	\$22.98	\$18.91
Stock price	\$20.36	\$12.71

Amazon Transaction Agreement in 2017

On April 4, 2017, the Company and Amazon entered into a Transaction Agreement (the "2017 Amazon Transaction Agreement"), pursuant to which the Company agreed to issue to Amazon.com NV Investment Holdings LLC, a warrant to acquire up to 55,286,696 Amazon Warrant Shares, subject to certain vesting events described below. The Company and Amazon entered into the 2017 Amazon Transaction Agreement in connection with existing commercial agreements between the Company and Amazon with respect to the deployment of the Company's GenKey (defined below) fuel cell technology at Amazon distribution centers. The existing commercial agreements contemplate, but do not guarantee, future purchase orders for the Company's fuel cell technology. The vesting of the Amazon Warrant Shares was conditioned upon payments made by Amazon or its affiliates (directly or indirectly through third parties) pursuant to the existing commercial agreements. At December 31, 2021, all 55,286,696 of the Amazon Warrant Shares had vested.

The warrant had been exercised with respect to 17,461,994 shares of the Company's common stock as of September 30, 2022 and December 31, 2021.

Walmart Transaction Agreement

On July 20, 2017, the Company and Walmart entered into a Transaction Agreement (the "Walmart Transaction Agreement"), pursuant to which the Company agreed to issue to Walmart a warrant (the "Walmart Warrant") to acquire up to 55,286,696 shares of the Company's common stock, subject to certain vesting events (the "Walmart Warrant Shares"). The Company and Walmart entered into the Walmart Transaction Agreement in connection with existing commercial agreements between the Company and Walmart with respect to the deployment of the Company's GenKey fuel cell technology across various Walmart distribution centers. The existing commercial agreements contemplate, but do

not guarantee, future purchase orders for the Company's fuel cell technology. The vesting of the warrant shares was conditioned upon payments made by Walmart or its affiliates (directly or indirectly through third parties) pursuant to transactions entered into after January 1, 2017 under existing commercial agreements.

The warrant had been exercised with respect to 13,094,217 shares of the Company's common stock as of September 30, 2022 and December 31, 2021.

At September 30, 2022 and December 31, 2021, 20,368,782 of the Walmart Warrant Shares had vested. The total amount of provision for common stock warrants recorded as a reduction of revenue for the Walmart Warrant during the three months ended September 30, 2022 and 2021 was \$6.7 million and \$1.2 million, respectively. The total amount of provision for common stock warrants recorded as a reduction of revenue for the Walmart Warrant during the nine months ended September 30, 2022 and 2021 was \$10.4 million and \$4.4 million, respectively. During the three and nine months ended September 30, 2022 and 2021, respectively, the Walmart Warrant was exercised with respect to 0 and 7,274,565 shares of common stock.

The assumptions used to calculate the valuations of the final tranche of the Walmart Warrant as of September 30, 2022 are as follows:

	September 30, 2022
Risk-free interest rate	3.99%
Volatility	75.00%
Expected average term	3.5 years
Exercise price	\$18.91
Stock price	\$12.09

13. Revenue

Disaggregation of revenue

The following table provides information about disaggregation of revenue (in thousands):

Major products/services lines

	Three months ended September 30		Nine months ended September 30	
	2022	2021	2022	2021
Sales of fuel cell systems	\$ 75,919	\$ 67,032	\$ 146,859	\$ 152,620
Sales of hydrogen infrastructure	37,139	48,967	96,641	109,429
Sales of electrolyzers	6,842	—	14,576	—
Sales of engineered equipment	25,556	—	76,080	—
Services performed on fuel cell systems and related infrastructure	8,406	6,677	25,468	18,397
Power Purchase Agreements	9,524	9,321	30,730	25,508
Fuel delivered to customers and related equipment	12,389	11,556	40,289	33,804
Sales of cryogenic equipment	12,529	—	48,909	—
Other	324	369	1,146	679
Net revenue	<u>\$ 188,628</u>	<u>\$ 143,922</u>	<u>\$ 480,698</u>	<u>\$ 340,437</u>

Contract balances

The following table provides information about receivables, contract assets and contract liabilities from contracts with customers (in thousands):

	September 30, 2022	December 31, 2021
Accounts receivable	\$ 95,472	\$ 92,675
Contract assets	70,879	38,757
Contract liabilities	189,145	183,090

Contract assets relate to contracts for which revenue is recognized on a straight-line basis; however, billings escalate over the life of a contract. Contract assets also include amounts recognized as revenue in advance of billings to customers, which are dependent upon the satisfaction of another performance obligation. These amounts are included in contract assets on the accompanying unaudited interim condensed consolidated balance sheets.

The contract liabilities relate to the advance consideration received from customers for services that will be recognized over time (primarily fuel cell and related infrastructure services) and advance consideration received from customers prior to delivery of products. These amounts are included within deferred revenue and other contract liabilities on the unaudited interim condensed consolidated balance sheets.

Significant changes in the contract assets and the contract liabilities balances during the period are as follows (in thousands):

Contract assets

	September 30, 2022	December 31, 2021
Transferred to receivables from contract assets recognized at the beginning of the period	\$ (15,504)	\$ (14,638)
Contract assets assumed as part of acquisition	—	9,960
Contract assets related to warrants	25,425	—
Revenue recognized and not billed as of the end of the period	22,201	25,246
Net change in contract assets	<u>\$ 32,122</u>	<u>\$ 20,568</u>

Contract liabilities

	September 30, 2022	December 31, 2021
Increases due to cash received, net of amounts recognized as revenue during the period	\$ 121,683	\$ 182,052
Contract liabilities assumed as part of acquisitions	—	35,727
Revenue recognized that was included in the contract liability balance as of the beginning of the period	(115,628)	(110,974)
Net change in contract liabilities	<u>\$ 6,055</u>	<u>\$ 106,805</u>

Estimated future revenue

The following table includes estimated revenue included in the backlog expected to be recognized in the future (sales of fuel cell systems and hydrogen installations are expected to be recognized as revenue within one year; sales of services and Power Purchase Agreements (“PPAs”) are expected to be recognized as revenue over five to seven years) related to performance obligations that are unsatisfied (or partially unsatisfied) at the end of the reporting period, net of the provision for common stock warrants (in thousands):

	September 30, 2022
Sales of fuel cell systems	\$ 26,551
Sales of hydrogen installations and other infrastructure	28,492
Sales of electrolyzers	266,738
Sales of engineered equipment	26,859
Services performed on fuel cell systems and related infrastructure	121,761
Power Purchase Agreements	319,742
Fuel delivered to customers and related equipment	90,925
Sales of cryogenic equipment	50,674
Total estimated future revenue	<u>\$ 931,742</u>

Contract costs

Contract costs consist of capitalized commission fees and other expenses related to obtaining or fulfilling a contract. Capitalized contract costs at September 30, 2022 and December 31, 2021 were \$0.6 million and \$0.4 million, respectively.

14. Income Taxes

The Company recorded \$1.5 million and \$0 of income tax expense for the three months ended September 30, 2022 and 2021, respectively. The Company recorded \$1.5 million and \$0 of income tax expense for the nine months ended September 30, 2022 and 2021, respectively. Tax expense for the three and nine months ended September 30, 2022 is due to foreign income taxes. The Company has not changed its overall conclusion with respect to the need for a valuation allowance against its domestic net deferred tax assets, which remain fully reserved.

The domestic net deferred tax asset generated from the Company’s net operating loss has been offset by a full valuation allowance because it is more likely than not that the tax benefits of the net operating loss carry forward will not be realized. The Company recognizes accrued interest and penalties related to unrecognized tax benefits, if any, as a component of income tax expense.

15. Fair Value Measurements

The Company records the fair value of assets and liabilities in accordance with ASC 820, *Fair Value Measurement* (“ASC 820”). ASC 820 defines fair value as the price received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date and in the principal or most advantageous market for that asset or liability. The fair value should be calculated based on assumptions that market participants would use in pricing the asset or liability, not on assumptions specific to the entity.

In addition to defining fair value, ASC 820 expands the disclosure requirements around fair value and establishes a fair value hierarchy for valuation inputs. The hierarchy prioritizes the inputs into three levels based on the extent to which inputs used in measuring fair value are observable in the market. Each fair value measurement is reported in one of the three levels, which is determined by the lowest level input that is significant to the fair value measurement in its entirety.

These levels are:

- Level 1 — quoted prices (unadjusted) in active markets for identical assets or liabilities.

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- Level 2 — quoted prices for similar assets and liabilities in active markets or inputs that are observable for the asset or liability, either directly or indirectly through market corroboration, for substantially the full term of the financial instrument.
- Level 3 — unobservable inputs reflecting management’s own assumptions about the inputs used in pricing the asset or liability at fair value.

Securities reported at fair value utilizing Level 1 inputs represent assets whose fair value is determined based upon observable unadjusted quoted market prices for identical assets in active markets. Level 2 securities represent assets whose fair value is determined using observable market information such as previous day trade prices, quotes from less active markets or quoted prices of securities with similar characteristics. Available-for-sale securities are characterized as Level 2 assets, as their fair values are determined using observable market inputs. Equity securities are characterized as Level 1 assets, as their fair values are determined using active markets for identical assets. There were no transfers between Level 1, Level 2, or Level 3 for the three and nine months ended September 30, 2022.

Financial instruments not recorded at fair value on a recurring basis include equity method investments that have not been remeasured or impaired in the current period, such as our investments in HyVia, AccionaPlug S.L., and SK Plug Hyverse Co., Ltd. During the three and nine months ended September 30, 2022, the Company contributed approximately \$9.1 million and \$33.3 million, respectively, to HyVia, AccionaPlug S.L. and SK Plug Hyverse Co., Ltd.

Assets and liabilities measured at fair value on a recurring basis are summarized below (in thousands):

		As of September 30, 2022						
		Carrying Amount	Fair Value	Fair Value Measurements				
				Level 1	Level 2	Level 3		
Assets								
Cash equivalents	\$	12,023	\$	12,023	\$	12,023	\$	—
Corporate bonds		211,533		211,533		—	211,533	—
U.S. Treasuries		607,907		607,907		607,907		—
Equity securities		130,121		130,121		130,121		—
Swaps and forward contracts		650		650		—		650
Liabilities								
Contingent consideration		94,485		94,485		—		94,485
As of December 31, 2021								
		Carrying Amount	Fair Value	Fair Value Measurements				
				Level 1	Level 2	Level 3		
Assets								
Cash equivalents	\$	115,241	\$	115,241	\$	115,241	\$	—
Corporate bonds		226,382		226,382		—	226,382	—
U.S. Treasuries		1,013,883		1,013,883		1,013,883		—
Equity securities		147,995		147,995		147,995		—
Swaps and forward contracts		70		70		70		—
Liabilities								
Contingent consideration		62,297		62,297		—		62,297
Swaps and forward contracts		981		981		981		—

The liabilities measured at fair value on a recurring basis that have unobservable inputs and are therefore categorized as level 3 are related to contingent consideration. The fair value as of September 30, 2022 is comprised of \$76.6 million related to the acquisitions of Frames, Applied Cryo, and Joule, as well as \$17.9 million from two acquisitions in 2020. Giner ELX, Inc. was acquired in June 2020, and included in the purchase price are preliminary fair value associated with earnout payments of \$16.0 million that the sellers are eligible to receive. The remaining contingent consideration as of September 30, 2022 is related to the achievement of the dry build electrolyzer stack earnout and the achievement of certain revenue targets for years 2022 through 2023. As of September 30, 2022, the remaining estimated fair value of contingent consideration for Giner ELX Inc. is \$16.5 million. United Hydrogen Group Inc. was acquired in June 2020, and included in the purchase price was contingent consideration based on the future performance related to the expansion of the liquefaction capacity of the Charleston, Tennessee liquid hydrogen plant. The Company’s liability for this contingent consideration was measured at fair value based on the Company’s expectations of achieving the expansion milestone. As of September 30, 2022, the remaining estimated fair value is \$1.4 million. In the unaudited interim condensed consolidated balance sheets, contingent consideration is recorded in the contingent consideration, loss accrual

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for service contracts, and other liabilities financial statement line item, and is comprised of the following unobservable inputs:

Financial Instrument	Fair Value	Valuation Technique	Unobservable Input	Range (weighted average)
Contingent Consideration	\$ 83,443	Scenario based method	Credit spread	16.24%
			Discount rate	17.56% - 19.19% (18.38%)
	10,350	Monte carlo simulation	Credit spread	16.24%
			Discount rate	18.84% - 19.09%
	692	Monte carlo simulation	Revenue volatility	49.11%
			Credit spread	16.24%
			Revenue volatility	40.7% - 24.4% (35.0%)
			Gross profit volatility	113.0% - 23.0% (65.0%)
	<u>94,485</u>			

The change in the carrying amount of Level 3 liabilities for the three and nine month period ended September 30, 2022 was as follows (in thousands):

	Nine months ended
	September 30, 2022
Beginning balance at December 31, 2021	\$ 62,297
Payments	(2,667)
Additions due to acquisitions	41,732
Fair value adjustments	2,461
Foreign currency translation adjustment	(604)
Ending balance at March 31, 2022	103,219
Fair value adjustments	(5,066)
Foreign currency translation adjustment	(1,645)
Ending balance at June 30, 2022	96,508
Fair value adjustments	—
Foreign currency translation adjustment	(2,023)
Ending balance at September 30, 2022	<u>\$ 94,485</u>

16. Investments

The amortized cost, gross unrealized gains and losses, fair value of those investments classified as available-for-sale, and allowance for credit losses at September 30, 2022 are summarized as follows (in thousands):

	September 30, 2022				
	Amortized	Gross	Gross	Fair	Allowance for
	Cost	Unrealized Gains	Unrealized Losses	Value	Credit Losses
Corporate bonds	\$ 220,537	\$ —	\$ (9,004)	\$ 211,533	—
U.S. Treasuries	624,972	133	(17,198)	607,907	—
Total	\$ 845,509	\$ 133	\$ (26,202)	\$ 819,440	\$ —

The amortized cost, gross unrealized gains and losses, fair value of those investments classified as available-for-sale, and allowance for credit losses at December 31, 2021 are summarized as follows (in thousands):

	December 31, 2021				
	Amortized	Gross	Gross	Fair	Allowance for
	Cost	Unrealized Gains	Unrealized Losses	Value	Credit Losses
Corporate bonds	\$ 228,614	\$ —	\$ (2,232)	\$ 226,382	—
U.S. Treasuries	1,014,319	20	(456)	1,013,883	—
Total	\$ 1,242,933	\$ 20	\$ (2,688)	\$ 1,240,265	\$ —

The following table summarizes the fair value and gross unrealized losses on securities classified as available-for-sale, and length of time that the individual securities have been in a continuous loss position as of September 30, 2022 (in thousands):

	September 30, 2022					
	Less than 12 months		12 months or greater		Total	
	Fair Value of	Gross Unrealized	Fair Value of	Gross Unrealized	Fair Value of	Gross Unrealized
	Investments with	Losses	Investments with	Losses	Investments with	Losses
	Unrealized Losses		Unrealized Losses		Unrealized Losses	
Corporate bonds	\$ 433,615	\$ (4,385)	\$ 385,825	\$ (21,818)	\$ 819,440	\$ (26,202)
Total available-for-sale securities	\$ 433,615	\$ (4,385)	\$ 385,825	\$ (21,818)	\$ 819,440	\$ (26,202)

We regularly review available-for-sale securities for declines in fair values that we determine to be credit related. In order to determine whether an allowance for credit losses was required, we considered factors such as whether amounts related to securities have become uncollectible, whether we intend to sell a security, and whether it is more likely than not that we will be required to sell a security prior to recovery. The Company also reviewed the declines in market value related to our available-for-sale securities and determined that these declines were due to fluctuations in interest rates. As of September 30, 2022, the Company did not have an allowance for credit losses related to available-for-sale securities.

The cost, gross unrealized gains and losses, and fair value of those investments classified as equity securities at September 30, 2022 are summarized as follows (in thousands):

	September 30, 2022			
	Cost	Gross Unrealized Gains	Gross Unrealized Losses	Fair Value
Fixed income mutual funds	\$ 70,247	\$ —	\$ (2,854)	\$ 67,393
Exchange traded mutual funds	76,000	—	(13,272)	62,728
Total	<u>\$ 146,247</u>	<u>\$ —</u>	<u>\$ (16,126)</u>	<u>\$ 130,121</u>

The cost, gross unrealized gains and losses, and fair value of those investments classified as equity securities at December 31, 2021 are summarized as follows (in thousands):

	December 31, 2021			
	Cost	Gross Unrealized Gains	Gross Unrealized Losses	Fair Value
Fixed income mutual funds	\$ 70,247	\$ —	\$ (574)	\$ 69,673
Exchange traded mutual funds	71,010	7,312	—	78,322
Total	<u>\$ 141,257</u>	<u>\$ 7,312</u>	<u>\$ (574)</u>	<u>\$ 147,995</u>

A summary of the amortized cost and fair value of investments classified as available-for-sale, by contractual maturity, as of September 30, 2022 and December 31, 2021 was as follows (in thousands):

	September 30, 2022		December 31, 2021	
	Amortized Cost	Fair Value	Amortized Cost	Fair Value
Maturity:				
Less than 12 months	\$ 437,867	\$ 433,615	\$ 670,584	\$ 670,306
12 months or greater	407,642	385,825	572,349	569,959
Total	<u>\$ 845,509</u>	<u>\$ 819,440</u>	<u>\$ 1,242,933</u>	<u>\$ 1,240,265</u>

Accrued interest income was \$3.0 million and \$3.7 million at September 30, 2022 and December 31, 2021, respectively, and included within the balance for prepaid expenses and other current assets in the unaudited interim condensed consolidated balance sheets.

17. Operating and Finance Lease Liabilities

As of September 30, 2022, the Company had operating leases, as lessee, primarily associated with sale/leaseback transactions that are partially secured by restricted cash, security deposits and pledged escrows (see also Note 1, “Nature of Operations”) as summarized below. These leases expire over the next one to nine years. Minimum rent payments under operating leases are recognized on a straight-line basis over the term of the lease.

Leases contain termination clauses with associated penalties, the amount of which cause the likelihood of cancellation to be remote. At the end of the lease term, the leased assets may be returned to the lessor by the Company, the Company may negotiate with the lessor to purchase the assets at fair market value, or the Company may negotiate with the lessor to renew the lease at market rental rates. No residual value guarantees are contained in the leases. No financial covenants are contained within the lease; however, the lease contains customary operational covenants such as the requirement that the Company properly maintain the leased assets and carry appropriate insurance. The leases include credit support in the form of either cash, collateral or letters of credit. See Note 19, “Commitments and Contingencies” for a description of cash held as security associated with the leases.

The Company has finance leases associated with its property and equipment in Latham, New York and at fueling customer locations. The fair value of this finance obligation approximated the carrying value as of September 30, 2022.

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Future minimum lease payments under operating and finance leases (with initial or remaining lease terms in excess of one year) as of September 30, 2022 were as follows (in thousands):

	Operating Lease	Finance Lease	Total Lease
	Liability	Liability	Liabilities
Remainder of 2022	\$ 28,717	\$ 2,501	\$ 31,218
2023	65,008	9,731	74,739
2024	64,055	9,704	73,759
2025	59,685	12,615	72,300
2026	51,780	9,967	61,747
2027 and thereafter	97,981	5,596	103,577
Total future minimum payments	367,226	50,114	417,340
Less imputed interest	(78,148)	(7,034)	(85,182)
Total	\$ 289,078	\$ 43,080	\$ 332,158

Rental expense for all operating leases was \$17.4 million and \$9.6 million for the three months ended September 30, 2022 and 2021, respectively. Rental expense for all operating leases was \$46.5 million and \$25.8 million for the nine months ended September 30, 2022 and 2021, respectively.

At September 30, 2022 and December 31, 2021, security deposits associated with sale/leaseback transactions were \$5.2 million and \$3.5 million, respectively, and were included in other assets in the unaudited interim condensed consolidated balance sheets.

At September 30, 2022 and December 31, 2021, the right of use assets associated with finance leases was \$52.9 million and \$33.9 million, respectively. The accumulated depreciation for these right of use assets was \$3.3 million and \$1.5 million at September 30, 2022 and December 31, 2021, respectively.

Other information related to the operating leases are presented in the following table:

	Nine months ended September 30, 2022	Nine months ended September 30, 2021
Cash payments (in thousands)	\$ 44,565	\$ 25,726
Weighted average remaining lease term (years)	6.31	5.72
Weighted average discount rate	11.1%	11.2%

Finance lease costs include amortization of the right of use assets (i.e., depreciation expense) and interest on lease liabilities (i.e., interest and other expense, net in the consolidated statement of operations), and were \$0.8 million and \$0.6 million for the three months ended September 30, 2022, respectively. Finance lease costs include amortization of the right of use assets (i.e., depreciation expense) and interest on lease liabilities (i.e., interest and other expense, net in the consolidated statement of operations), and were \$2.4 million and \$1.8 million for the nine months ended September 30, 2022, respectively.

Other information related to the finance leases are presented in the following table:

	Nine months ended September 30, 2022	Nine months ended September 30, 2021
Cash payments (in thousands)	\$ 6,166	\$ 2,128
Weighted average remaining lease term (years)	4.09	4.57
Weighted average discount rate	6.5%	6.9%

18. Finance Obligation

The Company has sold future services to be performed associated with certain sale/leaseback transactions and recorded the balance as a finance obligation. The outstanding balance of this obligation at September 30, 2022 was \$287.3 million, \$49.9 million and \$237.4 million of which was classified as short-term and long-term, respectively, on the accompanying unaudited interim condensed consolidated balance sheet. The outstanding balance of this obligation at December 31, 2021 was \$236.6 million, \$37.5 million and \$199.1 million of which was classified as short-term and long-term, respectively. The amount is amortized using the effective interest method. Interest expense recorded related to finance obligations for the three months ended September 30, 2022 and 2021 was \$7.4 million and \$5.3 million, respectively. Interest expense recorded related to finance obligations for the nine months ended September 30, 2022 and 2021 was \$21.1 million and \$15.0 million, respectively. The fair value of this finance obligation approximated the carrying value as of September 30, 2022 and December 31, 2021.

In prior periods, the Company entered into sale/leaseback transactions that were accounted for as financing transactions and reported as part of finance obligations. The outstanding balance of finance obligations related to sale/leaseback transactions at September 30, 2022 was \$16.3 million, \$3.4 million and \$12.9 million of which was classified as short-term and long-term, respectively on the accompanying consolidated balance sheet. The outstanding balance of this obligation at December 31, 2021 was \$17.0 million, \$4.5 million and \$12.5 million of which was classified as short-term and long-term, respectively on the accompanying consolidated balance sheets. The fair value of this finance obligation approximated the carrying value as of both September 30, 2022 and December 31, 2021.

Future minimum payments under finance obligations notes above as of September 30, 2022 were as follows (in thousands):

	Sale of future revenue - debt	Sale/leaseback financings	Total Finance Obligations
Remainder of 2022	\$ 20,008	\$ 1,057	\$ 21,065
2023	80,034	4,091	84,125
2024	80,034	9,846	89,880
2025	74,777	942	75,719
2026	58,054	942	58,996
2027 and thereafter	64,686	1,759	66,445
Total future minimum payments	377,593	18,637	396,230
Less imputed interest	(90,266)	(2,370)	(92,636)
Total	\$ 287,327	\$ 16,267	\$ 303,594

Other information related to the above finance obligations are presented in the following table:

	Nine months ended September 30, 2022	Nine months ended September 30, 2021
Cash payments (in thousands)	\$ 51,609	\$ 41,325
Weighted average remaining term (years)	4.86	4.88
Weighted average discount rate	11.1%	11.3%

19. Commitments and Contingencies

Restricted Cash

In connection with certain of the above noted sale/leaseback agreements, cash of \$356.9 million and \$275.1 million was required to be restricted as security as of September 30, 2022 and December 31, 2021, respectively, which restricted cash will be released over the lease term. As of September 30, 2022 and December 31, 2021, the Company also

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had certain letters of credit backed by security deposits totaling \$340.1 million and \$286.0 million, respectively, that are security for the above noted sale/leaseback agreements. As of September 30, 2022, the Company also had certain customer and customs related letters of credit totaling \$23.8 million.

As of September 30, 2022 and December 31, 2021, the Company had \$67.7 and \$67.7 million, respectively, held in escrow related to the construction of certain hydrogen plants.

The Company also had \$5.0 million and \$2.3 million of consideration held by our paying agent in connection with the Applied Cryo and Joule acquisitions, respectively, reported as restricted cash as of September 30, 2022, with a corresponding accrued liability on the Company's unaudited interim condensed consolidated balance sheet. Additionally, the Company had \$11.5 million in restricted cash as collateral resulting from the Frames acquisition as of September 30, 2022.

Litigation

Legal matters are defended and handled in the ordinary course of business. Liabilities for loss contingencies arising from claims, assessments, litigation, fines, and penalties and other sources are recorded when it is probable that a liability has been incurred and the amount can be reasonably estimated. Legal costs incurred in connection with loss contingencies are expensed as incurred. The Company has not recorded any accruals related to any legal matters.

As previously disclosed, in the Company's Quarterly Report on Form 10-Q filed on August 9, 2022, several actions were filed in the U.S. District Court for the Southern District of New York asserting claims under the federal securities laws against the Company and two of its senior officers, Mr. Marsh and Mr. Middleton. On July 22, 2021, the court consolidated those actions into *In re Plug Power, Inc. Securities Litigation*, No. 1:21-cv-2004, pending in the (the "Securities Action") and appointed a lead plaintiff. On October 6, 2021, lead plaintiff filed a consolidated amended complaint asserting claims on behalf of a putative class composed of all persons who purchased or otherwise acquired the Company's securities between November 9, 2020 and March 9, 2021. The complaint asserted a claim against all defendants for alleged violations of Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") and Rule 10b5 promulgated thereunder and a claim under Section 20(a) of the Exchange Act against Mr. Marsh and Mr. Middleton as alleged controlling persons. The complaint alleged that defendants made "materially false" statements concerning (1) adjusted EBITDA; (2) fuel delivery and research and development expenses; (3) costs related to provision for loss contracts; (4) gross losses; and (5) the effectiveness of internal controls and procedures, and that these alleged misstatements caused losses and damages for members of the alleged class. On December 6, 2021, defendants filed a motion to dismiss the complaint. In an opinion and order entered on September 29, 2022, the court granted defendants' motion to dismiss in its entirety but permitted the lead plaintiff to file an amended complaint. The current deadline for filing the amended complaint is November 21, 2022.

On March 31, 2021, Company stockholder Junwei Liu, derivatively and on behalf of nominal defendant Plug, filed a complaint in the U.S. District Court for the Southern District of New York against certain Company directors and officers (the "Derivative Defendants"), captioned *Liu v. Marsh et al.*, Case No. 1:21-cv-02753 (S.D.N.Y.) (the "Liu Derivative Complaint"). The Liu Derivative Complaint alleges that, between November 9, 2020 and March 1, 2021, the Derivative Defendants "made, or caused the Company to make, materially false and misleading statements concerning Plug Power's business, operations, and prospects" by "issu[ing] positive financial information and optimistic guidance, and made assurances that the Company's internal controls were effective," when, "[i]n reality, the Company's internal controls suffered from material deficiencies that rendered them ineffective." The Liu Derivative Complaint asserts claims for (1) breach of fiduciary duties, (2) unjust enrichment, (3) abuse of control, (4) gross mismanagement, (5) waste of corporate assets, and (6) contribution under Sections 10(b) and 21D of the Exchange Act (as to the named officer defendants). The Liu Derivative Complaint seeks a judgment "[d]eclaring that Plaintiff may maintain this action on behalf of Plug"; "[d]eclaring that the [Derivative] Defendants have breached and/or aided and abetted the breach of their fiduciary duties"; "awarding to Plug Power the damages sustained by it as a result of the violations" set forth in the Liu Derivative Complaint, "together with pre-judgment and post-judgment interest thereon"; "[d]irecting Plug Power and the [Derivative] Defendants to take all necessary actions to reform and improve Plug Power's corporate governance and internal procedures to comply with applicable laws"; and "[a]warding Plaintiff the costs and disbursements of this action, including reasonable

attorneys' and experts' fees, costs, and expenses"; and "[s]uch other and further relief as the [c]ourt may deem just and proper."

On April 5, 2021, Company stockholders Elias Levy and Cameroohn X. Withers, derivatively and on behalf of nominal defendant Plug, filed a complaint in the U.S. District Court for the Southern District of New York against the Derivative Defendants named in the Liu Derivative Complaint, captioned Levy et al. v. McNamee et al., Case No. 1:21-cv-02891 (S.D.N.Y.) (the "Levy Derivative Complaint"). The Levy Derivative Complaint alleges that, from November 9, 2020 to April 5, 2021, the Derivative Defendants "breached their duties of loyalty and good faith" by failing to disclose "(1) that the Company would be unable to timely file its 2020 annual report due to delays related to the review of classification of certain costs and the recoverability of the right to use assets with certain leases; (2) that the Company was reasonably likely to report material weaknesses in its internal control over financial reporting; and (3) that, as a result of the foregoing, Defendants' positive statements about the Company's business, operations, and prospects were materially misleading and/or lacked a reasonable basis." The Levy Derivative Complaint asserts claims for (1) breach of fiduciary duty (as to the named director defendants), (2) unjust enrichment (as to certain named director defendants), (3) waste of corporate assets (as to the named director defendants), and (4) violations of Sections 10(b) and 21D of the Exchange Act (as to the named officer defendants). The Levy Derivative Complaint seeks a judgment "declaring that Plaintiffs may maintain this action on behalf of the Company"; finding the Derivative Defendants "liable for breaching their fiduciary duties owed to the Company"; directing the Derivative Defendants "to take all necessary actions to reform and improve the Company's corporate governance, risk management, and internal operating procedures to comply with applicable laws"; "awarding damages to the Company for the harm the Company suffered as a result of Defendants' wrongful conduct"; "awarding damages to the Company for [the named officer Derivative Defendants'] violations of Sections 10(b) and 21D of the Exchange Act"; "awarding Plaintiffs the costs and disbursements of this action, including attorneys', accountants', and experts' fees"; and "awarding such other and further relief as is just and equitable." The Liu Derivative Complaint and the Levy Derivative Complaint have been consolidated in In re Plug Power Derivative Litigation, Lead Case No. 1:21-cv-02753-ER and, by stipulation approved by the Court, the cases have been stayed pending the resolution of the motion to dismiss in the Securities Class action.

On May 13, 2021, Company stockholder Romario St. Clair, derivatively and on behalf of nominal defendant Plug, filed a complaint in the Supreme Court of the State of New York, County of New York against the derivative defendants named in the Liu derivative Complaint, captioned St. Clair v. Plug Power Inc. et al., index no. 653167/2021 (n.Y. Sup. Ct., n.Y. Cty.) (the "St. Clair derivative Complaint"). The St. Clair derivative Complaint alleges that, for approximately two years from March 13, 2019 onwards, the company made a number of improper statements that "failed to disclose and misrepresented the following material, adverse facts, which the [derivative] defendants knew, consciously disregarded, or were reckless in not knowing", including: "(a) that the Company was experiencing known but undisclosed material weaknesses in its internal controls over financial reporting; (b) the Company was overstating the carrying amount of certain right of use assets and finance obligations associated with leases; (c) the Company was understating its loss accrual on certain service contracts; (d) the Company would need to take impairment charges relating to certain long-lived assets; (e) the Company was improperly classifying research and development costs versus costs of good sold; and (f) the Company would be unable to file its annual Report for the 2020 fiscal year due to these errors." The St. Clair Derivative Complaint asserts claims for (1) breach of fiduciary and (2) unjust enrichment. The St. Clair Derivative Complaint seeks a judgment "for the amount of damages sustained by the Company as a result of the defendants' breaches of fiduciary duties and unjust enrichment"; "[d]irecting Plug Power to take all necessary actions to reform and improve its corporate governance and internal procedures to comply with applicable laws"; "[e]xtraordinary equitable and/or injunctive relief as permitted by law, equity, and state statutory provisions"; "[a]warding to PlugPower restitution from defendants, and each of them, and ordering disgorgement of all profits, benefits, and other compensation obtained by the defendants"; "[a]warding to plaintiff the costs and disbursements of the action, including reasonable attorneys' fees, accountants' and experts' fees, costs, and expenses"; and "[g]ranteeing such other and further relief as the [c]ourt deems just and proper." By stipulation approved by the Court, the case has been stayed pending the resolution of the motion to dismiss in the Securities Class action.

On June 13, 2022, alleged Company stockholder Donna Max, derivatively on behalf of the Company as nominal defendant, filed a complaint in the United States District Court for the District of Delaware against the derivative defendants named in the Liu Derivative Complaint, captioned Max v. Marsh, et. al., case no. 1:22-cv-00781(D. Del.) (the "Max Derivative Complaint"). The Max Derivative Complaint alleges that, for the years 2018, 2019 and 2020, the

defendants did not “assure that a reliable system of financial controls was in place and functioning effectively”; “failed to disclose errors in the Company’s accounting primarily relating to (i) the reported book value of right of use assets and related finance obligations, (ii) loss accruals for certain service contracts, (iii) the impairment of certain long-lived assets, and (iv) the classification of certain expenses previously included in research and development costs”; and that certain defendants traded Company stock at “artificially inflated stock prices.” The Max Derivative Complaint asserts claims for (1) breach of fiduciary against all defendants; (2) breach of fiduciary duty for insider trading against certain defendants; and (3) contribution under Sections 10(b) and 21D of the Exchange Act against certain defendants. The Max Derivative Complaint seeks an award “for the damages sustained by [the Company]” and related relief. By stipulation approved by the Court, the case has been stayed pending the resolution of the motion to dismiss in the Securities Action.

On June 29, 2022, alleged Company stockholder Abbas Khambati, derivatively on behalf of the Company as nominal defendant, filed a complaint in the Court of Chancery in the State of Delaware against the derivative defendants named in the Liu Derivative Complaint and Gerard A. Conway, Jr. and Keith Schmid, captioned *Khambati v. McNamee, et. al.*, C.A. no. 2022-05691(Del. Ch.) (the “Khambati Derivative Complaint”). The Khambati Derivative Complaint alleges that the defendants “deceive[d] the investing public, including stockholders of Plug Power, regarding the Individual Defendants’ management of Plug Power’s operations and the Company’s compliance with the SEC’s accounting rules”; “facilitate[d]” certain defendants’ sales of “their personally held shares while in possession of material, nonpublic information”; and “enhance[d] the Individual Defendants’ executive and directorial positions at Plug Power and the profits, power, and prestige that the Individual Defendants enjoyed as a result of holding these positions.” The Khambati Derivative Complaint asserts claims for (1) breach of fiduciary; and (2) disgorgement and unjust enrichment. The Khambati Derivative Complaint seeks an award “for the damages sustained by [the Company] as a result of the breaches” alleged or “disgorgement or restitution”; “disgorgement of insider trading profits” and “all profits, benefits and other compensation obtained by [defendants’] insider trading and further profits flowing therefrom”; an order “[d]irecting the Company to take all necessary actions to reform and improve its corporate governance and internal procedures”; and related relief.

On July 19, 2022, alleged Company stockholder Anne D. Graziano, as Trustee of the Anne D. Graziano Revocable Living Trust, derivatively on behalf of the Company as nominal defendant, filed a complaint in the Court of Chancery in the State of Delaware against the derivative defendants named in the Khambati Derivative Complaint, captioned *Graziano v. Marsh, et. al.*, C.A. no. 2022-0629 (Del. Ch.) (the “Graziano Derivative Complaint”). The Graziano Derivative Complaint alleges that the director defendants (i) “either knowingly or recklessly issued or caused the Company to issue the materially false and misleading statements” concerning “certain critical accounting issues”; (ii) “willfully ignored, or recklessly failed to inform themselves of, the obvious problems with the Company’s internal controls, practices, and procedures, and failed to make a good faith effort to correct the problems or prevent their recurrence”; (iii) the members of the Audit Committee failed “to prevent, correct, or inform the Board of the issuance of material misstatements and omissions regarding critical accounting issues and the adequacy of the Company’s internal controls”; (iv) “received payments, benefits, stock options, and other emoluments by virtue of their membership on the Board and their control of the Company”; (v) violated the Company’s Code of Conduct because they knowingly or recklessly engaged in and participated in making and/or causing the Company to make the materially false and misleading statements; and (vi) certain defendants “sold large amounts of Company stock while it was trading at artificially inflated prices.” The Graziano Derivative Complaint asserts claims for (1) breach of fiduciary; (2) breach of fiduciary duty against certain defendants for insider trading; (3) unjust enrichment; (4) aiding and abetting breach of fiduciary duty; and (5) waste of corporate assets. The Graziano Derivative Complaint seeks an award of “the amount of damages sustained by the Company”; seeks an order “[d]irecting Plug Power to take all necessary actions to reform and improve its corporate governance and internal procedures to comply with applicable laws and to protect Plug Power and its stockholders from a repeat of the damaging events described herein”; and related relief. The parties to the Graziano Derivative Complaint and Khambati Derivative Complaint have been consolidated in Plug Power, Inc. Stockholder Derivative Litigation, Consolidated C.A. No. 2022-0569 and, by stipulation approved by the court, the cases have been stayed pending the resolution of the motion to dismiss in the Securities Action.

As previously disclosed, on August 28, 2018, a lawsuit was filed on behalf of multiple individuals against the Company and five corporate co-defendants in the 9th Judicial District Court, Rapides Parish, Louisiana. The lawsuit relates to the previously disclosed May 2018 accident involving a forklift powered by the Company’s fuel cell at a Procter & Gamble facility in Louisiana. The lawsuit alleges claims against the Company and co-defendants, including Structural

Composites Industries, Deep South Equipment Co., Air Products and Chemicals, Inc., and Hyster-Yale Group, Inc. for claims under the Louisiana Product Liability Act (“LPLA”) including defect in construction and/or composition, design defect, inadequate warning, breach of express warranty and negligence for wrongful death and personal injuries, among other damages. Procter & Gamble has intervened in that suit to recover worker’s compensation benefits paid to or for the employees/dependents. Procter & Gamble has also filed suit for property damage, business interruption, loss of revenue, expenses, and other damages. Procter & Gamble alleges theories under the LPLA, breach of warranty and quasi-contractual claims under Louisiana law. Defendants include the Company and several of the same co-defendants from the August 2018 lawsuit, including Structural Composites Industries, Deep South Equipment Co., and Hyster-Yale Group, Inc. In April 2022, Plug reached a settlement with respect to the individual plaintiffs on terms well below the Company’s commercial liability insurance limits and continues to vigorously defend the remaining lawsuit against Procter & Gamble.

Concentrations of Credit Risk

Financial instruments that potentially subject the Company to credit risk consist principally of cash, cash equivalents, restricted cash, accounts receivable and marketable securities. Cash and restricted cash are maintained in accounts with financial institutions, which, at times may exceed the Federal depository insurance coverage of \$0.3 million. The Company has not experienced losses on these accounts and management believes, based upon the quality of the financial institutions, that the credit risk with regard to these deposits is not significant. The Company’s available-for-sale securities consists primarily of investments in U.S. Treasury securities and short-term high credit quality corporate debt securities. Equity securities are comprised of fixed income and equity market index mutual funds.

Concentrations of credit risk with respect to receivables exist due to the limited number of select customers with whom the Company has commercial sales arrangements. To mitigate credit risk, the Company performs appropriate evaluation of a prospective customer’s financial condition.

At September 30, 2022, one customer comprised 28.4% of the total accounts receivable balance. At December 31, 2021, one customer comprised approximately 46.6% of the total accounts receivable balance.

For purposes of assigning a customer to a sale/leaseback transaction completed with a financial institution, the Company considers the end user of the assets to be the ultimate customer. For the three and nine months ended September 30, 2022, 66.9% and 53.2% of total consolidated revenues were associated with three customers, respectively. For the three and nine months ended September 30, 2021, 80.1% and 80.6% of total consolidated revenues were associated primarily with two and three customers, respectively.

20. Employee Benefit Plans

2011 and 2021 Stock Option and Incentive Plan

The Company has issued stock-based awards to employees and members of its Board of Directors (the “Board”) consisting of stock options and restricted stock awards. The Company accounts for all stock-based awards to employees and members of the Board as compensation costs in the consolidated financial statements based on their fair values measured as of the date of grant. These costs are recognized over the requisite service period. Stock-based compensation costs recognized, excluding the Company’s matching contributions to the Plug Power Inc. 401(k) Savings & Retirement Plan and quarterly Board compensation, were \$44.2 million and \$12.7 million for the three months ended September 30, 2022 and September 30, 2021, respectively. Stock-based compensation costs recognized, excluding the Company’s matching contributions to the Plug Power Inc. 401(k) Savings & Retirement Plan and quarterly Board compensation, were \$127.7 million and \$32.3 million for the nine months ended September 30, 2022 and September 30, 2021, respectively. The methods and assumptions used in the determination of the fair value of stock-based awards are consistent with those described in our 2021 Form 10-K.

The components and classification of stock-based compensation expense, excluding the Company's matching contributions to the Plug Power Inc. 401(k) Savings & Retirement Plan and quarterly Board compensation, were as follows (in thousands):

	Three months ended		Nine months ended	
	September 30, 2022	September 30, 2021	September 30, 2022	September 30, 2021
Cost of sales	\$ 1,821	\$ 680	\$ 4,928	\$ 1,231
Research and development	1,483	1,782	4,062	4,534
Selling, general and administrative	40,935	10,237	118,710	26,550
	<u>\$ 44,239</u>	<u>\$ 12,699</u>	<u>\$ 127,700</u>	<u>\$ 32,315</u>

Option Awards

The Company issues options that are time and performance-based awards. All option awards are determined to be classified as equity awards.

Service Stock Options Awards

The following table reflects the service stock option activity for the nine months ended September 30, 2022:

	Shares	Weighted Average Exercise Price	Weighted Average Remaining Contractual Terms	Aggregate Intrinsic Value
Options outstanding at December 31, 2021	\$ 9,786,909	\$ 11.65	\$ 7.70	\$ 172,412
Granted	1,097,974	23.55	—	—
Exercised	(727,992)	2.86	—	—
Forfeited	(127,634)	24.05	—	—
Options outstanding at September 30, 2022	<u>\$ 10,029,257</u>	<u>\$ 13.47</u>	<u>\$ 7.35</u>	<u>\$ 101,193</u>
Options exercisable at September 30, 2022	6,561,842	8.35	6.63	90,283
Options unvested at September 30, 2022	\$ 3,467,415	\$ 23.15	\$ 8.72	\$ 10,910

The weighted average grant-date fair value of the service stock options granted during the three months ended September 30, 2022 and 2021 was \$14.64 and \$15.82, respectively. The weighted average grant-date fair value of the service stock options granted during the nine months ended September 30, 2022 and 2021 was \$15.31 and \$19.76, respectively. The total intrinsic fair value of service stock options exercised during the nine months ended September 30, 2022 and 2021 was \$14.8 million and \$102.1 million, respectively. The total fair value of the service stock options that vested during the three months ended September 30, 2022 and 2021 was approximately \$15.5 million and \$10.4 million, respectively. The total fair value of the service stock options that vested during the nine months ended September 30, 2022 and 2021 was approximately \$21.74 million and \$10.9 million, respectively.

Compensation cost associated with service stock options represented approximately \$6.8 million and \$4.2 million of the total share-based payment expense recorded for the three months ended September 30, 2022 and 2021, respectively. Compensation cost associated with service stock options represented approximately \$19.2 million and \$11.9 million of the total share-based payment expense recorded for the nine months ended September 30, 2022 and 2021, respectively. As of September 30, 2022, there was approximately \$42.4 million of unrecognized compensation cost related to service stock option awards to be recognized over the weighted average remaining period of 1.85 years.

Performance Stock Option Awards

	Shares	Weighted Average Exercise Price	Weighted Average Remaining Contractual Terms	Aggregate Intrinsic Value
Options outstanding at December 31, 2021	14,020,000	\$ 26.92	6.70	\$ 18,336,200
Granted	1,500,000	26.38	6.89	—
Options outstanding at September 30, 2022	15,520,000	\$ 26.87	6.07	\$ —
Options exercisable at September 30, 2022	1,391,000	26.92	5.98	—
Options unvested at September 30, 2022	14,129,000	\$ 26.86	6.07	\$ —

The weighted average grant-date fair value of the performance stock options granted during the three and nine months ended September 30, 2022 and 2021 was \$9.73 and \$12.78, respectively. There were no performance stock options exercised during the nine months ended September 30, 2022 or 2021, respectively. The total fair value of the performance stock options that vested during the three and nine months ended September 30, 2022 and 2021 was approximately \$20.8 million and \$0 million, respectively.

As of September 30, 2022, there were 2,782,000 unvested stock options for which the employee requisite service period has not been rendered but are expected to vest. The aggregate intrinsic value of these unvested stock options is \$0 as of September 30, 2022. The weighted average remaining contractual term of these unvested stock options was 6.1 years as of September 30, 2022.

Compensation cost associated with performance stock options represented approximately \$26.1 million and \$2.0 of the total share-based payment expense recorded for the three months ended September 30, 2022 and 2021, respectively. Compensation cost associated with performance stock options represented approximately \$76.5 million and \$2.0 of the total share-based payment expense recorded for the nine months ended September 30, 2022 and 2021, respectively. As of September 30, 2022, there was approximately \$89.7 million of unrecognized compensation cost related to performance stock option awards to be recognized over the weighted average remaining period of 2.07 years.

Restricted Stock Awards

The Company recorded expense associated with its restricted stock awards of approximately \$11.3 million and \$6.5 million for the three months ended September 30, 2022 and 2021, respectively. The Company recorded expense associated with its restricted stock awards of approximately \$32.0 million and \$18.5 million for the nine months ended September 30, 2022 and 2021, respectively. Additionally, as of September 30, 2022, there was \$75.0 million of unrecognized compensation cost related to restricted stock awards to be recognized over the weighted average period of 1.91 years.

A summary of restricted stock activity for the nine months ended September 30, 2022 is as follows (in thousands except share amounts):

	Shares	Weighted Average Grant Date Fair Value	Aggregate Intrinsic Value
Unvested restricted stock at December 31, 2021	4,851,873	\$ 21.59	\$ 136,968
Granted	1,476,152	23.60	—
Vested	(2,474,065)	13.87	—
Forfeited	(116,668)	24.89	—
Unvested restricted stock at September 30, 2022	3,737,292	\$ 23.50	\$ 78,521

The weighted average grant-date fair value of the restricted stock awards granted during the three months ended September 30, 2022 and 2021, was \$22.00 and \$32.29, respectively. The weighted average grant-date fair value of the restricted stock awards granted during the nine months ended September 30, 2022 and 2021, was \$23.60 and \$32.29, respectively. The total fair value of restricted stock awards vested for the three months ended September 30, 2022 and

2021 was \$25.5 million and \$68.6 million, respectively. The total fair value of restricted stock awards vested for the nine months ended September 30, 2022, and 2021 was \$34.3 million and \$72.95 million, respectively.

401(k) Savings & Retirement Plan

The Company issued 310,159 shares of common stock and 54,531 shares of common stock pursuant to the Plug Power Inc. 401(k) Savings & Retirement Plan during the nine months ended September 30, 2022 and 2021, respectively.

The Company's expense for this plan was approximately \$2.5 million, and \$1.1 million for the three months ended September 30, 2022 and 2021, respectively. The Company's expense for this plan was approximately \$6.7 million and \$3.4 million for the nine months ended September 30, 2022 and 2021, respectively.

Non-Employee Director Compensation

The Company granted 4,342 shares of common stock and 3,685 shares of common stock to non-employee directors as compensation for the three months ended September 30, 2022 and 2021, respectively. The Company granted 14,282 shares of common stock and 8,923 shares of common stock to non-employee directors as compensation for the nine months ended September 30, 2022 and 2021, respectively. All common stock issued is fully vested at the time of issuance and is valued at fair value on the date of issuance. The Company's share-based compensation expense in connection with non-employee director compensation was approximately \$0.1 million and \$0.1 million for the three months ended September 30, 2022 and 2021, respectively. The Company's share-based compensation expense in connection with non-employee director compensation was approximately \$0.3 million and \$0.3 million for the nine months ended September 30, 2022 and 2021, respectively.

21. Segment Reporting

Our organization is managed from a sales perspective on the basis of "go-to-market" sales channels, emphasizing shared learning across end user applications and common supplier/vendor relationships. These sales channels are structured to serve a range of customers for our products and services. As a result of this structure, we concluded that we have one operating and reportable segment — the design, development and sale of fuel cells and hydrogen producing equipment. Our chief executive officer was identified as the chief operating decision maker (CODM). All significant operating decisions made by management are largely based upon the analysis of Plug Power Inc. on a total company basis.

	Revenues				Long-Lived Assets as of	
	Three Months Ended		Nine Months Ended		September 30, 2022	December 31, 2021
	September 30, 2022	September 30, 2021	September 30, 2022	September 30, 2021		
North America	\$ 157,426	\$ 140,151	\$ 385,620	\$ 328,139	\$ 1,047,036	\$ 570,778
Other	31,202	3,771	95,078	12,298	10,203	2,778
Total	\$ 188,628	\$ 143,922	\$ 480,698	\$ 340,437	\$ 1,057,239	\$ 573,556

22. Subsequent Events

We have evaluated events as of November 8, 2022 and have not identified any subsequent events.

Item 2 — Management’s Discussion and Analysis of Financial Condition and Results of Operations

The following discussion should be read in conjunction with our accompanying unaudited interim condensed consolidated financial statements and notes thereto included within this report, and our audited and notes thereto included in our 2021 Form 10-K. In addition to historical information, this Quarterly Report on Form 10-Q and the following discussion contain statements that are not historical facts and are considered forward-looking within the meaning of Section 27A of the Securities Act, and Section 21E of the Exchange Act. These forward-looking statements contain projections of our future results of operations or of our financial position or state other forward-looking information. In some cases, you can identify these statements by forward-looking words such as “anticipate,” “believe,” “could,” “continue,” “estimate,” “expect,” “intend,” “may,” “should,” “will,” “would,” “plan,” “project” or the negative of such words or other similar words or phrases. We believe that it is important to communicate our future expectations to our investors. However, there may be events in the future that we are not able to accurately predict or control and that may cause our actual results to differ materially from the expectations we describe in our forward-looking statements. Investors are cautioned not to unduly rely on forward-looking statements because they involve risks and uncertainties, and actual results may differ materially from those discussed as a result of various factors, including, but not limited to:

- the risk that we continue to incur losses and might never achieve or maintain profitability;
- the risk that we will need to raise additional capital to fund our operations and such capital may not be available to us;
- the risk that we may not be able to expand our business or manage our future growth effectively;
- the risk that delays in or not completing our product development goals may adversely affect our revenue and profitability;
- the risk that we may be unable to successfully pursue, integrate, or execute upon our new business ventures.
- the risk of dilution to our stockholders and/or stock price should we need to raise additional capital;
- the risk that our lack of extensive experience in manufacturing and marketing products may impact our ability to manufacture and market products on a profitable and large-scale commercial basis;
- the risk that unit orders may not ship, be installed and/or converted to revenue, in whole or in part;
- the risk that a loss of one or more of our major customers, or if one of our major customers delays payment of or is unable to pay its receivables, a material adverse effect could result on our financial condition;
- the risk that a sale of a significant number of shares of stock could depress the market price of our common stock;
- the risk that our convertible senior notes, if settled in cash, could have a material effect on our financial results;
- the risk that our convertible note hedges may affect the value of our convertible senior notes and our common stock;
- the risk that negative publicity related to our business or stock could result in a negative impact on our stock value and profitability;
- the risk of potential losses related to any product liability claims or contract disputes;
- the risk of loss related to an inability to remediate the material weaknesses identified in internal control over financial reporting as disclosed in this Quarterly Report on Form 10-Q, or inability to otherwise maintain an effective system of internal control;
- the risk that the restatement of our financial statements as of and for the years ended December 31, 2019 and 2018 and for each of the quarterly periods ended March 31, 2020 and 2019, June 30, 2020 and 2019, September 30, 2020 and 2019 could negatively affect investor confidence and raise reputational issues;
- the risk of loss related to an inability to maintain an effective system of internal controls;
- our ability to attract and maintain key personnel;
- the risks related to the use of flammable fuels in our products;
- the risk that pending orders may not convert to purchase orders, in whole or in part;
- the cost and timing of developing, marketing and selling our products;
- the risks of delays in or not completing our product development goals;
- the risks involved with participating in joint ventures, including our ability or inability to execute our strategic growth plan through joint ventures;
- our ability to obtain financing arrangements to support the sale or leasing of our products and services to customers;

- our ability to successfully pursue new business ventures;
- our ability to achieve the forecasted gross margin on the sale of our products;
- the cost and availability of fuel and fueling infrastructures for our products;
- the risks, liabilities, and costs related to environmental, health and safety matters;
- the risk of elimination of government subsidies and economic incentives for alternative energy products;
- market acceptance of our products and services, including GenDrive, GenSure and GenKey systems;
- our ability to establish and maintain relationships with third parties with respect to product development, manufacturing, distribution and servicing, and the supply of key product components;
- the cost and availability of components and parts for our products;
- the risk that possible new tariffs or sanctions could have a material adverse effect on our business;
- our ability to develop commercially viable products;
- our ability to reduce product and manufacturing costs;
- our ability to successfully market, distribute and service our products and services internationally;
- our ability to improve system reliability for our products;
- competitive factors, such as price competition and competition from other traditional and alternative energy companies;
- our ability to protect our intellectual property;
- the risk of dependency on information technology on our operations and the failure of such technology;
- the cost of complying with current and future federal, state and international governmental regulations;
- our subjectivity to legal proceedings and legal compliance;
- the risks associated with past and potential future acquisitions;
- the risks associated with geopolitical instability and global economic uncertainty, including the conflict between Russia and Ukraine, inflationary pressures, rising interest rates, and supply chain disruptions; and
- the volatility of our stock price.

The risks included here are not exhaustive, and additional factors could adversely affect our business and financial performance, including factors and risks discussed in the section titled “Risk Factors” included under Part I, Item 1A, in our 2021 Form 10-K. Moreover, we operate in a very competitive and rapidly changing environment. New risk factors emerge from time to time, and it is not possible for management to predict all such risk factors, nor can we assess the impact of all such risk factors on our business or the extent to which any factor, or combination of factors, may cause actual results to differ materially from those contained in any forward-looking statements. While forward-looking statements reflect our good faith beliefs, they are not guarantees of future performance. These forward-looking statements speak only as of the date on which the statements were made. Except as may be required by applicable law, we do not undertake or intend to update any forward-looking statements after the date of this Quarterly Report on Form 10-Q.

References in this Quarterly Report on Form 10-Q to “Plug,” the “Company,” “we,” “our” or “us” refer to Plug Power Inc., including as the context requires, its subsidiaries.

Overview

Plug is facilitating the paradigm shift to an increasingly electrified world by innovating cutting-edge hydrogen and fuel cell solutions. While we continue to develop commercially-viable hydrogen and fuel cell product solutions to replace lead-acid and lithium batteries in electric material handling vehicles and industrial trucks for some of the world’s largest retail-distribution and manufacturing businesses, we have expanded our offerings to support a variety of commercial operations that can be powered with green hydrogen. We also provide electrolyzers that allow customers — such as refineries, producers of chemicals, steel, fertilizer and commercial refueling stations — to generate hydrogen on-site. Additionally, we intend for our electrolyzers to be used to generate green hydrogen within Plug’s own plants that will then be sold to customers. We are focusing our efforts on industrial mobility applications, including electric forklifts and electric industrial vehicles, at multi-shift high volume manufacturing and high throughput distribution sites where we believe our products and services provide a unique combination of productivity, flexibility, and environmental benefits. Additionally, we manufacture and sell fuel cell products to replace batteries and diesel generators in stationary back-up

power applications for telecommunications, transportation, and utility customers. Plug supports these markets with an ecosystem of integrated products that make, transport, handle, dispense and use hydrogen.

Our current products and services include:

GenDrive: GenDrive is our hydrogen fueled Proton Exchange Membrane (“PEM”) fuel cell system, providing power to material handling electric vehicles, including Class 1, 2, 3 and 6 electric forklifts, Automated Guided Vehicles (“AGVs”), and ground support equipment.

GenFuel: GenFuel is our liquid hydrogen fueling delivery, generation, storage, and dispensing system.

GenCare: GenCare is our ongoing “Internet of Things”-based maintenance and on-site service program for GenDrive fuel cell systems, GenSure fuel cell systems, GenFuel hydrogen storage and dispensing products and ProGen fuel cell engines.

GenSure: GenSure is our stationary fuel cell solution providing scalable, modular PEM fuel cell power to support the backup and grid-support power requirements of the telecommunications, transportation, and utility sectors; GenSure High Power Fuel Cell Platform will support large scale stationary power and data center markets.

GenKey: GenKey is our vertically integrated “turn-key” solution combining either GenDrive or GenSure fuel cell power with GenFuel fuel and GenCare aftermarket service, offering complete simplicity to customers transitioning to fuel cell power.

ProGen: ProGen is our fuel cell stack and engine technology currently used globally in mobility and stationary fuel cell systems, and as engines in electric delivery vans. This includes the Plug membrane electrode assembly, a critical component of the fuel cell stack used in zero-emission fuel cell electric vehicle engines.

GenFuel electrolyzers: GenFuel electrolyzers are modular, scalable hydrogen generators optimized for clean hydrogen production. Electrolyzers generate hydrogen from water using electricity and a special membrane and “green” hydrogen is generated by using renewable energy inputs, such as solar or wind power.

We provide our products and solutions worldwide through our direct sales force, and by leveraging relationships with original equipment manufacturers (“OEMs”) and their dealer networks. Plug is currently targeting Asia, Australia, Europe, Middle East and North America for expansion in adoption. The European Union (the “EU”) has rolled out ambitious targets for the hydrogen economy as part of the EU strategy for energy integration and Plug is seeking to execute on its strategy to become a leader in the European hydrogen economy. Plug intends to implement a targeted account strategy for material handling, securing strategic partnerships with European OEMs, energy companies, utility leaders and accelerating our electrolyzer business. Our global strategy includes leveraging a network of integrators or contract manufacturers. We manufacture our commercially viable products in Latham, New York, Rochester, New York, Houston, Texas and Spokane, Washington and support liquid hydrogen generation and logistics in Charleston, Tennessee.

During the three months ended September, 30, 2022, our wholly-owned subsidiary, Plug Power LA JV, LLC, created a joint venture with Niloco Hydrogen Holdings LLC, a wholly-owned subsidiary of Olin Corporation (“Olin”), named “Hydrogenii”. We believe Hydrogenii will support reliability of supply and speed to market for hydrogen throughout North America, and set the foundation for broader collaboration between Plug and Olin. Hydrogenii plans to begin with the construction of a 15-ton-per-day hydrogen plant in St. Gabriel, Louisiana. Hydrogenii is owned 50% by Plug Power LA JV, LLC and 50% by Niloco Hydrogen Holdings LLC. As of September 30, 2022, there has been no activity related to this joint venture.

Part of our long-term plan includes Plug penetrating the European hydrogen market, on-road vehicle market, and large-scale stationary market. Plug’s formation of joint ventures with HyVia SAS and Acciona Plug S.L. in Europe and SK Plug Hyverse Co., Ltd., in Asia not only support this goal but are expected to provide us with a more global footprint. Plug has been successful with acquisitions, strategic partnerships and joint ventures, and we plan to continue this mix.

Recent Developments

COVID-19 Update

While we no longer enforce our prior COVID-19 policies with respect to weekly COVID-19 testing, face coverings, or daily COVID-19 questionnaires, we continue to monitor the COVID-19 pandemic and emerging variants, and remain prepared to adjust our policies and safety protocols in line with guidance from state and federal agencies. Employees are still expected to remain home if they are not feeling well and should contact our COVID team for future guidance. Furthermore, we have resumed all commercial air travel and all other non-critical travel, while also allowing employees to resume their personal travel. We have enabled third-party access to our facilities, and are continuing our normal janitorial and sanitary procedures. We are no longer requiring staggered shifts in our manufacturing facilities and are offering hybrid work schedules to those whose job function enabled them to do so.

We cannot predict at this time the full extent to which COVID-19 and its related variants will continue to impact our business, results, and financial condition, which will depend on many factors. We are staying in close communication with our manufacturing facilities, employees, customers, suppliers, and partners, and acting to mitigate the impact of this dynamic and evolving situation, but there is no guarantee that we will be able to do so. Many of the parts for our products are sourced from suppliers in China and the manufacturing situation in China remains variable. Supply chain disruptions could reduce the availability of key components, increase prices or both, as the COVID-19 pandemic has caused significant challenges for global supply chains resulting primarily in transportation delays. These transportation delays have caused incremental freight charges, which have negatively impacted our results of operations. We expect that these challenges will continue to have an impact on our businesses for the foreseeable future.

We continue to take proactive steps to limit the impact of these challenges and are working closely with our suppliers and transportation vendors to ensure availability of products and implement other cost savings initiatives. In addition, we continue to invest in our supply chain to improve its resilience with a focus on automation, dual sourcing of critical components and localized manufacturing when feasible. To date, there has been limited disruption to the availability of our products, though it is possible that more significant disruptions could occur if these supply chain challenges continue.

Inflation, Material Availability and Labor Shortages

Throughout the first half of 2022 and into the third quarter of 2022, we continued to experience higher than expected commodity costs and supply chain costs, including logistics, procurement, manufacturing costs, and fuel costs, largely due to inflationary pressures. We expect this cost inflation to remain elevated through at least the remainder of 2022 and possibly into 2023.

Our operations require significant amounts of necessary parts and raw materials. From time to time, the Company has encountered difficulties in obtaining certain raw materials or components necessary for production due to supply chain constraints and logistical challenges, which has also negatively impacted the pricing of materials and components sourced or used by the Company. Increased fuel costs have negatively impacted fuel margins. Additionally, conflicts abroad, such as the Russia-Ukraine conflict, may potentially contribute to issues related to supply chain disruptions and inflation impacts. There have been supply chain and logistical challenges that have resulted in supply constraints and commodity price increases on certain raw materials, and components used by the Company in production, as well as increased prices for freight and logistics, including air, sea and ground freight. Consequently, the Company has experienced supply shortages for certain raw materials or components, which could be further exacerbated by increased commodity prices as a result of additional inflationary pressures. Although we have offset a portion of these increased costs through price increases and operational efficiencies to date, there can be no assurance that we will be able to continue to do so. If we are unable to manage fluctuations through pricing actions, cost savings projects, and sourcing decisions as well as through productivity improvements, it may adversely impact our gross margins in future periods.

Additionally, we have observed an increasingly competitive labor market. Tight labor markets have resulted in labor inflation and longer times to fill open positions. Increased employee turnover, changes in the availability of our workers, including as a result of COVID-19-related absences, and labor shortages in our supply chain have resulted in,

and could continue to result in, increased costs which could negatively affect our financial condition, results of operations, or cash flows.

Results of Operations

Our primary sources of revenue are from sales of fuel cell systems, related infrastructure and equipment, services performed on fuel cell systems and related infrastructure, Power Purchase Agreements (PPAs), and fuel delivered to customers. A certain portion of our sales result from acquisitions in legacy markets, which we are working to transition to renewable solutions. Revenue from sales of fuel cell systems, related infrastructure and equipment represents sales of our GenDrive units, GenSure stationary backup power units, cryogenic stationary and on road storage, electrolyzers and hydrogen fueling infrastructure. Revenue from services performed on fuel cell systems and related infrastructure represents revenue earned on our service and maintenance contracts and sales of spare parts. Revenue from PPAs primarily represents payments received from customers who make monthly payments to access the Company's GenKey solution. Revenue associated with fuel delivered to customers represents the sale of hydrogen to customers that has been purchased by the Company from a third party or generated on site.

Based on historical experience, the Company experiences seasonality with respect to its revenue, with more revenue typically recognized in the second half of the fiscal year as compared to the first half.

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Net revenue, cost of revenue, gross profit (loss) and gross margin (loss) percentage for the three and nine months ended September 30, 2022 and 2021, were as follows (in thousands):

	Three Months Ended September 30,				Nine Months Ended September 30,			
	Net Revenue	Cost of Revenue	Gross Profit/(Loss)	Gross Margin	Net Revenue	Cost of Revenue	Gross Profit/(Loss)	Gross Margin
For the period ended September 30, 2022:								
Sales of fuel cell systems, related infrastructure and equipment	\$ 157,985	\$ 127,381	\$ 30,604	19.4 %	\$ 383,065	\$ 310,362	\$ 72,703	19.0 %
Services performed on fuel cell systems and related infrastructure	8,406	12,619	(4,213)	(50.1)%	25,468	38,106	(12,638)	(49.6)%
Provision for loss contracts related to service	—	5,727	(5,727)	N/A	—	8,843	(8,843)	N/A
Power purchase agreements	9,524	35,549	(26,025)	(273.3)%	30,730	102,194	(71,464)	(232.6)%
Fuel delivered to customers and related equipment	12,389	53,129	(40,740)	(328.8)%	40,289	134,008	(93,719)	(232.6)%
Other	324	286	38	11.7 %	1,146	1,063	83	7.2 %
Total	\$ 188,628	\$ 234,691	\$ (46,063)	(24.4)%	\$ 480,698	\$ 594,576	\$ (113,878)	(23.7)%
For the period ended September 30, 2021:								
Sales of fuel cell systems, related infrastructure and equipment	\$ 115,999	\$ 89,235	\$ 26,764	23.1 %	\$ 262,049	\$ 198,122	\$ 63,927	24.4 %
Services performed on fuel cell systems and related infrastructure	6,677	18,697	(12,020)	(180.0)%	18,397	47,258	(28,861)	(156.9)%
Provision for loss contracts related to service	—	7,462	(7,462)	N/A	—	15,641	(15,641)	N/A
Power purchase agreements	9,321	31,199	(21,878)	(234.7)%	25,508	71,776	(46,268)	(181.4)%
Fuel delivered to customers and related equipment	11,556	27,857	(16,301)	(141.1)%	33,804	90,331	(56,527)	(167.2)%
Other	369	550	(181)	(49.1)%	679	856	(177)	(26.1)%
Total	\$ 143,922	\$ 175,000	\$ (31,078)	(21.6)%	\$ 340,437	\$ 423,984	\$ (83,547)	(24.5)%

The amount of provision for common stock warrants recorded as a reduction of revenue during the three and nine months ended September 30, 2022 and 2021, respectively, is shown in the table below (in thousands):

	Three months ended September 30,		Nine months ended September 30,	
	2022	2021	2022	2021
Sales of fuel cell systems, related infrastructure and equipment	\$ (1,026)	\$ —	\$ (1,145)	\$ (27)
Services performed on fuel cell systems and related infrastructure	(227)	(69)	(558)	(340)
Power purchase agreements	(3,791)	(652)	(5,800)	(2,454)
Fuel delivered to customers	(3,527)	(573)	(5,010)	(1,925)
Total	\$ (8,571)	\$ (1,294)	\$ (12,513)	\$ (4,746)

Net Revenue

Revenue – sales of fuel cell systems, related infrastructure and equipment. Revenue from sales of fuel cell systems, related infrastructure and equipment represents revenue from the sale of our fuel cells, such as GenDrive units and GenSure stationary backup power units, as well as hydrogen fueling infrastructure referred to at the site level as hydrogen installations, electrolyzers and other equipment such as cryogenic storage equipment. Revenue from sales of fuel cell systems, related infrastructure and equipment for the three months ended September 30, 2022 increased \$42.0 million, or 36.2%, to \$158.0 million from \$116.0 million for the three months ended September 30, 2021 primarily due to the inclusion of revenue of acquired businesses, as well as an increase in revenue on GenDrive units. The total revenue generated by Applied Cryo, Frames and Joule was approximately \$38.0 million for the three months ended September 30, 2022. There was no revenue in the third quarter of 2021 related to these acquisitions. Revenue related to GenDrive units increased \$10.6 million due to a change in mix as the number of units decreased from 4,559 for the three months ended September 30, 2021 to 3,524 GenDrive units for the three months ended September 30, 2022. Additionally, the Company's revenue increased \$5.1 million from electrolyzer sales during the three months ended September 30, 2022, compared to the three months ended September 30, 2021. Offsetting these increases, was a decrease in hydrogen infrastructure revenue

of \$11.8 million due to 13 installations for the three months ended September 30, 2022 compared to 16 for the three months ended September 30, 2021.

Revenue from sales of fuel cell systems, related infrastructure and equipment for the nine months ended September 30, 2022 increased \$121.0 million, or 46.2%, to \$383.1 million from \$262.1 million for the nine months ended September 30, 2021 primarily due to the inclusion of revenue of acquired businesses. The total revenue generated by Applied Cryo, Frames and Joule was approximately \$124.9 million for the nine months ended September 30, 2022. There was no revenue in the prior year comparable period related to these acquisitions. Revenue related to GenDrive units decreased \$3.5 million primarily due to a variation of timing in deployments as the number of units decreased from 9,533 for the nine months ended September 30, 2021 to 6,011 GenDrive units for the nine months ended September 30, 2022. Additionally, the Company's revenue increased \$8.4 million from electrolyzer sales during the nine months ended September 30, 2022, compared to the nine months ended September 30, 2021. Hydrogen infrastructure revenue decreased \$12.8 million due to compared to the nine months ended September 30, 2021.

Revenue – services performed on fuel cell systems and related infrastructure. Revenue from services performed on fuel cell systems and related infrastructure represents revenue earned primarily on our service and maintenance contracts, as well as sales of spare parts. At September 30, 2022, there were 19,726 fuel cell units and 89 hydrogen installations under extended maintenance contracts, an increase from 18,685 fuel cell units and 78 hydrogen installations at September 30, 2021. Revenue from services performed on fuel cell systems and related infrastructure for the three months ended September 30, 2022 increased \$1.7 million, or 25.9%, to \$8.4 million as compared to \$6.7 million for the three months ended September 30, 2021. The increase in revenue from services performed on fuel cell systems and related infrastructure for the three months ended September 30, 2022 compared to 2021 was primarily related to our expanding customer base and growth within in our current customer base.

Revenue from services performed on fuel cell systems and related infrastructure for the nine months ended September 30, 2022 increased \$7.1 million, or 38.4%, to \$25.5 million as compared to \$18.4 million for the nine months ended September 30, 2021. The increase in revenue from services performed on fuel cell systems and related infrastructure for the nine months ended September 30, 2022 compared to 2021 was primarily related to our expanding customer base and growth within in our current customer base.

Revenue – Power Purchase Agreements. Revenue from PPAs represents payments received from customers for power generated through the provision of equipment and service. At September 30, 2022, there were 95 GenKey sites associated with PPAs, as compared to 61 at September 30, 2021. Revenue from PPAs for the three months ended September 30, 2022 increased \$0.2 million, or 2.2%, to \$9.5 million from \$9.3 million for the three months ended September 30, 2021. The increase in revenue from PPAs for the three months ended September 30, 2022 as compared to the three months ended September 30, 2021 was primarily attributable to the new sites for existing customers and new customers accessing the PPA solution, offset by an increase in the provision for common stock warrants of \$3.8 million and \$0.7 million for the three months ended September 30, 2022 and 2021, respectively. All of the new PPA sites in the third quarter of 2022 were not deployed until late in the quarter; therefore, the full impact on revenue has yet to be realized.

Revenue from PPAs for the nine months ended September 30, 2022 increased \$5.2 million, or 20.5%, to \$30.7 million from \$25.5 million for the nine months ended September 30, 2021. The increase in revenue from PPAs for the nine months ended September 30, 2022 as compared to the nine months ended September 30, 2021 was primarily attributable to the new sites for existing customers and new customers accessing the PPA solution, offset by an increase in the provision for common stock warrants of \$5.8 million and \$2.5 million for the nine months ended September 30, 2022 and 2021, respectively. All of the new PPA sites in the third quarter of 2022 were not deployed until late in the quarter; therefore, the full impact on revenue has yet to be realized.

Revenue – fuel delivered to customers and related equipment. Revenue associated with fuel delivered to customers and related equipment represents the sale of hydrogen to customers that has been purchased by the Company from a third party or generated on site. Revenue associated with fuel delivered to customers for the three months ended September 30, 2022 increased \$0.8 million, or 7.2%, to \$12.4 million from \$11.6 million for the three months ended September 30, 2021. The increase in revenue was due to an increase in the number of sites with fuel contracts from 141 as of September 30, 2021 to 182 as of September 30, 2022, offset by an increase in the provision for common stock warrants

of \$3.5 million and \$0.6 million for the three months ended September 30, 2022 and 2021, respectively. All of the new fuel sites in the third quarter of 2022 were not deployed until late in the quarter; therefore, the full impact on revenue has yet to be realized.

Revenue associated with fuel delivered to customers for the nine months ended September 30, 2022 increased \$6.5 million, or 19.2%, to \$40.3 million from \$33.8 million for the nine months ended September 30, 2021. The increase in revenue was due to an increase in the number of sites with fuel contracts from 141 as of September 30, 2021 to 182 as of September 30, 2022, offset by the provision for common stock warrants of \$5.0 million and \$1.9 million for the nine months ended September 30, 2022 and 2021, respectively. All of the new fuel sites in the third quarter of 2022 were not deployed until late in the quarter; therefore, the full impact on revenue has yet to be realized.

Cost of Revenue

Cost of revenue – sales of fuel cell systems, related infrastructure and equipment. Cost of revenue from sales of fuel cell systems, related infrastructure and equipment includes direct materials, labor costs, and allocated overhead costs related to the manufacture of our fuel cells such as GenDrive units and GenSure stationary backup power units, as well as hydrogen fueling infrastructure referred to at the site level as hydrogen installations, electrolyzers and other equipment such as cryogenic storage equipment. Cost of revenue from sales of fuel cell systems, related infrastructure and equipment for the three months ended September 30, 2022 increased 42.7%, or \$38.1 million, to \$127.4 million, compared to \$89.2 million for the three months ended September 30, 2021. This increase was due to costs incurred by Applied Cryo, Joule, and Frames, all of which were recent acquisitions by the Company. These costs are incremental in the third quarter of 2022 as these acquisitions all occurred in the fourth quarter of 2021 or the first quarter of 2022. Gross profit generated from sales of fuel cell systems, related infrastructure and equipment decreased to 19.4% for the three months ended September 30, 2022, compared to 23.1% for the three months ended September 30, 2021 primarily due to the margin on the equipment revenue from recently acquired businesses being lower than our legacy equipment margins given the focus on integrating and scaling these new businesses. A certain portion of our sales of engineered equipment are from an acquisition; the sales of engineered equipment from an acquisition are not expected to continue beyond current commitments.

Cost of revenue from sales of fuel cell systems, related infrastructure and equipment for the nine months ended September 30, 2022 increased 56.7%, or \$112.2 million, to \$310.4 million, compared to \$198.1 million for the nine months ended September 30, 2021. This increase was due to costs incurred by Applied Cryo, Joule, and Frames, all of which were recent acquisitions by the Company. These costs are incremental in the third quarter of 2022 as these acquisitions all occurred in the fourth quarter of 2021 or the first quarter of 2022. Gross profit generated from sales of fuel cell systems, related infrastructure and equipment decreased to 19.0% for the nine months ended September 30, 2022, compared to 24.4% for the nine months ended September 30, 2021 primarily due to: (i) increased freight and material cost largely due to inflationary pressures, and higher labor costs given an increasingly competitive labor market and COVID-19 related staffing and coverage issues; and (ii) the margin on the equipment revenue from recently acquired businesses being lower than our legacy equipment margins given the focus on integrating and scaling these new businesses. A certain portion of our sales of the sales of engineered equipment are from an acquisition; the sales of engineered equipment from an acquisition are not expected to continue beyond current commitments.

Cost of revenue – services performed on fuel cell systems and related infrastructure. Cost of revenue from services performed on fuel cell systems and related infrastructure includes the labor, material costs and allocated overhead costs incurred for our product service and hydrogen site maintenance contracts and spare parts. At September 30, 2022, there were 19,726 fuel cell units and 89 hydrogen installations under extended maintenance contracts, an increase from 18,685 fuel cell units and 78 hydrogen installations at September 30, 2021, respectively. Cost of revenue from services performed on fuel cell systems and related infrastructure for the three months ended September 30, 2022 decreased 32.5%, or \$6.1 million, to \$12.6 million, compared to \$18.7 million for the three months ended September 30, 2021. Gross loss decreased to (50.1%) for the three months ended September 30, 2022, compared to (180.0%) for the three months ended September 30, 2021. The decrease in cost of revenue and gross loss are both primarily due to an increase in the release of loss accrual of \$7.3 million over the three months ended September 30, 2021.

Cost of revenue from services performed on fuel cell systems and related infrastructure for the nine months ended September 30, 2022 decreased 19.4%, or \$9.2 million, to \$38.1 million, compared to \$47.3 million for the nine months

ended September 30, 2021. Gross loss decreased to (49.6%) for the nine months ended September 30, 2022, compared to (156.9%) for the nine months ended September 30, 2021, primarily due to an increase in the release of loss accrual of \$24.7 million over the nine months ended September 30, 2021.

Cost of revenue – provision for loss contracts related to service. The Company also recorded a provision for loss contracts related to service of \$5.7 million for the three months ended September 30, 2022, compared to \$7.5 million for the three months ended September 30, 2021, related primarily to new service contracts entered into during the third quarter of 2022.

The Company also recorded a provision for loss contracts related to service of \$8.8 million for the nine months ended September 30, 2022, compared to \$15.6 million for the nine months ended September 30, 2021, related primarily to new service contracts entered into during the third quarter of 2022.

Cost of revenue – Power Purchase Agreements. Cost of revenue from PPAs includes depreciation of assets utilized and service costs to fulfill PPA obligations and interest costs associated with certain financial institutions for leased equipment. At September 30, 2022, there were 95 GenKey sites associated with PPAs, as compared to 61 at September 30, 2021. Cost of revenue from PPAs for the three months ended September 30, 2022 increased 13.9%, or \$4.4 million, to \$35.5 million from \$31.2 million for the three months ended September 30, 2021 due to the increase in units and sites under PPA contract as well as certain inflation related issues such as increased freight costs. Gross loss increased to (273.3%) for the three months ended September 30, 2022, as compared to (234.7%) for the three months ended September 30, 2021 primarily due to certain inflation related issues, such as increased freight charges, as well as an increase in the provision for common stock warrants of \$3.8 million and \$0.7 million for the three months ended September 30, 2022 and 2021, respectively.

Cost of revenue from PPAs for the nine months ended September 30, 2022 increased 42.4%, or \$30.4 million, to \$102.2 million from \$71.8 million for the nine months ended September 30, 2021 due to the increase in units and sites under PPA contract as well as certain inflation and COVID-19 related issues, such as increased freight costs and scrap charges associated with certain parts. Gross loss increased to (232.6%) for the nine months ended September 30, 2022, as compared to (181.4%) for the nine months ended September 30, 2021 primarily due to certain inflation and COVID-19 related issues, such as increased freight charges and scrap charges associated with certain parts, as well as an increase in the provision for common stock warrants of \$5.8 million and \$2.5 million for the nine months ended September 30, 2022 and 2021, respectively.

Cost of revenue – fuel delivered to customers and related equipment. Cost of revenue from fuel delivered to customers and related equipment represents the purchase of hydrogen from suppliers that ultimately is sold to customers and costs for onsite generation. Cost of revenue from fuel delivered to customers for the three months ended September 30, 2022 increased 90.7%, or \$25.3 million, to \$53.1 million from \$27.9 million for the three months ended September 30, 2021. The increase was primarily due to higher volume of hydrogen delivered to customer sites as a result of an increase in the number of hydrogen installations completed under GenKey agreements, inefficiencies in fueling systems and higher fuel costs. The gross loss increased to (328.8%) during the three months ended September 30, 2022, compared to (141.1%) during the three months ended September 30, 2021, primarily due to the increase in cost of revenue described above, as well as a reduction of revenue resulting from an increase in the provision for common stock warrants of \$3.5 million and \$0.6 million for the three months ended September 30, 2022 and 2021, respectively.

Cost of revenue from fuel delivered to customers for the nine months ended September 30, 2022 increased 48.4%, or \$43.7 million, to \$134.0 million from \$90.3 million for the nine months ended September 30, 2021. The increase was primarily due to higher volume of hydrogen delivered to customer sites as a result of an increase in the number of hydrogen installations completed under GenKey agreements, inefficiencies in fueling systems and higher fuel costs. As a result of these inefficiencies and higher costs, gross loss increased to (232.6%) during the nine months ended September 30, 2022, compared to (167.2%) during the nine months ended September 30, 2021, primarily due to the increase in cost of revenue described above, as well as a reduction of revenue resulting from an increase in the provision for common stock warrants of \$5.0 million and \$1.9 million for the nine months ended September 30, 2022 and 2021, respectively. We expect higher hydrogen molecule costs to continue at least through 2022.

Expenses

Research and development expense. Research and development (“R&D”) expense includes: materials to build development and prototype units, cash and non-cash stock-based compensation and benefits for the engineering and related staff, expenses for contract engineers, fees paid to consultants for services provided, materials and supplies consumed, facility related costs such as computer and network services, and other general overhead costs associated with our research and development activities.

Research and development expense for the three months ended September 30, 2022 increased \$11.5 million, or 69.0%, to \$28.1 million, from \$16.6 million for the three months ended September 30, 2021. The overall growth in R&D investment is commensurate with the Company’s future expansion into new markets, new product lines, acquisitions and varied vertical integrations.

Research and development expense for the nine months ended September 30, 2022 increased \$34.5 million, or 91.7%, to \$72.1 million, from \$37.6 million for the nine months ended September 30, 2021. The overall growth in R&D investment is commensurate with the Company’s future expansion into new markets, new product lines, acquisitions and varied vertical integrations.

Selling, general and administrative expenses. Selling, general and administrative expenses includes cash and non-cash stock-based compensation, benefits, amortization of intangible assets and related costs in support of our general corporate functions, including general management, finance and accounting, human resources, selling and marketing, information technology and legal services.

Selling, general and administrative expenses for the three months ended September 30, 2022, increased \$43.2 million, or 101.7%, to \$85.6 million from \$42.4 million for the three months ended September 30, 2021. This increase was primarily related to increased headcount, which resulted in increased salaries and stock-based compensation, as well as rebranding expenses.

Selling, general and administrative expenses for the nine months ended September 30, 2022, increased \$155.8 million, or 146.1%, to \$262.4 million from \$106.7 million for the nine months ended September 30, 2021. This increase was primarily related to increased headcount, which resulted in increased salaries and stock-based compensation, as well as branding expenses.

Contingent consideration. The fair value of the contingent consideration is related to earnouts for the Giner ELX, Inc., United Hydrogen Group Inc, Frames, Applied Cryo and Joule acquisitions. The change in fair value for the three and nine months ended was \$0 and \$(2.6) million, respectively, primarily due to fair value remeasurements.

Interest income. Interest income primarily consists of income generated by our investment holdings, restricted cash escrow accounts, and money market accounts. Interest income for the three and nine months ended September 30, 2022 increased \$9.3 million and \$13.7 million, respectively, as compared to the three and nine months ended September 30, 2021. The increase is primarily related to the increase in interest rates during 2022.

Interest expense. Interest expense consists of interest expense related to our long-term debt, convertible senior notes, obligations under finance leases and our finance obligations. Interest expense for the three months ended September 30, 2022 decreased \$0.5 million compared to the three months ended September 30, 2021, primarily related to a decrease in long-term debt and an increase in capitalized interest, offset by an increase in finance obligations. Interest expense for the nine months ended September 30, 2022 decreased \$4.7 million compared to the nine months ended September 30, 2021, primarily related to a decrease in long-term debt and an increase in capitalized interest, offset by an increase in finance obligations.

Realized loss on investments, net. Realized loss on investments, net consists of the sales related to available-for-sale debt securities. For the three and nine months ended September 30, 2022, the Company had a loss of \$0 and \$1.3 million, respectively, of net realized loss on investments. For the three and nine months ended September 30, 2021, the Company had a gain of \$0.3 million and \$0.2 million, of realized loss on investments, net.

Change in fair value of equity securities. The change in fair value of equity securities decreased \$3.6 million and \$22.6 million for the three and nine months ended September 30, 2022, respectively, from September 30, 2021.

Loss on equity method investments. Loss on equity method investments consists of our interest in HyVia, which is our 50/50 joint venture with Renault, AccionaPlug S.L., which is our 50/50 joint venture with Acciona, and SK Plug Hyverse Co., Ltd., which is our 49/51 joint venture with SK E&S. For the three and nine months ended September 30, 2022, the Company recorded a loss of \$4.3 million and \$10.3 million on equity method investments, respectively. These losses are driven from the start-up activities for commercial and production operations. The Company did not have any equity method investments for the three or nine months ended September 30, 2021.

Income Taxes

The Company recorded \$1.5 million and \$0 of income tax expense for the three months ended September 30, 2022 and 2021, respectively. The Company recorded \$1.5 million and \$0 of income tax expense for the nine months ended September 30, 2022 and 2021, respectively. The Company has not changed its overall conclusion with respect to the need for a valuation allowance against its domestic net deferred tax assets, which remain fully reserved.

The domestic net deferred tax asset generated from the Company's net operating loss has been offset by a full valuation allowance because it is more likely than not that the tax benefits of the net operating loss carry forward will not be realized. The Company recognizes accrued interest and penalties related to unrecognized tax benefits, if any, as a component of income tax expense.

Liquidity and Capital Resources

Liquidity

As of September 30, 2022 and December 31, 2021, the Company had \$1.7 billion and \$2.5 billion, respectively of cash and cash equivalents and \$807.3 million and \$650.9 million of restricted cash, respectively. In January and February 2021, the Company issued and sold in a registered equity offering an aggregate of 32.2 million shares of its common stock at a purchase price of \$65.00 per share for net proceeds of approximately \$2.0 billion. In February 2021, the Company sold 54,996,188 shares of its common stock to a subsidiary of SK Holdings at a purchase price of \$29.2893 per share, or an aggregate purchase price of approximately \$1.6 billion.

The Company has continued to experience negative cash flows from operations and net losses. The Company incurred net losses of \$500.5 million and \$267.1 million for the nine months ended September 30, 2022 and 2021, respectively, and had an accumulated deficit of \$2.9 billion at September 30, 2022.

The net cash used in operating activities for the nine months ended September 30, 2022 and 2021 was \$522.0 million and \$348.5 million, respectively. The Company's working capital was \$3.1 billion at September 30, 2022, which included unrestricted cash and cash equivalents of \$1.7 billion. The Company plans to invest a portion of its available cash to expand its current production and manufacturing capacity, construction of hydrogen plants and to fund strategic acquisitions and partnerships and capital projects. Future use of the Company's funds is discretionary and the Company believes that its working capital and cash position will be sufficient to fund its operations for at least one year after the date the financial statements are issued.

The net cash used in investing activities for the nine months ended September 30, 2022 and 2021 was \$20.6 million and \$1.0 billion, respectively. This included purchases of property, plant and equipment and outflows associated with materials, labor, and overhead necessary to construct new leased property. Cash outflows related to equipment that we lease directly to customers are included in net cash used in investing activities.

The net cash (used in) provided by financing activities for the nine months ended September 30, 2022 and 2021 was (\$41.3) million and \$3.6 billion, respectively. The change was primarily driven by proceeds from public and private offerings, net of transaction costs that occurred in 2021.

The Company's significant obligations consisted of the following as of September 30, 2022:

- (i) Operating and finance leases totaling \$289.1 million and \$43.1 million, respectively, of which \$43.4 million and \$7.2 million, respectively, are due within the next 12 months. These leases are primarily related to sale/leaseback agreements entered into with various financial institutions to facilitate the Company's commercial transactions with key customers.
- (ii) Finance obligations totaling \$303.6 million, of which approximately \$53.2 million is due within the next 12 months. Finance obligations consist primarily of debt associated with the sale of future revenues and failed sale/leaseback transactions.
- (iii) Long-term debt, primarily related to the Company's Loan Agreement with Generate Capital totaling \$66.3 million, of which \$0.9 million is classified as short-term on our unaudited interim condensed consolidated balance sheets.
- (iv) Convertible senior notes totaling \$193.6 million at September 30, 2022.

Public and Private Offerings of Equity and Debt

Common Stock Issuances

In February 2021, the Company sold 54,966,188 shares of its common stock to a subsidiary of SK Holdings at a purchase price of \$29.2893 per share, or an aggregate purchase price of approximately \$1.6 billion.

In January and February 2021, the Company issued and sold in a registered equity offering an aggregate of 32.2 million shares of its common stock at a purchase price of \$65.00 per share for net proceeds of approximately \$2.0 billion.

In November 2020, the Company issued and sold in a registered direct offering an aggregate of 43,700,000 shares of its common stock at a purchase price of \$22.25 per share for net proceeds of approximately \$927.3 million.

In August 2020, the Company issued and sold in a registered direct offering an aggregate of 35,276,250 shares of its common stock at a purchase price of \$10.25 per share for net proceeds of approximately \$344.4 million.

Convertible Senior Notes

In May 2020, the Company issued \$212.5 million in aggregate principal amount of 3.75% Convertible Senior Notes. The total net proceeds from this offering, after deducting costs of the issuance, were \$205.1 million. The Company used \$90.2 million of the net proceeds from the offering of the 3.75% Convertible Senior Notes to repurchase \$66.3 million of the \$100 million in aggregate principal amount of the 5.5% Convertible Senior Notes. In addition, the Company used approximately \$16.3 million of the net proceeds from the offering of the 3.75% Convertible Senior Notes to enter into privately negotiated capped called transactions. In the fourth quarter of 2020, \$33.5 million of the remaining 5.5% Convertible Senior Notes were converted into 14.6 million shares of common stock, resulting in a gain of approximately \$4.5 million which was recorded on the consolidated statement of operations on the gain (loss) on extinguishment of debt line. As of December 31, 2020, approximately \$0.2 million aggregate principal amount of the 5.5% Convertible Senior Notes remained outstanding, all of which were converted to common stock in January 2021.

In September 2019, the Company issued \$40.0 million in aggregate principal amount of 7.5% Convertible Senior Note. The Company's total obligation, net of interest accretion, due to the holder was \$48.0 million. The total net proceeds from this offering, after deducting costs of the issuance, were \$39.1 million. On July 1, 2020, the note automatically converted fully into 16.0 million shares of common stock.

Secured Debt

In March 2019, the Company entered into a loan and security agreement, as amended (the “Loan Agreement”), with Generate Lending, LLC (“Generate Capital”), providing for a secured term loan facility in the amount of \$100 million (the “Term Loan Facility”). On September 30, 2022, the outstanding balance under the Term Loan Facility was \$57.3 million. The carrying value of the Term Loan Facility approximates fair value.

The Loan Agreement includes covenants, limitations, and events of default customary for similar facilities. Interest and a portion of the principal amount is payable on a quarterly basis. Principal payments are funded in part by releases of restricted cash, as described in Note 19, “Commitments and Contingencies.” Based on the amortization schedule as of September 30, 2022, the aforementioned loan balance under the Term Loan Facility will be fully paid by October 31, 2025. At September 30, 2022, the Company was in compliance with all debt covenants under the Term Loan Facility.

3.75% Convertible Senior Notes

On May 18, 2020, the Company issued \$200.0 million in aggregate principal amount of 3.75% Convertible Senior Notes due June 1, 2025, in a private placement to qualified institutional buyers pursuant to Rule 144A under the Securities Act of 1933, as amended (the “Securities Act”). On May 29, 2020, the Company issued an additional \$12.5 million in aggregate principal amount of 3.75% Convertible Senior Notes. During the three and nine months ended September 30, 2022, there were no conversions of the 3.75% Convertible Senior Notes.

The 3.75% Convertible Senior Notes consisted of the following (in thousands):

	September 30, 2022
Principal amounts:	
Principal	\$ 197,278
Unamortized debt issuance costs (1)	(3,686)
Net carrying amount	<u>\$ 193,592</u>

- 1) Included in the unaudited interim condensed consolidated balance sheets within the 3.75% Convertible Senior Notes, net and amortized over the remaining life of the notes using the effective interest rate method.

The following table summarizes the total interest expense, the amortization of debt issuance costs and the effective interest rate related to the 3.75% Convertible Senior Notes (in thousands, except for effective interest rate):

	September 30, 2022	September 30, 2021
Interest expense	\$ 1,849	\$ 1,849
Amortization of debt issuance costs	323	306
Total	<u>2,172</u>	<u>2,155</u>
Effective interest rate	4.5%	4.5%

Based on the closing price of the Company’s common stock of \$21.01 on September 30, 2022, the if-converted value of the notes was greater than the principal amount. The estimated fair value of the note at September 30, 2022 was approximately \$850 million. The fair value estimation was primarily based on an active stock exchange trade on October 5, 2022 of the 3.75% Convertible Senior Notes. See Note 15, “Fair Value Measurements,” for a description of the fair value hierarchy.

Capped Call

In conjunction with the pricing of the 3.75% Convertible Senior Notes, the Company entered into privately negotiated capped call transactions (the “3.75% Notes Capped Call”) with certain counterparties at a price of \$16.2 million. The 3.75% Notes Capped Call covers, subject to anti-dilution adjustments, the aggregate number of shares of the Company’s common stock that underlie the initial 3.75% Convertible Senior Notes and is generally expected to reduce potential dilution to the Company’s common stock upon any conversion of the 3.75% Convertible Senior Notes and/or offset any cash payments the Company is required to make in excess of the principal amount of the converted notes, as the case may be, with such reduction and/or offset subject to a cap based on the cap price. The cap price of the 3.75% Notes Capped Call is initially \$6.7560 per share, which represents a premium of approximately 60% over the last then-reported sale price of the Company’s common stock of \$4.11 per share on the date of the transaction and is subject to certain adjustments under the terms of the 3.75% Notes Capped Call. The 3.75% Notes Capped Call becomes exercisable if the conversion option is exercised.

The net cost incurred in connection with the 3.75% Notes Capped Call were recorded as a reduction to additional paid-in capital in the unaudited interim condensed consolidated balance sheets. The book value of the 3.75% Notes Capped Call is not remeasured.

Common Stock Forward

In March 2018, the Company issued \$100.0 million in aggregate principal amount of the 5.5% Convertible Senior Notes due on March 15, 2023, in a private placement to qualified institutional buyers pursuant to Rule 144A under the Securities Act, which have been fully converted into shares of common stock. In connection with the issuance of the 5.5% Convertible Senior Notes, the Company entered into a forward stock purchase transaction (the “Common Stock Forward”), pursuant to which the Company agreed to purchase 14,397,906 shares of its common stock for settlement on or about March 15, 2023. On May 18, 2020, the Company amended and extended the maturity of the Common Stock Forward to June 1, 2025. The number of shares of common stock that the Company will ultimately repurchase under the Common Stock Forward is subject to customary anti-dilution adjustments. The Common Stock Forward is subject to early settlement or settlement with alternative consideration in the event of certain corporate transactions.

The net cost incurred in connection with the Common Stock Forward of \$27.5 million was recorded as an increase in treasury stock in the unaudited interim condensed consolidated balance sheets. The related shares were accounted for as a repurchase of common stock. The book value of the Common Stock Forward is not remeasured.

There were no shares of common stock settled in connection with the Common Stock Forward during the three and nine months ended September 30, 2022. During the three and nine months ended September 30, 2021, the Common Stock Forward was partially settled and 2.1 million shares and 8.1 million shares were received by the Company, respectively.

Amazon Transaction Agreement in 2022

On August 24, 2022, the Company and Amazon.com, Inc. (“Amazon”) entered into a Transaction Agreement (the “2022 Transaction Agreement”), under which the Company concurrently issued to Amazon.com NV Investment Holdings LLC, a wholly owned subsidiary of Amazon, a warrant (the “Amazon Warrant”) to acquire up to 16,000,000 shares (the “Amazon Warrant Shares”) of the Company’s common stock, subject to certain vesting events described below. The Company and Amazon entered into the 2022 Transaction Agreement in connection with a concurrent commercial arrangement under which Amazon agreed to purchase hydrogen fuel from the Company through August 24, 2029.

Warrant

1,000,000 of the Amazon Warrant Shares vested immediately upon issuance of the Amazon Warrant. 15,000,000 of the Amazon Warrant Shares will vest in multiple tranches over the 7- year term of the Amazon Warrant based on payments made to the Company directly by Amazon or its affiliates, or indirectly through third parties, with 15,000,000 of the Amazon Warrant Shares fully vesting if Amazon-related payments of \$2.1 billion are made in the aggregate. The exercise price for the first 9,000,000 Amazon Warrant Shares is \$22.9841 per share and the fair value on the grant date

was \$20.36. The exercise price for the remaining 7,000,000 Amazon Warrant Shares will be an amount per share equal to 90% of the 30-day volume weighted average share price of the Company's common stock as of the final vesting event that results in full vesting of the first 9,000,000 Amazon Warrant Shares. The Amazon Warrant is exercisable through August 24, 2029.

Upon the consummation of certain change of control transactions (as defined in the applicable warrant) prior to the vesting of at least 60% of the aggregate Amazon Warrant Shares, the Amazon Warrant will automatically vest and become exercisable with respect to an additional number of Amazon Warrant Shares such that 60% of the aggregate Amazon Warrant Shares shall have vested. If a change of control transaction is consummated after the vesting of at least 60% of the aggregate Amazon Warrant Shares, then no acceleration of vesting will occur with respect to any of the unvested Amazon Warrant Shares as a result of the transaction. The exercise price and the Amazon Warrant Shares issuable upon exercise of the Amazon Warrant are subject to customary antidilution adjustments.

At September 30, 2022, 1,000,000 of the Amazon Warrant Shares issued pursuant to the 2022 Transaction Agreement had vested upon issuance. The warrant charge associated with the vested shares of \$20.4 million was capitalized to contract assets in our condensed consolidated unaudited interim financial statements based on the grant date fair value and is subsequently amortized ratably as a reduction to revenue based on the Company's estimate of revenue over the term of the agreement. The grant date fair value of tranches 2 and 3 will also be amortized ratably as a reduction to revenue based on the Company's estimate of revenue over the term of the agreement. Because the exercise price has yet to be determined, the fair value of tranche 4 will be remeasured at each reporting period end and amortized ratably as a reduction to revenue based on the Company's estimate of revenue over the term of the agreement. The total amount of provision for common stock warrants recorded as a reduction of revenue for the Amazon Warrant during the three and nine months ended September 30, 2022 was \$1.8 million.

The assumptions used to calculate the valuations as of August 24, 2022 and September 30, 2022 are as follows:

	Tranches 1-3 August 24, 2022	Tranche 4 September 30, 2022
Risk-free interest rate	3.15%	3.90%
Volatility	75.00%	75.00%
Expected average term	7 years	4 years
Exercise price	\$22.98	\$18.91
Stock price	\$20.36	\$12.71

Amazon Transaction Agreement in 2017

On April 4, 2017, the Company and Amazon entered into a Transaction Agreement (the "2017 Amazon Transaction Agreement"), pursuant to which the Company agreed to issue to Amazon.com NV Investment Holdings LLC, a warrant to acquire up to 55,286,696 Amazon Warrant Shares, subject to certain vesting events described below. The Company and Amazon entered into the 2017 Amazon Transaction Agreement in connection with existing commercial agreements between the Company and Amazon with respect to the deployment of the Company's GenKey fuel cell technology at Amazon distribution centers. The existing commercial agreements contemplate, but do not guarantee, future purchase orders for the Company's fuel cell technology. The vesting of the Amazon Warrant Shares was conditioned upon payments made by Amazon or its affiliates (directly or indirectly through third parties) pursuant to the existing commercial agreements. At December 31, 2021, all 55,286,696 of the Amazon Warrant Shares had vested.

The warrant had been exercised with respect to 17,461,994 shares of the Company's common stock as of September 30, 2022 and December 31, 2021.

Walmart Transaction Agreement

On July 20, 2017, the Company and Walmart entered into a Transaction Agreement (the "Walmart Transaction Agreement"), pursuant to which the Company agreed to issue to Walmart a warrant (the "Walmart Warrant") to acquire

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up to 55,286,696 shares of the Company's common stock, subject to certain vesting events (the "Walmart Warrant Shares"). The Company and Walmart entered into the Walmart Transaction Agreement in connection with existing commercial agreements between the Company and Walmart with respect to the deployment of the Company's GenKey fuel cell technology across various Walmart distribution centers. The existing commercial agreements contemplate, but do not guarantee, future purchase orders for the Company's fuel cell technology. The vesting of the warrant shares was conditioned upon payments made by Walmart or its affiliates (directly or indirectly through third parties) pursuant to transactions entered into after January 1, 2017 under existing commercial agreements.

The warrant had been exercised with respect to 13,094,217 shares of the Company's common stock as of September 30, 2022 and December 31, 2021.

At September 30, 2022 and December 31, 2021, 20,368,782 of the Walmart Warrant Shares had vested. The total amount of provision for common stock warrants recorded as a reduction of revenue for the Walmart Warrant during the three months ended September 30, 2022 and 2021 was \$6.7 million and \$1.2 million, respectively. The total amount of provision for common stock warrants recorded as a reduction of revenue for the Walmart Warrant during the nine months ended September 30, 2022 and 2021 was \$10.4 million and \$4.4 million, respectively. During the three and nine months ended September 30, 2022 and 2021, respectively, the Walmart Warrant was exercised with respect to 0 and 7,274,565 shares of common stock.

The assumptions used to calculate the valuations of the final tranche of the Walmart Warrant as of September 30, 2022 are as follows:

	September 30, 2022
Risk-free interest rate	3.99%
Volatility	75.00%
Expected average term	3.5 years
Exercise price	\$18.91
Stock price	\$12.09

Operating and Finance Lease Liabilities

As of September 30, 2022, the Company had operating leases, as lessee, primarily associated with sale/leaseback transactions that are partially secured by restricted cash, security deposits and pledged escrows (see also Note 1, "Nature of Operations") as summarized below. These leases expire over the next one to nine years. Minimum rent payments under operating leases are recognized on a straight-line basis over the term of the lease.

Leases contain termination clauses with associated penalties, the amount of which cause the likelihood of cancellation to be remote. At the end of the lease term, the leased assets may be returned to the lessor by the Company, the Company may negotiate with the lessor to purchase the assets at fair market value, or the Company may negotiate with the lessor to renew the lease at market rental rates. No residual value guarantees are contained in the leases. No financial covenants are contained within the lease; however, the lease contains customary operational covenants such as the requirement that the Company properly maintain the leased assets and carry appropriate insurance. The leases include credit support in the form of either cash, collateral or letters of credit. See Note 19, "Commitments and Contingencies" for a description of cash held as security associated with the leases.

The Company has finance leases associated with its property and equipment in Latham, New York and at fueling customer locations. The fair value of this finance obligation approximated the carrying value as of September 30, 2022.

Finance Obligation

The Company has sold future services to be performed associated with certain sale/leaseback transactions and recorded the balance as a finance obligation. The outstanding balance of this obligation at September 30, 2022 was \$287.3 million, \$49.9 million and \$237.4 million of which was classified as short-term and long-term, respectively, on the accompanying unaudited interim condensed consolidated balance sheet. The outstanding balance of this obligation at

December 31, 2021 was \$236.6 million, \$37.5 million and \$199.1 million of which was classified as short-term and long-term, respectively. The amount is amortized using the effective interest method. The fair value of this finance obligation approximated the carrying value as of September 30, 2022 and December 31, 2021.

In prior periods, the Company entered into sale/leaseback transactions that were accounted for as financing transactions and reported as part of finance obligations. The outstanding balance of finance obligations related to sale/leaseback transactions at September 30, 2022 was \$16.3 million, \$3.4 million and \$12.9 million of which was classified as short-term and long-term, respectively on the accompanying consolidated balance sheet. The outstanding balance of this obligation at December 31, 2021 was \$17.0 million, \$4.5 million and \$12.5 million of which was classified as short-term and long-term, respectively on the accompanying consolidated balance sheets. The fair value of this finance obligation approximated the carrying value as of both September 30, 2022 and December 31, 2021.

Restricted Cash

In connection with certain of the above noted sale/leaseback agreements, cash of \$356.9 million and \$275.1 million was required to be restricted as security as of September 30, 2022 and December 31, 2021, respectively, which restricted cash will be released over the lease term. As of September 30, 2022 and December 31, 2021, the Company also had certain letters of credit backed by security deposits totaling \$340.1 million and \$286.0 million, respectively, that are security for the above noted sale/leaseback agreements. As of September 30, 2022, the Company also had certain customer and customs related letters of credit totaling \$23.8 million.

As of September 30, 2022 and December 31, 2021, the Company had \$67.7 and \$67.7 million, respectively, held in escrow related to the construction of certain hydrogen plants.

The Company also had \$5.0 million and \$2.3 million of consideration held by our paying agent in connection with the Applied Cryo and Joule acquisitions, respectively, reported as restricted cash as of September 30, 2022, with a corresponding accrued liability on the Company's unaudited interim condensed consolidated balance sheet. Additionally, the Company had \$11.5 million in restricted cash as collateral resulting from the Frames acquisition as of September 30, 2022.

Investments

Our investment portfolio, including cash and cash equivalents, totaled \$2.7 billion at September 30, 2022. Purchases of fixed maturity securities are classified as available-for-sale at the time of purchase based on individual security.

The composition of our investment portfolio, including cash and cash equivalents, as of September 30, 2022, is shown in the following table (in thousands):

	Carrying Amount	Percentage of Portfolio
Fixed maturity securities - available-for-sale		
U.S. Treasuries	\$ 607,907	22.5%
Corporate bonds	211,533	7.8%
Total fixed maturity securities - available-for-sale	\$ 819,440	30.4%
Equity securities	130,121	4.8%
Cash and cash equivalents	1,747,753	64.8%
Total investments, including cash and cash equivalents	\$ 2,697,314	100.0%

Extended Maintenance Contracts

On a quarterly basis, we evaluate any potential losses related to our extended maintenance contracts for fuel cell systems and related infrastructure that have been sold. The following table shows the rollforward of balance in the accrual

for loss contracts, including changes due to the provision for loss accrual, loss accrual from acquisition, releases to service cost of sales, and releases due to the provision for warrants (in thousands):

	Nine months ended September 30, 2022	Year ended December 31, 2021
Beginning balance	\$ 89,773	\$ 24,013
Provision for loss accrual	4,683	71,988
Loss accrual acquired from acquisition	—	2,636
Releases to service cost of sales	(30,827)	(8,864)
Increase to loss accrual related to customer warrants	4,160	
Foreign currency translation adjustment	(189)	—
Ending balance	\$ 67,600	\$ 89,773

Critical Accounting Estimates

Management’s discussion and analysis of our financial condition and results of operations are based upon our consolidated financial statements, which have been prepared in accordance with GAAP. The preparation of these unaudited interim condensed consolidated financial statements requires us to make estimates and judgments that affect the reported amounts of assets, liabilities, revenues and expenses, and related disclosure of contingent assets and liabilities at the date of and during the reporting period. On an ongoing basis, we evaluate our estimates and judgments, including those related to revenue recognition, bad debts, inventories, goodwill and intangible assets, valuation of long-lived assets, accrual for service loss contracts, operating and finance leases, product warranty accruals, unbilled revenue, common stock warrants, income taxes, stock-based compensation and contingencies. We base our estimates and judgments on historical experience and on various other factors and assumptions that are believed to be reasonable under the circumstances, the results of which form the basis for making judgments about (1) the carrying values of assets and liabilities and (2) the amount of revenue and expenses realized that are not readily apparent from other sources. Actual results may differ from these estimates under different assumptions or conditions.

There have been no changes in our critical accounting estimates from those reported in our 2021 Form 10-K.

Recent Accounting Pronouncements

Recently Adopted Accounting Guidance

Other than the adoption of the accounting guidance mentioned in our 2021 Form 10-K, there have been no other significant changes in our reported financial position or results of operations and cash flows resulting from the adoption of new accounting pronouncements.

Recent Accounting Guidance Not Yet Effective

All issued but not yet effective accounting and reporting standards as of September 30, 2022 are either not applicable to the Company or are not expected to have a material impact on the Company.

Item 3 — Quantitative and Qualitative Disclosures about Market Risk

There has been no material change from the information provided in the Company’s 2021 Form 10-K under the section titled “Item 7A: Quantitative and Qualitative Disclosures About Market Risk.”

Item 4 — Controls and Procedures

(a) Disclosure Controls and Procedures

We maintain disclosure controls and procedures that are designed to ensure that information required to be disclosed in our reports that we file or submit under the Exchange Act, is recorded, processed, summarized and reported within the time periods specified in SEC rules and forms, and that such information is accumulated and communicated to our

management, including our Chief Executive Officer (our principal executive officer) and Chief Financial Officer (our principal financial officer) as appropriate, to allow for timely decisions regarding required disclosure.

Our management, with the participation of our Chief Executive Officer and Chief Financial Officer, has evaluated the effectiveness of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act), as of the end of the period covered by this report. Based on such evaluation, our Chief Executive Officer and Chief Financial Officer have concluded that our disclosure controls and procedures were not effective in 2018, 2019, 2020 and 2021 because of the material weaknesses in internal control over financial reporting described in Part II, Item 9A “Controls and Procedures” of our 2021 Form 10-K. The material weaknesses have not been remediated as of September 30, 2022.

Material Weakness

Management identified that the following deficiency existed in internal control over financial reporting in 2018, 2019, 2020 and 2021: the Company did not maintain a sufficient complement of trained, knowledgeable resources to execute its responsibilities with respect to internal control over financial reporting for certain financial statement accounts and disclosures. As a consequence, the Company did not conduct an effective risk assessment process that was responsive to changes in the Company's operating environment and did not design and implement effective process-level controls in the following areas:

- (a) presentation of operating expenses;
- (b) accrual for loss contracts related to service; and
- (c) identification of adjustments to physical inventory.

As of December 31, 2021, management identified additional deficiencies which were also the result of the Company not maintaining a sufficient complement of trained, knowledgeable resources to execute its responsibilities and conduct an effective risk assessment. Specifically, the process-level controls to ensure proper capitalization of inventory costs were not performed with an appropriate level of precision to detect and prevent a material misstatement. Additionally, management identified ineffective general information technology control activities over an information technology system that is used in calculating fuel billings, due to the ineffective risk assessment in identifying the relevant system. Management did not design and implement general information technology control activities in response to the current year growth in fuel delivered to customers.

The control deficiency, related to the accrual for loss contracts related to service, resulted in a material misstatement that was corrected prior to the filing of the 2021 Form 10-K. We did not identify any other material misstatements to the consolidated financial statements and there were no changes to previously issued financial results as a result of the other control deficiencies; however, the control deficiencies described above created a reasonable possibility that a material misstatement to the consolidated financial statements would not be prevented or detected on a timely basis. As a result, we concluded the deficiencies described above represent material weaknesses in our internal control over financial reporting, and our internal control over financial reporting was not effective as of December 31, 2021.

The Company acquired Applied Cryo Technologies and Frames Holdings B.V. (together, the “Acquired Companies”) during 2021, and management excluded from its assessment of the effectiveness of the Company's internal control over financial reporting as of December 31, 2021, the Acquired Companies' internal control over financial reporting associated with total assets of \$369.1 million and total revenues of \$15.8 million included in the consolidated financial statements of the Company as of and the year ended December 31, 2021.

Remediation Activities

As reported on our 2021 Form 10-K, we continue to take steps to remediate this material weakness and will continue to take further steps until such remediation is complete. These steps include the following:

- a) Hiring additional resources, including third-party resources, with the appropriate technical accounting expertise, and strengthening internal training, to assist us in identifying and addressing any complex technical accounting issues that affect our consolidated financial statements.
- b) Designing and implementing a comprehensive and continuous risk assessment process to identify and assess risks of material misstatements, and ensure that the impacted financial reporting processes and related internal controls are properly designed, maintained, and documented to respond to those risks in our financial reporting.
- c) Implementing more structured analysis and review procedures and documentation for the application of GAAP, complex accounting matters, and key accounting policies.
- d) Augmenting our current estimation policies and procedures to be more robust and in-line with overall market dynamics, including an evaluation of our operating environment, in order to ensure operating effectiveness of certain process-level control activities.
- e) Deploying new tools and tracking mechanisms to help enhance and maintain the appropriate documentation surrounding our classification of operating expenses.
- f) Further enhancing our policies, procedures, and controls related to physical inventory counting both in interim periods and at year-end.
- g) Implementing general information technology controls over our information technology system used in calculating fuel billings.
- h) Implementing structured analysis and review procedures around the manual processes related to capitalization of inventory costs.
- i) Reporting regularly to the Company's Audit Committee on the progress and results of the remediation plan, including the identification, status, and resolution of internal control deficiencies.

As we work to improve our internal control over financial reporting, we may modify our remediation plan and may implement additional measures as we continue to review, optimize, and enhance our financial reporting controls and procedures in the ordinary course. The material weaknesses will not be considered remediated until the remediated controls have been operating for a sufficient period of time and can be evidenced through testing that these controls are operating effectively.

(c) Changes in internal control over financial reporting

Exclusive of the steps taken as part of the remediation activities, there were no changes in the Company's internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) that occurred during the quarter ended September 30, 2022 that have materially affected, or are reasonably likely to materially affect, the Company's internal control over financial reporting.

Part II. OTHER INFORMATION

Item 1 – Legal Proceedings

See “Note 19: Commitments and Contingencies” within Item 1 of this Form 10-Q for a discussion regarding material legal proceedings.

Except as otherwise noted, there have been no material developments in legal proceedings. For previously reported information about legal proceedings, refer to Part I, Item 3, “Legal Proceedings,” of the Company’s 2021 Form 10-K.

Item 1A – Risk Factors

In addition to the other information set forth in this Quarterly Report on Form 10-Q, you should carefully consider the risk factors that could materially affect the Company’s business, financial condition or future results discussed in the Company’s 2021 Form 10-K in Part I, Item 1A. “Risk Factors.” The risks described in the 2021 Form 10-K are not the only risks that could affect the Company. Additional risks and uncertainties not currently known to us or that we currently deem to be immaterial may also materially adversely affect our business, financial condition and/or operating results in the future. As a supplement to the risk factors identified in the 2021 Form 10-K, below we have set forth two updated risk factors relating to the risks of inflationary pressures and economic downturn on the Company’s business. Other than as provided below, there have been no material changes to our risk factors since December 31, 2021.

Rising inflation rates, volatility in commodity prices and product shortages may adversely affect our financial results.

Some of our products contain commodity-priced materials. Commodity prices and supply levels affect our costs. For example, platinum and iridium are key materials in our PEM fuel cells and electrolyzers. Both platinum and iridium are scarce natural resources, and we are dependent upon a sufficient supply of these commodities. These resources may become increasingly difficult to source due to various cost, geopolitical, or other reasons, which in turn might have a material adverse effect on our business.

Any shortages could adversely affect our ability to produce commercially viable fuel cell systems, electrolyzers, or hydrogen production facilities, and in turn, significantly raise our cost of producing our products and services. While we do not anticipate significant near- or long-term shortages in the supply of platinum or iridium, a shortage could adversely affect our ability to produce commercially viable PEM fuel cells electrolyzers, or raise our cost of producing such products.

Global inflationary pressures, particularly in the United States, have increased recently to levels not seen in recent years, which could potentially increase commodity price volatility, increased operating costs (including our labor costs) and reduced liquidity. In addition, the United States Federal Reserve has raised, and may again raise, interest rates in response to concerns about inflation, which may result in limitations on our ability to access credit or otherwise raise debt and equity capital. Our ability to pass on such increases in costs in a timely manner depends on market conditions, and the inability to pass along cost increases could result in lower gross margins. Increases in interest rates, especially if coupled with reduced government spending and volatility in financial markets, may have the effect of further increasing economic uncertainty and heightening these risks. In an inflationary environment, we may be unable to raise the sales prices of our products and services at or above the rate at which our costs increase, which could reduce our profit margins and have a material adverse effect on our financial results. We also may experience lower than expected sales and potential adverse impacts on our competitive position if there is a decrease in consumer spending or a negative reaction to our pricing. A reduction in our revenue would be detrimental to our financial condition and could also have an adverse impact on our future growth.

The current economic downturn and weakness in the economy, market trends and other conditions affecting the profitability and financial stability of our customers could negatively impact our sales growth and results of operations.

The demand for our products and services is sensitive to the production activity, capital spending and demand for products and services of our customers worldwide. In recent months, we have observed increased economic uncertainty in the United States and abroad. Impacts of such economic weakness include falling overall demand for goods and services, leading to reduced profitability, reduced credit availability, higher borrowing costs, reduced liquidity, volatility in credit, equity and foreign exchange markets, and bankruptcies. These developments could lead to supply chain disruption, inflation, higher interest rates, and uncertainty about business continuity, which may adversely affect our business and our results of operations.

As our customers react to global economic conditions and the potential for a global recession, we may see them reduce spending on our products and take additional precautionary measures to limit or delay expenditures and preserve capital and liquidity. Reductions in spending on our solutions, delays in purchasing decisions, lack of renewals, inability to attract new customers, as well as pressure for extended billing terms or pricing discounts, would limit our ability to grow our business and negatively affect our operating results and financial condition.

Additionally, many of our customers operate in markets that may be impacted by market uncertainty, trade and tariff policies, costs of goods sold, currency exchange rates, central bank interest rate changes, foreign competition, offshoring of production, oil and natural gas prices, geopolitical developments, labor shortages, inflation, and a variety of other factors beyond our control. Any of these factors could cause customers to idle or close facilities, delay purchases, reduce production levels, or experience reductions in the demand for their own products or services. We have from time-to-time experience labor shortages and other labor-related issues. Labor shortages have become more pronounced as a result of the COVID-19 pandemic. For example, labor shortages might affect our ability to attain qualified candidates for certain positions within the Company.

Item 2 - Unregistered Sales of Equity Securities and Use of Proceeds

(a) Not applicable.

(b) Not applicable.

(c) None.

Item 3 — Defaults Upon Senior Securities

None.

Item 4 — Mine Safety Disclosures

None.

Item 5 — Other Information

None.

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Item 6 — Exhibits

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3.1	<u>Amended and Restated Certificate of Incorporation of Plug Power Inc. (filed as Exhibit 3.1 to Plug Power Inc.'s Annual Report on Form 10-K for the year ended December 31, 2008 and incorporated by reference herein).</u>
3.2	<u>Certificate of Amendment to Amended and Restated Certificate of Incorporation of Plug Power Inc. (filed as Exhibit 3.3 to Plug Power Inc.'s Annual Report on Form 10-K for the year ended December 31, 2008 and incorporated by reference herein).</u>
3.3	<u>Second Certificate of Amendment of Amended and Restated Certificate of Incorporation of Plug Power Inc. (filed as Exhibit 3.1 to Plug Power Inc.'s Current Report on Form 8-K filed on May 19, 2011 and incorporated by reference herein).</u>
3.4	<u>Third Certificate of Amendment of Amended and Restated Certificate of Incorporation of Plug Power Inc. (filed as Exhibit 3.1 to Plug Power Inc.'s Current Report on Form 8-K filed on July 25, 2014 and incorporated by reference herein).</u>
3.5	<u>Certificate of Correction to Third Certificate of Amendment of Amended and Restated Certificate of Incorporation of Plug Power Inc. (filed as Exhibit 3.9 to Plug Power Inc.'s Annual Report on Form 10-K for the year ended December 31, 2016 and incorporated by reference herein).</u>
3.6	<u>Fourth Certificate of Amendment of Amended and Restated Certificate of Incorporation of Plug Power Inc. (filed as Exhibit 3.1 to Plug Power Inc.'s Current Report on Form 8-K filed on June 30, 2017 and incorporated by reference herein).</u>
3.7	<u>Fifth Certificate of Amendment of Amended and Restated Certificate of Incorporation of Plug Power Inc. (filed as Exhibit 3.7 to Plug Power Inc.'s Quarterly Report on Form 10-Q filed on August 5, 2021 and incorporated by reference herein).</u>
3.8	<u>Certificate of Designations, Preferences and Rights of a Series of Preferred Stock of Plug Power Inc. classifying and designating the Series A Junior Participating Cumulative Preferred Stock. (filed as Exhibit 3.1 to Plug Power Inc.'s Registration Statement on Form 8-A filed on June 24, 2009 and incorporated by reference herein).</u>
3.9	<u>Fourth Amended and Restated By-laws of Plug Power Inc. (filed as Exhibit 3.9 to Plug Power Inc.'s Annual Report on Form 10-K for the year ended December 31, 2020 and incorporated by reference herein).</u>
4.1	<u>Warrant to Purchase Common Stock, issued August 24, 2022, between Plug Power Inc. and Amazon.com NV Investment Holdings LLC (filed as Exhibit 4.1 to Plug Power Inc.'s Current Report on Form 8-K filed August 25, 2022 and incorporated by reference herein).</u>
10.1*	<u>Form of Restricted Stock Unit Award Agreement for Non-U.S. Grantees</u>
10.2*	<u>Form of Non-Qualified Stock Option Agreement for Non-U.S. Optionees</u>
10.3	<u>Transaction Agreement, dated as of August 24, 2022, between Plug Power Inc. and Amazon.com, Inc. (filed as Exhibit 10.1 to Plug Power Inc.'s Current Report on Form 8-K filed August 25, 2022 and incorporated by reference herein).</u>
31.1*	<u>Certification pursuant to 18 U.S.C. Section 1350, adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.</u>
31.2*	<u>Certification pursuant to 18 U.S.C. Section 1350, adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.</u>
32.1**	<u>Certification pursuant to 18 U.S.C. Section 1350, adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.</u>
32.2**	<u>Certification pursuant to 18 U.S.C. Section 1350, adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.</u>
101.INS*	Inline XBRL Instance Document
101.SCH*	Inline XBRL Taxonomy Extension Schema Document
101.CAL*	Inline XBRL Taxonomy Extension Calculation Linkbase Document
101.DEF*	Inline XBRL Taxonomy Extension Definition Linkbase Document
101.LAB*	Inline XBRL Taxonomy Extension Labels Linkbase Document
101.PRE*	Inline XBRL Taxonomy Extension Presentation Linkbase Document
104*	Cover Page Interactive Data File (embedded within the Inline XBRL document)

* Submitted electronically herewith.

** Pursuant to Item 601(b)(32)(ii) of Regulation S-K, this certification is not being filed for purposes of Section 18 of the Securities Exchange Act of 1934, as amended.

Signatures

Pursuant to requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

PLUG POWER INC.

Date: November 8, 2022

By: /s/ Andrew Marsh

Andrew Marsh
President, Chief Executive
Officer and Director (Principal
Executive Officer)

Date: November 8, 2022

By: /s/ Paul B. Middleton

Paul B. Middleton
Chief Financial Officer (Principal
Financial Officer)

**RESTRICTED STOCK UNIT AWARD AGREEMENT
FOR NON-U.S. GRANTEES
UNDER THE PLUG POWER INC.
2021 STOCK OPTION AND INCENTIVE PLAN**

Name of Grantee: _____
No. of Restricted Stock Units: _____
Grant Date: _____

Pursuant to the Plug Power Inc. 2021 Stock Option and Incentive Plan, as amended through the date hereof (the "Plan"), and this Restricted Stock Unit Award Agreement for Non-U.S. Grantees, including any additional terms and conditions for the Grantee's country in the addendum attached hereto (the "Addendum" and collectively with the Restricted Stock Unit Award Agreement for Non-U.S. Grantees, the "Agreement"), Plug Power Inc. (the "Company") hereby grants an award of the number of Restricted Stock Units listed above (an "Award") to the Grantee named above. Each Restricted Stock Unit shall relate to one share of Common Stock, par value \$0.01 per share (the "Stock"), of the Company.

1. Restrictions on Transfer of Award. This Award may not be sold, transferred, pledged, assigned or otherwise encumbered or disposed of by the Grantee, and any shares of Stock issuable with respect to the Award may not be sold, transferred, pledged, assigned or otherwise encumbered or disposed of until (i) the Restricted Stock Units have vested as provided in Paragraph 2 of this Agreement and (ii) the shares of Stock have been issued to the Grantee in accordance with the terms of the Plan and this Agreement.

2. Vesting of Restricted Stock Units. The restrictions and conditions of Paragraph 1 of this Agreement shall lapse on the Vesting Date or Dates specified in the following schedule so long as the Grantee remains in a Service Relationship (as defined in the Plan) on such Vesting Dates. If a series of Vesting Dates is specified, then the restrictions and conditions in Paragraph 1 shall lapse only with respect to the number of Restricted Stock Units specified as vested on such date.

<u>Incremental Number of Restricted Stock Units Vested</u>	<u>Vesting Date</u>
_____ (____%)	_____
_____ (____%)	_____
_____ (____%)	_____
_____ (____%)	_____

In addition, if the Grantee's Service Relationship is terminated by the Company or an Affiliate, as applicable, without Cause (as defined below) upon or within 12 months following a Sale Event (as defined in the Plan), all outstanding Restricted Stock Units shall become fully vested as of the date of such termination. For purposes hereof, "Cause" shall have the meaning set forth

in the employment or other service agreement between the Company or an Affiliate, as applicable, and the Grantee. In the event that the Grantee is not party to an employment or other service agreement or the applicable agreement does not contain a definition of "Cause," it shall mean a determination by the Administrator that the Grantee shall be dismissed as a result of (i) any material breach by the Grantee of any agreement between the Grantee and the Company or any Affiliate; (ii) the conviction of, indictment for or plea of nolo contendere by the Grantee to a felony or a crime involving moral turpitude; or (iii) any material misconduct or willful and deliberate non-performance (other than by reason of disability) by the Grantee of the Grantee's duties to the Company or any Affiliate. The Administrator may at any time accelerate the vesting schedule specified in this Paragraph 2.

3. Termination of Service Relationship. Except as set forth in Paragraph 2 above, if the Grantee's Service Relationship terminates for any reason (including death or disability) prior to the satisfaction of the vesting conditions set forth in Paragraph 2 above, any Restricted Stock Units that have not vested as of such date shall automatically and without notice terminate and be forfeited, and neither the Grantee nor any of his or her successors, heirs, assigns, or personal representatives will thereafter have any further rights or interests in such unvested Restricted Stock Units. For the avoidance of doubt, service during only a portion of the vesting period, but where the Grantee's Service Relationship has terminated prior to a Vesting Date, will not entitle the Grantee to vest in a pro-rata portion of the Restricted Stock Units or any compensation for lost vesting.

For purposes of this Award, the Grantee's Service Relationship will be considered terminated as of the date the Grantee is no longer actively providing services to the Company or any Affiliate (regardless of the reason for such termination and whether or not later found to be invalid or in breach of employment or other laws in the jurisdiction where the Grantee is employed or otherwise providing services or the terms of the Grantee's employment or other service agreement, if any). The termination date for purposes of this Award will not be extended by any notice period (e.g., the Grantee's period of service would not include any contractual notice period or any period of "garden leave" or similar period mandated under employment laws in the jurisdiction where the Grantee is employed or otherwise providing services or the terms of the Grantee's employment or other service agreement, if any). The Administrator shall have the exclusive discretion to determine when the Grantee is no longer actively providing services for purposes of the Award (including whether the Grantee may still be considered to be providing services while on a leave of absence).

4. Issuance of Shares of Stock. As soon as practicable following each Vesting Date (but in no event later than two and one-half months after the end of the year in which the Vesting Date occurs), the Company shall issue to the Grantee the number of shares of Stock equal to the aggregate number of Restricted Stock Units that have vested pursuant to Paragraph 2 of this Agreement on such date and the Grantee shall thereafter have all the rights of a stockholder of the Company with respect to such shares of Stock.

5. Incorporation of Plan. Notwithstanding anything herein to the contrary, this Agreement shall be subject to and governed by all the terms and conditions of the Plan, including the powers of the Administrator set forth in Section 2(b) of the Plan. Capitalized terms in this Agreement shall have the meaning specified in the Plan, unless a different meaning is specified herein.

6. Responsibility for Taxes. The Grantee acknowledges that, regardless of any action taken by the Company, or if different, the Affiliate which employs the Grantee or for which the Grantee otherwise provides service (the "Service Recipient"), the ultimate liability for all income tax, social security contributions, payroll tax, fringe benefits tax, payment on account or other tax-related items related to the Grantee's participation in the Plan and legally applicable or deemed legally applicable to the Grantee ("Tax-Related Items") is and remains the Grantee's responsibility and may exceed the amount, if any, actually withheld by the Company or the Service Recipient. The Grantee further acknowledges that the Company and/or the Service Recipient (i) make no representations or undertakings regarding the treatment of any Tax-Related Items in connection with any aspect of the Restricted Stock Units or the underlying shares of Stock, including, but not limited to, the grant, vesting or settlement of the Restricted Stock Units, the subsequent sale of shares of Stock acquired pursuant to such settlement and the receipt of any dividends; and (ii) do not commit to and are under no obligation to structure the terms of the grant or any aspect of the Restricted Stock Units to reduce or eliminate the Grantee's liability for Tax-Related Items or achieve any particular tax result. Further, if the Grantee is subject to Tax-Related Items in more than one jurisdiction, the Grantee acknowledges that the Company and/or the Service Recipient (or former service recipient, as applicable) may be required to withhold or account for Tax-Related Items in more than one jurisdiction.

In connection with any relevant taxable or tax withholding event, as applicable, the Grantee agrees to make adequate arrangements satisfactory to the Company and/or the Service Recipient to satisfy all Tax-Related Items. In this regard, the Grantee authorizes the Company and/or the Service Recipient, or their respective agents, at their discretion, to satisfy any applicable withholding obligations or rights with regard to all Tax-Related Items by one or a combination of: (i) requiring the Grantee to make a payment in a form acceptable to the Company; (ii) withholding from the Grantee's wages or other cash compensation payable to the Grantee; (iii) withholding from proceeds of the sale of shares of Stock acquired upon settlement of the Restricted Stock Units either through a voluntary sale or through a mandatory sale arranged by the Company (on the Grantee's behalf pursuant to this authorization without further consent); (iv) withholding shares of Stock to be issued upon settlement of the Restricted Stock Units; (v) any other method of withholding determined by the Company and, to the extent required by applicable law or the Plan, approved by the Administrator.

The Company may withhold or account for Tax-Related Items by considering statutory or other withholding rates, including minimum or maximum rates applicable in the Grantee's jurisdiction(s). In the event of over-withholding, the Grantee may receive a refund from the Company of any over-withheld amount in cash (with no entitlement to the equivalent in shares of Stock), or if not refunded by the Company, the Grantee must seek a refund from the local tax authorities to the extent the Grantee wishes to recover the over-withheld amount in the form of a refund. If the obligation for Tax-Related Items is satisfied by withholding shares of Stock, for tax purposes, the Grantee will be deemed to have been issued the full number of shares of Stock subject to the vested Restricted Stock Units, notwithstanding that a number of the shares of Stock is held back solely for the purpose of paying the Tax-Related Items. The Company may refuse to issue or deliver the shares of Stock or the proceeds from the sale of shares of Stock to the Grantee if the Grantee fails to comply with the Grantee's obligations in connection with the Tax-Related Items.

Finally, the Grantee agrees to pay to the Company or the Service Recipient any amount of Tax-Related Items that the Company or the Service Recipient may be required to withhold or account for as a result of the Grantee's participation in the Plan that cannot be satisfied by the means previously described. The Company may refuse to issue or deliver the underlying shares of Stock, if the Grantee fails to comply with his or her obligations in connection with the Tax-Related Items.

7. Nature of Grant. In accepting the Restricted Stock Units, the Grantee acknowledges, understands and agrees that:

(a) the Plan is established voluntarily by the Company, it is discretionary in nature and it may be modified, amended, suspended or terminated by the Company at any time, to the extent permitted by the Plan;

(b) the grant of the Restricted Stock Units is exceptional, voluntary and occasional and does not create any contractual or other right to receive future grants of Restricted Stock Units, or benefits in lieu of Restricted Stock Units, even if Restricted Stock Units have been granted in the past;

(c) all decisions with respect to future Restricted Stock Units or other awards, if any, will be at the sole discretion of the Administrator;

(d) the Grantee is voluntarily participating in the Plan;

(e) the Restricted Stock Units are granted as an incentive for future services and in no event should be considered as compensation for, or relating in any way to, past services for the Company or Service Recipient;

(f) the Restricted Stock Units and the shares of Stock subject to the Restricted Stock Units, and the income from and value of same, are not intended to replace any pension rights or compensation;

(g) the Restricted Stock Units and the shares of Stock subject to the Restricted Stock Units, and the income from and value of same, are not part of normal or expected wages or salary for any purposes, including, but not limited to, calculation of any severance, resignation, termination, redundancy, dismissal, end of service payments, bonuses, holiday pay, long-service awards, pension or retirement benefits or similar payments;

(h) the future value of the underlying shares of Stock is unknown and cannot be predicted with certainty;

(i) the value of the shares of Stock acquired upon settlement of the Restricted Stock Units may increase or decrease in value;

(j) unless otherwise agreed with the Company in writing, the Restricted Stock Units and the shares of Stock subject to the Restricted Stock Units, and the income from and value of same, are not granted as consideration for, or in connection with, the service the Grantee may provide as a director of any Affiliate;

(k) no claim or entitlement to compensation or damages shall arise from forfeiture of the Restricted Stock Units resulting from the termination of the Grantee's Service Relationship (for any reason whatsoever whether or not later found to be invalid or in breach of employment laws in the jurisdiction where the Grantee is providing services or the terms of the Grantee's employment or other service agreement, if any); and

(l) neither the Company nor any Affiliate shall be liable for any foreign exchange rate fluctuation between the Grantee's local currency and the United States Dollar that may affect the value of the Restricted Stock Units or of any amounts due to the Grantee pursuant to the settlement of the Restricted Stock Units or the subsequent sale of any shares of Stock acquired upon settlement.

8. No Advice Regarding Grant. The Company is not providing any tax, legal or financial advice, nor is the Company making any recommendations regarding the Grantee's participation in the Plan, or the Grantee's acquisition or sale of the underlying shares of Stock. The Grantee should consult with the Grantee's own personal tax, legal and financial advisors regarding the Grantee's participation in the Plan before taking any action related to the Plan.

9. Section 409A of the Code. This Agreement shall be interpreted in such a manner that all provisions relating to the settlement of the Award are exempt from the requirements of Section 409A of the Code as "short-term deferrals" as described in Section 409A of the Code.

10. No Obligation to Continue Service Relationship. Neither the Company, the Service Recipient nor any other Affiliate is obligated by or as a result of the Plan or this Agreement to continue the Grantee's Service Relationship and neither the Plan nor this Agreement shall interfere in any way with the right of the Company or any Affiliate, as applicable, to terminate the Grantee's Service Relationship at any time.

11. Integration. This Agreement constitutes the entire agreement between the parties with respect to this Award and supersedes all prior agreements and discussions between the parties concerning such subject matter.

12. Data Privacy Consent.

(a) Data Collection and Usage. *The Company and the Service Recipient collect, process and use certain personal information about the Grantee, including, but not limited to, the Grantee's name, home address, telephone number, email address, date of birth, social insurance number, passport or other identification number, salary, nationality, job title, any shares of Stock or directorships held in the Company, details of all Restricted Stock Units granted under the Plan or any other entitlement to shares of Stock awarded, cancelled, exercised, vested, unvested or outstanding in the Grantee's favor ("Data"), for the legitimate purpose of implementing, administering and managing the Plan. Where required, the legal basis for the collection and processing of Data is the Grantee's consent.*

(b) Stock Plan Administration and Service Provider. *The Company will transfer Data to Broadridge Corporate Issuer Solutions, an independent service provider, which is assisting the Company with the implementation, administration and management of the Plan (the "Service Provider"). The Grantee may be asked to agree on separate terms and data*

processing practices with the Service Provider, with such agreement being a condition to the ability to participate in the Plan. Where required, the legal basis for the transfer of Data to the Service Provider is the Grantee's consent.

(c) *International Data Transfers.* *The Company and the Service Provider are based in the United States. The Grantee's country or jurisdiction may have different data privacy laws and protections than the United States. The Company's legal basis, where required, for the transfer of Data is the Grantee's consent.*

(d) *Data Retention.* *The Company will hold and use Data only as long as is necessary to implement, administer and manage the Grantee's participation in the Plan, or as required to comply with legal or regulatory obligations, including under tax, exchange control, securities and labor laws. This may mean Data may be retained until after the Grantee's Service Relationship ends, plus any additional time periods necessary for compliance with law, exercise or defense of legal rights, archiving, back-up and deletion purposes.*

(e) *Voluntariness and Consequences of Consent Denial or Withdrawal.* *Participation in the Plan is voluntary and the Grantee is providing the consents herein on a voluntary basis. The Grantee understands that the Grantee may request to stop the transfer and processing of the Data for purposes of the Grantee's participation in the Plan and that the Grantee's Service Relationship will not be affected. The only consequence of refusing or withdrawing consent is that the Company would not be able to allow the Grantee to participate in the Plan. The Grantee understands that the Data will still be processed in relation to the Grantee's Service Relationship for record-keeping purposes.*

(f) *Data Subject Rights.* *The Grantee may have a number of rights under data privacy laws in the Grantee's jurisdiction. Depending on where the Grantee is based, such rights may include the right to (i) request access to or copies of Data the Company processes, (ii) rectify incorrect Data, (iii) delete Data, (iv) restrict the processing of Data, (v) restrict the portability of Data, (vi) lodge complaints with competent authorities in the Grantee's jurisdiction, and/or (vii) receive a list with the names and addresses of any potential recipients of Data. To receive clarification regarding these rights or to exercise these rights, the Grantee can contact the Grantee's local human resources representative.*

13. *Notices.* *Notices hereunder shall be mailed or delivered to the Company at its principal place of business and shall be mailed or delivered to the Grantee at the address on file with the Company or, in either case, at such other address as one party may subsequently furnish to the other party in writing.*

14. *Governing Law and Venue.* *This Agreement shall be governed by and construed in accordance with the General Corporation Law of the State of Delaware as to matters within the scope thereof, and as to all other matters shall be governed by and construed in accordance with the internal laws of the State of Delaware, without regard to conflict of law principles that would result in the application of any law other than the law of the State of Delaware. For purposes of any action, lawsuit or other proceedings brought to enforce this Agreement, relating to it, or arising from it, the parties hereby irrevocably consent to the exclusive jurisdiction and venue of the state and federal courts located in the state of Delaware.*

15. Compliance with Law. Notwithstanding any other provision of the Plan or this Agreement, unless there is an available exemption from any registration, qualification or other legal requirement applicable to the shares of Stock, the Company shall not be required to permit the vesting of the Restricted Stock Units and/or deliver any shares of Stock prior to the completion of any registration or qualification of the shares of Stock under any U.S. or non-U.S. local, state or federal securities or exchange control law or under rulings or regulations of the U.S. Securities and Exchange Commission ("SEC") or of any other governmental regulatory body, or prior to obtaining any approval or other clearance from any local, state, federal or foreign governmental agency, which registration, qualification or approval the Company shall, in its absolute discretion, deem necessary or advisable. The Grantee understands that the Company is under no obligation to register or qualify the shares of Stock with the SEC or any U.S. state or non-U.S. securities commission or to seek approval or clearance from any governmental authority for the issuance or sale of the shares of Stock subject to this Restricted Stock Unit. Further, the Grantee agrees that the Company shall have unilateral authority to amend this Agreement without the Grantee's consent to the extent necessary to comply with securities or other laws applicable to issuance of the shares of Stock subject to the Restricted Stock Units.

16. Electronic Delivery and Participation. The Company may, in its sole discretion, decide to deliver any documents related to current or future participation in the Plan by electronic means. The Grantee hereby consents to receive such documents by electronic delivery and agrees to participate in the Plan through an on-line electronic system established and maintained by the Company or a third party designated by the Company.

17. Language. The Grantee acknowledges that he or she is sufficiently proficient in English, or has consulted with an advisor who is sufficiently proficient in English, so as to allow the Grantee to understand the terms and conditions of this Agreement. If the Grantee has received this Agreement or any other document related to the Plan translated into a language other than English and if the meaning of the translated version is different than the English version, the English version will control.

18. Addendum. Notwithstanding any provisions in this Restricted Stock Unit Award Agreement for Non-U.S. Grantees, the Restricted Stock Units shall be subject to any additional terms and conditions for the Grantee's country set forth in the Addendum attached hereto. Moreover, if the Grantee relocates to one of the countries included in the Addendum, the additional terms and conditions for such country, if any, will apply to the Grantee, to the extent the Company determines that the application of such terms and conditions is necessary or advisable for legal or administrative reasons. The Addendum constitutes part of this Agreement.

19. Imposition of Other Requirements. The Company reserves the right to impose other requirements on the Grantee's participation in the Plan, on the Restricted Stock Units and on the shares of Stock acquired upon the vesting of the Restricted Stock Units, to the extent the Company determines it is necessary or advisable for legal or administrative reasons, and to require the Grantee to sign any additional agreements or undertakings that may be necessary to accomplish the foregoing.

20. Waiver. The Grantee acknowledges that a waiver by the Company of breach of any provision of this Agreement shall not operate or be construed as a waiver of any other provision of this Agreement, or of any subsequent breach by the Grantee or any other grantee.

21. Severability. The provisions of this Agreement are severable and if any one or more provisions are determined to be illegal or otherwise unenforceable, in whole or in part, the remaining provisions shall nevertheless be binding and enforceable.

22. Insider Trading Restrictions/Market Abuse Laws. The Grantee acknowledges that, depending on his or her country, the Grantee may be subject to insider trading restrictions and/or market abuse laws in applicable jurisdictions, which may affect his or her ability to acquire, sell or attempt to sell shares of Stock or rights to shares of Stock (e.g., Restricted Stock Units) under the Plan during such times as the Grantee is considered to have “inside information” regarding the Company (as defined by laws in the applicable jurisdiction or the Grantee’s country). Any restrictions under these laws or regulations are separate from and in addition to any restrictions that may be imposed under any applicable Company insider trading policy. The Grantee acknowledges that it is his or her responsibility to comply with any applicable restrictions as well as any applicable Company insider trading policy, and the Grantee is advised to speak to his or her personal advisor on this matter.

23. Foreign Asset/Account Reporting Requirements. The Grantee acknowledges that there may be certain foreign asset and/or account reporting requirements which may affect the Grantee’s ability to acquire or hold the shares of Stock acquired under the Plan or cash received from participating in the Plan (including from any dividends paid on the shares of Stock acquired under the Plan) in a brokerage or bank account outside the Grantee’s country. The Grantee may be required to report such accounts, assets or transactions to the tax or other authorities in his or her country. The Grantee also may be required to repatriate sale proceeds or other funds received as a result of participating in the Plan to the Grantee’s country through a designated bank or broker within a certain time after receipt. The Grantee acknowledges that it is his or her responsibility to be compliant with such regulations, and the Grantee is advised to speak to his or her personal advisor on this matter.

PLUG POWER INC.

By: _____
Title:

The foregoing Agreement (including the Addendum attached hereto) is hereby accepted and the terms and conditions thereof hereby agreed to by the undersigned. Electronic acceptance of this Agreement pursuant to the Company’s instructions to the Grantee (including through an online acceptance process) is acceptable.

Dated: _____

Grantee’s Signature _____

Grantee’s name and address:

**ADDENDUM
TO
RESTRICTED STOCK UNIT AWARD AGREEMENT
FOR NON-U.S. GRANTEES
UNDER THE PLUG POWER INC.
2021 STOCK OPTION AND INCENTIVE PLAN**

Certain capitalized terms used but not defined in this Addendum shall have the meanings set forth in the Plan or the Restricted Stock Unit Award Agreement for Non-U.S. Grantees (the “RSU Agreement”).

Terms and Conditions

This Addendum includes additional terms and conditions that govern the Grantee’s Restricted Stock Units if the Grantee resides and/or works in one of the countries listed below. If the Grantee is a citizen or resident of a country (or is considered as such for local law purposes) other than the country in which the Grantee is currently residing and/or working, or if the Grantee relocates to another country after the grant of the Restricted Stock Units, the Company shall, in its discretion, determine to what extent the additional terms and conditions contained herein will be applicable to the Grantee.

Notifications

This Addendum also includes information regarding securities, exchange control, tax and certain other issues of which the Grantee should be aware with respect to the Grantee’s participation in the Plan. The information is based on the exchange control, securities, tax and other laws in effect in the countries listed in this Addendum, as of April 2022. Such laws are often complex and change frequently. As a result, the Grantee should not rely on the notifications herein as the only source of information relating to the consequences of the Grantee’s participation in the Plan because the information may be outdated when the Grantee vests in the Restricted Stock Units and acquires shares of Stock, or when the Grantee subsequently sells shares of Stock acquired under the Plan.

In addition, the information is general in nature and may not apply to the Grantee’s particular situation, and the Company is not in a position to assure the Grantee of any particular result. Accordingly, the Grantee is advised to seek appropriate professional advice as to how the relevant laws in the Grantee’s country may apply to the Grantee’s individual situation.

Finally, if the Grantee is a citizen or resident (or is considered as such for local tax purposes) of a country other than the one in which the Grantee is currently residing and/or working, or if the Grantee moves or transfers to another country after the grant of Restricted Stock Units, the information contained herein may not be applicable to the Grantee in the same manner.

FRANCE

Terms and Conditions

Type of Award. The Restricted Stock Units are not granted as “French-qualified” awards and are not intended to qualify for the specific tax and social security treatment applicable to shares granted for no consideration under Sections L. 225-197-1 to L. 225-197-5 and Sections L. 22-10-59 to L. 22-10-60 of the French Commercial Code, as amended.

Consent to Receive Information in English. By accepting the Restricted Stock Units, the Grantee confirms having read and understood the documents relating to this grant (the Plan and this Agreement), including all terms and conditions included therein, which were provided in the English language. The Grantee accepts the terms and conditions of these documents accordingly.

Consentement relatif à la réception d'informations en langue anglaise. En acceptant le Contrat d'Attribution décrivant les termes et conditions de l'attribution au Grantee, ce dernier confirme avoir lu et compris les documents relatifs à cette attribution (le Plan et le présent Contrat d'Attribution) qui ont été communiqués en langue anglaise. Le Grantee accepte les termes de ces documents en connaissance de cause.

Notifications

Exchange Control Information. The value of any cash or securities imported to or exported from France without the use of a financial institution must be reported to the customs and excise authorities when the value of such cash or securities is equal to or greater than a certain amount. The Grantee should consult with his or her personal financial advisor for further details regarding this requirement.

Foreign Asset/Account Reporting Information. The Grantee is required to report all foreign accounts (whether open, current or closed) to the French tax authorities when filing his or her annual tax return.

**NON-QUALIFIED STOCK OPTION AGREEMENT
FOR NON-U.S. OPTIONEES
UNDER THE PLUG POWER INC.
2021 STOCK OPTION AND INCENTIVE PLAN**

Name of Optionee: _____

No. of Option Shares: _____

Option Exercise Price per Share: US\$ _____
[Fair Market Value on Grant Date]

Grant Date: _____

Expiration Date: _____
[No more than 10 years]

Pursuant to the Plug Power Inc. 2021 Stock Option and Incentive Plan, as amended through the date hereof (the "Plan"), Plug Power Inc. (the "Company") hereby grants to the Optionee named above an option (the "Stock Option") to purchase on or prior to the Expiration Date specified above all or part of the number of shares of Common Stock, par value \$0.01 per share (the "Stock"), of the Company specified above at the Option Exercise Price per Share specified above subject to the terms and conditions set forth in this Non-Qualified Stock Option Agreement for Non-U.S. Optionees, including any additional terms and conditions for the Optionee's country set forth in the addendum attached hereto (the "Addendum" and, collectively with the Non-Qualified Stock Option Agreement for Non-U.S. Optionees, the "Agreement") and in the Plan. This Stock Option is not intended to be an "incentive stock option" under Section 422 of the United States Internal Revenue Code of 1986, as amended.

1. Exercisability Schedule. No portion of this Stock Option may be exercised until such portion shall have become exercisable. Except as set forth below, and subject to the discretion of the Administrator (as defined in Section 1 of the Plan) to accelerate the exercisability schedule hereunder, this Stock Option shall be exercisable with respect to the following number of Option Shares on the dates indicated so long as the Optionee remains in a Service Relationship (as defined in the Plan) on such dates:

<u>Incremental Number of Option Shares Exercisable</u>	<u>Exercisability Date</u>
_____ (____%)	_____
_____ (____%)	_____
_____ (____%)	_____
_____ (____%)	_____

Notwithstanding anything to the contrary herein or in the Plan, all outstanding Option Shares shall become fully exercisable upon the termination of the Optionee's Service Relationship by reason of the Optionee's death or disability (as determined by the Administrator). In addition, if the Optionee's Service Relationship is terminated by the Company or an Affiliate, as applicable, without Cause (as defined below) **or by the Optionee for Good Reason (as defined in the employment or other service agreement between the Optionee and the Company or an Affiliate), in either case]**¹ upon or within 12 months following a Sale Event, all outstanding Option Shares shall become fully exercisable as of the date of such termination. The Administrator may at any time accelerate the exercisability schedule specified in this Paragraph 1. Once exercisable, this Stock Option shall continue to be exercisable at any time or times prior to the close of business on the Expiration Date, subject to the provisions hereof and of the Plan.

2. Manner of Exercise.

(a) The Optionee may exercise this Stock Option only in the following manner: from time to time on or prior to the Expiration Date of this Stock Option, the Optionee may give written notice to the Administrator of his or her election to purchase some or all of the Option Shares purchasable at the time of such notice. This notice shall specify the number of Option Shares to be purchased.

Payment of the Option Exercise Price for the Option Shares may be made by one or more of the following methods: (i) in cash, by certified or bank check or other instrument acceptable to the Administrator; (ii) if permitted by the Administrator, through the delivery (or attestation to the ownership) of shares of Stock that have been purchased by the Optionee on the open market or that are beneficially owned by the Optionee and are not then subject to any restrictions under any Company plan and that otherwise satisfy any holding periods as may be required by the Administrator; (iii) by the Optionee delivering to the Company a properly executed exercise notice together with irrevocable instructions to a broker to promptly deliver to the Company cash or a check payable and acceptable to the Company to pay the Option Exercise Price, provided that in the event the Optionee chooses to pay the Option Exercise Price as so provided, the Optionee and the broker shall comply with such procedures and enter into such agreements of indemnity and other agreements as the Administrator shall prescribe as a condition of such payment procedure; (iv) if permitted by the Administrator, by a "net exercise" arrangement pursuant to which the Company will reduce the number of shares of Stock issuable upon exercise by the largest whole number of shares with a Fair Market Value that does not exceed the aggregate Option Exercise Price; or (v) a combination of (i), (ii), (iii) and (iv) above. Payment instruments will be received subject to collection.

The transfer to the Optionee on the records of the Company or of the transfer agent of the Option Shares will be contingent upon (i) the Company's receipt from the Optionee of the full Option Exercise Price for the Option Shares, as set forth above, (ii) the fulfillment of any other requirements contained herein or in the Plan or in any other agreement or provision of laws, and (iii) the receipt by the Company of any agreement, statement or other evidence that the Company may require to satisfy itself that the issuance of Stock to be purchased pursuant to the exercise of the Stock Option under the Plan and any subsequent resale of the shares of Stock will be in

¹ **Note to Draft:** To be included only for grants made to executive officers.

compliance with applicable laws and regulations. In the event the Optionee chooses to pay the Option Exercise Price by previously-owned shares of Stock through the attestation method, the number of shares of Stock transferred to the Optionee upon the exercise of the Stock Option shall be net of the shares of Stock attested to.

(b) The shares of Stock purchased upon exercise of this Stock Option shall be transferred to the Optionee on the records of the Company or of the transfer agent upon compliance to the satisfaction of the Administrator with all requirements under applicable laws or regulations in connection with such transfer and with the requirements hereof and of the Plan. The determination of the Administrator as to such compliance shall be final and binding on the Optionee. The Optionee shall not be deemed to be the holder of, or to have any of the rights of a holder with respect to, any shares of Stock subject to this Stock Option unless and until this Stock Option shall have been exercised pursuant to the terms hereof, the Company or the transfer agent shall have transferred the shares of Stock to the Optionee, and the Optionee's name shall have been entered as the stockholder of record on the books of the Company. Thereupon, the Optionee shall have full voting, dividend and other ownership rights with respect to such shares of Stock.

(c) The minimum number of shares of Stock with respect to which this Stock Option may be exercised at any one time shall be 100 shares, unless the number of shares with respect to which this Stock Option is being exercised is the total number of shares subject to exercise under this Stock Option at the time.

(d) Notwithstanding any other provision hereof or of the Plan, no portion of this Stock Option shall be exercisable after the Expiration Date hereof.

3. Termination of Service Relationship. If the Optionee's Service Relationship terminates, the period within which to exercise the Stock Option may be subject to earlier termination as set forth below.

(a) Termination Due to Death. If the Optionee's Service Relationship terminates by reason of the Optionee's death, any portion of this Stock Option outstanding on such date, to the extent exercisable on the date of death, may thereafter be exercised by the Optionee's legal representative or legatee for a period of 12 months from the date of death or until the Expiration Date, if earlier. Any portion of this Stock Option that is not exercisable on the date of death shall terminate immediately and be of no further force or effect.

(b) Termination Due to Disability. If the Optionee's Service Relationship terminates by reason of the Optionee's disability (as determined by the Administrator), any portion of this Stock Option outstanding on such date, to the extent exercisable on the date of such termination, may thereafter be exercised by the Optionee for a period of 12 months from the Termination Date (as defined in Paragraph 3(e) below), or until the Expiration Date, if earlier. Any portion of this Stock Option that is not exercisable on the Termination Date shall terminate immediately and be of no further force or effect.

(c) Termination for Cause. If the Optionee's Service Relationship terminates for Cause, any portion of this Stock Option outstanding on such date shall terminate immediately and be of no further force and effect. For purposes hereof, "Cause" shall mean, unless otherwise

provided in an employment or other service agreement between the Company or an Affiliate, as applicable, and the Optionee, a determination by the Administrator that the Optionee shall be dismissed as a result of (i) any material breach by the Optionee of any agreement between the Optionee and the Company or any Affiliate; (ii) the conviction of, indictment for or plea of nolo contendere by the Optionee to a felony or a crime involving moral turpitude; or (iii) any material misconduct or willful and deliberate non-performance (other than by reason of disability) by the Optionee of the Optionee's duties to the Company or any Affiliate.

(d) Other Termination. If the Optionee's Service Relationship terminates for any reason other than the Optionee's death, the Optionee's disability or Cause, and unless otherwise determined by the Administrator, any portion of this Stock Option outstanding on such date may be exercised, to the extent exercisable on the Termination Date (as defined in Paragraph 3(e) below), for a period of three months from the Termination Date or until the Expiration Date, if earlier. Any portion of this Stock Option that is not exercisable on the Termination Date shall terminate immediately and be of no further force or effect. For the avoidance of doubt, providing service during only a portion of the vesting period prior to an exercisability date shall not entitle the Optionee to vest in a pro-rata portion of the unvested Stock Option that would have vested as of such exercisability date or extend the date from which the Optionee's right to exercise any vested and outstanding portion of the Stock Option after the Termination Date will be measured, nor will it entitle the Optionee to any compensation for the lost vesting and/or lost right to exercise.

(e) Termination Date. For purposes of this Stock Option, the Optionee's Service Relationship will be considered terminated as of the date the Optionee is no longer actively providing services to the Company or any of its Affiliates (regardless of the reason for such termination and whether or not later found to be invalid or in breach of employment or other applicable laws in the jurisdiction where the Optionee is employed or otherwise providing services or the terms of the Optionee's employment or other service agreement, if any). Unless otherwise provided in this Agreement or determined by the Company, the Optionee's right to vest in this Stock Option under the Plan, if any, will terminate as of such date, and the period (if any) during which the Optionee may exercise this Stock Option after termination of the Optionee's Service Relationship will commence on such date (the "Termination Date"). The Termination Date will not be extended by any notice period (*e.g.*, the Optionee's period of service would not include any contractual notice period or any period of "garden leave" or similar period mandated under employment or other applicable laws in the jurisdiction where the Optionee is employed or otherwise providing services or the terms of the Optionee's employment or other service agreement, if any). The Administrator shall have the exclusive discretion to determine when the Optionee is no longer actively providing services for purposes of this Stock Option grant (including whether the Optionee may still be considered to be providing services while on a leave of absence).

The Administrator's determination of the reason for termination of the Optionee's Service Relationship shall be conclusive and binding on the Optionee and his or her representatives or legatees.

4. Incorporation of Plan. Notwithstanding anything herein to the contrary, this Stock Option shall be subject to and governed by all the terms and conditions of the Plan, including the powers of the Administrator set forth in Section 2(b) of the Plan. Capitalized terms in this

Agreement shall have the meaning specified in the Plan, unless a different meaning is specified herein.

5. Transferability. This Agreement is personal to the Optionee, is non-assignable and is not transferable in any manner, by operation of law or otherwise, other than by will or the laws of descent and distribution. This Stock Option is exercisable, during the Optionee's lifetime, only by the Optionee, and thereafter, only by the Optionee's legal representative or legatee.

6. Responsibility for Taxes.

(a) The Optionee acknowledges that, regardless of any action taken by the Company or, if different, the Affiliate which employs the Optionee or for which the Optionee otherwise provides services (the "Service Recipient"), the ultimate liability for all income tax, social insurance, payroll tax, fringe benefits tax, payment on account or other tax-related items related to the Optionee's participation in the Plan and legally applicable or deemed legally applicable to the Optionee ("Tax-Related Items") is and remains the Optionee's responsibility and may exceed the amount, if any, actually withheld by the Company or the Service Recipient. The Optionee further acknowledges that the Company and/or the Service Recipient (i) make no representations or undertakings regarding the treatment of any Tax-Related Items in connection with any aspect of this Stock Option, including, but not limited to, the grant, vesting or exercise of this Stock Option, the subsequent sale of Shares acquired upon the exercise of this Stock Option and the receipt of any dividends; and (ii) do not commit to and are under no obligation to structure the terms of the grant or any aspect of this Stock Option to reduce or eliminate the Optionee's liability for Tax-Related Items or achieve any particular tax result. Further, if the Optionee is subject to Tax-Related Items in more than one jurisdiction, the Optionee acknowledges that the Company and/or the Service Recipient (or former service recipient, as applicable) may be required to withhold or account for Tax-Related Items in more than one jurisdiction.

(b) In connection with the relevant taxable or tax withholding event, as applicable, the Optionee agrees to make adequate arrangements satisfactory to the Company and/or the Service Recipient to satisfy all Tax-Related Items. In this regard, the Optionee authorizes the Company and/or the Service Recipient, or their respective agents, at their discretion, to satisfy any applicable withholding obligations or rights with regard to all Tax-Related Items by one or a combination of the following: (i) requiring the Optionee to make a payment in a form acceptable to the Company; (ii) withholding from the Optionee's wages or other compensation payable to the Optionee, (iii) withholding from proceeds of the sale of shares of Stock acquired upon the exercise of this Stock Option either through a voluntary sale or through a mandatory sale arranged by the Company (on the Optionee's behalf pursuant to this authorization without further consent), (iv) withholding from the shares of Stock otherwise issuable at exercise of this Stock Option, or (v) any other method determined by the Administrator to be in compliance with applicable laws.

(c) The Company and/or Service Recipient may withhold or account for Tax-Related Items by considering statutory or other withholding rates, including maximum rates applicable in the Optionee's jurisdiction(s). In the event of over-withholding, the Optionee may receive a refund of any over-withheld amount in cash (with no entitlement to the equivalent in shares of Stock), or if not refunded, the Optionee may seek a refund from local tax authorities. In the event of under-withholding, the Optionee may be required to pay any additional Tax-Related

Items directly to the applicable tax authority or to the Company and/or the Service Recipient. If the obligation for Tax-Related Items is satisfied by withholding in shares of Stock, for tax purposes, the Optionee is deemed to have been issued the full number of shares of Stock subject to the exercised Stock Option, notwithstanding that a number of shares of Stock is held back solely for the purpose of paying the Tax-Related Items.

(d) Finally, the Optionee agrees to pay to the Company or the Service Recipient any amount of Tax-Related Items that the Company or the Service Recipient may be required to withhold or account for as a result of the Optionee's participation in the Plan that cannot be satisfied by the means previously described. The Company may refuse to issue or deliver the underlying shares of Stock or the proceeds from the sale of the shares of Stock acquired upon exercise of this Stock Option, if the Optionee fails to comply with his or her obligations in connection with the Tax-Related Items.

7. Nature of Grant. In accepting this Stock Option, the Optionee acknowledges, understands and agrees that:

(a) the Plan is established voluntarily by the Company, it is discretionary in nature, and may be modified, amended, suspended or terminated by the Company at any time, to the extent permitted under the Plan;

(b) the grant of this Stock Option is voluntary and occasional and does not create any contractual or other right to receive future grants of stock options, or benefits in lieu of stock options, even if stock options have been granted in the past;

(c) all decisions with respect to future stock options or other grants, if any, will be at the sole discretion of the Company;

(d) the Optionee is voluntarily participating in the Plan;

(e) this Stock Option and any shares of Stock acquired under the Plan, and the income from and value of same, are not intended to replace any pension rights or compensation;

(f) this Stock Option and any shares of Stock acquired under the Plan, and the income from and value of same, are not part of normal or expected compensation for any purpose, including, without limitation, calculating any severance, resignation, termination, redundancy, dismissal, end-of-service payments, bonuses, holiday pay, long-service awards, pension or retirement or welfare benefits or similar payments;

(g) the future value of the shares of Stock underlying this Stock Option is unknown, indeterminable, and cannot be predicted with certainty;

(h) if the shares of Stock underlying this Stock Option do not increase in value, this Stock Option will have no value;

(i) if the Optionee exercises this Stock Option and acquires shares of Stock, the value of such shares of Stock may increase or decrease, even below the Option Exercise Price;

(j) no claim or entitlement to compensation or damages, shall arise from the forfeiture of this Stock Option resulting from the termination of the Optionee's Service Relationship (for any reason whatsoever, whether or not later found to be invalid or in breach of employment or other laws in the jurisdiction where the Optionee is employed or otherwise providing services or the terms of the Optionee's employment or other service agreement, if any);

(k) unless otherwise agreed with the Company in writing, this Stock Option and any shares of Stock acquired under the Plan, and the income from and value of same, are not granted as consideration for, or in connection with, the service the Optionee may provide as a director of any Affiliate;

(l) unless otherwise provided in the Plan or by the Company in its discretion, this Stock Option and the benefits evidenced by this Agreement do not create any entitlement to have this Stock Option or any such benefits transferred to, or assumed by, another company, nor to be exchanged, cashed out or substituted for, in connection with any corporate transaction affecting the shares of Stock; and

(m) neither the Company, the Service Recipient nor any other Subsidiary or Affiliate shall be liable for any foreign exchange rate fluctuation between the Optionee's local currency and the United States Dollar that may affect the value of this Stock Option or of any amounts due to the Optionee pursuant to the exercise of this Stock Option or the subsequent sale of shares of Stock acquired upon exercise.

8. No Advice Regarding Grant. The Company is not providing any tax, legal or financial advice, nor is the Company making recommendations regarding the Optionee's participation in the Plan, or the Optionee's acquisition or sale of shares of Stock acquired upon exercise. The Optionee understands and agrees that the Optionee should consult with his or her own personal tax, legal and financial advisors regarding his or her participation in the Plan before taking any action related to the Plan.

9. No Obligation to Continue Service Relationship. Neither the Company, the Service Recipient nor any other Affiliate is obligated by or as a result of the Plan or this Agreement to continue the Optionee's Service Relationship and neither the Plan nor this Agreement shall interfere in any way with the right of the Company, Service Recipient or any other Affiliate to terminate the Optionee's Service Relationship at any time.

10. Integration. This Agreement constitutes the entire agreement between the parties with respect to this Stock Option and supersedes all prior agreements and discussions between the parties concerning such subject matter.

11. **Data Privacy.**

(a) **Data Collection and Usage.** *The Company and the Service Recipient collect, process and use certain personal information about the Optionee, including, but not limited to, the Optionee's name, home address, telephone number, email address, date of birth, social insurance number, passport or other identification number, salary, nationality, job title, any shares of Stock or directorships held in the Company, details of all Stock Options granted under the Plan or any other entitlement to shares awarded, canceled, exercised, vested, unvested*

or outstanding in the Optionee's favor ("Data"), for the legitimate purpose of implementing, administering and managing the Plan. Where required, the legal basis for the collection and processing of Data is the Optionee's consent.

(b) Stock Plan Administration and Service Providers. The Optionee understands that the Company will transfer Data to Morgan Stanley and Broadridge Corporate Issuer Solutions, a third-party stock plan administrator/broker ("Service Provider"), which assists the Company with the implementation, administration and management of the Plan. The Optionee may be asked to agree on separate terms and data processing practices with the Service Provider, with such agreement being a condition to the ability to participate in the Plan. Where required, the legal basis for the transfer of Data to the Service Provider is the Optionee's consent.

(c) International Data Transfers. The Company and the Service Provider are based in the United States. The Optionee's country or jurisdiction may have different data privacy laws and protections than the United States. Where required, the Company's legal basis for the transfer of Data is the Optionee's consent.

(d) Data Retention. The Company will hold and use Data only as long as is necessary to implement, administer and manage the Optionee's participation in the Plan, or as required to comply with legal or regulatory obligations, including under tax, exchange control, securities and labor laws. This may mean Data is retained until after the Optionee's Service Relationship ends, plus any additional time periods necessary for compliance with law, exercise or defense of legal rights, archiving, back-up and deletion purposes.

(e) Voluntariness and Consequences of Consent Denial or Withdrawal. Participation in the Plan is voluntary and the Optionee is providing the consents herein on a voluntary basis. The Optionee understands that the Optionee may request to stop the transfer and processing of the Optionee's Data for purposes of the Optionee's participation in the Plan and that the Optionee's compensation from or Service Relationship with the Service Recipient will not be affected. The only consequence of refusing or withdrawing consent is that the Company would not be able to allow the Optionee to participate in the Plan. The Optionee understands that the Optionee's Data will still be processed in relation to his or her Service Relationship for record-keeping purposes.

(f) Data Subject Rights. The Optionee may have a number of rights under data privacy laws in the Optionee's jurisdiction. Depending on where the Optionee is based, such rights may include the right to (i) request access to or copies of Data the Company processes, (ii) rectify incorrect Data, (iii) delete Data, (iv) restrict the processing of Data, (v) restrict the portability of Data, (vi) lodge complaints with competent authorities in the Optionee's jurisdiction, and/or (vii) receive a list with the names and addresses of any potential recipients of Data. To receive clarification regarding these rights or to exercise these rights, the Optionee can contact the Optionee's local human resources representative.

12. Notices. Notices hereunder shall be mailed or delivered to the Company at its principal place of business and shall be mailed or delivered to the Optionee at the address on file

with the Company or, in either case, at such other address as one party may subsequently furnish to the other party in writing.

13. Governing Law and Venue. This Agreement shall be governed by and construed in accordance with the General Corporation Law of the State of Delaware as to matters within the scope thereof, and as to all other matters shall be governed by and construed in accordance with the internal laws of the State of Delaware, without regard to conflict of law principles that would result in the application of any law other than the law of the State of Delaware. For purposes of any action, lawsuit or other proceedings brought to enforce this Agreement, relating to it, or arising from it, the parties hereby irrevocably consent to the exclusive jurisdiction and venue of the state and federal courts located in the state of Delaware.

14. Compliance with Law. Notwithstanding any other provision of the Plan or this Agreement, unless there is an available exemption from any registration, qualification or other legal requirement applicable to the shares of Stock, the Company shall not be required to permit the exercise of this Stock Option and/or deliver any shares of Stock prior to the completion of any registration or qualification of the shares of Stock under any U.S. or non-U.S. local, state or federal securities or exchange control law or under rulings or regulations of the U.S. Securities and Exchange Commission ("SEC") or of any other governmental regulatory body, or prior to obtaining any approval or other clearance from any local, state, federal or foreign governmental agency, which registration, qualification or approval the Company shall, in its absolute discretion, deem necessary or advisable. The Optionee understands that the Company is under no obligation to register or qualify the shares of Stock with the SEC or any U.S. state or non-U.S. securities commission or to seek approval or clearance from any governmental authority for the issuance or sale of the shares of Stock subject to this Stock Option. Further, the Optionee agrees that the Company shall have unilateral authority to amend this Agreement without the Optionee's consent to the extent necessary to comply with securities or other laws applicable to issuance of the shares of Stock subject to the Stock Option.

15. Electronic Delivery and Participation. The Company may, in its sole discretion, decide to deliver any documents related to current or future participation in the Plan by electronic means. The Optionee hereby consents to receive such documents by electronic delivery and agrees to participate in the Plan through an on-line electronic system established and maintained by the Company or a third party designated by the Company.

16. Language. The Optionee acknowledges that he or she is sufficiently proficient in English, or has consulted with an advisor who is sufficiently proficient in English, so as to allow the Optionee to understand the terms and conditions of this Agreement. If the Optionee has received this Agreement or any other document related to the Plan translated into a language other than English and if the meaning of the translated version is different than the English version, the English version will control.

17. Addendum. Notwithstanding any provisions in this Non-Qualified Stock Option Agreement for Non-U.S. Optionees, the Stock Option shall be subject to any additional terms and conditions for the Optionee's country set forth in the Addendum attached hereto. Moreover, if the Optionee relocates to one of the countries included in the Addendum, the additional terms and conditions for such country, if any, will apply to the Optionee, to the extent the Company

determines that the application of such terms and conditions is necessary or advisable for legal or administrative reasons. The Addendum constitutes part of this Agreement.

18. Imposition of Other Requirements. The Company reserves the right to impose other requirements on the Optionee's participation in the Plan, on the Stock Option and on the shares of Stock acquired upon exercise of the Stock Option, to the extent the Company determines it is necessary or advisable for legal or administrative reasons, and to require the Optionee to sign any additional agreements or undertakings that may be necessary to accomplish the foregoing.

19. Waiver. The Optionee acknowledges that a waiver by the Company of breach of any provision of this Agreement shall not operate or be construed as a waiver of any other provision of this Agreement, or of any subsequent breach by the Optionee or any other Optionee.

20. Severability. The provisions of this Agreement are severable and if any one or more provisions are determined to be illegal or otherwise unenforceable, in whole or in part, the remaining provisions shall nevertheless be binding and enforceable.

21. Insider Trading Restrictions/Market Abuse Laws. The Optionee acknowledges that, depending on his or her country, the Optionee may be subject to insider trading restrictions and/or market abuse laws in applicable jurisdictions, which may affect his or her ability to acquire, sell or attempt to sell shares of Stock or rights to shares of Stock (e.g., the Stock Option) under the Plan during such times as the Optionee is considered to have "inside information" regarding the Company (as defined by laws in the applicable jurisdiction or the Optionee's country). Any restrictions under these laws or regulations are separate from and in addition to any restrictions that may be imposed under any applicable Company insider trading policy. The Optionee acknowledges that it is his or her responsibility to comply with any applicable restrictions as well as any applicable Company insider trading policy, and the Optionee is advised to speak to his or her personal advisor on this matter.

22. Foreign Asset/Account Reporting Requirements. The Optionee acknowledges that there may be certain foreign asset and/or account reporting requirements which may affect the Optionee's ability to acquire or hold the shares of Stock acquired under the Plan or cash received from participating in the Plan (including from any dividends paid on the shares of Stock acquired under the Plan) in a brokerage or bank account outside the Optionee's country. The Optionee may be required to report such accounts, assets or transactions to the tax or other authorities in his or her country. The Optionee also may be required to repatriate sale proceeds or other funds received as a result of participating in the Plan to the Optionee's country through a designated bank or broker within a certain time after receipt. The Optionee acknowledges that it is his or her responsibility to be compliant with such regulations, and the Optionee is advised to speak to his or her personal advisor on this matter.

PLUG POWER INC.

By: _____
Title: _____

The foregoing Agreement (including the Addendum attached hereto) is hereby accepted and the terms and conditions thereof hereby agreed to by the undersigned. Electronic acceptance of this Agreement pursuant to the Company's instructions to the Optionee (including through an online acceptance process) is acceptable.

Dated: _____
Optionee's Signature _____

Optionee's name and address:

**ADDENDUM
TO
NON-QUALIFIED STOCK OPTION AGREEMENT
FOR NON-U.S. OPTIONEES
UNDER THE PLUG POWER INC.
2021 STOCK OPTION AND INCENTIVE PLAN**

Certain capitalized terms used but not defined in this Addendum shall have the meanings set forth in the Plan or the Non-Qualified Stock Option Agreement for Non-U.S. Optionees (the “Option Agreement”).

Terms and Conditions

This Addendum includes additional terms and conditions that govern the Optionee’s Stock Option if the Optionee resides and/or works in one of the countries listed below. If the Optionee is a citizen or resident of a country (or is considered as such for local law purposes) other than the country in which the Optionee is currently residing and/or working, or if the Optionee relocates to another country after the grant of the Stock Option, the Company shall, in its discretion, determine to what extent the additional terms and conditions contained herein will be applicable to the Optionee.

Notifications

This Addendum also includes information regarding securities, exchange control, tax and certain other issues of which the Optionee should be aware with respect to the Optionee’s participation in the Plan. The information is based on the exchange control, securities, tax and other laws in effect in the countries listed in this Addendum, as of April 2022. Such laws are often complex and change frequently. As a result, the Optionee should not rely on the notifications herein as the only source of information relating to the consequences of the Optionee’s participation in the Plan because the information may be outdated when the Optionee exercises the Stock Option and acquires shares of Stock, or when the Optionee subsequently sells shares of Stock acquired under the Plan.

In addition, the information is general in nature and may not apply to the Optionee’s particular situation, and the Company is not in a position to assure the Optionee of any particular result. Accordingly, the Optionee is advised to seek appropriate professional advice as to how the relevant laws in the Optionee’s country may apply to the Optionee’s individual situation.

Finally, if the Optionee is a citizen or resident (or is considered as such for local tax purposes) of a country other than the one in which the Optionee is currently residing and/or working, or if the Optionee moves or transfers to another country after the grant of Stock Option, the information contained herein may not be applicable to the Optionee in the same manner.

AUSTRALIA

Notifications

Australian Offer Document. The Company is pleased to provide the Optionee with this offer to participate in the Plan. This offer document sets out information regarding the Stock Option granted under the Plan for Australian resident employees or Consultants of the Company and its Affiliates (the “Australian Participants”). This information is provided by the Company to ensure compliance of the offer with Australian Securities and Investments Commission (“ASIC”) Class Order 14/1000, ASIC Regulatory Guide 49 and relevant provisions of the *Corporations Act 2001*.

In addition to the information set out in this Agreement, the Optionee is also being provided with copies of the following documents:

- a. the Plan;
- b. the Plan prospectus; and
- c. the [Employee Information Supplement –Stock Options – Australia]

(collectively, the “Additional Documents”).

The Additional Documents provide further information to help the Australian Participants make an informed decision about participating in the Plan. Neither the Plan nor the Plan prospectus is a prospectus for purposes of the *Corporations Act 2001*.

The Australian Participant should not rely upon any oral statements made in relation to this offer. The Australian Participant should only rely upon the statements contained in this Agreement and the Additional Documents when considering participation in the Plan.

General Information Only. The information herein is general information only. It is not advice or information that takes into account the Australian Participant’s objectives, financial situation and needs.

The Australian Participant should consider obtaining his or her own financial product advice from a person who is licensed by ASIC to give such advice.

Risk Factors. Investment in shares of Stock involves a degree of risk. If the Australian Participant elects to participate in the Plan, he or she should monitor his or her participation and consider all risk factors relevant to the settlement of this Stock Option or issuance of shares of Stock under the Plan as set forth below and in the Additional Documents.

The Australian Participant should have regard to risk factors relevant to investment in securities generally and, in particular, to holding shares of Stock of the Company. For example, the value at which an individual share is quoted on the Nasdaq Capital Market (“Nasdaq”) may increase or decrease due to a number of factors. There is no guarantee that the value of a share will increase. Factors that may affect the value of an individual share of Stock include fluctuations in the domestic and international market for listed stocks, general economic conditions, including interest rates, inflation rates, commodity and oil prices, changes to government fiscal, monetary or

regulatory policies, legislation or regulation, the nature of the markets in which the Company operates and general operational and business risks.

More information about potential factors that could affect the Company's business and financial results will be included in the Company's most recent Annual Report on Form 10-K and the Company's Quarterly Report on Form 10-Q filed with the U.S. Securities Exchange Commission. Copies of these reports are available at <http://www.sec.gov/>, on the Company's "Investor Relations" page at <https://www.ir.plugpower.com/Financial-Information/SEC-Filings/default.aspx>, and upon request to the Company.

In addition, the Australian Participant should be aware that the Australian dollar ("AUD") value of any shares of Stock acquired under the Plan will be affected by the USD/AUD exchange rate. Participation in the Plan involves certain risks related to fluctuations in this rate of exchange.

Common Stock in a U.S. Corporation. Common stock of a U.S. corporation is analogous to ordinary shares of an Australian corporation. Each holder of a share of Stock is entitled to one vote. Further, shares of Stock are not liable to any further calls for payment of capital or for other assessment by the Company and have no sinking fund provisions, pre-emptive rights, conversion rights or redemption provisions.

Ascertaining the Market Value of Shares. The Australian Participant may ascertain the current market value of an individual share of Stock as traded on the Nasdaq under the symbol "PLUG" at: <https://www.nasdaq.com/symbol/plug>. The AUD equivalent of that value can be obtained at: <https://www.rba.gov.au/statistics/frequency/exchange-rates.html>.

Please note this will not be a prediction of the market value of an individual share of Stock when such shares of Stock are vested or issued under the Plan or of the applicable exchange rate on the vesting date or the date the shares of Stock are issued.

Exchange Control Information. Exchange control reporting is required for cash transactions exceeding AUD10,000 and for international fund transfers. If an Australian bank is assisting with the transaction, the bank will file the report on the Optionee's behalf.

Tax Information. Subdivision 83A-C of the Income Tax Assessment Act 1997 (Cth) applies to this Stock Option granted under the Plan, such that this Stock Option is intended to be subject to deferred taxation.

BELGIUM

Notifications

Foreign Asset / Account Reporting Information. Belgian residents are required to report any securities (e.g., shares of Stock acquired under the Plan) held and bank accounts (including brokerage accounts) opened and maintained outside of Belgium on their annual tax return. In a separate report, the resident is required to provide the National Bank of Belgium with the account details of any such foreign accounts (including the account number, bank name and country in

which such account was opened). This report, as well as information on how to complete it, can be found on the website of the National Bank of Belgium, www.nbb.be, under the *Kredietcentrales / Centrales des crédits* caption.

Securities Tax Information. An annual securities tax may be payable if the total value of securities held in a Belgian or foreign securities account (*e.g.*, shares of Stock acquired under the Plan) exceeds €1,000,000 threshold on four reference dates within the relevant reporting period (*i.e.*, March 31, June 30, September 30 and December 31). In such case, the tax will be due on the value of the qualifying securities held in such account. The Optionee should consult with his or her personal tax advisor regarding the securities tax.

Stock Exchange Tax Information. A stock exchange tax applies to transactions executed by a Belgian resident through a non- Belgian financial intermediary, such as a U.S. broker. The stock exchange tax likely will apply when shares of Stock acquired under the Plan are sold. The Optionee should consult with his or her tax or financial advisor for additional details on his or her obligations with respect to the stock exchange tax.

BRAZIL

Terms and Conditions

Compliance with Law. By accepting this Stock Option, the Optionee agrees to comply with all applicable Brazilian laws and pay any and all applicable Tax-Related Items associated with the exercise of this Stock Option and the issuance and/or sale of shares of Stock acquired under the Plan or the receipt of dividends.

Labor Law Acknowledgment. By accepting this Stock Option, the Optionee understands, acknowledges and agrees that, for all legal purposes (i) the Optionee is making an investment decision, (ii) this Stock Option may be exercised by the Optionee only if the vesting conditions are met, and (iii) the value of the underlying shares of Stock is not fixed and may increase or decrease in value over the term of this Stock Option without compensation to the Optionee.

Notifications

Foreign Asset / Account Reporting Information. If the Optionee is a resident of, or domiciled in, Brazil, the Optionee will be required to submit an annual declaration of assets and rights held outside of Brazil to the Central Bank of Brazil if the aggregate value of such assets and rights is equal to or greater than US\$1,000,000. The assets and rights that must be reported include shares of Stock acquired under the Plan and may include this Stock Option.

Tax on Financial Transaction (IOF). Payments to foreign countries and repatriation of funds into Brazil (including proceeds from the sale of shares of Stock) and the conversion of USD into BRL associated with such fund transfers may be subject to the Tax on Financial Transactions. Brazilian residents must comply with any applicable Tax on Financial Transactions arising from participation in the Plan. Brazilian residents should consult with their personal tax advisor for additional details.

FRANCE

Terms and Conditions

Type of Award. The Stock Option granted is not a “French-qualified” award and is not intended to qualify for the specific tax and social security treatment applicable to shares of Stock granted for no consideration under Sections L. 225-177 to L. 225-186 and Sections L. 22-10-56 to L. 22-10-58 of the French Commercial Code, as amended.

Consent to Receive Information in English. By accepting the Stock Option, the Optionee confirms having read and understood the documents relating to this grant (the Plan and this Agreement), including all terms and conditions included therein, which were provided in the English language. The Optionee accepts the terms and conditions of these documents accordingly.

Consentement relatif à la réception d'informations en langue anglaise. En acceptant l'Option d'Achat d'Actions, le Bénéficiaire de l'Option confirme avoir lu et compris les documents relatifs à cette attribution (le Plan et le présent Contrat d'Attribution), y compris les termes et conditions de ces documents, qui ont été communiqués en langue anglaise. Le Bénéficiaire de l'Option accepte les termes et conditions de ces documents en connaissance de cause.

Notifications

Exchange Control Information. The value of any cash or securities imported to or exported from France without the use of a financial institution must be reported to the customs and excise authorities when the value of such cash or securities is equal to or greater than a certain amount. The Optionee should consult with his or her personal financial advisor for further details regarding this requirement.

Foreign Asset/Account Reporting Information. The Optionee is required to report all foreign accounts (whether open, current or closed) to the French tax authorities when filing his or her annual tax return.

GERMANY

Notifications

Exchange Control Information. Cross-border payments and certain other transactions with a value in excess of €12,500 must be reported monthly to the German Federal Bank (*Bundesbank*). In case of payments in connection with securities (including proceeds realized upon the sale of shares of Stock or from the receipt of any dividends paid on such shares of Stock), the report must be made by the 5th day of the month following the month in which the payment was received. The report must be filed electronically. The form of report (“*Allgemeines Meldeportal Statistik*”) can be accessed via the Bundesbank’s website (www.bundesbank.de) and is available in both German and English. In addition, the Optionee may be required to report the acquisition of shares of Stock to the Bundesbank via email or telephone if the value of the shares of Stock acquired exceeds €12,500. The Optionee is responsible for complying with applicable reporting requirements and

should consult with his or her advisor or directly with the Bundesbank as to the transactions that trigger a reporting obligation.

Foreign Asset / Account Reporting Information. If the Optionee's acquisition of shares of Stock under the Plan leads to a so-called qualified participation at any point during the calendar year, the Optionee will need to report the acquisition when the Optionee files his or her tax return for the relevant year. A qualified participation is attained only if (i) the Optionee owns at least 1% of the Company and the value of the shares acquired exceeds €150,000 or (ii) the Optionee holds shares exceeding 10% of the Company's total Stock.

INDIA

Notifications

Exchange Control Information. The Optionee understands that he or she must repatriate any proceeds from the sale of shares of Stock acquired under the Plan to India or the receipt of any dividends paid on such shares of Stock within such period as prescribed by applicable regulations, as may be amended from time to time. The Optionee will receive a foreign inward remittance certificate ("FIRC") from the bank where he or she deposits the foreign currency. The Optionee should maintain the FIRC as evidence of the repatriation of funds in the event the Reserve Bank of India, the Company or an Affiliate requests proof of repatriation. It is the Optionee's responsibility to comply with applicable exchange control laws in India.

Foreign Asset / Account Reporting Information. The Optionee is required to declare the Optionee's foreign bank accounts and any foreign financial assets (including shares of Stock held outside India) in his or her annual tax return. It is the Optionee's responsibility to comply with this reporting obligation and the Optionee should consult with his or her personal tax advisor in this regard.

ITALY

Terms and Conditions

Plan Document Acknowledgement. By accepting this Stock Option, the Optionee acknowledges that he or she has received a copy of the Plan, has reviewed the Plan and the Agreement in their entirety and fully understands and accepts all provisions of the Plan and the Agreement.

The Optionee further acknowledges that he or she has read and specifically and expressly approves the following clauses in the Option Agreement: Section 3 (Termination of Service Relationship); Section 6 (Responsibility for Taxes); Section 7 (Nature of Grant); Section 8 (No Advice Regarding Grant); Section 9 (No Obligation to Continue Service Relationship); Section 11 (Data Privacy Consent); Section 13 (Governing Law and Venue); Section 15 (Electronic Delivery and Participation); Section 16 (Language); Section 17 (Addendum) and Section 18 (Imposition of Other Requirements).

Notifications

Foreign Asset / Account Reporting Information. If the Optionee is an Italian resident and, during any fiscal year, holds investments or financial assets outside of Italy (e.g., cash, shares of Stock) which may generate income taxable in Italy (or if the Optionee is the beneficial owner of such an investment or asset even if he or she does not directly hold the investment or asset), the Optionee is required to report such investments or assets on his or her annual tax return for such fiscal year (on UNICO Form, RW Schedule, or on a special form if the Optionee is not required to file a tax return).

Foreign Financial Assets Tax Information. The fair market value of any shares of Stock held outside of Italy is subject to a foreign assets tax. Financial assets include shares of Stock acquired under the Plan. The taxable amount will be the fair market value of the financial assets assessed at the end of the calendar year. The Optionee should consult with his or her personal tax advisor about the foreign financial assets tax.

MALAYSIA

Notifications

Data Privacy Notice. The following provision replaces Section 11 of the Option Agreement:²

The Optionee hereby explicitly and unambiguously consents to the collection, use and transfer, in electronic or other form, of the Optionee's personal data as described in this Agreement by and among, as applicable, the Company, the Service Recipient and its other Affiliates for the exclusive purpose of implementing, administering and managing the Optionee's participation in the Plan.

The Optionee understands that the Company and the Service Recipient may hold certain personal information about the Optionee, including, but not limited to, the Optionee's name, home address and telephone number, date of birth, social insurance number or other identification number, salary, nationality, job title, any shares of Stock or directorships held in the Company, details of all Stock Options or any other entitlement to shares awarded, canceled, vested, unvested or outstanding in the Optionee's favor ("Data"), for the purpose

Peserta dengan ini secara eksplisit dan tanpa sebarang keraguan mengizinkan pengumpulan, penggunaan dan pemindahan, dalam bentuk elektronik atau lain-lain, data peribadi Peserta seperti yang diterangkan dalam Perjanjian Penganugerahan dan apa-apa bahan geran opsyen lain oleh dan di antara, seperti mana yang terpakai, Majikan, Syarikat dan Anak-Anak Syarikat Sekutunya untuk tujuan eksklusif bagi melaksanakan, mentadbir dan menguruskan penyertaan peserta dalam Pelan.

Peserta memahami bahawa Syarikat dan Majikan mungkin memegang maklumat peribadi tertentu tentang Peserta, termasuk, tetapi tidak terhad kepada, nama Peserta, alamat rumah dan nombor telefon, tarikh lahir, nombor insurans sosial atau nombor pengenalan lain, gaji, kewarganegaraan, jawatan, apa-apa syer dalam saham atau jawatan pengarah yang dipegang di Syarikat,

² **Note Plug Power:** The Malaysian translation will need to be updated.

of implementing, administering and managing the Plan.

The Optionee understands that Data will be transferred to Morgan Stanley and Broadridge Corporate Issuer Solutions, or such other stock plan service provider as may be selected by the Company in the future, which is assisting the Company with the implementation, administration and management of the Plan. The Optionee understands that the recipients of the Data may be located in the United States or elsewhere, and that the recipients' country (e.g., the United States) may have different data privacy laws and protections than the Optionee's country. The Optionee understands that he or she may request a list with the names and addresses of any potential recipients of the Data by contacting his or her local human resources representative [insert] at telephone number [insert].

The Optionee authorizes the Company, Morgan Stanley and Broadridge Corporate Issuer Solutions and any other possible recipients which may assist the Company (presently or in the future) with implementing, administering and managing the Plan to receive, possess, use, retain and transfer the Data, in electronic or other form, for the sole purpose of implementing, administering and managing the Optionee's participation in the Plan. The Optionee understands that Data will be held only as long as is necessary to implement, administer and manage the Optionee's participation in the Plan. The Optionee understands that he or she may, at any time, view Data, request additional information about the storage and processing of Data, require any necessary amendments to Data or refuse or withdraw the consents herein, in any case without cost, by contacting in writing his or her local human resources representative. Further, the Optionee understands that he or she is providing the consents herein on a purely voluntary basis. If the Optionee does not consent, or later seeks

butir-butir semua opsyen atau apa-apa hak lain atas syer dalam saham biasa yang dianugerahkan, dibatalkan, dilaksanakan, terletak hak, tidak diletak hak ataupun yang belum dijelaskan bagi faedah Peserta ("Data"), untuk tujuan eksklusif bagi melaksanakan, mentadbir dan menguruskan Pelan.

Peserta memahami bahawa Data akan dipindahkan kepada Morgan Stanley and Broadridge Corporate Issuer Solutions, atau pembekal perkhidmatan pelan saham yang mungkin ditetapkan oleh Syarikat pada masa depan yang membantu Syarikat dengan pelaksanaan, pentadbiran dan pengurusan Pelan. Peserta memahami bahawa penerima-penerima Data mungkin berada di Amerika Syarikat atau mana-mana tempat lain dan bahawa negara penerima-penerima (contohnya di Amerika Syarikat) mungkin mempunyai undang-undang privasi data dan perlindungan yang berbeza daripada negara Peserta. Peserta memahami bahawa Peserta boleh meminta satu senarai yang mengandungi nama dan alamat penerima-penerima Data yang berpotensi dengan menghubungi wakil sumber manusia tempatan Peserta [insert], T: [insert].

Peserta memberi kuasa kepada Syarikat, Morgan Stanley and Broadridge Corporate Issuer Solutions dan mana-mana penerima-penerima lain yang mungkin membantu Syarikat (pada masa sekarang atau pada masa depan) dengan melaksanakan, mentadbir dan menguruskan Pelan untuk menerima, memiliki, menggunakan, mengekalkan dan memindahkan Data, dalam bentuk elektronik atau lain-lain, semata-mata dengan tujuan untuk melaksanakan, mentadbir dan menguruskan penyertaan Peserta dalam Pelan. Peserta memahami bahawa Data hanya akan disimpan untuk tempoh yang perlu bagi melaksanakan, mentadbir, dan menguruskan penyertaan Peserta dalam Pelan. Peserta memahami bahawa Peserta boleh, pada bila-

to revoke his or her consent, the Optionee's employment status or service and career with the Company or its Affiliate will not be affected; the only consequence of refusing or withdrawing consent is that the Company would not be able to grant the Optionee Stock Options or other equity awards or administer or maintain such awards. Therefore, the Optionee understands that refusing or withdrawing consent may affect the Optionee's ability to participate in the Plan. For more information on the consequences of the Optionee's refusal to consent or withdrawal of consent, the Optionee understands that he or she may contact his or her local human resources representative.

bila masa, melihat Data, meminta maklumat tambahan mengenai penyimpanan dan pemprosesan Data, meminta bahawa pindaan-pindaan dilaksanakan ke atas Data atau menolak atau menarik balik persetujuan dalam ini, dalam mana-mana kes, tanpa kos, dengan menghubungi secara bertulis wakil sumber manusia tempatan Peserta . Peserta selanjutnya memahami bahawa Peserta memberi persetujuan ini secara sukarela. Sekiranya Peserta tidak bersetuju, atau kemudian membatalkan persetujuan Peserta , status pekerjaan atau perkhidmatan dan kerjaya Peserta dengan Majikan tidak akan terjejas; satunya akibat jika Peserta tidak bersetuju atau menarik balik persetujuan Peserta adalah bahawa Syarikat tidak akan dapat menganugerahkan kepada RSUs atau anugerah ekuiti lain atau mentadbir atau mengekalkan anugerah tersebut. Oleh itu, Peserta memahami bahawa keengganan atau penarikan balik persetujuan Peserta boleh menjejaskan keupayaan Peserta untuk mengambil bahagian dalam Pelan. Untuk maklumat lanjut mengenai akibat keengganan Peserta untuk memberikan keizinan atau penarikan balik keizinan, Peserta boleh menghubungi wakil sumber manusia tempatan.

Director Notification Obligation. If the Optionee is a director of a Malaysian Affiliate, the Optionee is subject to certain notification requirements under the Malaysian Companies Act. Among these requirements is an obligation to notify the Malaysian Affiliate in writing when the Optionee receives or disposes of an interest (e.g., Stock Option or shares of Stock) in the Company or any related company. Such notifications must be made within 14 days of receiving or disposing of any interest in the Company or any related company.

NETHERLANDS

There are no country-specific provisions.

NORWAY

Notifications

Foreign Asset / Account Reporting Information. The Optionee may be subject to foreign asset reporting as part of his or her ordinary tax return. Norwegian banks, financial institutions, limited companies, etc. must report certain information to the Tax Administration. Such information may then be pre-completed in the Optionee's tax return. However, if the Optionee has traded, or is the owner of, financial instruments (e.g., shares of Stock acquired under the Plan) not pre-completed in his or her tax return, the Optionee must enter this information in the Form RF-1159, which is an appendix to the tax return.

OMAN

Notifications

Securities Law Information. The Plan does not constitute the marketing or offering of securities in Oman and consequently has not been registered or approved by the Central Bank of Oman, the Omani Ministry of Commerce and Industry, the Omani Capital Market Authority or any other authority in the Sultanate of Oman. Offerings under the Plan are being made only to eligible employees or Consultants of the Company or its Affiliates.

POLAND

Notifications

Exchange Control Information. If the Optionee maintains bank or brokerage accounts holding cash and foreign securities (including shares of Stock) outside of Poland, he or she will be required to report information to the National Bank of Poland on transactions and balances in such accounts if the value of such cash and securities (calculated individually or together with all other assets/liabilities held abroad) exceeds PLN 7 million. If required, such reports must be filed on special forms available on the website of the National Bank of Poland. The Optionee should consult with his or her personal legal advisor to determine whether the Optionee will be required to submit reports to the National Bank of Poland. Further, the Optionee acknowledges that any transfer of funds in excess of a certain threshold (currently €15,000 unless the transfer of funds is considered to be connected with the business activity of an entrepreneur, in which case a lower threshold may apply) into or out of Poland must be effected through a bank account in Poland. The Optionee understands that he or she is required to store all documents connected with any foreign exchange transactions the Optionee engages in for a period of five years, as measured from the end of the year in which such transaction occurred.

SOUTH AFRICA

Terms and Conditions

Responsibility for Taxes. The following provision supplements Section 6 of the Option Agreement:

By accepting this Stock Option, the Optionee agrees that, immediately upon exercise of this Stock Option, the Optionee will notify the Company or the Service Recipient of the amount of any gain

realized. If the Optionee fails to advise the Company or the Service Recipient of the gain realized upon vesting and settlement, the Optionee may be liable for a fine. The Optionee will be solely responsible for paying any difference between the Optionee's actual tax liability and the amount withheld by the Company or the Service Recipient.

Notifications

Exchange Control Information. If the Optionee is a South African resident, he or she should consult his or her personal advisor to ensure compliance with applicable exchange control regulations in South Africa, as such regulations are subject to frequent change. The Optionee is solely responsible for complying with all exchange control laws in South Africa, and neither the Company nor the Service Recipient nor any other Affiliate will be liable for any fines or penalties resulting from the Optionee's failure to comply with South African exchange control laws.

Securities Law Information and Deemed Acceptance of Stock Options.³ Neither this Stock Option nor the underlying shares of Stock shall be publicly offered or listed on any stock exchange in South Africa. The offer is intended to be private pursuant to Section 96(1)(g)(ii) of the Companies Act, 71 of 2008 (the "Companies Act") and is not subject to the supervision of any South African governmental authority.

Pursuant to Section 96(1)(g)(ii) of the Companies Act, this Stock Option offer must be finalized within six (6) months following the date the offer is communicated to the Optionee. If the Optionee does not want to accept this Stock Option, the Optionee is required to decline this Stock Option no later than the six (6) months following the date the offer is communicated to the Optionee. If the Optionee does not reject this Stock Option within six (6) months following the date the offer is communicated to the Optionee, the Optionee will be deemed to accept this Stock Option.

SOUTH KOREA

Notifications

Foreign Asset / Account Reporting Information. Korean residents must declare all foreign financial accounts (e.g., non-Korean bank accounts, brokerage accounts, etc.) to the Korean tax authority and file a report with respect to such accounts if the value of such accounts exceeds KRW 500 million (or an equivalent amount in foreign currency). The Optionee should consult with his or her personal tax advisor to determine how to value the Optionee's foreign accounts for purposes of this reporting requirement and whether the Optionee is required to file a report with respect to such accounts.

³ **Note to Plug Power:** This assumes that Plug Power can rely on the Section 96 small offering exemption. An offering will qualify under the Section 96 small offering exemption if provided that only one offer is made in any 12-month period, the offer is made to no more than 50 persons, and the securities are issued within six months of the offer date (this last requirement likely is met if the awards are accepted within six months of the offer date). In addition, no advertising is allowed and the aggregate "subscription price" must not exceed ZAR1,000,000.

SPAIN

Terms and Conditions

Labor Law Acknowledgement. The following provisions supplement Sections 3, 7 and 9 of the Option Agreement.

By accepting this Stock Option, the Optionee acknowledges that he or she consents to participation in the Plan and has received a copy of the Plan and the Agreement.

The Optionee understands that the Company has unilaterally, gratuitously and discretionally decided to grant Stock Options under the Plan to individuals who may be employees or Consultants of the Company or its Affiliates throughout the world. The decision is a limited decision that is entered into upon the express assumption and condition that any grant will not economically or otherwise bind the Company or any of its Affiliates. Consequently, the Optionee understands that this Stock Option is granted on the assumption and condition that this Stock Option and the shares of Stock acquired pursuant to this Stock Option shall not become a part of any employment or other service contract (either with the Company or any of its Affiliates) and shall not be considered a mandatory benefit, salary for any purposes (including severance compensation) or any other right whatsoever. Further, the Optionee understands and freely accepts that there is no guarantee that any benefit whatsoever shall arise from any gratuitous and discretionary award since the future value of this Stock Option and underlying shares of Stock is unknown and unpredictable. In addition, the Optionee understands that this grant of Stock Option would not be made to the Optionee but for the assumptions and conditions referred to herein; thus, the Optionee acknowledges and freely accepts that should any or all of the assumptions be mistaken or should any of the conditions not be met for any reason, then any grant of or right to this Stock Option shall be null and void.

The Optionee understands and agrees that, as a condition of the grant of this Stock Option the Optionee's termination of Service Relationship for any reason other than as set forth in Section 1 of the Option Agreement (including for the reasons listed below) will automatically result in the loss of this Stock Option to the extent this Stock Option has not vested as of the date of the Optionee's termination of Service Relationship. This will be the case, for example, even if (i) the Optionee is considered to be unfairly dismissed without good cause (*i.e.*, subject to a "*despido improcedente*"); (ii) the Optionee is dismissed for disciplinary or objective reasons or due to a collective dismissal; (iii) the Optionee's Service Relationship terminates due to a change of work location, duties or any other employment or contractual condition; (iv) the Optionee's Service Relationship terminates service due to a unilateral breach of the Optionee's contract by the Company or an Affiliate; or (v) the Optionee's Service Relationship terminates for any other reason whatsoever. Consequently, upon termination of the Service Relationship for any of the above reasons, he or she may automatically lose any rights to this Stock Option that were not vested on the date of his or her termination of Service Relationship, as described in the Plan and this Agreement. The Optionee acknowledges that he or she has read and specifically accepts the conditions referred to in Sections 2, 3, 7(j) and 9 of the Option Agreement.

Notifications

Exchange Control Information. If the Optionee acquires shares of Stock under the Plan, the Optionee must declare the shares for statistical purposes to the *Dirección General de Comercio e Inversiones* (“DGCI”) of the Ministry of Economy and Competitiveness. The Optionee must also declare ownership of any shares of Stock each January for shares of Stock owned as of December 31st of the prior year by filing a Form D-6 with the Directorate of Foreign Transactions. In addition, the acquisition or sale of shares of Stock during the prior year must also be declared on Form D-6 filed with the DGCI in January, unless the value of the shares of Stock acquired or the proceeds from the sale of shares of Stock exceed the applicable threshold (currently €1,502,530) or the Optionee holds 10% or more of the share capital of the Company, in which case, the filing is due within one month after the acquisition or sale, as applicable.

Foreign Asset / Account Reporting Information. If the Optionee holds assets (e.g., shares of Stock or cash) in a bank or brokerage account outside of Spain with a value in excess of €50,000 per type of asset (e.g., shares of Stock, cash, etc.) as of December 31 each year, the Optionee will be required to report information on such assets on his or her annual tax return for such year. After such assets are initially reported, the reporting obligation will only apply for subsequent years if the value of a category of any previously- reported assets increases by more than €20,000, if the shares of Stock are transferred or if a bank account is closed. It is the Optionee’s responsibility to comply with these reporting obligations, and the Optionee should consult with his or her personal tax and legal advisors in this regard.

Further, the Optionee will be required to electronically declare to the Bank of Spain any securities accounts (including brokerage accounts) held abroad, as well as the securities (including shares of Stock acquired under the Plan) held in such accounts if the value of the transactions for all such accounts during the prior tax year or the balances in such accounts as of December 31 of the prior tax year exceeds €1,000,000.

Securities Law Information. This Stock Option and the shares of Stock do not qualify under Spanish law as securities. No “offer to the public,” as defined under Spanish law, has taken place or will take place in the Spanish territory. Neither the Plan nor the Agreement have been registered with the *Comisión Nacional del Mercado de Valores* and they do not constitute a public offering prospectus.

UNITED ARAB EMIRATES

Notifications

Securities Law Information. Participation in the Plan is being offered only to eligible employees or Consultants and is in the nature of providing equity incentives to employees or Consultants in the United Arab Emirates. The Plan and the Agreement are intended for distribution only to such employees and Consultants and must not be delivered to, or relied on by, any other person. Prospective purchasers of the securities offered should conduct their own due diligence on the securities. The Emirates Securities and Commodities Authority has no responsibility for reviewing or verifying any documents in connection with the Plan. Neither the Ministry of Economy nor the

Dubai Department of Economic Development has approved the Plan or the Agreement nor taken steps to verify the information set out therein, and has no responsibility for such documents.

UNITED KINGDOM

Terms and Conditions⁴

Responsibility for Taxes. The following provisions supplement Section 6 of the Option Agreement:

Without limitation to Section 6 of the Option Agreement, the Optionee agrees that he or she is liable for all Tax-Related Items and hereby covenants to pay all such Tax-Related Items as and when requested by the Company, the Service Recipient or by Her Majesty's Revenue and Customs' ("HMRC") (or any other tax authority or any other relevant authority). The Optionee also agrees to indemnify and keep indemnified the Company and the Service Recipient against any Tax-Related Items that they are required to pay or withhold or have paid or will pay to HMRC (or any other tax authority or any other relevant authority) on his or her behalf. For the purposes of this Agreement, Tax-Related Items include (without limitation) employment income tax, employee National Insurance Contributions ("NICs") and the employee portion of the Health and Social Care levy.

Notwithstanding the foregoing, if the Optionee is a director or an executive officer of the Company (within the meaning of Section 13(k) of the Exchange Act), the terms of the immediately foregoing provision may not apply in case the indemnification is viewed as a loan. In such case, the amount of any uncollected income tax may constitute an additional benefit to the Optionee on which additional income tax and NICs may be payable. The Optionee will be responsible for reporting and paying any income tax due on this additional benefit directly to HMRC under the self-assessment regime and for reimbursing the Company or the Service Recipient (as applicable) for the value of any employee NICs due on this additional benefit, which the Company and/or the Service Recipient may recover at any time thereafter by any of the means referred to in Section 6 of the Option Agreement.

⁴ **Note to Plug Power:** Legislation provides that an employer and award recipient may jointly elect to have the award recipient pay all or part of the employer's national insurance contribution ("NIC") liability upon vesting. Evaluate interest in shifting employer NIC liability.

I, Andrew Marsh, certify that:

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

Date: November 8, 2022

by: /s/ Andrew Marsh
Andrew Marsh
Chief Executive Officer

I, Paul B. Middleton, certify that:

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

Date: November 8, 2022

by: /s/ Paul B. Middleton
Paul B. Middleton
Chief Financial Officer

CERTIFICATION PURSUANT TO

18 U.S.C. SECTION 1350,

AS ADOPTED PURSUANT TO

SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Quarterly Report of Plug Power Inc. (the “Company”) on Form 10-Q for the period ending September 30, 2022 as filed with the Securities and Exchange Commission (the “SEC”) on the date hereof (the “Report”), I, Andrew Marsh, Chief Executive Officer of the Company, certify, solely pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that to my knowledge:

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

This certification is being furnished and not filed, and shall not be incorporated into any documents for any other purpose, under the Securities Exchange Act of 1934, as amended or the Securities Act of 1933, as amended. A signed original of this written statement required by § 906 has been provided to the Company and will be retained by the Company and furnished to the SEC or its staff upon request.

/s/ Andrew Marsh

Andrew Marsh

Chief Executive Officer

November 8, 2022

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

In connection with the Quarterly Report of Plug Power Inc. (the “Company”) on Form 10-Q for the period ending September 30, 2022 as filed with the Securities and Exchange Commission (the “SEC”) on the date hereof (the “Report”), I, Paul B. Middleton, Chief Financial Officer of the Company, certify, solely pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that to my knowledge:

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

This certification is being furnished and not filed, and shall not be incorporated into any documents for any other purpose, under the Securities Exchange Act of 1934, as amended or the Securities Act of 1933, as amended. A signed original of this written statement required by § 906 has been provided to the Company and will be retained by the Company and furnished to the SEC or its staff upon request.

/s/ Paul B. Middleton

Paul B. Middleton
Chief Financial Officer

November 8, 2022
