UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-K

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

For the fiscal year ended December 31, 2021

OR

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

for the transition period from _____ to _____

STEM, INC.

(Exact name of registrant as specified in its charter)

Delaware	**333-251397**	**85-1972187**
(State or Other Jurisdiction of Incorporation)	(Commission File Number)	(IRS Employer Identification No.)

100 California St., 14th Fl, San Francisco, California 94111

(Address of principal executive offices including zip code)

1-**877-374-7836**

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 $0.0001	**STEM**	**New York Stock Exchange**

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes ☐ No ☒

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Exchange Act. Yes ☐ No ☒

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

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

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

Large accelerated filer	☒	Accelerated filer	☐
Non-accelerated 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 has filed a report on and attestation to its management's assessment of the effectiveness of its internal control over financial reporting under Section 404(b) of the Sarbanes-Oxley Act (15 U.S.C. 7262(b)) by the registered public accounting firm that prepared or issued its audit report. ☐

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

As of June 30, 2021, the aggregate market value of the common stock of the registrant held by non-affiliates of the registrant was $4.998 billion.

As of February 17, 2022, the number of shares of common stock outstanding was 153,443,756.

DOCUMENTS INCORPORATED BY REFERENCE

Certain information required to be furnished pursuant to Part III of this Form 10-K is set forth in, and is incorporated by reference from, Stem's definitive proxy statement for its 2022 Annual Meeting of Stockholders, to be filed by Stem with the Securities and Exchange Commission ("SEC") pursuant to Regulation 14A within 120 days after December 31, 2021 (the "2022 Proxy Statement").

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Forward-Looking Statements

The discussions in this Annual Report on Form 10-K contain forward-looking statements reflecting our current expectations that involve risks and uncertainties. These forward-looking statements include, but are not limited to, statements concerning any potential future impact of the coronavirus disease ("COVID-19") pandemic on our business, our strategy, future operations, future financial position, future revenues, projected costs, profitability, expected cost reductions, capital adequacy, expectations regarding demand and acceptance for our technologies, growth opportunities and trends in the market in which we operate, prospects and plans and objectives of management. The words "anticipates," "believes," "could," "estimates," "expects," "intends," "may," "plans," "projects," "will," "would" and similar expressions are intended to identify forward-looking statements, although not all forward-looking statements contain these identifying words. We may not actually achieve the plans, intentions or expectations disclosed in our forward-looking statements and you should not place undue reliance on our forward-looking statements. Actual results or events could differ materially from the plans, intentions and expectations disclosed in the forward-looking statements that we make. These forward-looking statements involve risks and uncertainties that could cause our actual results to differ materially from those contemplated in the forward-looking statements, including, without limitation, the risks set forth in Part I, Item 1A, "Risk Factors" in this Annual Report on Form 10-K and in our other filings with the Securities and Exchange Commission. We do not assume any obligation to update any forward-looking statements after the date of this Report, except as required by law.

Part I.

ITEM 1. BUSINESS

Overview

Stem, Inc., a Delaware corporation (the "Company," "we," "us," or "our"), is a large, digitally connected, intelligent energy storage network provider, providing our customers (i) with an energy storage system, sourced from leading, global battery original equipment manufacturers ("OEMs"), that we deliver through our partners, including solar project developers and engineering, procurement and construction firms and (ii) through our Athena® artificial intelligence ("AI") platform ("Athena"), with ongoing software-enabled services to operate the energy storage systems for up to 20 years. In addition, in all the markets where we operate our customers' systems, we have agreements to manage the energy storage systems using our Athena platform to participate in energy markets and to share the revenue from such market participation.

We deliver our battery hardware and software-enabled services to our customers through our Athena platform. Our hardware and recurring software-enabled services mitigate customer energy costs through time-of-use and demand charge management innovations and a network of virtual power plants. The resulting network created by our growing customer base is designed to increase grid resilience and reliability through the real-time processing of market-based demand cycles, energy prices and other factors in connection with the deployment of renewable energy resources to such customers. Additionally, our energy storage solutions support renewable energy generation by alleviating grid intermittency issues and thereby reducing customer dependence on traditional, fossil fuel resources. As of December 31, 2021, Athena had accumulated more than 25.9 million runtime hours, which is equivalent to more than 2,900 years of operational experience, across hundreds of sites and customers in several utility territories across the U.S., Canada and Chile.

We believe that energy storage, which can instantly provide grid power 24x7, is a critical component of the global transition to renewable energy and a distributed energy infrastructure. As a result, there is rising demand for clean electric power solutions that can provide electric power with lower carbon emissions and high availability. One such solution is distributed, renewable generation, which is supplementing and replacing conventional generation sources, given its increasingly compelling economics. According to a September 23, 2020 report from Wood Mackenzie Energy Storage Service ("Wood Mackenzie"), since 2019, 90% of the new interconnection requests in the U.S. electrical markets were for installations of renewable energy assets. However, one of the principal challenges affecting the increased development of renewable energy assets is the intermittent capacity that solar and wind generation exhibit when integrating into electrical power networks. Energy storage helps mitigate intermittency by acting as an energy reserve in times when wind and solar generation is reduced, unavailable or offline, which is why as of November 21, 2021 Bloomberg New Energy Finance ("BNEF") forecasted energy storage solutions and services to represent a $1.2 trillion revenue opportunity on a cumulative basis through 2050.

The transition to renewable energy and a distributed energy infrastructure has resulted in an increase in the complexity and variability of end-customer electricity demand influenced by onsite generation and flexible sources of load. Accordingly, it has become nearly impossible to efficiently manage and operate businesses and the grid using a schedule based, human operated approach. Instead, the utilization of intelligent, responsive energy storage throughout the grid is required to provide the real-time balance necessary to support more distributed renewable assets, and we believe that Athena fulfills this vital need of a modern energy infrastructure. Athena unlocks the value of battery storage by providing energy forecasting, real-time energy

optimization and automated controls for our customers leveraging over 10 years of operational data and experience. By dispatching electricity to our Commercial & Industrial ("C&I") customers through our energy storage network during periods of peak power demand, we are able to reduce our customers' electricity expenses, improve the value of their energy usage and diminish their environmental impact. In addition, our energy storage network enables grid operators to decrease their reliance on conventional generation sources, thereby improving the resiliency of the electrical grid and enabling lower carbon emissions through the increased adoption of renewable generation sources.

We operate in two key areas within the energy storage landscape: Behind-the-Meter ("BTM") and Front-of-the-Meter ("FTM"). An energy system's position in relation to a customer's electric meter determines whether it is designated a BTM or FTM system. BTM systems installed at C&I customer locations generate energy that can be used on-site without interacting with the electric grid and passing through an electric meter. Our BTM systems are designed to reduce C&I customer energy bills and help our customers achieve their corporate environmental, social, and corporate governance ("ESG") objectives. FTM, grid-connected systems deliver power into the grid, which is often sold to off-site customers and must pass through an electric meter prior to reaching an end-user. Our FTM systems are designed to decrease risk for project developers, asset owners, independent power producers and investors by adapting to dynamic energy market conditions in connection with the deployment of electricity and improving the combined value of the solar renewable resource and energy storage over the course of their FTM system's useful life. As an early participant in the BTM market, we developed operational focus and technical capabilities that position us to have multiple product offerings and services in the evolving market for FTM energy storage services. We believe that Athena's ability to optimize operations in both the BTM and FTM markets is unique in the industry and provides us with a competitive advantage.

History

We were originally known as Star Peak Energy Transition Corp. ("STPK"), which was a special purpose acquisition company that completed its public offering on August 20, 2020. On April 28, 2021 (the "Closing Date"), we consummated a business combination (the "Merger") pursuant to an Agreement and Plan of Merger by and among STPK, STPK Merger Sub Corp., a Delaware corporation and wholly-owned subsidiary of STPK ("Merger Sub"), and Stem, Inc., a Delaware corporation ("Legacy Stem"). The Merger was effected on the Closing Date through the merger of the Merger Sub with and into Legacy Stem, with Legacy Stem surviving as a wholly-owned subsidiary of the Company. Legacy Stem was a private company and is considered the Company's accounting predecessor.

On June 30, 2021, we issued 4,683,349 shares of common stock (the "Exchange Shares") to Star Peak Sponsor LLC, a Delaware limited liability company ("STPK Sponsor"), and Star Peak Sponsor Warrantco LLC, a Delaware limited liability company (together with STPK Sponsor, the "Sellers"). The issuance was pursuant to an Exchange Agreement dated as of June 25, 2021 by and among us and the Sellers (the "Exchange Agreement"). Pursuant to the Exchange Agreement and in consideration of the issuance to the Sellers of the Exchange Shares, the Sellers exchanged 7,181,134 warrants originally issued to STPK Sponsor in a private placement that closed simultaneously with the STPK initial public offering. The Exchange Shares were issued in reliance upon the exemption provided by Section 3(a)(9) of the Securities Act of 1933, as amended (the "Securities Act").

On August 20, 2021, we issued an irrevocable notice for the redemption of all 12,786,129 of our outstanding public warrants at 5:00 p.m. Eastern time on September 20, 2021 (the "Redemption Date"). Pursuant to the notice of redemption, holders of public warrants exercised 12,638,723 public warrants for proceeds to us of $145.3 million, and we redeemed all remaining outstanding public warrants that had not been exercised as of 5:00 p.m. Eastern time on the Redemption Date. The public warrants have been delisted from the NYSE, and there are no public warrants left outstanding.

On November 22, 2021, we sold to Morgan Stanley & Co. LLC, Goldman Sachs & Co. LLC and Barclays Capital Inc, as initial purchasers (the "Initial Purchasers"), and the Initial Purchasers purchased from us, $460.0 million aggregate principal amount of our 0.50% Green Convertible Senior Notes due 2028 (the "2028 Convertible Notes"), pursuant to a purchase agreement dated as of November 17, 2021, by and between us and the Initial Purchasers. The Notes were offered in a private placement in reliance on Section 4(a)(2) of the Securities Act to the Initial Purchasers for initial resale to qualified institutional buyers pursuant to an exemption from registration provided by Rule 144A promulgated under the Securities Act. On November 17, 2021, in connection with the pricing of the Notes, and on November 19, 2021, in connection with the exercise in full by the Initial Purchasers of their option to purchase additional Notes, we entered into capped call transactions with certain of the Initial Purchasers of the Notes. The Company's net proceeds from this offering were approximately $445.7 million, after deducting the Initial Purchasers' discounts and commissions and the estimated offering expenses payable by us. We used approximately $66.7 million of the net proceeds to pay the cost of the capped call transactions.

On February 1, 2022, we completed the acquisition of 100% of the outstanding shares of AlsoEnergy Holdings, Inc. ("AlsoEnergy") for an aggregate purchase price of $695.0 million, consisting of approximately 75% in cash and approximately

25% in shares of the Company's common stock. The acquisition was structured on a cash-free, debt-free basis and subject to other customary adjustments as set forth in the purchase agreement.

The transaction combines our storage optimization capabilities with AlsoEnergy's solar asset performance monitoring and control software. We will complete our initial accounting for the acquisition during the first quarter of 2022.

Competitive Strengths

Our competitive strengths include the following:

- ***Significant Benefits from Scale & Network Effects***: We believe we are the largest in global distributed energy storage megawatts under management, with more than 1.5 GWh operating or contracted across more than 1,000 sites. This generates a significant amount of operational data leading to enhanced software performance through machine-learning and improving customer economics.
- ***Advanced Technology Platform***: We developed one of the first AI platforms for energy storage and virtual power plants, automating storage participation in electricity markets, performing monitoring and management of customer loads, solar generation and energy prices with real-time, complex decision-making algorithms. The platform is able to co-optimize multiple energy market revenue streams across a diverse fleet of hardware throughout multiple geographies and energy markets.
- ***Compelling Business Model & Customer Solutions***: We provide a seamless customer experience from commercial proposal to installation. We pioneered a project financed offering for C&I energy storage, providing customers immediate significant savings without capital expenditure. C&I customers are aggressively procuring renewable energy to meet ESG targets and save money on electricity, our solution enables these objectives with no impact to customer operations. Customers sign long-term contracts, typically between 10 and 20 years in duration, while providing us the flexibility to control their energy storage system to earn market participation revenue, lower their energy costs and meet their decarbonization goals.
- ***Leading Strategic Partnerships***: We have numerous partnerships with a diverse set of industry leaders to reduce execution risk and increase speed to market in certain geographies. In Massachusetts, we have a partnership with Constellation Energy to pair our energy storage systems with retail energy offerings for C&I customers. Internationally, we have partnerships with leading regional industrial equipment and energy firms such as Copec in South America, each focused on leveraging the partner's local market knowledge and reputation with leading corporates, utilities and grid operators.
- ***Exceptional AI and Energy Storage Expertise***: We have a seasoned leadership team with a demonstrated track record of execution and more than 150 years of accumulated experience in energy storage, software and distributed energy expertise focused on artificial intelligence and technology development, new market commercialization, renewable project development and utility / grid program operations. Our data science team has more than 135 years of combined experience in machine learning, optimization and controls.

Our Strategy

Our mission is to build and operate the largest, digitally connected, intelligent energy storage network for our customers. In order to fulfill our mission, (i) we provide our customers, which include commercial and industrial ("C&I") enterprises as well as independent power producers, renewable project developers, utilities and grid operators, with an energy storage system, sourced from leading, global battery original equipment manufacturers ("OEMs"), that we deliver through our partners, including solar project developers and engineering, procurement and construction firms and (ii) through our Athena artificial intelligence ("AI") platform ("Athena"), we provide our customers with on-going software-enabled services to operate the energy storage systems for 10 to 20 years. In addition, in all the markets where we operate our customers' systems, we have agreements to manage the energy storage systems using the Athena platform to participate in energy markets and to share the revenue from such market participation.

We operate in two key areas within the energy storage landscape: Behind-the-Meter ("BTM") and Front-of-the-Meter ("FTM"). An energy system's position in relation to a customer's electric meter determines whether it is designated a BTM or FTM system. BTM systems provide power that can be used on-site without interacting with the electric grid and passing through an electric meter. Our BTM systems reduce C&I customer energy bills and help our customers facilitate the achievement of their corporate environmental, social, and corporate governance ("ESG") objectives. FTM, grid-connected systems provide power to off-site locations and must pass through an electric meter prior to reaching an end-user. Our FTM systems decrease risk for project developers, lead asset professionals, independent power producers and investors by adapting

to dynamic energy market conditions in connection with the deployment of electricity and improving the value of energy storage over the course of their FTM system's lifetime.

Our Customers

We operate in two key markets within the energy storage landscape: BTM and FTM. BTM systems installed at C&I customer locations provide power that can be used on-site without interacting with the electric grid and generally without generating energy that passes through a utility electric meter. FTM grid-connected systems deliver power into the grid which is often sold to off-site customers and transported by the grid prior to reaching an end-user. For BTM customers, we seek to maximize value by providing AI-powered storage services that reduce spending on utility bills, enhance the economics of solar and provide backup power. Additionally, we help BTM customers achieve renewable energy targets as part of their ESG commitments. For FTM customers, we provide software-enabled services to capture revenue from energy market participation, including the sale of capacity, energy and ancillary services into regional electricity markets helping these customers enhance renewable project returns while improving grid resiliency and reliability for utilities and grid operators. These services that we provide are all at the direction of our customers, and we do not independently participate in the wholesale electricity market.

We believe that Athena's ability to optimize the operations in both the BTM and FTM markets is unique in the industry and provides a competitive differentiation. As an early participant in the BTM market, we developed operational focus and technical capabilities that position us to have multiple product offerings and services in the evolving market for FTM energy storage services. In particular, we believe recent regulatory actions by the Federal Energy Regulatory Commission (the "FERC") and by global utilities and grid operators will enable distributed energy storage systems to participate in energy markets and receive equivalent compensation and market access to the same extent as conventional generation assets. Such regulatory actions are expected to provide new economic opportunities for software-enabled services offerings in the energy storage and broader distributed energy resource markets.

Research and Development

We have invested significant amounts of time and expense in the development of our Athena platform. The ability to maintain our leadership position depends in part on our ongoing research and development activities. Our software development team of 50 employees is responsible for the design, development, integration and testing of the Athena platform. In addition, we augment our internal team with 15 off-shore contractors for flexible development capacity. We focus our efforts on developing Athena to continuously improve our algorithms, augment value with new revenue streams and localize based on geography and regulatory considerations.

Our research and development is principally conducted by our teams in the Silicon Valley and Seattle. As of December 31, 2021, we had 66 full-time employees engaged in research and development activities.

Intellectual Property

Intellectual property is a key differentiator for our business, and we seek protection whenever possible for the intellectual property that we own and control, including but not limited to patents, proprietary information, trade secrets and software tools and applications. We rely upon a combination of patent, copyright, trade secret and trademark laws, as well as employee and third-party non-disclosure agreements and other contractual restrictions to establish and protect our proprietary rights.

We have developed a significant patent portfolio to protect elements of our proprietary technology. As of December 31, 2021, we had 27 issued patents and 4 patent applications pending in the U.S.

Our intellectual property encompasses a diverse mix of patents with respect to our proprietary systems and software. These patents relate to the following broad categories:

- power electronics, including the basic interaction of batteries with the power grid where such electronics convert direct current (DC) battery power to alternating current (AC) compatible grid power;
- analytics and control, including use cases and decisions into the operation of an energy storage system and the coordination of providing economic or operational value to a customer; and
- networked operations and grid services that involve the aggregation and operation of a group of energy storage systems to provide value to a utility or grid operator.

Our registered trademarks for goods and services include "Stem," "Powerscope," "Athena" and "Energy Superintelligence." The goods and services relating to these trademarks include, but are not limited to, energy optimization services, software as a service for energy optimization services and energy storage charge and discharge.

We continually review our development efforts to assess the existence and patentability of our intellectual property. We pursue the registration of our domain names and trademarks and service marks in the U.S. In an effort to protect our brand, as of December 31, 2021, we had four registered trademarks in the U.S.

We have no pending claims of infringement or similar claims with third parties with respect to our intellectual property.

Competition

The energy storage industry is highly competitive, and new regulatory requirements for carbon emissions, technological advances, the lower cost of renewable energy, the decrease in battery costs, improving battery technology and shifting customer demands are causing the industry to evolve and expand. We believe that the principal competitive factors in the energy storage market include, but are not limited to:

- safety, reliability and quality;
- product performance and uptime;
- historical track record and references for customer satisfaction;
- experience in utilizing the energy storage system for multiple stakeholders;
- technological innovation;
- comprehensive solution from a single provider;
- ease of integration; and
- seamless hardware and software-enabled service offerings.

There is rising demand for clean electric power solutions that can provide electric power with lower carbon emissions with high availability. Additionally, the transition to renewable energy sources and distributed energy infrastructure has increased the complexity and variability of end-customer electricity demand. This industry transformation has created an opportunity for an increased role for energy storage solutions like ours. We believe as one of the largest in this industry we have a significant head start against our competition in this rapidly evolving environment. We believe the global push for lower carbon emissions combined with vast technological improvements in lithium-ion battery-powered technologies will drive commercial and industrial customers, utilities, independent power producers and project developers to grow their use of and investment in energy storage systems.

Our key competitors include energy storage system OEMs, hardware integration providers, renewable project developers and engineering, procurement and construction firms. Our industry peers are typically focused on the development and marketing of single-purpose built solutions with captive hardware offerings, while our AI-powered platform is capable of delivering a multitude of software-enabled services operating an extensive and diverse network of energy storage systems across multiple geographies, utility and grid operator service areas.

We believe that one of the key advantages driving sustainable differentiation for our company includes the focus and capabilities built in our pioneering history in the BTM segment of the energy storage industry. This experience required an emphasis on AI-driven co-optimization of energy storage operations and the build out of significant operational infrastructure to execute economic considerations for enterprise customers, utilities and grid operators. We believe that the distributed asset management capability from this experience positions us well to compete in the evolving FTM segment of the energy storage industry as recent regulatory actions include the liberalization and formalization of rules for compensation of market participation for distributed energy resources. We believe the legacy single-purpose market for FTM solutions will be driven by greater demand for flexible solutions that can access multiple market opportunities. Our solutions have been designed to mitigate the challenges of today's enterprise customers, independent power producers, utilities, renewable asset owners and the modern electrical grid at scale with continuous improvements to artificial intelligence optimization strategies informed by operational data from one of the industry's largest network of digitally-connected energy storage systems.

We believe we are well-positioned to compete successfully in the market for energy storage hardware and software-enabled services. Despite our limited operating history, we are among the leaders in global distributed energy storage under management, supported by our Athena platform, compelling customer services, strategic partnerships and seasoned leadership team with a proven track record of success.

Government Regulation and Compliance

There are varying policy frameworks across the U.S. and abroad designed to support and accelerate customer adoption of clean and/or reliable distributed generation technologies. These policy initiatives come in the form of tax incentives, cash grants, performance incentives and/or electric tariffs.

Our AI-powered platform manages energy storage systems currently installed in California, Massachusetts, New York, Hawaii and Texas, each of which has its own enabling policy framework. Some states have utility procurement programs and/or renewable portfolio standards for which our technology is eligible. These energy storage systems currently qualify for tax exemptions, incentives or other customer incentives in many states, including the states of California, Massachusetts and New York. These policy provisions are subject to change.

Although we are not regulated as a utility, federal, state and local government statutes and regulations concerning electricity heavily influence the market for our product and services. These statutes and regulations often relate to electricity pricing, net metering, incentives, taxation, competition with utilities and the interconnection of customer-owned electricity generation. In the U.S., governments, often acting through state utility or public service commissions, change and adopt different rates for commercial customers on a regular basis. These changes can have a positive or negative effect on our ability to deliver cost savings to customers for the purchase of electricity.

Several states have an energy storage mandate or policies designed to encourage the adoption of storage. For example, California offers a cash rebate for storage installations through the Self Generation Incentive Program and Massachusetts and New York offer performance-based financial incentives for storage. Storage installations also are supported in certain states by state public utility commission policies that require utilities to consider alternatives such as storage before they can build new generation. In February 2018, the FERC issued Order 841 directing regional transmission operators and independent system operators to remove barriers to the participation of storage in wholesale electricity markets and to establish rules to help ensure storage resources are compensated for the services they provide. An appeal of Order 841 filed by utility trade associations and other parties challenging the extent of the FERC's jurisdiction over storage resources connected to distribution systems (among other issues) is currently pending before the U.S. Court of Appeals for the D.C. Circuit. In September 2020, the FERC issued Order 2222, opening up U.S. wholesale energy markets to aggregations of distributed energy resources like rooftop solar, BTM batteries and electric vehicles.

Energy storage systems require interconnection agreements from the applicable local electricity utilities in order to operate. In almost all cases, interconnection agreements are standard form agreements that have been pre-approved by the local public utility commission or other regulatory body with jurisdiction over interconnection agreements. As such, no additional regulatory approvals are typically required once interconnection agreements are signed.

Our operations are subject to stringent and complex federal, state and local laws and regulations governing the occupational health and safety of our employees and wage regulations. For example, we are subject to the requirements of the federal Occupational Safety and Health Act, as amended, and comparable state laws that protect and regulate employee health and safety.

There are government regulations pertaining to battery safety, transportation of batteries and disposal of hazardous materials. We and our suppliers, as applicable, are required to comply with these regulations in order to sell our batteries into the market. The license and sale of our batteries and technology abroad is likely to be subject to export controls in the future.

Each of our installations or customer installations must be designed, constructed and operated in compliance with applicable federal, state and local regulations, codes, standards, guidelines, policies and laws. To install and operate energy storage systems on our platform, we, our customers or our partners, as applicable, are required to obtain applicable permits and approvals from local authorities having jurisdiction to install energy storage systems and to interconnect the systems with the local electrical utility.

Human Capital Resources

Our mission is to build and operate the largest digitally connected energy storage network for our customers, and we are also committed to creating a world-class workforce. We aim to foster and maintain a workplace that values the unique talents and contributions of every individual. We believe it is the diversity of our people, with varied skills and backgrounds, that shape our success and innovation. Our people-focused culture is driven by collaboration and global cross-functional connections. We recognize the success of Stem is dependent on our talent and the satisfaction of our global workforce, and we are greatly invested in the ability of our people to succeed and thrive. The following discussions provide a description of our employees, and outline how we manage our human capital resources and how we invest in our employees' success.

Employees

As of December 31, 2021, we had 213 employees, of whom 195 were based in the United States and 18 in Canada. As of December 31, 2021, approximately 28% of the global team was female and 72% was male.

We have not experienced any employment-related work stoppages due to the COVID-19 pandemic or otherwise, and consider relations with our employees to be good. Specifically, in response to local government and health guidelines around the COVID-19 pandemic we shifted almost all of our employees to remote work and began offering tools and services for optimizing remote work. We believe that our future success depends in part on our continued ability to hire, motivate and retain qualified employees in any operating environment.

Recruiting

We believe in investing for the future, including the future of our workforce, and have several talent programs to recruit exceptional individuals who share our values. Our recruiting team and hiring managers begin with the creation of detailed job descriptions, which clearly outline the skills and experience necessary for success in each role. We believe these steps are essential to effectively interview for identifiable skillsets and not just "personality fits." We strive to build our workforce from within whenever possible; however, if the best candidate for an available position is not identified from within our existing talent pool, we will look externally for the best talent. Our recruitment strategy is to initially search for candidates directly through our professional networks, university and mentorship programs, and through advertising with certain partners. We also occasionally use recruitment consultants and search firms.

Professional Development

We are committed to helping people realize their highest potential and fostering a culture that supports personal development for individuals, leaders and teams across the organization. Our employees enjoy ample opportunity to learn new skills to develop and advance their career, and we provide opportunities for all our employees to receive ongoing formal training to help foster their professional development. We also encourage continuing education programs through approved institutions and online learning such as Udemy and Stem University.

Employee Feedback

We value the feedback we receive from our employees. Our annual employee engagement survey asks all of our employees for their input on a variety of matters. The results of the employee survey are disseminated to all employees, and the results are used to design action plans to assist managers with actively responding to employees' sentiments. The employee survey is an important tool that allows us to continuously improve, innovate and evolve through ongoing engagement and measurement.

Diversity and Inclusion

We are committed to building an inclusive culture and team environment that supports current and future diversity in our industry and our talent. In the spirit of Stem's core values we are One Team and succeed through collaboration when we respect, acknowledge and celebrate each other's differences. We are committed to creating an inclusive environment that promotes equality, cultural awareness and respect by implementing policies, benefits, training, recruiting and recognition practices to support our colleagues. We believe that diversity and inclusion is about valuing our differences and continually identifying ways to improve our cultural intelligence which ultimately leads to better decision-making and a more tailored client experience. To help us achieve and maintain a diverse workforce, we globally monitor certain employee demographic data such as gender, ethnicity, tenure and age.

Employee Compensation, Benefits & Wellbeing

We strive to enrich and elevate the lives of our employees through a robust compensation and benefits package that is flexible to meet both individual and family needs, including but not limited to:

- Market competitive compensation packages;
- Robust health and well-being benefits, including a variety of medical, dental, and vision benefit offerings, and physical and mental health programs;
- Paid maternity/paternity leave;
- Snacks and beverages in the office;
- Competitive paid time off and paid holidays;
- Retirement plan alternatives and education offerings; and
- Social activities and happy hours.

Our employee compensation structure is designed to attract, motivate and retain employees and we accomplish this through our competitive compensation and bonus structure.

Available Information

Our website is www.stem.com. We use our Investor Relations website, at https://investors.stem.com,, as a routine channel channel for distribution of important information, including news releases, analyst presentations, and financial information. We make available free of charge, though our Investor Relations website, our Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K, proxy statements and Forms 3, 4 and 5 filed on behalf of directors and executive officers, and amendments to each of those reports, as soon as reasonably practicable after such material is filed with or furnished to the SEC. Alternatively, you may access these reports at the SEC's website at www.sec.gov. Copies are also available, without charge, from Stem Investor Relations, 100 California Street, 14th Floor, San Francisco, California, 94111. Unless expressly noted, the information on our website or any other website is not incorporated by reference in this Form 10-K and should not be considered part of this Form 10-K or any other filing that we make with the SEC.

Information About Our Executive Officers

The following table sets forth, as of January 30, 2022, the names and ages of the executive officers of Stem, Inc., including all offices and positions held by each for the past five years.

Name	Age	Current Position and Five-Year Business Experience
John Carrington	55	Chief Executive Officer and Director, since December 2013.
Bill Bush	56	Chief Financial Officer, since November 2016.
Saul R. Laureles	56	Chief Legal Officer and Secretary, since May 2021; Director, Corporate Legal Affairs and Assistant Corporate Secretary at Schlumberger Limited (a global oilfield services company), from May 2007 to May 2021.
Mark Triplett	60	Chief Operating Officer, since March 2018; Chief Operating Officer at Green Charge Networks, LLC (an energy storage company), from July 2015 to March 2018.
Alan Russo	52	Chief Revenue Officer, since February 2019; Senior Vice President of Global Sales and Marketing, April 2018 to February 2019; Senior Vice President of Sales and Marketing at REC Solar Holdings AS (subsidiary of Duke Energy), from October 2015 to April 2018.
Larsh Johnson	64	Chief Technical Officer, since January 2016.
Prakesh Patel	47	Chief Strategy Officer since January 2020; Vice President of Capital Markets and Strategy from 2013 to January 2020.

ITEM 1A. RISK FACTORS.

The following discussion of risk factors known to us contains important information for the understanding of our "forward-looking statements," which are discussed immediately following Item 7A. of this Form 10-K and elsewhere. These risk factors should also be read in conjunction with Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations, and the *Consolidated Financial Statements* and related notes included in this Form 10-K.

We urge you to consider carefully the risks described below, which discuss the material factors that make an investment in our securities speculative or risky, as well as in other reports and materials that we file with the SEC and the other information included or incorporated by reference in this Form 10-K. A manifestation of any of the following risks and uncertainties, or additional risks and uncertainties not currently known to us or that we currently deem immaterial, could, in circumstances we may or may not be able to accurately predict, materially adversely affect our business, operations, reputation, financial condition, results of operations, cash flows, liquidity, growth, prospects and stock price.

Summary Risk Factors

Risks Related to our Acquisition of AlsoEnergy

- We may fail to realize the anticipated benefits of our acquisition of AlsoEnergy.
- Business issues currently faced by AlsoEnergy may adversely affect our operations.

Risks Related to Our Business and Industry

- Our limited operating history at current scale and our nascent industry make evaluating our business and prospects difficult.
- Our distributed generation offerings may not receive widespread market acceptance.
- Our operations may continue to be adversely affected by the coronavirus outbreak.

- Sufficient demand for our hardware and software-enabled services may not develop or take longer to develop than we anticipate.
- Events that negatively affect the growth of renewable energy may have a negative effect on our business.
- Battery storage costs may not continue to decline.
- Estimates and assumptions used to determine the size of our total addressable market may be inaccurate.
- We currently face and will continue to face significant competition.

Risks Relating to Our Operations

- Supply chain disruption and competition could result in insufficient inventory and negatively affect our business.
- Long-term supply agreements could result in insufficient inventory.
- Our hardware and software-enabled services involve a lengthy sales and installation cycle. If we fail to close sales on a regular and timely basis it could adversely affect our business.
- We may fail to attract and retain qualified management and technical personnel, which may adversely affect our ability to compete and grow our business
- We may not be able to develop, produce, market and sell our hardware and software-enabled services successfully.
- We have incurred significant losses in the past and expect to incur net losses through 2022.
- We may be unable to reduce our cost structure.
- Any future acquisitions we undertake may disrupt our business, adversely affect operations, dilute our stockholders, and expose us to significant costs and liabilities.
- Our current and planned foreign operations will subject us to additional business, financial, regulatory, and competitive risks.
- Our platform performance may not meet our customers' expectations or needs.
- If any energy storage systems procured from OEM suppliers and provided to our customers contain manufacturing defects, our business and financial results could be adversely affected.
- Estimates of useful life for our energy storage systems and related hardware and software-enabled services may be inaccurate, and our OEM suppliers may not meet service and performance warranties and guarantees.
- Future product recalls could materially adversely affect our business, financial condition and operating results.
- Any disruption of, or interference with, our use of Amazon Web Services could adversely affect our business.
- Any failure to offer high-quality technical support services may adversely affect our relationships with our customers.
- Our business currently depends on the availability of rebates, tax credits and other financial incentives.
- The economic benefit of our energy storage systems to our customers depends on the cost of electricity available from alternative sources.
- Our business is subject to risks associated with construction.
- The growth of our business depends on customers renewing their services subscriptions.
- Changes in subscriptions or pricing models may not be reflected in near-term operating results.
- Severe weather events, including the effects of climate change, may impact our customers and suppliers.
- Increased scrutiny regarding ESG practices and disclosures could result in additional costs and adversely impact our business and reputation.

Risks Related to Third-Party Partners

- We are exposed to interconnection and transmission facility development and curtailment risks.
- We may not successfully maintain relationships with third-parties such as contractors and developers.
- We may not maintain customer confidence in our long-term business prospects.

Risks Related to Our Intellectual Property and Technology

- Our future growth depends on our ability to continue to develop and maintain our proprietary technology.
- We may experience IT or data security failures.
- Our technology could have undetected defects, errors or bugs in hardware or software.
- We may not adequately secure, protect and enforce our intellectual property rights and trademarks.
- Our patent applications may not result in issued patents and our patents may not provide adequate protection
- We may need to defend ourselves against claims that we infringed intellectual property rights of others.

Regulatory Risks

- The installation and operation of our energy storage systems are subject to environmental laws and regulations.
- Existing regulations and changes to such regulations may reduce demand for our energy storage systems.
- Our business could be adversely affected by trade tariffs or other trade barriers.
- Negative attitudes toward renewable energy from lawmakers and others may adversely affect our business, including by delaying permits for our customers' projects.

Additional Risks Related to Ownership of our Common Stock

- We may not successfully correct all of the material weaknesses in our internal control over financial reporting, which could affect the reliability of our consolidated financial statements and have other adverse consequences.
- We may issue a significant number of shares in the future in connection with investments or acquisitions.
- We do not intend to pay cash dividends for the foreseeable future.
- Analysts may not publish sufficient or any research about our business or may publish inaccurate or unfavorable research.
- The trading price of our common stock is volatile.
- Our financial and operating results are likely to fluctuate on a quarterly basis in future periods.
- Certain provisions of the Company's organizational documents may have an anti-takeover effect.
- The Company's exclusive forum provision may limit the Company's stockholders' ability to obtain a favorable judicial forum for disputes.

General Risk Factors

- We will continue to incur significant costs as a result of operating as a public company.
- Our management team has limited experience managing a public company.
- Future litigation, investigations or regulatory or administrative proceedings could have a material adverse effect on our business.

Risks Related to our Acquisition of AlsoEnergy

We may fail to realize the anticipated benefits of our acquisition of AlsoEnergy.

The success of our acquisition of AlsoEnergy will depend on, among other things, our ability to combine our business with that of AlsoEnergy in a manner that facilitates growth opportunities and realizes anticipated synergies. However, we must successfully combine both businesses in a manner that permits these benefits to be realized. The acquisition of AlsoEnergy is our first significant acquisition, and we have very limited experience integrating a company of the size and geographic scope of AlsoEnergy. The anticipated benefits of our integration plan may not be realized on a timely basis, if at all. In addition, we must achieve the anticipated synergies without adversely affecting current revenues and investments in future growth. If we are not able to achieve these objectives, the anticipated benefits of the acquisition may not be realized fully, may take longer to realize than expected, or may never be realized.

Potential issues and difficulties we may encounter in integrating AlsoEnergy include the following:

- difficulties in managing the expanded operations of a significantly larger and more complex combined company;

- difficulties in managing operations in foreign jurisdictions in which we have never operated (see — "*Our current and planned foreign operations could subject us to additional business, financial, regulatory and competitive risks*" below);
- maintaining employee morale and retaining key management and other employees;
- integrating personnel from the two companies while maintaining focus on providing consistent, high-quality products and customer service;
- retaining existing business and operational relationships, including customers, suppliers and employees and other counterparties, and attracting new business and operational relationships;
- consolidating corporate and administrative infrastructures and eliminating duplicative operations, and addressing unanticipated issues in integrating information technology, communications and other systems;
- potential unknown liabilities and unforeseen expenses associated with the AlsoEnergy acquisition; and
- performance shortfalls at one or both of the two companies as a result of the diversion of management's attention caused by completing the acquisition and integrating the companies' operations.

Many of these factors will be outside of our control, and any one of them could result in delays, increased costs, decreases in the amount of expected revenues or cost synergies, and other adverse impacts, which could materially affect our financial position, results of operations and cash flows.

Business issues currently faced by AlsoEnergy may adversely affect our operations.

To the extent that AlsoEnergy currently has or is perceived by customers to have operational challenges, such as on-time performance, safety issues or workforce issues, those challenges may raise concerns by our existing customers following the acquisition, which may limit or impede our future ability to obtain additional work from those customers.

Risks Related to Our Business and Industry

Our limited operating history at current scale and our nascent industry make evaluating our business and prospects difficult.

From our inception in 2009 through 2012, we were focused principally on research and development activities relating to our energy storage system technology. We did not sell any of our battery hardware and software-enabled services and did not recognize any material revenue until fairly recently. As a result, we have a limited history operating our business at its current scale, and therefore a limited history upon which you can base an investment decision.

There is rising demand for clean electric power solutions that can provide electric power with lower carbon emissions with high availability. One such solution is distributed, renewable energy generation, which is supplementing and replacing conventional generation sources, given its increasingly compelling economics. Among other renewable energy market trends, we expect our business results to be driven by declines in the cost of generation of renewable power both on an absolute basis and relative to other energy sources (as evidenced by current solar and wind generation deployments), decreases in the cost of manufacturing battery packs and a rapidly growing energy storage market driven by increasing demand from commercial and industrial customers, utilities and grid operators. However, predicting our future revenue and appropriately budgeting for our expenses is difficult, and we have limited insight into trends that may emerge and affect our business.

The distributed generation industry is emerging and our distributed generation offerings may not receive widespread market acceptance.

The implementation and use of distributed generation at scale is still relatively nascent, and we cannot be sure that potential customers will accept such solutions broadly, or our hardware and software-enabled services more specifically. Enterprises may be unwilling to adopt our offerings over traditional or competing power sources for any number of reasons, including the perception that our technology is unproven, lack of confidence in our business model, unavailability of back-up service providers to operate and maintain the energy storage systems, and lack of awareness of our related hardware and software-enabled services. Because this is an emerging industry, broad acceptance of our hardware and software-enabled services is subject to a high level of uncertainty and risk. If the market develops more slowly than we anticipate, our business may be adversely affected.

Our operations may continue to be adversely affected by the COVID-19 pandemic, and we face disruption risks from the pandemic that could adversely affect our business.

The COVID-19 pandemic has resulted in the extended shutdown of certain businesses in the U.S., Europe and Asia, which has resulted, and may in the future result, in disruptions or delays to our supply chain and has resulted in, and may result in further, significant disruptions to our customer base. Any disruption in these businesses will likely negatively affect our sales and operating results.

We purchase some of our components and materials outside of the United States through arrangements with various vendors, and have experienced delays in obtaining these components and materials as a result of the COVID-19 pandemic. We have also been affected by inflation in the costs of equipment, components and materials.

To date, COVID-19 has had a limited adverse impact on our operations, supply chains and hardware and software-enabled services. Due to governmental responses to limit the spread of COVID-19 and resulting global economic effects, we may experience significant and unpredictable reductions in demand for our hardware and software-enabled services. In addition, the pandemic may have the effect of heightening many of the other risks described in this "Risk Factors" section, including risks associated with our customers, supply chain and financial condition.

The future impact of the COVID-19 pandemic is highly uncertain and cannot be predicted and there is no assurance that such outbreak will not have a material adverse impact on our business, financial condition and results of operations. The extent of the impact will depend on future developments, including actions taken to contain COVID-19 and if these impacts persist. In particular, we cannot predict the full effects the pandemic will have on the demand for our services, our sales cycles or installation timelines, the collections of account receivable, spending by customers, whether the pandemic will cause further customers to go out of business or continue to limit the ability of our direct sales force to travel to existing or potential customers, all of which could adversely affect our business, financial condition and results of operations.

If renewable energy technologies are not suitable for widespread adoption, or if sufficient demand for our hardware and software-enabled services does not develop or takes longer to develop than we anticipate, our sales may decline and we may be unable to achieve or sustain profitability.

The market for renewable, distributed energy generation is emerging and rapidly evolving, and its future success is uncertain. If renewable energy generation proves unsuitable for widespread commercial deployment or if demand for our renewable energy hardware and software-enabled services fails to develop sufficiently, we would be unable to achieve sales and market share.

Many factors may influence the widespread adoption of renewable energy generation and demand for our hardware and software-enabled services, including, but not limited to the cost-effectiveness of renewable energy technologies as compared with conventional and competitive technologies, the performance and reliability of renewable energy products as compared with conventional and non-renewable products, fluctuations in economic and market conditions that impact the viability of conventional and competitive alternative energy sources, increases or decreases in the prices of oil, coal and natural gas, continued deregulation of the electric power industry and broader energy industry, and the availability or effectiveness of government subsidies and incentives. You should consider our prospects in light of the risks and uncertainties emerging companies encounter when introducing new products and services into a nascent industry.

The failure of battery storage cost to continue to decline would have a negative impact on our business and financial condition.

The growth and profitability of our business is dependent upon the continued decline in the cost of battery storage. Over the last decade the cost of battery storage systems, particularly lithium-ion based battery storage systems, has declined significantly. This lower cost has been driven by advances in battery technology, maturation of the battery supply chain, the scale of battery production by the leading manufacturers and other factors. The growth of our hardware sales and related software-enabled services is dependent upon the continued decrease in the price and efficiency of battery storage systems of our OEM suppliers. If for whatever reason, our OEM suppliers are unable to continue to reduce the price of their battery storage systems, our business and financial condition will be negatively impacted.

If the estimates and assumptions we use to determine the size of our total addressable market are inaccurate, our future growth rate may be affected and the potential growth of our business may be limited.

Market estimates and growth forecasts are subject to significant uncertainty and are based on assumptions and estimates that may prove to be inaccurate. Even if the market in which we compete meets our size estimates and forecasted growth, our business could fail to grow at similar rates, if at all. The assumptions relating to our market opportunity include, but are not limited to, the following: (i) Wood Mackenzie research forecasts that the U.S. energy storage market, excluding the residential market, is expected to reach a total value of approximately 37.3 GWh in 2026 and the global energy storage market, excluding the residential market, is expected to reach a total value of approximately 75 GWh in 2026; (ii) declines in lithium-ion battery

costs and in the cost of renewable generation; (iii) growing demand for renewable energy: and (iv) increased complexity of the electrical grid. Our market opportunity is also based on the assumption that our existing and future offerings will be more attractive to our customers and potential customers than competing products and services. If these assumptions prove inaccurate, our business, financial condition and results of operations could be adversely affected.

We currently face and will continue to face significant competition.

We compete for customers, financing partners and incentive dollars with other energy storage providers. Many providers of electricity, such as traditional utilities and other companies offering distributed generation products, have longer operating histories, customer incumbency advantages, access to and influence with local and state governments, and more capital resources than we do. Significant developments in alternative energy storage technologies or improvements in the efficiency or cost of traditional energy sources, including coal, oil, natural gas used in combustion or nuclear power, may materially and adversely affect our business and prospects in ways we cannot anticipate. We may also face new energy storage competitors who are not currently in the market. If we fail to adapt to changing market conditions and to compete successfully with new competitors, we will limit our growth and adversely affect our business results.

Risks Relating to Our Operations

We are subject to supply chain risk, including as a result of supply chain competition, which could result in insufficient inventory and negatively affect our results of operations.

We purchase our components and materials from international and domestic vendors and are exposed to supply chain risks arising from logistics disruptions, such as delays experienced in obtaining internationally sourced components and materials during the COVID-19 pandemic. In addition to such operational disruptions, international supply arrangements are also exposed to risks related to tariffs and sanctions, as well as political, social, or economic instability in regions where we source products and material. For example, in recent years, China and the U.S. have each imposed tariffs, and there remains a potential for further trade barriers and the possibility of an escalated trade war between China and the U.S. These or other tariffs could potentially impact our hardware component prices and impact any plans to sell products in China and other impacted international markets. Disruptions in the availability of key equipment, components or materials may adversely impact our business and operations, and volatility in prices and availability of such items may negatively impact our customer relationships and ability to plan for future growth.

In addition to the risk of supply chain disruptions, we are also subject to competitive risks resulting from limited supplier capacity. Certain of our suppliers also supply systems and components to other businesses, including businesses engaged in the production of consumer electronics and other industries unrelated to energy storage systems. As a relatively low-volume purchaser of certain of these parts and materials, we may be unable to procure a sufficient supply of the items in the event that our suppliers fail to produce sufficient quantities to satisfy the demands of all of their customers, which could materially adversely affect our business, financial condition and results of operations.

We have in some instances, entered into long-term supply agreements that could result in insufficient inventory and negatively affect our results of operations.

We have entered into long-term supply agreements with certain suppliers of battery storage systems and other components of our energy storage systems. Some of these supply agreements provide for fixed or inflation-adjusted pricing and substantial prepayment obligations. If our suppliers provide insufficient inventory at the level of quality required to meet customer demand, or if our suppliers are unable or unwilling to provide us with the contracted quantities, as we have limited alternatives for supply in the short term, our results of operations could be materially and negatively impacted. Further, we face significant specific counterparty risk under long-term supply agreements when dealing with certain suppliers without a long, stable production and financial history.

Given the uniqueness of our product, many of our suppliers do not have a long operating history and may not have substantial capital resources. In the event any such supplier experiences financial difficulties, it may be difficult or may require substantial time and expense to replace such supplier. We do not know whether we will be able to maintain long-term supply relationships with our critical suppliers, or secure new long-term supply agreements. Additionally, we procure many of the battery storage systems and components of our energy storage systems from non-U.S. suppliers, which exposes us to risks including unforeseen increases in costs or interruptions in supply arising from changes in applicable international trade regulations, such as taxes, tariffs, or quotas. Any of the foregoing could materially adversely affect our business, financial condition and results of operations.

Our hardware and software-enabled services involve a lengthy sales and installation cycle. If we fail to close sales on a regular and timely basis it could adversely affect our business, financial condition and results of operations. Amounts included in our pipeline and contracted backlog may not result in actual revenue or translate into profits.

Our sales cycle is typically six to 12 months for our hardware and software-enabled services, but can vary considerably. In order to make a sale, we must typically provide a significant level of education to prospective customers regarding the use and benefits of our hardware and software-enabled services.

The period between initial discussions with a potential customer and the sale of even a single energy storage system typically depends on a number of factors, including the potential customer's budget and decision as to the type of financing it chooses to use, as well as the arrangement of such financing. Prospective customers often undertake a significant evaluation process, which may further extend the sales cycle.

We view potential contracts with developers and independent power producers for energy optimization services and transfer of energy storage systems that are currently being pursued by our direct salesforce and channel partners as part of our pipeline. Our pipeline is an internal metric based on numerous assumptions and limitations, and is calculated using our own data that has neither been prepared or audited in accordance with U.S. GAAP, nor been independently verified by third parties. We cannot guarantee that our pipeline provides an accurate indication of our future or expected results, or will result in meaningful revenue or profitability.

Currently, we believe the time between the entry into a sales contract with a customer and the installation of our energy storage systems can range from nine to 18 months, or more. This lengthy sales and installation cycle is subject to a number of significant risks over which we have little or no control. We characterize contracts that have been signed but not yet installed as a booking that becomes part of our backlog. Because of both the long sales and installation cycles, we may expend significant resources without generating a sale or producing revenue from our bookings and backlog.

These lengthy sales and installation cycles increase the risk that our customers may fail to satisfy their payment obligations, cancel orders before the completion of the transaction or delay the planned date for installation. Cancellation rates may be impacted by factors outside of our control including an inability to install an energy storage system at the customer's chosen location because of permitting or other regulatory issues, unanticipated changes in the cost or availability of alternative sources of electricity available to the customer or other reasons unique to each customer. Our operating expenses are based on anticipated sales levels, and many of our expenses are fixed. If we are unsuccessful in closing sales after expending significant resources or if we experience delays or cancellations, our business, financial condition and results of operations could be adversely affected.

Additionally, we have ongoing arrangements with our customers and target customers. Some of these arrangements are evidenced by contracts or long-term contract partnership arrangements. If these arrangements are terminated or if we are unable to continue to fulfill the obligations under such contracts or arrangements, our business, financial condition and results of operations could be adversely affected.

If we are unable to attract and retain key employees and hire qualified management, technical, engineering and sales personnel, our ability to compete and successfully grow our business could be adversely affected.

We believe that our success and our ability to reach our strategic objectives are highly dependent on the contributions of our key management, technical, engineering and sales personnel. The loss of the services of any of our senior executives and other key employees could disrupt our operations, delay the development and introduction of our hardware and software-enabled services, and negatively impact our business, financial condition and operating results. In addition, our ability to manage our growth effectively, including expanding our market presence in international markets such as Japan, Australia, Europe and Latin America, will be affected by our ability to successfully expand our management team, hire and train new personnel and successfully implement and enhance human resources administrative systems. Our success in hiring, attracting and retaining senior management and other experienced and highly skilled employees will depend in part on our ability to provide competitive compensation packages and a high-quality work environment and maintain a desirable corporate culture. We may not be able to attract, integrate, train, motivate or retain current or additional highly qualified personnel, and our failure to do so could adversely affect our business, financial condition and operating results.

Furthermore, there is continued and increasing competition for talented individuals in our field, and competition for qualified personnel is especially intense in the San Francisco Bay Area, where our principal offices are located. In addition to longstanding competition for highly skilled and technical personnel, we face increased competitive pressures and employee cost inflation in tighter labor markets, such as has been experienced during the COVID-19 pandemic. Industry competition and cross-industry labor market pressures may negatively impact our ability to attract and retain our executive officers and other

key technology, sales, marketing and support personnel and drive increases in our employee costs, both of which could adversely affect our business, financial condition and results of operations.

We have incurred significant losses in the past and expect to incur net losses through at least 2023.

Since our inception in 2009, we have incurred significant net losses and have used significant cash in our business. As of December 31, 2021, we had an accumulated deficit of approximately $509.1 million. We expect to continue to expand our operations, including by investing in sales and marketing, research and development, staffing systems and infrastructure to support our growth. Under our current plans, we expect to incur net losses on a GAAP basis through at least 2023. Our ability to achieve profitability in the future will depend on a number of factors, including:

- growing our sales volume;
- increasing sales to existing customers and attracting new customers for our hardware and software- enabled services;
- improving our ability to procure energy storage systems from original equipment manufacturers ("OEMs") on cost-effective terms;
- improving our consolidated gross margins reflecting the ability to maintain favorable contract pricing and terms with our customers for our hardware and software-enabled services;
- improving the effectiveness of our sales and marketing activities; and
- attracting and retaining key talent in a competitive marketplace.

Even if we do achieve profitability when expected, we may be unable to sustain or increase our profitability in the future.

If we are not able to continue to reduce our cost structure in the future, our ability to become profitable may be impaired.

We must continue to reduce the costs of production, installation and operation of our energy storage systems to expand our market. Additionally, certain of our existing service contracts were entered into based on projections regarding service costs reductions that assume continued advances in the cost of delivery of our services, which we may be unable to realize. While we have been successful in reducing our costs to date, the cost of battery storage systems and other components of our energy storage systems, for example, could increase in the future. Any such increases could slow our growth and cause our financial results and operational metrics to suffer. In addition, we may face increases in our other expenses, including increases in wages or other labor costs, as well as marketing, sales or related costs. We will continue to make significant investments to drive growth in the future. In order to expand into new markets while still maintaining our current margins, we will need to continue to reduce our costs. Increases in any of these costs, or our failure to achieve projected cost reductions, could adversely affect our business, financial condition and results of operations. If we are unable to reduce our cost structure in the future, we may not be able to achieve profitability, which could have a material adverse effect on our business and prospects.

Any future acquisitions we undertake may disrupt our business, adversely affect operations, dilute our stockholders, and expose us to significant costs and liabilities.

Acquisitions are an important element of our business strategy, and we may pursue future acquisitions to increase revenue, expand our market position, add to our service offerings and technological capabilities, respond to dynamic market conditions, or for other strategic or financial purposes. However, we cannot assure you that we will identify suitable acquisition candidates or complete any acquisitions on favorable terms, or at all. In addition, any acquisitions we do complete, including our acquisition of AlsoEnergy, would involve a number of risks, which may include the following:

- the identification, acquisition and integration of acquired businesses require substantial attention from management. The diversion of management's attention and any difficulties encountered in the integration process could hurt our business;
- the identification, acquisition and integration of acquired businesses requires significant investment, including to determine which new service offerings we might wish to acquire, harmonize service offerings, expand management capabilities and market presence, and improve or increase development efforts and technology features and functions;
- the anticipated benefits from any acquisition may not be achieved, including as a result of loss of clients or personnel of the target, other difficulties in supporting and transitioning the target's clients, the inability to realize expected synergies from an acquisition, or negative organizational cultural effects arising from the integration of new personnel;
- we may face difficulties in integrating the personnel, technologies, solutions, operations, and existing contracts of the acquired business;

- we may fail to identify all of the problems, liabilities or other shortcomings or challenges of an acquired company, technology or solution, including issues related to intellectual property, solution quality or architecture, income tax and other regulatory compliance practices, revenue recognition or other accounting practices, or employee or client issues;
- to pay for future acquisitions, we could issue additional shares of our common stock or pay cash. Issuance of shares would dilute stockholders. See "— We may issue a significant number of shares in the future in connection with investments or acquisitions" below. Use of cash reserves could diminish our ability to respond to other opportunities or challenges. Borrowing to fund any cash purchase price would result in increased fixed obligations and could also include covenants or other restrictions that would impair our ability to manage our operations;
- acquisitions expose us to the risk of assumed known and unknown liabilities including contract, tax, regulatory or other legal, and other obligations incurred by the acquired business or fines or penalties, for which indemnity obligations, escrow arrangements or insurance may not be available or may not be sufficient to provide coverage;
- new business acquisitions can generate significant intangible assets that result in substantial related amortization charges and possible impairments;
- the operations of acquired businesses, or our adaptation of those operations, may require that we apply revenue recognition or other accounting methodologies, assumptions, and estimates that are different from those we use in our current business, which could complicate our financial statements, expose us to additional accounting and audit costs, and increase the risk of accounting errors;
- acquired businesses may have insufficient internal controls that we must remediate, and the integration of acquired businesses may require us to modify or enhance our own internal controls, in each case resulting in increased administrative expense and risk that we fail to comply with the requirements of Section 404 of the Sarbanes-Oxley Act of 2002; and
- acquisitions can sometimes lead to disputes with the former owners of the acquired company, which can result in increased legal expenses, management distraction and the risk that we may suffer an adverse judgment if we are not the prevailing party in the dispute.

Our current and planned foreign operations expose us to additional business, financial, regulatory and geopolitical risks, and any adverse event could have a material adverse effect on our results of operations.

As a result of our recent acquisition of AlsoEnergy, we now operate in more than 50 countries, including the United States and Canada, and in multiple EU and Latin American countries and Asia. Prior to our acquisition of AlsoEnergy, we operated in only three countries. We may in the future evaluate further opportunities to expand into new geographic markets and introduce new product offerings and services that are an extension of our existing business. We also may from time to time acquire businesses or product lines with the potential to strengthen our market position, enable us to enter attractive markets, expand our technological capabilities, or provide synergy opportunities.

We have very limited experience operating outside of the U.S. Managing our international expansion will require additional resources and controls, including additional manufacturing and assembly facilities. Furthermore, any additional markets that we may enter could have different characteristics from the markets in which we currently operate, and our success will depend on our ability to adapt properly to these differences. Any further international expansion could subject our business to risks associated with international operations, including:

- compliance with multiple, potentially conflicting and changing governmental laws, regulations and permitting processes, including trade, labor, environmental, banking, employment, privacy and data protection laws and regulations, such as the EU Data Privacy Directive, as well as tariffs, export quotas, customs duties and other trade restrictions;
- compliance with U.S. and foreign anti-bribery laws, including the Foreign Corrupt Practices Act of 1977, as amended;
- difficulties in collecting payments in foreign currencies and associated foreign currency exposure;
- compliance with potentially conflicting and changing laws of taxing jurisdictions where we conduct business and applicable U.S. tax laws as they relate to international operations, the complexity and adverse consequences of such tax laws and potentially adverse tax consequences due to changes in such tax laws;
- the laws of some countries do not protect proprietary rights as fully as do the laws of the U.S. As a result, we may not be able to protect our proprietary rights adequately outside of the U.S.;
- regional economic and political conditions;

- conformity with applicable business customs, including translation into foreign languages and associated expenses;
- lack of availability of government incentives and subsidies;
- potential changes to our established business model;
- cost of alternative power sources, which could vary meaningfully outside the U.S.;
- difficulties in staffing and managing foreign operations in an environment of diverse culture, laws and customers, and the increased travel, infrastructure and legal and compliance costs associated with international operations;
- customer installation challenges which we have not encountered before, which may require the development of a unique model for each country;
- differing levels of demand among members of our customer base, including commercial and industrial customers, utilities, independent power producers and project developers; and
- restrictions on repatriation of earnings.

As a result of these risks, any future international expansion efforts that we may undertake (as well as our recent acquisition of AlsoEnergy) may not be successful and may negatively affect our results of operations and profitability.

In addition, there may be adverse effects to our business if there is instability, disruption or destruction in a significant geographic region, regardless of cause, including war, terrorism, riot, civil insurrection or social unrest; and natural or man-made disasters, including famine, flood, fire, earthquake, storm or disease. In particular, in February 2022, armed conflict escalated between Russia and Ukraine. The U.S. government and other governments in jurisdictions in which we operate have imposed severe sanctions and export controls against Russia and Russian interests, and have threatened additional sanctions and controls. It is not possible to predict the broader consequences of this conflict, which could include further sanctions, embargoes, greater regional instability, geopolitical shifts and other adverse effects on macroeconomic conditions, currency exchange rates, supply chains and financial markets.

Our platform performance may not meet our customers' expectations or needs.

The renewable energy projects that our customers construct and own are subject to various operating risks that may cause them to generate less value for our customers than expected. These risks include a failure or wearing out of our or our operators', customers' or utilities' equipment; an inability to find suitable replacement equipment or parts; less than expected supply or quality of the project's source of electricity and faster than expected diminishment of such electricity supply; or volume disruption in our supply collection and distribution system. Any extended interruption or failure of our customer's projects for any reason to generate the expected amount of output could adversely affect our business, financial condition and results of operations. In addition, there has been in the past, and may be in the future, an adverse impact on our customers' willingness to continue to procure additional hardware and software-enabled services from us if any of our customer's projects incur operational issues that indicate expected future cash flows from the project are less than the project's carrying value. Any such outcome could adversely affect our operating results or ability to continue to grow our sales volume or to increase sales to existing customers or new customers.

If any energy storage systems procured from OEM suppliers and provided to our customers contain manufacturing defects, our business and financial results could be adversely affected.

The energy storage systems we pair with the Athena® platform are complex energy solutions. We rely on our OEM suppliers to control the quality of the battery storage equipment and other components that make up the energy storage system sold to our customers. We are not involved in the manufacture of the batteries or other components of the energy storage systems. As a result, our ability to seek recourse for liabilities and recover costs from our OEM suppliers depends on our contractual rights as well as the financial condition and integrity of such OEM suppliers that supply us with the batteries and other components of our energy storage systems. Such systems may contain undetected or latent errors or defects. In the past, we discovered latent defects in energy storage systems. In connection with such defects, we could incur significant expenses or disruptions of our operations, including to our energy storage network, that would prevent us from performing the automated data engineering required to support our AI processes and energy storage network. Any manufacturing defects or other failures of our energy storage systems to perform as expected could cause us to incur significant re-engineering costs, divert the attention of our personnel from operating and maintenance efforts, expose us to adverse regulatory action and significantly and adversely affect customer satisfaction, market acceptance and our business reputation. Furthermore, our OEM suppliers may be unable to correct manufacturing defects or other failures of any energy storage systems in a manner satisfactory to our customers, which could adversely affect customer satisfaction, market acceptance and our business reputation.

On rare occasions, lithium-ion batteries can rapidly release the energy they contain by venting smoke and flames in a manner that can ignite nearby materials as well as other lithium-ion batteries. This faulty result could subject us to lawsuits, product recalls or redesign efforts, all of which would be time consuming and expensive. Also, negative public perceptions regarding the suitability of lithium-ion batteries for energy applications or any future incident involving lithium-ion batteries, such as a plant, vehicle or other fire, even if such incident does not involve hardware provided by us, could adversely affect our business and reputation.

If our estimates of useful life for our energy storage systems and related hardware and software-enabled services are inaccurate, or if our OEM suppliers do not meet service and performance warranties and guarantees, our business and financial results could be adversely affected.

We sell hardware and software-enabled services to our customers. Our software-enabled services are essential to the operation of these hardware products. As a result, in connection with the sales of energy storage hardware, we enter into recurring long-term services agreements with customers for the usage of our Athena platform for approximately 10 to 20 years. Our pricing of services contracts is based upon the value we expect to deliver to our customers, including considerations such as the useful life of the energy storage system and prevailing electricity prices. We also provide performance warranties and guarantees covering the efficiency and output performance of our software-enabled services. We do not have a long history with a large number of field deployments, and our estimates may prove to be incorrect. Failure to meet these performance warranties and guarantee levels may require us to refund our service contract payments to the customer, or require us to make cash payments to the customer based on actual performance, as compared to expected performance.

Further, the occurrence of any defects, errors, disruptions in service, or other performance problems, interruptions, or delays associated with our energy storage systems or the Athena platform, whether in connection with day-to-day operations or otherwise, could result in:

- loss of customers;
- loss or delayed market acceptance and sales of our hardware and software-enabled services;
- delays in payment to us by customers;
- injury to our reputation and brand;
- legal claims, including warranty and service level agreement claims, against us; or
- diversion of our resources, including through increased service and warranty expenses or financial concessions, and increased insurance costs.

The costs incurred in correcting any material defects or errors in our hardware and software or other performance problems may be substantial and could adversely affect our business, financial condition and results of operations.

Future product recalls could materially adversely affect our business, financial condition and operating results.

Any product recall in the future, whether it involves our or a competitor's product, may result in negative publicity, damage our brand and materially and adversely affect our business, financial condition and results of operations. In the future, we may voluntarily or involuntarily initiate a recall if any of our products are proven to be or possibly could be defective or noncompliant with applicable environmental laws and regulations, including health and safety standards. Such recalls involve significant expense and diversion of management attention and other resources, which could adversely affect our brand image, as well as our business, financial condition and operating results.

We primarily rely on Amazon Web Services to deliver our services to users on our Athena platform, and any disruption of, or interference with, our use of Amazon Web Services could adversely affect our business, financial condition and results of operations.

We currently host our Athena platform and support our energy storage network operations on one or more data centers provided by Amazon Web Services ("AWS"), a third-party provider of cloud infrastructure services. We do not have control over the operations of the facilities of AWS that we use. AWS' facilities are vulnerable to damage or interruption from natural disasters, cybersecurity attacks, terrorist attacks, power outages, and similar events or acts of misconduct.

Our Athena platform's continuing and uninterrupted performance is critical to our success. We have experienced, and expect that in the future we will experience, interruptions, delays, and outages in service and availability from time to time due to a variety of factors, including infrastructure changes, human or software errors, website hosting disruptions and capacity constraints. In addition, any changes in AWS' service levels may adversely affect our ability to meet the requirements of users on our Athena platform. Since our Athena platform's continuing and uninterrupted performance is critical to our success,

sustained or repeated system failures would reduce the attractiveness of our hardware and software-enabled services to customers. It may become increasingly difficult to maintain and improve our performance, as we expand and our energy storage network grows, increasing customer reliance on the Athena platform. Any negative publicity arising from any disruptions to AWS' facilities, and as a result, our Athena platform could adversely affect our reputation and brand and may adversely affect the usage of our hardware and software-enabled services. Any of the above circumstances or events may adversely affect our reputation and brand, reduce the availability or usage of our hardware and software- enabled services, lead to a significant short-term loss of revenue, increase our costs, and impair our ability to attract new users, any of which could adversely affect our business, financial condition and results of operations.

Our commercial agreement with AWS will remain in effect until terminated by AWS or us. AWS may terminate the agreement for convenience by providing us at least thirty (30) days' advance notice. AWS may also terminate the agreement for cause upon a material breach of the agreement, subject to AWS providing prior written notice and a 30-day cure period, and may in some cases terminate the agreement immediately for cause upon written notice. Even though our platform is entirely in the cloud, we believe that we could transition to one or more alternative cloud infrastructure providers on commercially reasonable terms. If our agreement with AWS is terminated or we add additional cloud infrastructure service providers, we may experience significant costs or downtime for a short period in connection with the transfer to, or the addition of, new cloud infrastructure service providers. However, we do not believe that such transfer to, or the addition of, new cloud infrastructure service providers would adversely affect our business, financial condition and results of operations over the longer term.

Any failure to offer high-quality technical support services may adversely affect our relationships with our customers and adversely affect our financial results.

Our customers depend on our support organization to resolve any technical issues relating to our hardware and software-enabled services. In addition, our sales process is highly dependent on the quality of our hardware and software-enabled services, on our business reputation and on strong recommendations from our existing customers. Any failure to maintain high-quality and highly-responsive technical support, or a market perception that we do not maintain high-quality and highly-responsive support, could adversely affect our reputation, our ability to sell our products to existing and prospective customers, and our business, financial condition and results of operations.

We offer technical support services with our hardware and software-enabled services and may be unable to respond quickly enough to accommodate short-term increases in demand for support services, particularly as we increase the size of our customer base. We also may be unable to modify the format of our support services to compete with changes in support services provided by competitors. It is difficult to predict demand for technical support services and if demand increases significantly, we may be unable to provide satisfactory support services to our customers. Additionally, increased demand for these services, without corresponding revenue, could increase costs and adversely affect our business, financial condition and results of operations.

Our business currently depends on the availability of rebates, tax credits and other financial incentives. The reduction, modification, or elimination of government economic incentives could cause our revenue to decline and adversely affect business, financial condition and results of operations.

The U.S. federal government and some state and local governments provide incentives to end users and purchasers of our energy storage systems in the form of rebates, tax credits and other financial incentives, such as system performance payments and payments for renewable energy credits associated with renewable energy generation. We rely on these governmental rebates, tax credits and other financial incentives to significantly lower the effective price of the energy storage systems to our customers in the U.S. However, these incentives may expire on a particular date, end when the allocated funding is exhausted, or be reduced or terminated as a matter of regulatory or legislative policy.

Our energy storage systems have qualified for tax exemptions, incentives or other customer incentives in many states, including California, Massachusetts, New York, Hawaii and Texas. Some states have utility procurement programs and/or renewable portfolio standards for which our technology is eligible. Our energy storage systems are currently installed in eight U.S. states, each of which may have its own enabling policy framework. There is no guarantee that these policies will continue to exist in their current form, or at all. Such state programs may face increased opposition on the U.S. federal, state and local levels in the future. Changes in federal or state programs could reduce demand for our energy storage systems, impair sales financing and adversely impact our business results.

The economic benefit of our energy storage systems to our customers depends on the cost of electricity available from alternative sources, including local electric utility companies, which cost structure is subject to change.

The economic benefit of our energy storage systems to our customers includes, among other things, the benefit of reducing such customer's payments to the local electric utility company. The rates at which electricity is available from a customer's

local electric utility company is subject to change and any changes in such rates may affect the relative benefits of our energy storage systems. Further, the local electric utility may impose "departing load," "standby" or other charges on our customers in connection with their acquisition of our energy storage systems, the amounts of which are outside of our control and which may have a material impact on the economic benefit of our energy storage systems to our customers. Changes in the rates offered by local electric utilities and/or in the applicability or amounts of charges and other fees imposed by such utilities on customers acquiring our energy storage systems could adversely affect the demand for our energy storage systems.

Additionally, the electricity produced by our energy storage systems is currently not cost competitive in some geographic markets, and we may be unable to reduce our costs to a level at which our energy storage systems would be competitive in such markets. As such, unless the cost of electricity in these markets rises or we are able to generate demand for our energy storage systems based on benefits other than electricity cost savings, our potential for growth may be limited.

Our business is subject to risks associated with construction, utility interconnection, cost overruns and delays, including those related to obtaining government permits and other contingencies that may arise in the course of completing installations.

Although we generally are not regulated as a utility, federal, state and local government statutes and regulations concerning electricity heavily influence the market for our products and services. These statutes and regulations often relate to electricity pricing, net metering, incentives, taxation and the rules surrounding the interconnection of customer-owned electricity generation for specific technologies. In the U.S., governments frequently modify these statutes and regulations. Governments, often acting through state utility or public service commissions, change and adopt different requirements for utilities and rates for commercial customers on a regular basis. Changes, or in some cases a lack of change, in any of the laws, regulations, ordinances or other rules that apply to customer installations and new technology could make it more costly for our customers to install and operate our energy storage systems on particular sites, and in turn could negatively affect our ability to deliver cost savings to customers for the purchase of electricity.

The installation and operation of our energy storage systems at a particular site is also generally subject to oversight and regulation in accordance with national, state and local laws and ordinances relating to building codes, safety, environmental protection and related matters, and typically requires obtaining and keeping in good standing various local and other governmental approvals and permits, including environmental approvals and permits, that vary by jurisdiction. In some cases, these approvals and permits require periodic renewal. It is difficult and costly to track the requirements of every individual authority having jurisdiction over energy storage system installations, to design our energy storage systems to comply with these varying standards, and for our customers to obtain all applicable approvals and permits. We cannot predict whether or when all permits required for a given customer's project will be granted or whether the conditions associated with the permits will be achievable. The denial of a permit or utility connection essential to a project or the imposition of impractical conditions would impair our customer's ability to develop the project. In addition, we cannot predict whether the permitting process will be lengthened due to complexities and appeals. Delay in the review and permitting process for a project can impair or delay our customers' abilities to develop that project or increase the cost so substantially that the project is no longer attractive to our customers. Furthermore, unforeseen delays in the review and permitting process could delay the timing of the installation of our energy storage systems and could therefore adversely affect the timing of the recognition of revenue related to hardware acceptance by our customer, which could adversely affect our operating results in a particular period.

In addition, the successful installation of our energy storage systems is dependent upon the availability of and timely connection to the local electric grid. We may be unable to unable to obtain the required consent and authorization of local utilities to ensure successful interconnection to energy grids to enable the successful discharge of renewable energy to customers. Any delays in our customers' ability to connect with utilities, delays in the performance of installation-related services or poor performance of installation-related services will have an adverse effect on our results and could cause operating results to vary materially from period to period.

The growth of our business depends on customers renewing their services subscriptions. If customers do not continue to use our subscription offerings or if we fail to expand the availability of hardware and software-enabled services available to our customers, our business and operating results will be adversely affected.

In addition to upfront sale of hardware and network integration, we depend on customers continuing to subscribe to services enabled by our Athena platform. Therefore, it is important that customers renew their subscriptions when the contract term expires, increase their purchases of our hardware and network solutions and enhance their subscriptions. Customers may decide not to renew their subscriptions with a similar contract period, at the same prices or terms or with the same or a greater number of users or level of functionality. Customer retention may decline or fluctuate as a result of a number of factors, including satisfaction with software-enabled services and features, functionality of our energy storage hardware and software-

enabled services, prices, the features and pricing of competing products, reductions in spending levels, mergers and acquisitions involving customers and deteriorating general economic conditions.

If customers do not renew their subscriptions, if they renew on less favorable terms, if they fail to increase their purchase of our hardware and software-enabled services, or if they fail to refer us their customers and partners as potential new customers, our business, financial condition and results of operations will be adversely affected.

Changes in subscriptions or pricing models may not be reflected in near-term operating results.

We generally recognize subscription revenue from customers ratably over the terms of their contracts. As a result, most of the subscription revenue reported in each quarter is derived from the recognition of deferred revenue relating to subscriptions entered into during previous quarters. Consequently, a decline in new or renewed subscriptions in any single quarter will likely have only a small impact on revenue for that quarter. However, such a decline will negatively affect revenue in future quarters. In addition, the severity and duration of events may not be predictable and their effects could extend beyond a single quarter. Accordingly, the effect of significant downturns in sales and market acceptance of subscription services, and potential changes in pricing policies or rate of renewals, may not be fully apparent until future periods.

Severe weather events, including the effects of climate change, are inherently unpredictable and may have a material adverse effect on our financial results and financial condition.

Our business, including our customers and suppliers, may be exposed to severe weather events and natural disasters, such as tornadoes, tsunamis, tropical storms (including hurricanes), earthquakes, windstorms, hailstorms, severe thunderstorms, flooding, wildfires and other fires, extreme heatwaves, drought and power shut-offs causing, among other things, disruptions to our supply chain or utility interconnections and/or damage to energy storage systems installed at our customers' sites. Such damage or disruptions may prevent us from being able to satisfy our contractual obligations or may reduce demand from our customers for our energy storage systems causing our operating results to vary significantly from one period to the next. We may incur losses in our business in excess of: (1) those experienced in prior years, (2) the average expected level used in pricing, or (3) current insurance coverage limits.

The incidence and severity of severe weather conditions and other natural disasters are inherently unpredictable. Climate change may affect the occurrence of certain natural events, such as an increase in the frequency or severity of wind and thunderstorm events, and tornado or hailstorm events due to increased convection in the atmosphere; more frequent wildfires and subsequent landslides in certain geographies; higher incidence of deluge flooding; and the potential for an increase in severity of the hurricane events due to higher sea surface temperatures. Additionally, climate change and the occurrence of severe weather events may adversely impact the demand, price, and availability of insurance. Due to significant variability associated with future changing climate conditions, we are unable to predict the impact climate change will have on our business.

Increased scrutiny from stakeholders and regulators regarding ESG practices and disclosures, including those related to sustainability, and disclosure could result in additional costs and adversely impact our business and reputation.

Companies across all industries are facing increasing scrutiny relating to their Environmental, Social and Governance ("ESG") practices and disclosures and institutional and individual investors are increasingly using ESG screening criteria in making investment decisions. Our disclosures on these matters or a failure to satisfy evolving stakeholder expectations for ESG practices and reporting may potentially harm our reputation and impact employee retention, customer relationships and access to capital. For example, certain market participants use third-party benchmarks or scores to measure a company's ESG practices in making investment decisions and customers and supplies may evaluate our ESG practices or require that we adopt certain ESG policies as a condition of awarding contracts. In addition, our failure or perceived failure to pursue or fulfill our goals, targets and objectives or to satisfy various reporting standards within the timelines we announce, or at all, could expose us to government enforcement actions and private litigation

Our ability to achieve any goal or objective, including with respect to environmental and diversity initiatives and compliance with ESG reporting standards, is subject to numerous risks, many of which are outside of our control. Examples of such risks include the availability and cost of technologies and products that meet sustainability and ethical supply chain standards, evolving regulatory requirements affecting ESG standards or disclosures, our ability to recruit, develop and retain diverse talent in our labor markets, and our ability to develop reporting processes and controls that comply with evolving standards for identifying, measuring and reporting ESG metrics. As ESG best-practices, reporting standards and disclosure requirements continue to develop, we may incur increasing costs related ESG monitoring and reporting.

Risks Related to Third-Party Partners

Our hardware and software-enabled services rely on interconnections to distribution and transmission facilities that are owned and operated by third parties, and as a result, are exposed to interconnection and transmission facility development and curtailment risks.

Our hardware and software-enabled services are interconnected with electric distribution and transmission facilities owned and operated by regulated utilities necessary to deliver the electricity that our storage systems produce. A failure or delay in the operation or development of these distribution or transmission facilities could result in a loss of revenues or breach of a contract because such a failure or delay could limit the amount of renewable electricity that our energy storage systems deliver or delay the completion of our customers' construction projects. In addition, certain of our energy storage systems' generation may be curtailed without compensation due to distribution and transmission limitations, reducing our revenues and impairing our ability to capitalize fully on a particular customer project's potential. Such a failure or curtailment at levels above our expectations could impact our ability to satisfy agreements entered into with our suppliers and adversely affect our business.

Our growth depends in part on the success of our relationships with third parties, including contractors and project developers

We rely on third-party general contractors to install energy storage systems at our customers' sites. We currently work with a limited number of general contractors, which has impacted and may continue to impact our ability to facilitate customer installations as planned. Our work with contractors or their subcontractors may have the effect of our being required to comply with additional rules (including rules unique to our customers), working conditions, site remediation and other union requirements, which can add costs and complexity to an installation project. The timeliness, thoroughness and quality of the installation-related services performed by our general contractors and their subcontractors in the past have not always met our expectations or standards and in the future may not meet our expectations and standards and it may be difficult to find and train third-party general contractors that meet our standards at a competitive cost.

In addition, we are investing resources in establishing strategic relationships with market players across a variety of industries, including large renewable project developers, to generate new customers. These programs may not roll out as quickly as planned or produce the results we anticipated. A significant portion of our business depends on attracting new partners and retaining existing partners. Negotiating relationships with our partners, investing in due diligence efforts with potential partners, training such third parties and contractors and monitoring them for compliance with our standards require significant time and resources and may present greater risks and challenges than expanding a direct sales or installation team. If we are not successful in establishing or maintaining our relationships with these third parties, our ability to grow our business and address our market opportunity could be impaired. Even if we are able to establish and maintain these relationships, we may not be able to execute on our goal of leveraging these relationships to meaningfully expand our business, brand recognition and customer base. Such circumstance would limit our growth potential and our opportunities to generate significant additional revenue or cash flows.

We must maintain customer confidence in our long-term business prospects in order to grow our business.

Customers may be less likely to purchase our hardware and services if they are not convinced that our business will succeed or that our services and support and other operations will continue in the long term. Similarly, suppliers and other third parties will be less likely to invest time and resources in developing business relationships with us if they are not convinced that our business will succeed. Accordingly, in order to build and maintain our business, we must maintain confidence among customers, suppliers, analysts, ratings agencies and other parties in our hardware and software-enabled services, long-term financial viability and business prospects. Maintaining such confidence may be particularly complicated by certain factors including those that are largely outside of our control, such as our limited operating history, customer unfamiliarity with our hardware and software-enabled services, delivery and service operations to meet demand, competition, future changes in the evolving distributed and renewable energy markets or uncertainty regarding sales performance compared with market expectations.

Accordingly, in order to grow our business, we must maintain confidence among our customers, OEM suppliers, third-party general contractor partners, financing partners and other parties in our long-term business prospects. This may be particularly complicated by factors such as:

- our limited operating history at current scale;
- our historical and anticipated near-term lack of profitability;
- unfamiliarity with or uncertainty about our energy storage systems and the overall perception of the distributed and renewable energy generation markets;
- prices for electricity in particular markets;

- competition from alternate sources of energy;
- warranty or unanticipated service issues we may experience in connection with third-party manufactured hardware and our proprietary software;
- the environmental consciousness and perceived value of environmental programs to our customers;
- the size of our expansion plans in comparison to our existing capital base and the scope and history of operations; and
- the availability and amount of incentives, credits, subsidies or other programs to promote installation of energy storage systems.

Several of these factors are largely outside our control, and any negative perceptions about our long-term business prospects, even if unfounded, would likely adversely affect our business, financial condition and results of operations.

Risks Related to Our Intellectual Property and Technology

If we are unsuccessful in developing and maintaining our proprietary technology, including our Athena platform, our ability to attract and retain partners could be impaired, our competitive position could be adversely affected and our revenue could be reduced.

Our future growth depends on our ability to continue to develop and maintain our proprietary technology that supports our hardware and software-enabled services, including our Athena platform. In the event that our current or future products and services require features that we have not developed or licensed, or we lose the benefit of an existing license, we will be required to develop or obtain such technology through purchase, license or other arrangements. If the required technology is not available on commercially reasonable terms, or at all, we may incur additional expenses in an effort to internally develop the required technology. We have received patents and have filed patent applications with respect to certain aspects of our technology, and we generally rely on patent protection with respect to our proprietary technology, as well as a combination of trade secrets and copyright law, employee and third-party non-disclosure agreements and other protective measures to protect intellectual property rights pertaining to our proprietary technology and hardware and software- enabled services. There can be no assurance that the steps taken by us to protect any of our proprietary technology will be adequate to prevent misappropriation of these technologies by third parties. If we were unable to maintain our existing proprietary technology, our ability to attract and retain customers could be impaired, our competitive position could be adversely affected, and our revenue could be reduced.

A failure of our information technology ("IT") and data security infrastructure could adversely affect our business and operations.

The efficient operation of our business depends on our IT systems, some of which are managed by third-party service providers. We rely upon the capacity, reliability and security of our IT and data security infrastructure and our ability to effectively manage our business data, accounting, financial, legal and compliance functions, communications, supply chain, order entry and fulfillment, and expand and continually update this infrastructure in response to the changing needs of our business. Our existing IT systems and any new IT systems we utilize may not perform as expected. If we experience a problem with the functioning of an important IT system or a security breach of our IT systems, including during system upgrades or new system implementations, the resulting disruptions could adversely affect our business.

Despite our implementation of reasonable security measures, our IT systems, like those of other companies, are vulnerable to damages from computer viruses, natural disasters, fire, power loss, telecommunications failures, personnel misconduct, human error, unauthorized access, physical or electronic security breaches, cyber-attacks (including malicious and destructive code, phishing attacks, ransomware, and denial of service attacks), and other similar disruptions. Such attacks or security breaches may be perpetrated by bad actors internally or externally (including computer hackers, persons involved with organized crime, or foreign state or foreign state-supported actors). Cybersecurity threat actors employ a wide variety of methods and techniques that are constantly evolving, increasingly sophisticated, and difficult to detect and successfully defend against. We have experienced such incidents in the past, and any future incidents could expose us to claims, litigation, regulatory or other governmental investigations, administrative fines and potential liability. Any system failure, accident or security breach could result in disruptions to our operations. A material network breach in the security of our or our service providers' IT systems could include the theft of our trade secrets, customer information, human resources information or other confidential data, including but not limited to personally identifiable information. Although past incidents have not had a material effect on our business operations or financial performance, to the extent that any disruptions or security breach results in a loss or damage to our data, or an inappropriate disclosure of confidential, proprietary or customer information, it could cause significant damage to our reputation, affect our relationships with our customers and strategic partners, lead to claims

against us from governments and private plaintiffs, and otherwise adversely affect our business. We cannot guarantee that future cyberattacks, if successful, will not have a material effect on our business or financial results.

Many governments have enacted laws requiring companies to provide notice of cyber incidents involving certain types of data, including personal data. If an actual or perceived cybersecurity breach of security measures, unauthorized access to our system or the systems of the third-party vendors that we rely upon, or any other cybersecurity threat occurs, we may incur liability, costs, or damages, contract termination, our reputation may be compromised, our ability to attract new customers could be negatively affected, and our business, financial condition, and results of operations could be materially and adversely affected. Any compromise of our security could also result in a violation of applicable domestic and foreign security, privacy or data protection, consumer and other laws, regulatory or other governmental investigations, enforcement actions, and legal and financial exposure, including potential contractual liability. In addition, we may be required to incur significant costs to protect against and remediate damage caused by these disruptions or security breaches in the future.

Our technology, including the Athena platform, could have undetected defects, errors or bugs in hardware or software which could reduce market adoption, damage our reputation with current or prospective customers and/or expose us to product liability and other claims that could materially and adversely affect our business.

We may be subject to claims that our hardware and software-enabled services, including the Athena platform have malfunctioned and persons were injured or purported to be injured. Any insurance that we carry may not be sufficient or it may not apply to all situations. Similarly, to the extent that such malfunctions are related to components obtained from third-party vendors, such vendors may not assume responsibility for such malfunctions. In addition, our customers could be subjected to claims as a result of such incidents and may bring legal claims against us to attempt to hold us liable. Any of these events could adversely affect our brand, relationships with customers, operating results or financial condition.

Furthermore, our Athena platform is complex, developed for over a decade by many developers, and includes a number of licensed third-party commercial and open-source software libraries. Our software has contained defects and errors and may in the future contain undetected defects or errors. We are continuing to evolve the features and functionality of our platform through updates and enhancements, and as we do, we may introduce additional defects or errors that may not be detected until after deployment to customers through our hardware. In addition, if our hardware and software- enabled services, including any updates or patches, are not implemented or used correctly or as intended, inadequate performance and disruptions in service may result.

Any defects or errors in product or services offerings, or the perception of such defects or errors, or other performance problems could result in any of the following, each of which could adversely affect our business, financial condition and results of operations:

- expenditure of significant financial and product development resources, including recalls, in efforts to analyze, correct, eliminate or work around errors or defects;
- loss of existing or potential customers or partners;
- interruptions or delays in sales;
- delayed or lost revenue;
- delay or failure to attain market acceptance;
- delay in the development or release of new functionality or improvements;
- negative publicity and reputational harm;
- sales credits or refunds;
- exposure of confidential or proprietary information;
- diversion of development and customer service resources;
- breach of warranty claims;
- legal claims under applicable laws, rules and regulations; and
- the expense and risk of litigation.

Although we have contractual protections, such as warranty disclaimers and limitation of liability provisions, in many of our agreements with customers, resellers and other business partners, such protections may not be uniformly implemented in all contracts and, where implemented, may not fully or effectively protect from claims by customers, resellers, business partners or

other third parties. Any insurance coverage or indemnification obligations of suppliers may not adequately cover all such claims, or cover only a portion of such claims. A successful product liability, warranty, or other similar claim could have an adverse effect on our business, financial condition and operating results. In addition, even claims that ultimately are unsuccessful could result in expenditure of funds in litigation, divert management's time and other resources and cause reputational harm.

Our failure to adequately secure, protect and enforce our intellectual property rights may undermine our competitive position, and litigation to protect our intellectual property rights may be costly.

Although we have taken many protective measures to protect our intellectual property, including trade secrets, policing unauthorized use of proprietary technology can be difficult and expensive. For example, many of our software developers reside in California and we cannot legally prevent them from working for a competitor.

Also, litigation may be necessary to enforce our intellectual property rights, protect our trade secrets, or determine the validity and scope of the proprietary rights of others. Such litigation may result in our intellectual property rights being challenged, limited in scope or declared invalid or unenforceable. We cannot be certain that the outcome of any litigation will be in our favor, and an adverse determination in any such litigation could impair our intellectual property rights and may adversely affect our business, prospects and reputation.

We rely primarily on patent, trade secret and trademark laws, and non-disclosure, confidentiality, and other types of contractual restrictions to establish, maintain, and enforce our intellectual property and proprietary rights. However, our rights under these laws and agreements afford us only limited protection and the actions we take to establish, maintain, and enforce our intellectual property rights may not be adequate. For example, our trade secrets and other confidential information could be disclosed in an unauthorized manner to third parties, our owned or licensed intellectual property rights could be challenged, invalidated, circumvented, infringed, or misappropriated or our intellectual property rights may not be sufficient to provide us with a competitive advantage, any of which could have a material adverse effect on our business, financial condition and results of operations. For example, we rely on our brand names, trade names and trademarks to distinguish our products and services, such as our Athena® platform, from the products of our competitors; however, third parties may oppose our trademark applications, or otherwise challenge our use of such trademarks. In the event that our trademarks are successfully challenged and we lose rights to use those trademarks, we could be forced to rebrand our products and services, which could result in the loss of goodwill and brand recognition. In addition, the laws of some countries do not protect proprietary rights as fully as do the laws of the U.S. As a result, we may not be able to protect our proprietary rights adequately abroad.

Our patent applications may not result in issued patents, and our issued patents may not provide adequate protection, which may have a material adverse effect on our ability to prevent others from commercially exploiting products similar to ours.

We cannot be certain that our pending patent applications will result in issued patents or that any of our issued patents will afford protection against a competitor. The status of patents involves complex legal and factual questions, and the breadth of claims allowed is uncertain. As a result, we cannot be certain that the patent applications that we file will result in patents being issued, or that our patents and any patents that may be issued to us in the future will afford protection against competitors with similar technology. In addition, patent applications filed in foreign countries are subject to laws, rules and procedures that differ from those of the U.S., and thus we cannot be certain that foreign patent applications related to issued U.S. patents will be issued in other regions. Furthermore, even if these patent applications are accepted and the associated patents issued, some foreign countries provide significantly less effective patent enforcement than in the U.S.

In addition, patents issued to us may be infringed upon or designed around by others and others may obtain patents that we need to license or design around, either of which would increase costs and may adversely affect our business, prospects, and operating results.

We may need to defend ourselves against claims that we infringe, have misappropriated or otherwise violate the intellectual property rights of others, which may be time consuming and would cause us to incur substantial costs.

Companies, organizations, or individuals, including our competitors, may hold or obtain patents, trademarks, or other proprietary rights that they may in the future believe are infringed by our products and services. Although we are not currently subject to any claims related to intellectual property, these companies holding patents or other intellectual property rights allegedly relating to our technologies could, in the future, make claims or bring suits alleging infringement, misappropriation or other violations of such rights, or otherwise asserting their rights and seeking licenses or injunctions. Several of the proprietary components used in our energy storage systems have been subjected to infringement challenges in the past. We also generally indemnify our customers against claims that the hardware and software-enabled services we supply infringe, misappropriate, or otherwise violate third-party intellectual property rights, and we may therefore be required to defend our customers against such claims. If a claim is successfully brought in the future and we or our hardware and software-enabled services are determined to

have infringed, misappropriated, or otherwise violated a third-party's intellectual property rights, we may be required to do one or more of the following:

- cease selling products or services that incorporate the challenged intellectual property;
- pay substantial damages (including treble damages and attorneys' fees if our infringement is determined to be willful);
- obtain a license from the holder of the intellectual property right, which license may not be available on reasonable terms or at all; or
- redesign our products or services, which may not be possible or cost-effective.

Any of the foregoing could adversely affect our business, financial condition and operating results. In addition, any litigation or claims, whether or not valid, could adversely affect our reputation, result in substantial costs, and divert resources and management attention.

We also license technology from third parties, and incorporate components supplied by third parties into our hardware. We may face claims that our use of such technology or components infringes or otherwise violates the rights of others, which would subject us to the risks described above. We may seek indemnification from our licensors or suppliers under our contracts with them, but our rights to indemnification or our suppliers' resources may be unavailable or insufficient to cover our costs and losses.

Regulatory Risks

The installation and operation of our energy storage systems are subject to environmental laws and regulations in various jurisdictions, and there is uncertainty with respect to the interpretation of certain environmental laws and regulations to our energy storage systems, especially as these regulations evolve over time.

We are subject to national, state and local environmental laws and regulations, as well as environmental laws in those foreign jurisdictions in which we operate. Environmental laws and regulations can be complex and may change often. These laws can give rise to liability for administrative oversight costs, cleanup costs, property damage, bodily injury, fines and penalties. We are committed to compliance with applicable environmental laws and regulations, including health and safety standards, and we continually review the operation of our energy storage systems for health, safety and compliance. Our energy storage systems, like other battery technology-based products of which we are aware, produce small amounts of hazardous wastes and air pollutants, and we seek to ensure that they are handled in accordance with applicable regulatory standards.

Maintaining compliance with laws and regulations can be challenging given the changing patchwork of environmental laws and regulations that prevail at the U.S. federal, state, regional and local levels and in foreign countries in which we operate. Most existing environmental laws and regulations preceded the introduction of battery technology and were adopted to apply to technologies existing at the time, namely large, coal, oil or gas-fired power plants. Currently, there is generally little guidance from these agencies on how certain environmental laws and regulations may, or may not, be applied to our technology.

In many instances, our technology is moving faster than the development of applicable regulatory frameworks. It is possible that regulators could delay or prevent us from conducting our business in some way pending agreement on, and compliance with, shifting regulatory requirements. Such actions could delay the sale to and installation by customers of energy storage systems, require their modification or replacement, result in fines, or trigger claims of performance warranties and defaults under customer contracts that could require us to refund hardware or service contract payments, any of which could adversely affect our business, financial performance and reputation.

Existing regulations and changes to such regulations impacting the electric power industry may create technical, regulatory and economic barriers which could significantly reduce demand for our energy storage systems.

The market for electricity generation products is heavily influenced by U.S. federal, state, local and foreign government regulations and policies, as well as internal policies and regulations of electric utility providers. These regulations and policies often relate to electricity pricing and technical interconnection of customer-owned electricity generation. These regulations and policies are often modified and could continue to change, and this could result in a significant reduction in demand for our energy storage systems. For example, utility companies commonly charge fees to larger, industrial customers for disconnecting from the electric grid or for having the capacity to use power from the electric grid for back-up purposes. These fees could change, increasing the cost to our customers of using our energy storage systems and making them less economically attractive.

Negative attitudes toward renewable energy projects from the U.S. government, other lawmakers and regulators, and activists could adversely affect our business, financial condition and results of operations.

Parties with an interest in other energy sources, including lawmakers, regulators, policymakers, environmental and advocacy organizations or other activists may invest significant time and money in efforts to delay, repeal or otherwise negatively influence regulations and programs that promote renewable energy. Many of these parties have substantially greater resources and influence than we have. Further, changes in U.S. federal, state or local political, social or economic conditions, including a lack of legislative focus on these programs and regulations, could result in their modification, delayed adoption or repeal. Any failure to adopt, delay in implementing, expiration, repeal or modification of these programs and regulations, or the adoption of any programs or regulations that encourage the use of other energy sources over renewable energy, could adversely affect our business, financial condition and results of operations.

Opposition to our customers' project requests for permits or successful challenges or appeals to permits issued for their projects could adversely affect our operating plans.

A decrease in acceptance of renewable energy projects by local populations, an increase in the number of legal challenges, or an unfavorable outcome of such legal challenges could adversely affect the financial condition of our customers and reduce their demand for our hardware and software-enabled services. For example, persons, associations and groups could oppose renewable energy projects in general or our customers' projects specifically, citing, for example, misuse of water resources, landscape degradation, land use, food scarcity or price increase and harm to the environment. Moreover, regulation may restrict the development of renewable energy plants in certain areas. In order to develop a renewable energy project, our customers are typically required to obtain, among other things, environmental impact permits or other authorizations and building permits, which in turn require environmental impact studies to be undertaken and public hearings and comment periods to be held during which any person, association or group may oppose a project. The effect of such public opposition to renewable energy projects and any resulting reduction in customer demand for our hardware and software-enabled services could adversely affect our business, financial condition and results of operations.

Additional Risks Related to Ownership of our Common Stock

We may issue a significant number of shares in the future in connection with investments or acquisitions.

We may issue securities in the future in connection with investments or acquisitions or otherwise. The amount of shares of common stock issued in connection with an investment or acquisition could constitute a material portion of our then-outstanding shares of common stock. Any issuance of additional securities in connection with investments or acquisitions may result in additional dilution to our stockholders.

We do not intend to pay cash dividends for the foreseeable future.

We currently intend to retain our future earnings, if any, to finance the further development and expansion of our business, and do not intend to pay cash dividends in the foreseeable future. Any future determination to pay dividends will be at the discretion of our board of directors and will depend on our financial condition, results of operations, capital requirements, restrictions contained in future agreements and financing instruments, business prospects and such other factors as our board of directors deems relevant.

In early 2021, we identified material weaknesses in our internal control over financial reporting, which we are in the process of remediating. If we do not remediate these weaknesses, it could affect the reliability of our consolidated financial statements and have other adverse consequences.

In connection with the Company's assessment of the effectiveness of internal control over financial reporting, the Company identified certain deficiencies in internal control over financial reporting that existed as of December 31, 2021, which management believes to be material weaknesses. These were previously identified and reported as of and for the year ended December 31, 2020 (our prior year end). Specifically, the material weaknesses identified related to (i) accounting for energy storage systems, deferred cost of goods sold and inventory, (ii) ineffective internal controls over review of the Company's consolidated financial statements and related disclosures, (iii) a lack of formality in our internal control activities, especially related to management review-type controls, and (iv) ineffective internal controls over the review of certain revenue recognition calculations.

We have concluded that our disclosure controls and procedures were not effective as December 31, 2021 due to material weaknesses in our internal control over financial reporting, all as described in Part II, Item 9A,"Controls and Procedures" of this Annual Report on Form 10-K.

With respect to energy storage systems, inventory and deferred cost of goods sold, we did not properly track inflows and outflows, including the valuation of energy storage systems, due in part to the systems that we used to track and value energy storage systems and inventory. With respect to a lack of formality in our control activities, we did not sufficiently establish formal policies and procedures to design effective controls, establish responsibilities to execute these policies and procedures

and hold individuals accountable for performance of these responsibilities, including over review over revenue recognition and internal-use capitalized software calculations. We had multiple control deficiencies aggregating to a material weakness over ineffective control activities.

Our management concluded that these material weaknesses in our internal control over financial reporting, are due to the fact that, at the time, we were a private company with limited resources and did not have the necessary business processes and related internal controls formally designed and implemented coupled with the appropriate resources with the appropriate level of experience and technical expertise to oversee our business processes and controls. While we have taken a number of steps during 2021 to remediate the material weaknesses, as described below, the controls implemented need to operate for a sufficient period of time, and their operational effectiveness needs to be confirmed through testing, in order for management to conclude that these controls are effective and the material weaknesses have been remediated. We cannot provide assurance that our remediation efforts will be adequate to allow us to conclude that such controls will be effective in the future. We also cannot assure you that additional material weaknesses in our internal control over financial reporting will not arise or be identified in the future.

Remediation Activities

We have remediated material weaknesses related to (i) ineffective internal controls over accounting for complex and significant transactions, and (ii) ineffective internal controls over the review of internal-use capitalized software calculations that were previously identified during the course of preparing our financial statements as of and for the year ended December 31, 2020 (our prior year end). Our remediation efforts included implementing, under the direction of our Chief Financial Officer, enhanced review procedures and documentation standards to monitor and review all complex and significant transactions. Our management took further action by performing a robust review of all internal controls to strengthen documentation, validate processes and communicate accountability for performance of internal control responsibilities. Further, we engaged outside service providers to assist in evaluating and documenting processes and controls, identifying and addressing control gaps and strengthening the overall quality of documentation that evidences control activities.

Our management, with oversight of the Audit Committee of the Board, continues to devote significant time, attention and resources to remediating the aforementioned material weaknesses in its internal control over financing reporting and believes that we have made significant progress to that end. The material weaknesses will be considered remediated when management designs and implements effective controls that operate for a sufficient period of time and management has concluded, through testing, that these controls are effective. As of December 31, 2021, the Company had initiated the following steps intended to remediate the material weaknesses described above and strengthen its internal control over financial reporting that, as of December 31, 2021, had not yet been fully implemented or had not been in place for a sufficient period of time to demonstrate that they were having their desired effect:

- develop and deliver internal control training to management and finance/accounting personnel, focusing on a review of management's and individual roles and responsibilities related to internal control over financial reporting;
- hire, train and develop experienced accounting executives and personnel with a level of public accounting knowledge and experience in the application of U.S. GAAP commensurate with our financial reporting requirements and the complexity of our operations and transactions;
- establish and implement policies and practices to attract, develop and retain competent personnel with public accounting experience;
- engage a qualified third-party SOX compliance firm to assist us in bolstering and implementing our SOX compliance program, with a focus on documenting processes and controls, identifying and addressing control gaps, formalizing the internal control activities and strengthening the overall quality of documentation that evidences control activities;
- perform a financial statement risk assessment and scoping exercise to identify and assess the risks of material misstatements in our financial statements to better ensure that the appropriate effort and resources are dedicated to addressing risks of material misstatement;
- establish a disclosure committee comprised of our CEO, CFO, Chief Legal Officer, Chief Accounting Officer and other senior finance/accounting personnel to, among other things, communicate, discuss and capture information from across the Company for inclusion in our public filings to ensure that information required by us to be disclosed is recorded, processed, summarized and reported accurately and on a timely basis.
- implement a Section 302 sub-certification program to reinforce the Company's culture of compliance;

- implement processes to improve monitoring activities involving the review and supervision of our accounting operations, including increased and enhanced balance sheet reviews to allow more focus on quality account reconciliations and enhanced monitoring of our internal control over financial reporting, and
- implement new accounting applications to enhance and streamline the order-to-cash and commissions processes.

We plan to continue to devote significant time and attention to remediate the above material weaknesses as soon as reasonably practicable and believe that we have made significant progress to that end. In doing so, we will continue to incur expenses and expend management time on compliance-related issues. The material weaknesses will be considered remediated when management designs and implements effective controls that operate for a sufficient period of time and management has concluded, through testing, that these controls are effective. We believe the foregoing actions will be sufficient to remediate the identified material weaknesses and strengthen our internal control over financial reporting; however, there can be no guarantee that such remediation will be sufficient. We will continue to evaluate the effectiveness of our controls and will make any further changes management determines appropriate. If we are unable to complete our remediation efforts in a timely manner and are, therefore, not able to favorably assess the effectiveness of our internal control over financial reporting, this could further cause investors to lose confidence, and our operating results, financial position, ability to accurately report our financial results and timely file our SEC reports, and our stock price could be adversely affected.

If analysts do not publish research about our business or if they publish inaccurate or unfavorable research, our stock price and trading volume could decline.

The trading market for our common stock depends in part on the research and reports that analysts publish about our business. We do not have any control over these analysts. If one or more of the analysts who cover us downgrade our common stock or publish inaccurate or unfavorable research about our business, the price of our common stock would likely decline. If few analysts cover us, demand for our common stock could decrease and our common stock price and trading volume may decline. Similar results may occur if one or more of these analysts stop covering us in the future or fail to publish reports on us regularly.

The trading price of our common stock is volatile.

The trading price of our common stock has been and is likely to continue to be volatile. You may not be able to resell your shares at an attractive price due to a number of factors such as those listed in "— *Risks Relating to Stem's Business and Industry*" and the following:

- results of operations that vary from the expectations of securities analysts and investors;
- results of operations that vary from those of our competitors;
- the effects of the COVID-19 pandemic and its effect on the Company's business and financial conditions;
- changes in expectations as to the Company's future financial performance, including financial estimates and investment recommendations by securities analysts and investors;
- declines in the market prices of stocks generally;
- strategic actions by us or our competitors;
- announcements by us or our competitors of significant contracts, acquisitions, joint ventures, other strategic relationships or capital commitments;
- any significant change in the Company's senior management;
- changes in general economic or market conditions or trends in the Company's industry or markets;
- changes in business or regulatory conditions, including new laws or regulations or new interpretations of existing laws or regulations applicable to the Company's business;
- future sales of our common stock or other securities;
- investor perceptions or the investment opportunity associated with our common stock relative to other investment alternatives;
- the public's response to press releases or other public announcements by us or third parties, including the Company's filings with the SEC;
- litigation involving the Company, the Company's industry, or both, or investigations by regulators into the Company's operations or those of the Company's competitors;

- guidance, if any, that we provide to the public, any changes in this guidance or the Company's failure to meet this guidance;
- the development and sustainability of an active trading market for our common stock;
- actions by institutional or activist stockholders;
- changes in accounting standards, policies, guidelines, interpretations or principles; and
- other events or factors, including those resulting from natural disasters, war, acts of terrorism or responses to these events.

These broad market and industry fluctuations may adversely affect the market price of our common stock, regardless of our actual operating performance. In addition, price volatility may be greater if the public float and trading volume of our common stock is low.

In the past, following periods of market volatility, stockholders have instituted securities class action litigation. If we were involved in securities litigation, it could have a substantial cost and divert resources and the attention of executive management from the Company's business regardless of the outcome of such litigation.

Our financial condition and results of operations and other key metrics are likely to fluctuate on a quarterly basis in future periods, which could cause our results for a particular period to fall below expectations, resulting in a severe decline in the price of our common stock.

Our financial condition and results of operations and other key metrics have fluctuated significantly in the past and may continue to fluctuate in the future due to a variety of factors, many of which are beyond our control. For example, the amount of revenue we recognize in a given period is materially dependent on the volume of purchases of our energy storage systems and software-enabled services in that period.

In addition to the other risks described herein, the following factors could also cause our financial condition and results of operations to fluctuate on a quarterly basis:

- the timing of customer installations of our hardware, which may depend on many factors such as availability of inventory, product quality or performance issues, or local permitting requirements, utility requirements, environmental, health and safety requirements, weather and customer facility construction schedules, and availability and schedule of our third-party general contractors;
- the sizes of particular customer hardware installations and the number of sites involved in any particular quarter;
- delays or cancellations of energy storage system purchases and installations;
- fluctuations in our service costs, particularly due to unaccrued costs of servicing and maintaining energy storage systems;
- weaker than anticipated demand for our energy storage systems due to changes in government incentives and policies;
- interruptions in our supply chain;
- the timing and level of additional purchases by existing customers;
- unanticipated expenses or installation delays incurred by customers due to changes in governmental regulations, permitting requirements by local authorities at particular sites, utility requirements and environmental, health and safety requirements; and
- disruptions in our sales, production, service or other business activities resulting from our inability to attract and retain qualified personnel.

In addition, our revenue, key operating metrics and other operating results in future quarters may fall short of the expectations of investors and financial analysts, which could have an adverse effect on the price of our common stock.

Certain provisions of our Amended and Restated Charter and Amended and Restated Bylaws may have an anti- takeover effect and may delay, defer or prevent a merger, acquisition, tender offer, takeover attempt or other change of control transaction that a stockholder might consider in its best interest, including those attempts that might result in a premium over the market price for the shares held by our stockholders.

These provisions, among other things:

- establish a staggered board of directors divided into three classes serving staggered three-year terms, such that not all members of our board of directors will be elected at one time;
- authorize the our board of directors to issue new series of preferred stock without stockholder approval and create, subject to applicable law, a series of preferred stock with preferential rights to dividends or our assets upon liquidation, or with superior voting rights to our existing common stock;
- eliminate the ability of stockholders to call special meetings of stockholders;
- eliminate the ability of stockholders to fill vacancies on our board of directors;
- establish advance notice requirements for nominations for election to our board of directors or for proposing matters that can be acted upon by stockholders at our annual stockholder meetings;
- permit our board of directors to establish the number of directors;
- provide that our board of directors is expressly authorized to make, alter or repeal our Amended and Restated Bylaws;
- provide that stockholders can remove directors only for cause and only upon the approval of not less than 66 2⁄3 of all outstanding shares of our voting stock;
- require the approval of not less than 66 2⁄3 of all outstanding shares of our voting stock to amend our Amended and Restated Bylaws and specific provisions of our Amended and Restated Charter; and
- limit the jurisdictions in which certain stockholder litigation may be brought.

As a Delaware corporation, we are subject to the anti-takeover provisions of Section 203 of the DGCL, which prohibits a Delaware corporation from engaging in a business combination specified in the statute with an interested stockholder (as defined in the statute) for a period of three (3) years after the date of the transaction in which the person first becomes an interested stockholder, unless the business combination is approved in advance by a majority of the independent directors or by the holders of at least two-thirds of the outstanding disinterested shares. The application of Section 203 of the DGCL could also have the effect of delaying or preventing a change of control of our company.

These anti-takeover provisions could make it more difficult for a third-party to acquire us, even if the third-party's offer may be considered beneficial by many of our stockholders. As a result, our stockholders may be limited in their ability to obtain a premium for their shares. These provisions could also discourage proxy contests and make it more difficult for you and other stockholders to elect directors of your choosing and to cause us to take other corporate actions you desire.

Our Amended and Restated Charter designates the Court of Chancery of the State of Delaware as the sole and exclusive forum for certain types of actions and proceedings that may be initiated by our stockholders, which could limit our stockholders' ability to obtain a favorable judicial forum for disputes with us or our directors, officers, employees or stockholders.

Our Amended and Restated Charter provides that, that, unless we consent in writing to the selection of an alternative forum, the sole and exclusive forum, to the fullest extent permitted by law, for (i) any derivative action or proceeding brought on our behalf, (ii) any action asserting a breach of a fiduciary duty owed by any director, officer or other employee to us or our stockholders, (iii) any action asserting a claim against us or any director, officer, or other employee arising pursuant to the DGCL, (iv) any action to interpret, apply, enforce, or determine the validity of our second amended and restated certificate of incorporation or amended and restated bylaws, or (v) any other action asserting a claim that is governed by the internal affairs doctrine, shall be the Court of Chancery of the State of Delaware (or another state court or the federal court located within the State of Delaware if the Court of Chancery does not have or declines to accept jurisdiction), in all cases subject to the court's having jurisdiction over indispensable parties named as defendants.

In addition, our Amended and Restated Charter provides that the federal district courts of the United States will be the exclusive forum for resolving any complaint asserting a cause of action arising under the Securities Act but that the forum selection provision does not apply to claims brought to enforce a duty or liability created by the Securities Exchange Act of 1934, as amended, (the "Exchange Act"). Although we believe these provisions benefit us by providing increased consistency in the application of Delaware law for the specified types of actions and proceedings, the provisions may have the effect of discouraging lawsuits against us or our directors and officers. Alternatively, if a court were to find the choice of forum provision contained in our Amended and Restated Charter to be inapplicable or unenforceable in an action, we might incur additional costs associated with resolving such action in other jurisdictions, which could harm our business, financial condition, and operating results. For example, under the Securities Act, federal courts have concurrent jurisdiction over all suits brought to enforce any duty or liability created by the Securities Act, and investors cannot waive compliance with the federal securities laws and the rules and regulations thereunder. Any person or entity purchasing or otherwise acquiring any interest in our shares

of capital stock shall be deemed to have notice of and consent to this exclusive forum provision, but will not be deemed to have waived our compliance with the federal securities laws and the rules and regulations thereunder.

General Risk Factors

Our management team has limited experience managing a public company.

Most members of our management team have limited experience managing a publicly traded company, interacting with public company investors, and complying with the increasingly complex laws pertaining to public companies. Our management team may not successfully or efficiently manage us as a public company that is subject to significant regulatory oversight and reporting obligations under the federal securities laws and the continuous scrutiny of securities analysts and investors. These new obligations and constituents require significant attention from our senior management and could divert their attention away from the day-to-day management of our business, which could adversely affect our business, results of operations and financial condition.

Future litigation or administrative proceedings could have a material adverse effect on our business, financial condition, and results of operations.

We have been and continue to be involved in legal proceedings, administrative proceedings, claims, and other litigation. In addition, since our energy storage product is a new type of product in a nascent market, we have in the past needed and may in the future need to seek the amendment of existing regulations or, in some cases, the creation of new regulations, in order to operate our business in some jurisdictions. Such regulatory processes may require public hearings concerning our business, which could expose us to subsequent litigation. Unfavorable outcomes or developments relating to proceedings to which we are a party or transactions involving our products and services, such as judgments for monetary damages, injunctions, or denial or revocation of permits, could have a material adverse effect on our business, financial condition, and results of operations. In addition, settlement of claims could adversely affect our financial condition and results of operations.

ITEM 1B. UNRESOLVED STAFF COMMENTS

None.

ITEM 2. PROPERTIES

Our corporate headquarters is located in San Francisco, California. This facility comprises approximately 23,500 square feet of office space. We have an additional facility in Burlingame, California comprising approximately 20,800 square feet of office and warehouse space. We lease both of these facilities.

We believe our space is adequate for our current needs and that suitable additional or substitute space will be available to accommodate the foreseeable expansion of our operations. For more information about our material lease commitments, see Note 7 — *Leases*, in the accompanying notes to the consolidated financial statements included in Part II, Item 8, “Financial Statements and Supplementary Data” of this Annual Report on Form 10-K.

ITEM 3. LEGAL PROCEEDINGS

The information with respect to this Item 3. Legal Proceedings is set forth in Note 19 — *Commitments and Contingencies,* in the accompanying notes to the consolidated financial statements included in Part II, Item 8, “Financial Statements and Supplementary Data” of this Annual Report on Form 10-K.

ITEM 4. MINE SAFETY DISCLOSURES

Not applicable.

Part II.

ITEM 5. MARKET FOR REGISTRANT'S COMMON EQUITY, RELATED STOCKHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES

Market Information for Common Stock

Our common stock is listed on The New York Stock Exchange under the symbol "STEM."

Holders

As of February 17, 2022, there were 176 holders of record of our common stock.

Dividend Policy

We have not paid any cash dividends on our common stock to date and currently intend to retain any future earnings to fund the growth of our business. The payment of cash dividends is subject to the discretion of our Board of Directors and may be affected by various factors, including our future earnings, financial condition, capital requirements, share repurchase activity, current and future planned strategic growth initiatives, levels of indebtedness, and other considerations our Board of Directors deem relevant.

Recent Sales of Unregistered Securities

None.

Purchases of Equity Securities by the Issuer and Affiliated Purchasers

None, other than shares of our common stock repurchased pursuant to net settlement by employees in satisfaction of income tax withholding obligations incurred through the vesting of stock awards.

ITEM 6. [RESERVED]

ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

You should read the following discussion and analysis of our financial condition and results of operations in conjunction with our consolidated financial statements and the related notes included in Part II, Item 8, "Financial Statements and Supplementary Data" of this Report. In addition to our historical consolidated financial information, the following discussion contains forward-looking statements that reflect our plans, estimates, and beliefs. Our actual results and the timing of certain events could differ materially from those discussed in the forward-looking statements. Factors that could cause or contribute to these differences include, but are not limited to, those discussed below and elsewhere in this Report, particularly in Part I, Item 1A, "Risk Factors."

This MD&A section generally discusses 2021 and 2020 items and year-to-year comparisons between 2021 and 2020. Discussions of 2019 items and year-to-year comparisons between 2020 and 2019 that are not included in this Annual Report on Form 10-K can be found in the section entitled "Stem's Management's Discussion and Analysis of Financial Condition and Results or Operations" contained in our Form S-1 filed with the SEC on July 19, 2021.

The Merger

The information regarding the Merger set forth in the first paragraph of "Item 1. Business — History" above is incorporated herein by reference. See also Note 1 - *Business*, in the accompanying notes to the consolidated financial statements included in Part II, Item 8, "Financial Statements and Supplementary Data" of this Annual Report on Form 10-K. For financial reporting purposes, Legacy Stem is treated as the accounting acquirer.

Acquisition of AlsoEnergy

On February 1, 2022, we completed the acquisition of 100% of the outstanding shares of AlsoEnergy for an aggregate purchase price of $695.0 million, consisting of approximately 75% in cash and approximately 25% in shares of the Company's common stock. The acquisition was structured on a cash-free, debt free basis and subject to other customary adjustments as set forth in the purchase agreement.

The transaction combines our storage optimization capabilities with AlsoEnergy's solar asset performance monitoring and control software. We will complete the initial accounting for the acquisition during our first quarter of 2022.

Our 2021 results included in this Annual Report on Form 10-K do not reflect the effects of the AlsoEnergy acquisition.

Overview

Our mission is to build and operate the largest, digitally connected, intelligent energy storage network for our customers. In order to fulfill our mission, (i) we provide our customers, which include commercial and industrial ("C&I") enterprises as well as independent power producers, renewable project developers, utilities and grid operators, with an energy storage system, sourced from leading, global battery original equipment manufacturers ("OEMs"), that we deliver through our partners, including solar project developers and engineering, procurement and construction firms and (ii) through our Athena artificial intelligence ("AI") platform ("Athena"), we provide our customers with on-going software-enabled services to operate the energy storage systems for 10 to 20 years. In addition, in all the markets where we operate our customers' systems, we have agreements to manage the energy storage systems using the Athena platform to participate in energy markets and to share the revenue from such market participation.

We operate in two key areas within the energy storage landscape: Behind-the-Meter ("BTM") and Front-of-the-Meter ("FTM"). An energy system's position in relation to a customer's electric meter determines whether it is designated a BTM or FTM system. BTM systems provide power that can be used on-site without interacting with the electric grid and passing through an electric meter. Our BTM systems reduce C&I customer energy bills and help our customers facilitate the achievement of their corporate environmental, social, and corporate governance ("ESG") objectives. FTM, grid-connected systems provide power to off-site locations and must pass through an electric meter prior to reaching an end-user. Our FTM systems decrease risk for project developers, lead asset professionals, independent power producers and investors by adapting to dynamic energy market conditions in connection with the deployment of electricity and improving the value of energy storage over the course of their FTM system's lifetime.

Since our inception in 2009, we have engaged in developing and marketing Athena's software enabled services, raising capital, and recruiting personnel. We have incurred net operating losses and negative cash flows from operations each year since our inception. We have financed our operations primarily through the Merger, the issuance of convertible preferred stock, convertible senior notes, debt financing, and cash flows from customers.

Our total revenue grew from $36.3 million for the year ended December 31, 2020 to $127.4 million for the year ended December 31, 2021. For the years ended December 31, 2021 and 2020, we incurred net losses of $101.2 million and $156.1 million, respectively. As of December 31, 2021, we had an accumulated deficit of $509.1 million.

We expect that our sales and marketing, research and development, and general and administrative costs and expenses will continue to increase as we expand our efforts to increase sales of our solutions, expand existing relationships with our customers, and obtain regulatory clearances or approvals for future product enhancements. In addition, we expect our general and administrative costs and expenses to increase due to the additional costs associated with scaling our business operations as well as with being a public company, including legal, accounting, insurance, exchange listing and SEC compliance, investor relations, and other costs and expenses.

Key Factors, Trends and Uncertainties Affecting our Business

We believe that our performance and future success depend on several factors that present significant opportunities for us but also pose risks and challenges, including but not limited to:

Decline in Lithium-Ion Battery Costs

Our revenue growth is directly tied to the continued adoption of energy storage systems by our customers. The cost of lithium-ion energy storage hardware has declined significantly in the last decade and has resulted in a large addressable market today. The market for energy storage is rapidly evolving, and while we believe costs will continue to decline, there is no guarantee. If costs do not continue to decline, or do not decline as quickly as we anticipate, this could adversely affect our ability to increase our revenue and grow our business.

Increase in Deployment of Renewables

Deployment of intermittent resources has accelerated over the last decade, and today, wind and solar have become a low cost fuel source. We expect the cost of generating renewable energy to continue to decline and deployments of energy storage systems to increase. As renewable energy sources of energy production are expected to represent a larger proportion of energy generation, grid instability rises due to their intermittency, which can be addressed by energy storage solutions.

Competition

We are a market leader in terms of capacity of energy storage under management. We intend to strengthen our competitive position over time by leveraging the network effect of Athena's AI infrastructure. Existing competitors may expand their

product offerings and sales strategies, and new competitors may enter the market. Furthermore, our competitors include other types of software providers and some hardware manufacturers that offer software solutions. If our market share declines due to increased competition, our revenue and ability to generate profits in the future may be adversely affected.

Government Regulation and Compliance

Although we are not regulated as a utility, the market for our product and services is heavily influenced by federal, state, and local government statutes and regulations concerning electricity. These statutes and regulations affect electricity pricing, net metering, incentives, taxation, competition with utilities, and the interconnection of customer-owned electricity generation. In the United States and internationally, governments continuously modify these statutes and regulations and acting through state utility or public service commissions, regularly change and adopt different rates for commercial customers. These changes can positively or negatively affect our ability to deliver cost savings to customers.

Effects of COVID-19

The ongoing COVID-19 pandemic has resulted and may continue to result in widespread adverse effects on the global and U.S. economies. Ongoing government and business responses to COVID-19, along with COVID-19 variants and the resurgence of related disruptions, could have a continued material adverse impact on economic and market conditions and trigger a period of continued global and U.S. economic slowdown.

Our industry is currently facing shortages and shipping delays affecting the supply of inverters, enclosures, battery modules and associated component parts for inverters and battery energy storage systems available for purchase. These shortages and delays can be attributed in part to the COVID-19 pandemic and resulting government action, as well as broader macroeconomic conditions that may persist once the immediate effects of the COVID-19 pandemic have subsided. While a majority of our suppliers have secured sufficient supply to permit them to continue delivery and installations through the end of 2022, if these shortages and delays persist into 2023, they could adversely affect the timing of when battery energy storage systems can be delivered and installed, and when (or if) we can begin to generate revenue from those systems. We cannot predict the full effects the COVID-19 pandemic will have on our business, cash flows, liquidity, financial condition and results of operations at this time due to numerous uncertainties. We will continue to monitor developments affecting our workforce, our suppliers, our customers and our business operations generally, and will take actions we determine are necessary in order to mitigate these impacts as much as possible.

Non-GAAP Financial Measures

In addition to financial results determined in accordance with U.S. generally accepted accounting principles, or GAAP, we use Adjusted EBITDA and non-GAAP gross margin, which are non-GAAP financial measures, for financial and operational decision making and as a means to evaluate our operating performance and prospects, develop internal budgets and financial goals, and to facilitate period-to-period comparisons. Our management believes that these non-GAAP financial measures provide meaningful supplemental information regarding our performance and liquidity by excluding certain expenses and expenditures that may not be indicative of our operating performance, such as stock-based compensation and other non-cash charges, as well as discrete cash charges that are infrequent in nature. We believe that both management and investors benefit from referring to these non-GAAP financial measures in assessing our performance and when planning, forecasting, and analyzing future periods. These non-GAAP financial measures also facilitate management's internal comparisons to our historical performance and liquidity as well as comparisons to our competitors' operating results. We believe these non-GAAP financial measures are useful to investors both because they (1) allow for greater transparency with respect to key metrics used by management in its financial and operational decision making and (2) are used by our institutional investors and the analyst community to help them analyze the health of our business. Adjusted EBITDA and non-GAAP gross margin should be considered in addition to, not as a substitute for, or superior to, other measures of financial performance prepared in accordance with GAAP.

Non-GAAP gross margin

We define non-GAAP gross margin as gross margin excluding amortization of capitalized software, impairments related to decommissioning of end-of-life systems, and certain operating expenses including communication and cloud services expenditures reclassified to cost of revenue.

The following table provides a reconciliation of non-GAAP gross margin to GAAP gross margin ($ in millions, except for percentages):

	Year Ended December 31,	
	2021	2020
Revenue	$ 127.4	$ 36.3
Cost of revenue	(126.1)	(40.2)
GAAP Gross Margin	1.2	(3.9)
GAAP Gross Margin %	*1 %*	*(11)%*
Adjustments to Gross Margin:		
Amortization of Capitalized Software	5.3	4.0
Impairments	4.6	3.1
Other Adjustments (1)	2.8	0.3
Non-GAAP Gross Margin	$ 14.0	$ 3.5
Non-GAAP Gross Margin %	*11 %*	*10 %*

(1) Consists of certain operating expenses including communication and cloud service expenditures reclassified to cost of revenue.

Adjusted EBITDA

As discussed above, we believe that Adjusted EBITDA is useful for investors to use in comparing our financial performance with the performance of other companies. Nonetheless, the expenses and other items that we exclude in our calculation of Adjusted EBITDA may differ from the expenses and other items, if any, that other companies may exclude when calculating Adjusted EBITDA.

We calculate Adjusted EBITDA as net income (loss) before net interest expense, income tax provision and depreciation and amortization, including amortization of internally developed software, further adjusted to exclude stock-based compensation and other income and expense items, including the change in fair value of warrants and embedded derivatives, vesting of warrants and loss on extinguishment of debt.

The following table provides a reconciliation of Adjusted EBITDA to net loss:

	Year Ended December 31,	
	2021	2020
	(in thousands)	
Net loss	$ (101,211)	$ (156,124)
Adjusted to exclude the following:		
Depreciation and amortization	29,098	20,871
Interest expense	17,395	20,806
Loss on extinguishment of debt	5,064	—
Stock-based compensation	13,546	4,542
Issuance of warrants for services	9,183	—
Change in fair value of warrants and embedded derivative	(3,424)	84,455
Provision for income taxes	—	5
Adjusted EBITDA	$ (30,349)	$ (25,445)

Financial Results and Key Metrics

The following table presents our financial results and our key metrics (in millions unless otherwise noted):

	Year Ended December 31,	
	2021	2020
	(in millions)	
Financial Results		
Revenue	$ 127.4	$ 36.3
GAAP Gross Margin	$ 1.2	$ (3.9)
GAAP Gross Margin %	1 %	(11)%
Non-GAAP Gross Margin	$ 14.0	$ 3.5
Non-GAAP Gross Margin %	11 %	10 %
Net Loss	$ (101.2)	$ (156.1)
Adjusted EBITDA	$ (30.3)	$ (25.4)
Key Operating Metrics		
12-Month Pipeline (in billions) (1)	$ 4.0	$ 1.6
Bookings (in millions) (2)	416.5	137.7
Contracted Backlog (in millions) (3)	$ 449.0	$ 184.0
Contracted AUM (in GWh) (4)	1.6	1.0
** at period end*		
*** not available*		

(1) As described below.

(2) As described below.

(3) Total value of bookings in dollars, as reflected on a specific date. Backlog increases as new contracts are executed (bookings) and decreases as integrated storage systems are delivered and recognized as revenue.

(4) Total GWh of systems in operation or under contract.

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Pipeline

Pipeline represents the total value (excluding market participation revenue) of uncontracted, potential hardware and software contracts that are currently being pursued by Stem direct salesforce and channel partners with developers and independent power producers seeking energy optimization services and transfer of energy storage systems that have a reasonable likelihood of execution within 12 months of the end of the relevant period based on project timelines published by such developers and independent power producers. We cannot guarantee that our pipeline will result in meaningful revenue or profitability.

Bookings

Due to the long-term nature of our contracts, bookings are a key metric that allows us to understand and evaluate the growth of our Company and our estimated future revenue related to customer contracts for our energy optimization services and transfer of energy storage systems. Bookings represents the accumulated value at a point in time of contracts that have been executed under both our host customer and partnership sales models.

For host customer sales, bookings represent the expected consideration from energy optimization services contracts, including estimated incentive payments that are earned by the host customer from utility companies in relation to the services provided by us and assigned by the host customer to us. For host customer sales, there are no differences between bookings and remaining performance obligations at any point in time.

For partnership sales, bookings are the sum of the expected consideration to be received from the transfer of hardware and energy optimization services (excluding any potential revenues from market participation). For partnership sales, even though we have secured an executed contract with estimated timing of project delivery and installation from the customer, we do not consider it a contract in accordance with FASB ASU 2014-09 Topic 606, *Revenue from Contracts with Customers* (“ASC 606)”,or a remaining performance obligation, until the customer has placed a binding purchase order. A signed customer contract is considered a booking as this indicates the customer has agreed to place a purchase order in the foreseeable future, which typically occurs within three (3) months of contract execution. However, executed customer contracts, without binding purchase orders, are cancellable without penalty by either party.

For partnership sales, once a purchase order has been executed, the booking is considered to be a contract in accordance with ASC 606, and therefore, gives rise to a remaining performance obligation as we have an obligation to transfer hardware and energy optimization services in our partnership agreements. We also have the contractual right to receive consideration for our performance obligations.

The accounting policy and timing of revenue recognition for host customer contracts and partnership arrangements that qualify as contracts with customers under ASC 606, are described within Note 3- *Revenue*, in the accompanying notes to the consolidated financial statements included in Part II, Item 8, "Financial Statements and Supplementary Data" of this Annual Report on Form 10-K.

Components of Our Results of Operations

Revenue

We generate service revenue and hardware revenue. Service revenue is generated through arrangements with host customers to provide energy optimization services using our proprietary cloud-based software platform coupled with a dedicated energy storage system owned and controlled by us throughout the term of the contract. Fees charged to customers for energy optimization services generally consist of recurring fixed monthly payments throughout the term of the contract and in some arrangements, an installation and/or upfront fee component. We may also receive incentives from utility companies in relation to the sale of our services.

We generate hardware revenue through partnership arrangements consisting of promises to sell an energy storage system to solar plus storage project developers. Performance obligations are satisfied when the energy storage system along with all ancillary hardware components are delivered. The milestone payments received before the delivery of hardware are treated as deferred revenue. We separately generate services revenue through partnership arrangements by providing energy optimization services after the developer completes the installation of the project.

Cost of Revenue

Cost of service revenue includes depreciation of the cost of energy storage systems we own under long-term customer contracts, which includes capitalized fulfillment costs, such as installation services, permitting and other related costs. Cost of revenue may also include any impairment of inventory and energy storage systems, along with system maintenance costs associated with the ongoing services provided to customers. Costs of revenue are recognized as energy optimization and other supporting services are provided to our customers throughout the term of the contract.

Cost of hardware revenue includes the cost of the hardware, which generally includes the cost of the hardware purchased from a manufacturer, shipping, delivery, and other costs required to fulfill our obligation to deliver the energy storage system to the customer location. Cost of revenue may also include any impairment of energy storage systems held in our inventory for sale to our customer. Cost of hardware revenue related to the sale of energy storage systems is recognized when the delivery of the product is completed.

Gross Margin

Our gross margin fluctuates significantly from quarter to quarter. Gross margin, calculated as revenue less costs of revenue, has been, and will continue to be, affected by various factors, including fluctuations in the amount and mix of revenue and the amount and timing of investments to expand our customer base. We hope to increase both our gross margin in absolute dollars and as a percentage of revenue through enhanced operational efficiency and economies of scale.

Operating Expenses

Sales and Marketing

Sales and marketing expense consists of payroll and other related personnel costs, including salaries, stock-based compensation, employee benefits, and travel for our sales and marketing personnel. In addition, sales and marketing expense includes trade show costs, amortization of intangibles and other expenses. We expect to our selling and marketing expense to increase in future periods to support the overall growth in our business.

Research and development

Research and development expense consists primarily of payroll and other related personnel costs for engineers and third parties engaged in the design and development of products, third-party software and technologies, including salaries, bonus and stock-based compensation expense, project material costs, services and depreciation. We expect research and development expense to increase in future periods to support our growth, including continuing to invest in optimization, accuracy and reliability of our platform and other technology improvements to support and drive efficiency in our operations. These expenses may vary from period to period as a percentage of revenue, depending primarily upon when we choose to make more significant investments.

General and Administrative Expense

General and administrative expense consists of payroll and other related personnel costs, including salaries, stock-based compensation, employee benefits and expenses for executive management, legal, finance and other costs. In addition, general and administrative expense includes fees for professional services and occupancy costs. We expect our general and administrative expense to increase in future periods as we scale up headcount with the growth of our business, and as a result of operating as a public company, including compliance with the rules and regulations of the SEC, legal, audit, additional insurance expenses, investor relations activities, and other administrative and professional services.

Other Income (Expense), Net

Interest Expense

Interest expense consists primarily of interest on our outstanding borrowings under our outstanding notes payable, convertible promissory notes, convertible senior notes, and financing obligations and accretion on our asset retirement obligations.

Loss on Extinguishment of Debt

Loss on extinguishment of debt consists of penalties incurred in relation to the prepayment of our outstanding borrowings under our outstanding notes payable and the write-off of any unamortized debt issuance costs associated with such notes.

Change in Fair Value of Warrants and Embedded Derivatives

Change in fair value of warrants and embedded derivatives is related to the revaluation of our outstanding convertible preferred stock warrant liabilities and embedded derivatives related to the redemption features associated with our convertible notes at each reporting date.

Other Expenses, Net

Other expenses, net consists primarily of income from equity investments and foreign exchange gains or losses.

Results of Operations

In this section, we discuss the results of our operations for the year ended December 31, 2021 compared to the year ended December 31, 2020.

Results of Operations for the Year Ended December 31, 2021 and 2020

	Year Ended December 31,			
	2021	2020	$ Change	% Change
	(In thousands, except percentages)			
Revenue				
Service revenue	$ 20,463	$ 15,645	$ 4,818	31%
Hardware revenue	106,908	20,662	86,246	*
Total revenue	127,371	36,307	91,064	251%
Cost of revenue				
Cost of service revenue	28,177	21,187	6,990	33%
Cost of hardware revenue	97,947	19,032	78,915	*
Total cost of revenue	126,124	40,219	85,905	214%
Gross margin	1,247	(3,912)	5,159	(132)%
Operating expenses:				
Sales and marketing	19,950	14,829	5,121	35%
Research and development	22,723	15,941	6,782	43%
General and administrative	41,648	14,705	26,943	183%
Total operating expenses	84,321	45,475	38,846	85%
Loss from operations	(83,074)	(49,387)	(33,687)	68%
Other income (expense), net:				
Interest expense	(17,395)	(20,806)	3,411	(16)%
Loss on extinguishment of debt	(5,064)	—	(5,064)	*
Change in fair value of warrants and embedded derivative	3,424	(84,455)	87,879	(104)%
Other expenses, net	898	(1,471)	2,369	(161)%
Total other income (expense)	(18,137)	(106,732)	88,595	(83)%
Income (loss) before income taxes	(101,211)	(156,119)	54,908	(35)%
Income tax expense	—	(5)	5	(100)%
Net income (loss)	$ (101,211)	$ (156,124)	$ 54,913	(35)%

*Percentage is not meaningful

Revenue

Total revenue increased by $91.1 million, or 251%, for the year ended December 31, 2021, as compared to the year ended December 31, 2020. The change was primarily driven by a $86.2 million increase in hardware revenue due to the growth in demand for systems related to both FTM and BTM partnership agreements. Services revenue increased by $4.8 million primarily due to continued growth in host customers arrangements and partnership revenue related to services provided.

Cost of Revenue

Total cost of revenue increased by $85.9 million, or 214%, for the year ended December 31, 2021, as compared to the year ended December 31, 2020. The change was primarily driven by an increase of cost of hardware sales of $78.9 million in line with the increase in hardware revenue, and an increase of $7.0 million in cost of service revenue associated with the growth in service revenue.

Operating Expenses

Sales and Marketing

Sales and marketing expense increased by $5.1 million, or 35%, for the year ended December 31, 2021, as compared to the year ended December 31, 2020. The increase was primarily due to an increase of $3.6 million in amortization of contract origination costs mainly related to hardware deliveries, an increase of $1.3 million in stock-based compensation expense primarily due to grants of stock options and RSUs to employees, $0.3 million in personnel related expenses as a result of

increased headcount, and an increase of $0.6 million in professional services. The increase was partially offset by a decrease of $0.6 million in marketing expenses, and a decrease of $0.1 million in miscellaneous expenses.

Research and Development

Research and development expense increased by $6.8 million, or 43%, for the year ended December 31, 2021, as compared to the year ended December 31, 2020. The increase was primarily due to an increase of $8.3 million in personnel related expenses as a result of increased headcount and an increase of $1.2 million in stock-based compensation expense primarily due to grants of stock options and RSUs to employees. The increase was partially offset by a decrease of $2.3 million in third-party software and technologies related expenses, and a decrease of $0.4 million in professional services.

General and Administrative

General and administrative expense increased by $26.9 million, or 183%, for the year ended December 31, 2021, as compared to the year ended December 31, 2020. The increase was primarily driven by an increase of $14.6 million in professional and legal services primarily related to various transactions undertaken by us during 2021, an increase of $6.5 million in stock-based compensation expense primarily due to grants of stock options and RSUs to employees, an increase of $4.1 million in insurance related expenses, and an increase of $2.2 million in personnel related expenses due to higher headcount. The increase was partially offset by a decrease of $0.6 million in connection with settlement expenses incurred in 2020 not present in 2021.

Other Income (Expense), Net

Interest Expense

Interest expense decreased by $3.4 million, or 16%, for the year ended December 31, 2021, as compared to the year ended December 31, 2020. The decrease was primarily driven by the repayment of notes payable during 2021, as discussed in Note 11 - *Notes Payable,* in the accompanying notes to the consolidated financial statements included in Part II, Item 8, "Financial Statements and Supplementary Data" of this Annual Report on Form 10-K. The decrease was partially offset by additional interest expense from the issuance of the 2028 Convertible Notes in November 2021, and interest expense from financing obligations.

Loss on Extinguishment of Debt

The loss on extinguishment of debt of $5.1 million for the year ended December 31, 2021, is related to a $4.0 million cash penalty paid and the write-off of $1.1 million of unamortized debt issuance costs upon the conversion of our Series D convertible notes in relation to the Merger. There was no loss or gain on debt extinguishment recorded in the year ended December 31, 2020.

Change in Fair Value of Warrants and Embedded Derivative

The change in fair value of warrants and embedded derivative reflected a $3.4 million of income for the year ended December 31, 2021, compared to a $84.5 million expense for the year ended December 31, 2020. The income of $3.4 million in the year ended December 31, 2021 primarily resulted from a decrease in the fair value of the Public Warrants, which was recorded as a gain in revaluation of the warrant liability, in connection with the exercise and redemption of the Public Warrants during the third quarter of 2021.

The expense of $84.5 million in the year ended December 31, 2020 primarily resulted from a loss on revaluation of warrant liabilities and embedded derivatives related to convertible promissory notes issued in 2019 and 2020. The loss was primarily driven by an increased in the fair value of the warrants as a result of increases in fair value of the underlying stock.

Other Expenses, Net

Other expenses, net decreased by $2.4 million, or 161%, for the year ended December 31, 2021, as compared to the year ended December 31, 2020. The net decrease was primarily driven by $1.2 million in legal settlement and late fees incurred in 2020 and not present in 2021, a $0.9 million increase in interest income from debt securities purchased in the current year, and a $0.3 million net gain in connection with equity securities.

Liquidity and Capital Resources

Sources of liquidity

Liquidity describes the ability of a company to generate sufficient cash flows to meet the cash requirements of its business operations, including working capital needs, debt service, acquisitions, contractual obligations and other commitments. We

assess liquidity in terms of our cash flows from operations and their sufficiency to fund our operating and investing activities. To meet our payment service obligations we must have sufficient liquid assets and be able to move funds on a timely basis.

As of December 31, 2021, our principal source of liquidity is cash generated from financing activities. Cash generated from financing activities through December 31, 2021 primarily includes proceeds from the Merger and PIPE financing that provided us with approximately $550.3 million, net of fees and expenses, sales of convertible preferred stock, proceeds from convertible notes, including the 2028 Convertible Notes that provided us net proceeds of $445.7 million, proceeds from our various borrowings, and the exercise of Public Warrants, which increased our cash balance by $145.3 million. In connection with the Merger, the convertible notes and related accrued interest converted to equity and we paid in full all other outstanding debt except the 2021 Credit Agreement described below. On February 1, 2022, we completed the acquisition of AlsoEnergy for an aggregate purchase price of $695.0 million, of which approximately 75% was paid in cash. We believe that our cash position is sufficient to meet our capital and liquidity requirements for at least the next 12 months from the date of issuance of this Form 10-K.

Our business prospects are subject to risks, expenses and uncertainties frequently encountered by companies in the early stages of commercial operations. The attainment of profitable operations is dependent upon future events, including obtaining adequate financing to complete our development activities, obtaining adequate supplier relationships, building our customer base, successfully executing our business and marketing strategy and hiring appropriate personnel. Failure to generate sufficient revenues, achieve planned gross margins and operating profitability, control operating costs, or secure additional funding may require us to modify, delay, or abandon some of our planned future expansion or development, or to otherwise enact operating cost reductions available to management, which could have a material adverse effect on our business, operating results, financial condition and ability to achieve our intended business objectives.

In the future, we may be required to obtain additional equity or debt financing in order to support our continued capital expenditures and operations. In the event that additional financing is required from outside sources, we may not be able to raise it on terms acceptable to us or at all. If we are unable to raise additional capital or generate cash flows necessary to expand our operations and invest in new technologies, this could reduce our ability to compete successfully and harm our business, growth and results of operations.

Our long-term liquidity requirements are linked primarily to the continued extension of the Athena platform and the use of our balance sheet to improve the terms and conditions associated with the purchase of energy storage systems from our hardware vendors. While we have plans to potentially expand our geographical footprint beyond our current partnerships and enter into joint ventures, those initiatives are not required to achieve our plan.

Financing Obligations

We have entered into arrangements wherein we finance the cost of energy storage systems via special purpose entities ("SPE") we establish with outside investors. These SPEs are not consolidated into our financial statements, but are accounted for as equity method investments. Through the SPEs, the investors provide us upfront payments. Under these arrangements, the payment by the SPE to us is accounted for as a borrowing by recording the proceeds received as a financing obligation. The financing obligation is repaid with the future customer payments and incentives received. A portion of the amounts paid to the SPE is allocated to interest expense using the effective interest rate method.

Furthermore, we continue to account for the revenues from customer arrangements and incentives and all associated costs despite such systems being legally sold to the SPEs due to our significant continuing involvement in the operations of the energy storage systems.

The total financing obligation as of December 31, 2021 was $88.5 million, of which $15.3 million was classified as a current liability.

Notes Payable

Revolving Loan Due to SPE Member

In April 2017, we entered into a revolving loan agreement with an affiliate of a member of certain SPEs in which we have an ownership interest. The purpose of this revolving loan agreement was to finance our purchase of hardware for our various energy storage system projects.

In May 2020, concurrent with the 2020 Credit Agreement discussed below, we amended the facility to reduce the loan capacity to $35.0 million and extend the maturity date to May 2021. The amendment increased the fixed interest rate for any borrowings outstanding more than nine (9) months to 14% thereafter.

Additionally, under the original terms of the revolving loan agreement, we were able to finance 100% of the value of the hardware purchased up to the total loan capacity. The amendment reduced the advance rate to 85%, with an additional reduction to 70% in August 2020. In April 2021, we repaid the remaining outstanding balance in full.

Term Loan Due to Former Non-Controlling Interest Holder

In June 2018, we acquired, for $8.1 million, the outstanding member interests of an entity we controlled. We financed this acquisition by entering into a term loan agreement with the noncontrolling member bearing fixed interest of 18% (4.5% quarterly) on the outstanding principal balance. This loan requires fixed quarterly payments throughout the term of the loan, which will be paid in full by April 1, 2026. In May 2020, we amended the term loan and, using the proceeds from the 2020 Credit Agreement discussed below, prepaid $1.5 million of principal and interest on the note, of which $1.0 million was towards the outstanding principal balance, thereby reducing the fixed quarterly payment due to the lender. In relation to this amendment, we were required to issue warrants for 400,000 shares of common stock resulting in a discount to the term loan of $0.2 million. Such debt discount is amortized to earnings through interest expense over the expected life of the debt. In April 2021, we repaid the remaining outstanding balance in full.

2020 Credit Agreement

In May 2020, we entered into a credit agreement ("2020 Credit Agreement") with a new lender that provided us with proceeds of $25.0 million that increased our access to working capital. The 2020 Credit Agreement had a maturity date of the earlier of (1) May 14, 2021, (2) the maturity date of the revolving loan agreement, or (3) the maturity date of the convertible promissory notes discussed below. The loan bore interest of 12% per annum, of which 8% was paid in cash and 4% was added back to principal of the loan balance every quarter. We used a portion of the proceeds towards payments associated with existing debt as previously discussed. In April 2021, we repaid the remaining outstanding balance in full.

2021 Credit Agreement

In January 2021, we entered into a non-recourse credit agreement to provide a total of $2.7 million towards the financing of certain energy storage systems that we own and operate. The credit agreement has a stated interest of 5.45% and a maturity date of June 2031. We received an advance under the credit agreement of $1.8 million in January 2021. The repayment of advances received under this credit agreement is determined by the lender based on the proceeds generated by us through the operation of the underlying energy storage systems. We had $1.9 million of outstanding borrowings under this credit agreement as of December 31, 2021.

2028 Green Convertible Senior Notes

On November 22, 2021, we sold to Morgan Stanley & Co. LLC, Goldman Sachs & Co. LLC and Barclays Capital Inc, as initial purchasers (the "Initial Purchasers"), and the Initial Purchasers purchased from the Company, $460 million aggregate principal amount of the Company's 0.50% Green Convertible Notes due 2028 (the "2028 Convertible Notes"), pursuant to a purchase agreement dated as of November 17, 2021, by and between us and the Initial Purchasers. The 2028 Convertible Notes will accrue interest payable semi-annually in arrears and will mature on December 1, 2028, unless earlier repurchased, redeemed or converted in accordance with their terms prior to such date. Upon conversion, we may choose to pay or deliver, as the case may be, cash, shares of common stock or a combination of cash and shares of common stock. The 2028 Convertible Notes are redeemable for cash at the Company's option at any time given certain conditions. Refer to Note 12 - *Convertible Promissory Notes*, in the accompanying notes to the consolidated financial statements included in Part II, Item 8, "Financial Statements and Supplementary Data" of this Annual Report on Form 10-K.

On November 17, 2021, in connection with the pricing of the 2028 Convertible Notes, and on November 19, 2021, in connection with the exercise in full by the Initial Purchasers of their option to purchase additional Notes, we entered into capped call transactions with certain of the Initial Purchasers of the 2028 Convertible Notes to minimize the potential dilution to the Company's common stockholders upon conversion of the 2028 Convertible Notes. Our net proceeds from this offering were approximately $445.7 million, after deducting the Initial Purchasers' discounts and commissions and the estimated offering expenses payable by the Company. We used approximately $66.7 million of the net proceeds to pay the cost of the capped call transactions described above. We intend to allocate an amount equivalent to the net proceeds from this offering to finance or refinance, in whole or in part, existing or new eligible green expenditures of Stem, including investments related to creating a more resilient clean energy system, optimized software capabilities for energy systems, and reducing waste through operations.

Cash Flows

The following table summarizes our cash flows for the periods indicated (in thousands):

	Year Ended December 31,	
	2021	2020
Net cash used in operating activities	$ (101,266)	$ (33,671)
Net cash used in investing activities	(185,233)	(12,036)
Net cash provided by financing activities	1,027,095	40,294
Effect of exchange rate changes on cash and cash equivalents	242	(534)
Net increase (decrease) in cash and cash equivalents	$ 740,838	$ (5,947)

Operating Activities

During the year ended December 31, 2021, net cash used in operating activities was $101.3 million, primarily resulting from our operating loss of $101.2 million, adjusted for non-cash charges of $59.5 million and net cash outflow of $59.5 million from changes in operating assets and liabilities. Non-cash charges primarily consisted of depreciation and amortization of $24.5 million, non-cash interest expense of $9.6 million, which includes interest expenses associated with debt issuance costs, stock-based compensation expense of $13.5 million, change in the fair value of warrant liability and embedded derivative of $3.4 million, impairment of energy storage systems of $4.3 million, issuance of warrants for services of $9.2 million, noncash lease expense of $0.9 million, accretion expense of $0.2 million, and net amortization of premium on investments of $0.7 million. The net cash outflow from changes in operating assets and liabilities was primarily driven by an increase in accounts receivable of $48.1 million, an increase in other assets of $24.8 million, a decrease in deferred revenue of $15.0 million, an increase in inventory of $1.9 million, an increase in contract origination costs of $2.6 million, a decrease in lease liabilities of $0.3 million, a decrease in right-of-use-assets arising from the prepayment of our headquarter's lease of $0.2 million, and a decrease in other liabilities of $0.1 million, partially offset by an increase in accounts payable and accrued expenses of $33.5 million.

During the year ended December 31, 2020, net cash used in operating activities was $33.7 million, primarily resulting from our operating loss of $156.1 million, adjusted for non-cash charges of $118.8 million and net cash flows of $2.7 million from changes in operating assets and liabilities. Non-cash charges primarily consisted of change in fair value of warrants and embedded derivative of $84.5 million, depreciation and amortization of $17.7 million, non-cash interest expense of $10.0 million, which includes amortization of debt issuance costs, stock-based compensation expense of $4.5 million, $1.4 million of impairment charges related to energy storage systems that were determined to not be recoverable and non-cash lease expense of $0.6 million. The net cash inflow from changes in operating assets and liabilities was primarily driven by an increase in deferred revenue of $31.7 million due to advance payments for hardware sales prior to delivery and rebates from state incentive programs received in the period, an increase in accounts payable and accrued expenses of $5.7 million and partially offset by an increase in inventory of $17.3 million in line with revenue growth, including growth in hardware sales, an increase in accounts receivable of $7.0 million primarily due to advance billings for partner hardware sales, an increase in contract origination costs of $2.6 million related to commissions paid on new contracts executed in the period, an increase of $5.3 million in other assets, a decrease of $1.0 million in other liabilities and a decrease of $0.6 million in lease liabilities.

Investing Activities

During the year ended December 31, 2021, net cash used for investing activities was $185.2 million, primarily consisting of $189.9 million in purchase of available-for-sale investments, $3.6 million in purchase of energy systems, $5.9 in capital expenditures on internally-developed software, $1.2 million in purchase of equity method investment, and $0.6 million in purchase of property plant and equipment, partially offset by $16.0 million proceeds from the sale of available-for-sale investments.

During the year ended December 31, 2020, net cash used for investing activities was $12.0 million, consisting of $6.2 million in purchase of energy storage systems and $5.8 million in capital expenditures on internally developed software.

Financing Activities

During the year ended December 31, 2021, net cash provided by financing activities was $1,027.1 million, primarily consisting of net proceeds from the Merger and PIPE financing of $550.3 million, proceeds from exercise of stock options and warrants of $148.5 million, proceeds from financing obligations of $7.8 million, proceeds from issuance of notes payable of $3.9 million, net proceeds from issuance of convertible promissory notes of $446.8 million, partially offset by purchased capped call options of $66.7 million, the repayment of notes payable of $41.4 million, payments for withholding taxes related to net share settlement of stock options of $12.6 million, and repayment of financing obligations of $9.6 million.

During the year ended December 31, 2020, net cash provided by financing activities was $40.3 million, primarily resulting from net proceeds from the issuance of convertible notes of $33.1 million, proceeds from the issuance of notes payable of $23.5 million, proceeds from financing obligations of $16.2 million and proceeds from exercise of stock options and warrants of $0.4 million, partially offset by repayment of our notes payable of $22.2 million and repayment of financing obligations of $10.7 million.

The Company's material cash requirements include the following contractual and other obligations:

- **2028 Convertible Notes:** Includes the aggregate principal amounts of the 2028 Convertible Notes on their contractual maturity dates, as well as the associated coupon interest. As of December 31, 2021, we have an outstanding aggregate principal amount of $460.0 million, none of which is payable within 12 months. Future interest payments associated with the 2028 Convertible Notes total $16.2 million, with $2.3 million payable within 12 months. For maturity dates, stated interest rates and additional information on our convertible senior notes, refer to Note 12 - *Convertible Promissory Notes*, in the accompanying notes to the consolidated financial statements included in Part II, Item 8, "Financial Statements and Supplementary Data" of this Annual Report on Form 10-K.
- **Operating Lease Obligations:** Our lease portfolio primarily comprises operating leases for our office space. As of December 31, 2021, we have operating lease obligations totaling $15.7 million, with $1.8 million payable within 12 months. For additional information regarding our operating leases, see Note 17 - *Leases*, in the accompanying notes to the consolidated financial statements included in Part II, Item 8, "Financial Statements and Supplementary Data" of this Annual Report on Form 10-K.

We do not consider our financing obligations as contractual obligations, as our repayments of such obligations are required only to the extent payments are collected in relation to the operation of the underlying energy storage systems. The obligation is nonrecourse and there are no contractual commitments to pay specific amounts at any point in time throughout the life of the obligation.

We are not a party to any off-balance sheet arrangements, including guarantee contracts, retained or contingent interests, or unconsolidated variable interest entities that either have, or would reasonably be expected to have, a current or future material effect on our consolidated financial statements.

Critical Accounting Policies and Estimates

Our discussion and analysis of financial condition and results of operations are based upon our consolidated financial statements. Our consolidated financial statements are prepared in accordance with GAAP. The preparation of our consolidated financial statements in accordance with GAAP requires us to make estimates and assumptions that affect the reported amounts of assets, liabilities, revenue and expenses. We base our estimates on past experience and other assumptions that we believe are reasonable under the circumstances, and we evaluate these estimates on an ongoing basis. Actual results may differ from those estimates.

Our critical accounting policies are those that materially affect our consolidated financial statements and involve difficult, subjective or complex judgments by management. A thorough understanding of these critical accounting policies is essential when reviewing our consolidated financial statements. We believe that the critical accounting policies listed below involve the most difficult management decisions because they require the use of significant estimates and assumptions as described above.

Our significant accounting policies are described in Note 2 - *Summary of Significant Accounting Policies*, in the accompanying notes to the consolidated financial statements included in Part II, Item 8, "Financial Statements and Supplementary Data" of this Annual Report on Form 10-K. We believe that the following critical accounting policies reflect the more significant estimates and assumptions used in the preparation of our consolidated financial statements:

- revenue recognition;
- financing obligations;
- energy storage systems, net;
- common stock warrants
- convertible preferred stock warrant liability; and
- 2028 Convertible Notes

Revenue Recognition

We generate revenue through two types of arrangements with customers, host customer arrangements and partnership arrangements. We recognize revenue under these arrangements as described below.

Host Customer Arrangements

Host customer contracts are generally entered into with commercial entities who have traditionally relied on power supplied directly from the grid. Host customer arrangements consist of a promise to provide energy optimization services through our proprietary SaaS platform coupled with a dedicated energy storage system owned and controlled by us throughout the term of the contract. The host customer does not obtain legal title to, or ownership of the dedicated energy storage system at any point in time. The host customer is the end consumer of the energy that directly benefits from the energy optimization services we provide. The term for our contracts with host customers generally ranges from 5 to 10 years, which may include certain renewal options to extend the initial contract term or certain termination options to reduce the initial contract term.

Although we install energy storage systems at the host customer site in order to provide the energy optimization services, we determined we have the right to direct how and for what purpose the asset is used through the operation of our SaaS platform and, as such, retain control of the energy storage system; therefore, the contract does not contain a lease. We determined the various energy optimization services provided throughout the term of the contract, which may include services such as remote monitoring, performance reporting, preventative maintenance and other ancillary services necessary for the safe and reliable operation of the system, are part of a combined output of energy optimization services and we provide a single distinct combined performance obligation representing a series of distinct days of services.

We determine the transaction price at the outset of the arrangement, primarily based on the contractual payment terms dictated by the contract with the customer. Fees charged to customers for energy optimization services generally consist of recurring fixed monthly payments throughout the term of the contract. In certain arrangements, the transaction price may include incentive payments that are earned by the host customer from utility companies in relation to the services we provide. Under such arrangements, the rights to the incentive payments are assigned to us by the host customer. These incentives may be in the form of fixed upfront payments, variable monthly payments, or annual performance-based payments over the first five years of the customer contract term. Incentive payments may be contingent on approval from utility companies or actual future performance of the energy storage system.

Substantially all of our arrangements provide customers the unilateral ability to terminate for convenience prior to the conclusion of the stated contractual term or the contractual term is shorter than the estimated benefit period, which we have determined to be 10 years based on the estimated useful life of the underlying energy storage systems and the period over which the customer can benefit from the energy optimization services utilizing such energy storage systems. In these instances, we determined that upfront incentive payments received from our customers represent a material right that is, in effect, an advance payment for future energy optimization services to be recognized throughout the estimated benefit period. In contracts where the customer does not have the unilateral ability to terminate for convenience without a penalty during the estimated benefit period, we determined the upfront incentive payments do not represent a material right for services provided beyond the initial contractual period and are therefore a component of the initial transaction price. We revisit our estimate of the benefit period each reporting period. Our contracts with host customers do not contain a significant financing component.

We transfer control of our energy optimization services to our customers continuously throughout the term of the contract (a stand-ready obligation) and recognize revenue ratably as control of these services is transferred to our customers, in an amount that reflects the consideration we expect to be entitled to in exchange for our services. Monthly incentive payments based on the performance of the energy storage system are allocated to the distinct month in which they are earned because the terms of the payments relate specifically to the outcome from transferring the distinct time increment (month) of service and because such amounts reflect the fees to which we expect to be entitled for providing energy optimization services each period, consistent with the allocation objective. Annual variable performance- based payments are estimated at the inception in the transaction price using the expected value method, which takes into consideration historical experience, current contractual requirements, specific known market events and forecasted energy storage system performance patterns, and we recognize such payments ratably using a time-based measure of progress of days elapsed over the term of the contract to the extent that it is probable that a significant reversal of the cumulative revenue recognized will not occur in a future period. At the end of each reporting period, we reassess our estimate of the transaction price. We do not begin recognition of revenue until the System is live (i.e., provision of energy optimization services has commenced) or, as it relates to incentive payments, when approval has been received from the utility company if later.

Partnership Arrangements

Partnership arrangements consist of promises to transfer inventory in the form of an energy storage system to a solar plus storage project developer and separately provide energy optimization services as described previously to the ultimate owner of the project after the developer completes the installation of the project. Under partnership arrangements, our customer is the

solar plus storage project developer. The customer obtains legal title to along with ownership and control of the inventory upon delivery and the customer is responsible for the installation of the project. Once installation of the project is complete, the owner of the solar plus storage project provides energy to the end consumer through a separate contractual arrangement directly with the end consumer. The term for our contracts with customers under partnership arrangements generally ranges from 10 to 20 years.

We determined the promise to deliver the inventory as a component of the solar plus storage project for which the customer is responsible to develop is a separate and distinct performance obligation from the promise to provide energy optimization services.

We determine the transaction price at the outset of the arrangement, primarily based on the contractual payment terms dictated by the contract with the customer. Fees charged for the sale of inventory generally consist of fixed fees payable upon or shortly after successful delivery to the customer. Fees charged to customers for energy optimization services consist of recurring fixed monthly payments throughout the term of the contract. We are responsible for designing, procuring, delivering and ensuring the proper components are provided in accordance with the requirements of the contract. Although we purchase the inventory from a third-party manufacturer, we determined we obtain control of the inventory prior to delivery to the customer and are the principal in the arrangement. We are fully responsible for responding to and correcting any customer issues related to the delivery of the inventory. We hold title and assume all risks of loss associated with the inventory until the customer accepts the inventory. We are primarily responsible for fulfilling the delivery of the inventory to the customer, assume substantial inventory risks and have discretion in the pricing charged to the customer. We have not entered into any partnership arrangements where we are not the principal in the transaction.

We allocate revenue between the hardware and energy storage services performance obligations based on the standalone selling price of each performance obligation. The standalone selling price for the hardware is established based on observable pricing. The standalone selling price for the energy optimization services is established using a residual value approach due to the significant variability in the services provided to each individual customer based on the specific requirements of each individual project and the lack of observable standalone sales of such services. Our partnership arrangements do not contain a significant financing component.

We transfer control of the inventory upon delivery and simultaneous transfer of title to the customer. We transfer control of our energy optimization services to our customers continuously throughout the term of the contract (a stand-ready obligation), which does not commence until the customer successfully completes the installation of the project. As a result, the time frame between when we transfer control of the inventory to the customer upon delivery is generally several months, and can be in excess of one year, before we are required to perform any subsequent energy optimization services. Revenue is recognized ratably as control of these services is transferred to our customers based on a time-based output measure of progress of days elapsed over the term of the contract, in an amount that reflects the consideration we expect to be entitled to in exchange for our services.

In some partnership arrangements, we charge shipping fees for the inventory. We account for shipping as a fulfillment activity, since control transfers to the customer after the shipping is complete and include such amounts within cost of revenue.

Financing Obligations

We have formed various SPEs to finance the development and construction of our energy storage systems (“Projects”). These SPEs, which are structured as limited liability companies, obtain financing in the form of large upfront payments from outside investors and purchase Projects from us under master purchase agreements. We account for the large upfront payments received from the fund investor as a borrowing by recording the proceeds received as a financing obligation, which will be repaid through host customer payments and incentives received from the utilities that will be received by the investor.

The financing obligation is non-recourse once the associated energy storage systems have been placed in-service and the associated customer arrangements have been assigned to the SPE. However, we are responsible for any warranties, performance guarantees, accounting, performance reporting and all other costs associated with the operation of the energy storage systems. Despite such systems being legally sold to the SPEs, we recognize host customer payments and incentives as revenue during the period as discussed in the Revenue Recognition section above. The amounts received by the fund investor from customer payments and incentives are recognized as interest using the effective interest method, and the balance is applied to reduce the financing obligation. The effective interest rate is the interest rate that equates the present value of the cash amounts to be received by a fund investor in relation to the underlying Projects with the present value of the cash amounts paid to us by the investor, adjusted for any payments made by us.

Energy Storage Systems, net

We sell energy optimization services to host customers through the use of energy storage systems installed at customer locations. We determined that we do not transfer control of these energy storage systems, which are operated and controlled via our proprietary cloud-based software ("SaaS") platform; therefore, these energy storage systems do not qualify as a leased asset. The energy storage systems are stated at cost, less accumulated depreciation.

Energy storage systems, net is comprised of system equipment costs, which include components such as batteries, inverters, and other electrical equipment, and associated design, installation, and interconnection costs required to begin providing the energy optimization services to our customers.

Depreciation of the energy storage systems is calculated using the straight-line method over the estimated useful lives of the energy storage systems, or 10 years, once the respective systems have been installed, interconnected to the power grid, received permission to operate and we have begun to provide energy optimization services to the host customer (i.e., system is live). The valuation of energy storage systems and the useful life both require significant judgment.

We review our energy storage systems for impairment whenever events or changes in circumstances indicate that the carrying amount of energy storage systems may not be recoverable. If energy storage systems are impaired, the impairment recognized is measured by the amount by which the carrying amount of the assets exceeds the fair value of the assets. Assessing energy storage systems for impairment requires significant judgement.

Common Stock Warrants

We do not use derivative instruments to hedge exposures to cash flow, market, or foreign currency risks. We evaluate all of our financial instruments, including warrants, to determine if such instruments are derivatives or contain features that qualify as embedded derivatives, pursuant to ASC 480 and ASC 815-15. The classification of derivative instruments, including whether such instruments should be recorded as liabilities or as equity, is re-assessed at the end of each reporting period. Such assessment requires significant judgement.

We accounted for our 19,967,302 public warrants issued in connection with our Initial Public Offering (12,786,168) and Private Placement (7,181,134) as derivative warrant liabilities in accordance with ASC 815-40. Accordingly, we recognized the warrant instruments as liabilities at fair value and adjusted the instruments to fair value at each reporting period. The liabilities were subject to re-measurement at each balance sheet date until exercised, and any change in fair value was recognized in the Company's statements of operations. The fair value of the Private Placement Warrants was estimated using a Black-Scholes method at each measurement date. The fair value of the warrants issued in connection with the Public Offering were initially measured at fair value using a Black-Scholes method and subsequently measured based on the listed market price of such warrants. Refer to Note 13 - *Warrants*, in the accompanying notes to the consolidated financial statements included in Part II, Item 8, "Financial Statements and Supplementary Data" of this Annual Report on Form 10-K.

Convertible Preferred Stock Warrant Liability

We evaluate whether our warrants for shares of convertible redeemable preferred stock are freestanding financial instruments that obligate us to redeem the underlying preferred stock at some point in the future and determined that each of our outstanding warrants for convertible preferred stock are liability classified. The warrants are subject to re-measurement at each balance sheet date, and any change in fair value is recognized in the change in fair value of warrants and embedded derivatives in the consolidated statements of operations.

As discussed in Note 13 - *Warrants*, in the accompanying notes to the consolidated financial statements included in Part II, Item 8, "Financial Statements and Supplementary Data" of this Annual Report on Form 10-K, upon effectiveness of the Merger, substantially all of the outstanding convertible preferred stock warrants were converted into shares of common stock of Stem. As such, the associated warrant liability was reclassified to additional paid-in-capital upon the Merger and was no longer an outstanding Level 3 financial instrument as of December 31, 2021.

2028 Convertible Notes

We accounted for the 2028 Convertible Notes as separate liability and equity components. On issuance, the carrying amount of the liability component was calculated by measuring the fair value of a similar liability that did not have an associated convertible feature. The carrying amount of the equity component representing the conversion option was calculated by deducting the fair value of the liability component from the principal amount of the Convertible Notes as a whole. We estimated the fair value of the liability and equity components using a binomial lattice model, which includes subjective assumptions such as the expected term, the expected volatility, and the interest rate of a similar non-convertible debt instrument. These assumptions involved inherent uncertainties and management judgement. See Note 12 - *Convertible Promissory Notes*, in the accompanying notes to the consolidated financial statements included in Part II, Item 8, "Financial Statements and Supplementary Data" of this Annual Report on Form 10-K.

Recent Accounting Pronouncements

Information with respect to recent accounting pronouncements may be found in Note 2 - S*ummary of Significant Accounting Policies*, in the accompanying notes to the consolidated financial statements included in Part II, Item 8, "Financial Statements and Supplementary Data" of this Annual Report on Form 10-K.

ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Market risk represents the risk of loss that may impact our financial position because of adverse changes in financial market prices and rates. Our market risk exposure is primarily a result of exposure resulting from potential changes in inflation, exchange rates or interest rates. We do not hold financial instruments for trading purposes.

Foreign Currency Exchange Risk

Our expenses are generally denominated in U.S. dollars. However, we have foreign currency risks related to our revenue and operating expenses denominated in Canadian dollars. We have entered into contracts with customers and a limited number of supply contracts with vendors with payments denominated in foreign currencies. We are subject to foreign currency transaction gains or losses on our contracts denominated in foreign currencies. To date, foreign currency transaction gains and losses have not been material to our financial statements.

Unfavorable changes in foreign exchange rates versus the U.S. dollar could increase our product costs, thus reducing our gross profit. We have not engaged in the hedging of foreign currency transactions to date, although we may choose to do so in the future. We do not believe that an immediate 10% increase or decrease in the relative value of the U.S. dollar to other currencies would have a material effect on operating results or financial condition.

Interest Rate Risk

Interest rate risk is the risk that the value or yield of fixed-income investments may decline if interest rates change. Fluctuations in interest rates may impact the level of interest expense recorded on outstanding borrowings. In addition, our convertible promissory notes, 2028 Convertible Notes, notes payable, and financing obligations bear interest at a fixed rate and are not publicly traded. Therefore, fair value of our convertible promissory notes, notes payable, financing obligations and interest expense is not materially affected by changes in the market interest rates. We do not enter into derivative financial instruments, including interest rate swaps, for hedging or speculative purposes.

Credit Risk

Credit risk with respect to accounts receivable is generally not significant due to a limited carrying balance of receivables. We routinely assess the creditworthiness of our customers. We generally have not experienced any material losses related to receivables from individual customers, or groups of customers during the years ended December 31, 2021 and 2020. We do not require collateral. Due to these factors, no additional credit risk beyond amounts provided for collection losses is believed by management to be probable in our accounts receivable.

ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

STEM, INC.

INDEX TO CONSOLIDATED FINANCIAL STATEMENTS
As of December 31, 2021 and 2020, and for Years Ended December 31, 2021, 2020 and 2019

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Stockholders and the Board of Directors of Stem, Inc.

Opinion on the Financial Statements

We have audited the accompanying consolidated balance sheets of Stem, Inc. and subsidiaries (the "Company") as of December 31, 2021 and 2020, the related consolidated statements of operations, comprehensive loss, stockholders' equity (deficit), and cash flows for each of the three years in the period ended December 31, 2021, and the related notes (collectively referred to as the "financial statements"). In our opinion, the financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2021 and 2020, and the results of its operations and its cash flows for each of the three years in the period ended December 31, 2021, in conformity with accounting principles generally accepted in the United States of America.

Basis for Opinions

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

We conducted our audits in accordance with the standards of the PCAOB and in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether due to error or fraud. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. As part of our audits, we are required to obtain an understanding of internal control over financial reporting but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion.

Our audits included performing procedures to assess the risks of material misstatement of the financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the financial statements. We believe that our audits provide a reasonable basis for our opinion.

Critical Audit Matter

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

Business – Star Peak Acquisition Corp. Merger — Refer to Note 1 to the financial statements

Critical Audit Matter Description

On December 3, 2020, the Company ("Legacy Stem") entered into an agreement and plan of merger with Star Peak Transition Corp. ("STPK," prior to the closing of the Merger (as defined below) and "New Stem," following the closing of the Merger), and STPK Merger Sub Corp., a wholly owned subsidiary of STPK ("Merger Sub"), providing for the combination of the Company and STPK pursuant to the merger of Merger Sub with and into the Company (the "Merger"), with the Company continuing as the surviving entity. On April 28, 2021, shareholders of

STPK approved the Merger, under which the Company received approximately $550.3 million. The amount received, net of transaction costs and advisory fees of $58.1 million, consisted of STPK trust and working capital cash of approximately $383.4 million and $225.0 million in cash proceeds from the sale of 22,500,000 shares of STPK common stock for $10 per share in a private placement that closed simultaneously with the consummation of the Merger. Upon the effectiveness of the Merger, STPK's outstanding public and private placement warrants ("SPAC Warrants") were assumed by New Stem, met the criteria for liability classification, and resulted in an assumed warrant liability of $302.6 million.

The Merger is accounted for as a reverse recapitalization in accordance with accounting principles generally accepted in the United States of America. Under this method of accounting, STPK was treated as the acquired company for financial reporting purposes. Accordingly, the Merger was treated as the equivalent of the Company issuing stock for the net assets of STPK, accompanied by a recapitalization.

We identified the Company's accounting for the Merger and the SPAC Warrants as a critical audit matter because of the complexity of the agreements, including the agreement, plan of merger, and warrant agreements, and the significant judgment used by management to account for the Merger and the SPAC Warrants in accordance with accounting principles generally accepted in the United States of America.

How the Critical Audit Matter Was Addressed in the Audit

Our audit procedures related to the accounting for the Merger and the SPAC Warrants included the following, among others:

- We evaluated the reasonableness of management's accounting for the Merger and SPAC Warrants in accordance with accounting principles generally accepted in the United States by:
  - Obtaining and evaluating the Company's accounting memoranda and other documentation regarding the application of the relevant accounting guidance to the Merger and SPAC Warrants.
  - Obtaining, reading, and comparing the underlying terms and conditions of the relevant agreements to the Company's accounting memoranda and other documentation.
  - Evaluating the Company's conclusions regarding the accounting treatment applied to the Merger.
  - Evaluating the Company's conclusions regarding the accounting treatment applied to the SPAC Warrants, with the assistance of professionals with expertise in accounting for warrants.
- We evaluated the sufficiency of the disclosures related to the accounting for the Merger and SPAC Warrants matter in the financial statements.

Fair Value Measurements – Legacy Stem Warrants and Private Warrants — Refer to Notes 2, 5, and 13 to the financial statements

Critical Audit Matter Description

Since inception the Company has issued warrants to purchase shares of Legacy Stem's convertible redeemable preferred stock ("Legacy Stem Warrants") in conjunction with various debt financings. The Legacy Stem Warrants are liability classified, and are subject to remeasurement at each balance sheet date, and any change in fair value is recognized in the change in fair value of warrants and embedded derivatives in the consolidated statement of operations. The fair value of the Legacy Stem Warrants was determined using the Black-Scholes option-pricing model as well as a discount for lack of marketability. Black-Scholes inputs used to value the warrants include selection of guideline public companies and volatility. Upon effectiveness of the Merger, the Company had 50,207,439 Legacy Stem Warrants outstanding, of which substantially all were converted into 2,759,970 shares of Class A common stock and the associated warrant liability was reclassified to additional paid-in capital. Upon conversion of the Legacy Stem Warrants, the existing warrant liabilities were remeasured to fair value resulting in a gain on remeasurement of $100.9 million and a total warrant liability of $60.6 million, which was then reclassified to additional paid-in capital.

As part of STPK's initial public offering, STPK issued 12,786,168 warrants to purchase common stock (the "Public Warrants"). Simultaneously with the closing of the initial public offering, STPK completed the private sale of 7,181,134 warrants to STPK's sponsor (the "Private Warrants"). Upon the effectiveness of the Merger, New Stem assumed the outstanding Public Warrants and Private Warrants (together, the "SPAC Warrants"), resulting in assumed warrant liabilities of $185.9 million and $116.7 million, respectively, or a total warrant liability of $302.6 million. On June 25, 2021, the Company entered into an exchange agreement with the holders of the 7,181,134 outstanding Private Warrants, pursuant to which such holders received 4,683,349 shares of the Company's common stock on June 30, 2021, in exchange for the cancellation of the outstanding Private Warrants. Although the Public Warrants were publicly traded and thus had an observable market price, the Private Warrants were not publicly traded. The Company used the Black-Scholes option-pricing model valuation model and valuation assumptions to determine the fair value of the Private Warrants upon the effectiveness of the Merger. Immediately prior to the exchange, the Private Warrants were remeasured to fair value based on the trading price of the exchanged shares of common stock, resulting in a loss on remeasurement of $52.0 million and a total warrant liability of $168.6 million, which was then reclassified to additional paid-in capital.

We identified the fair value measurements of the Legacy Stem Warrants and Private Warrants as a critical audit matter because of the model and the inputs management used in the Black-Scholes model, including selection of guideline public companies and volatility, as well as the inputs management used in estimating the discount for lack of marketability used in the fair value measurements of the Legacy Stem Warrants. This required a high degree of auditor judgment and an increased extent of effort, including the need to involve our fair value specialists who possess significant quantitative and modeling expertise, to audit and evaluate the appropriateness of these models and inputs.

How the Critical Audit Matter Was Addressed in the Audit

Our audit procedures related to the fair value measurements of the Legacy Stem Warrants and Private Warrants included the following, among others:

- With the assistance of fair value specialists, we evaluated the reasonableness of the valuation model and the inputs including selection of guideline public companies and volatility used to determine the fair value of the Private Warrants.
- With the assistance of fair value specialists, we evaluated the reasonableness of the valuation model and the inputs including selection of guideline public companies and volatility used to determine the fair value of the Legacy Stem Warrants.
- We tested the source information underlying the fair value measurements of the Legacy Stem Warrants and Private Warrants and the mathematical accuracy of management's calculations.
- We evaluated the sufficiency of the disclosures related to the fair value measurements of the Legacy Stem Warrants and Private Warrants in the financial statements.

Convertible Promissory Notes – 2028 Convertible Notes and Capped Call Options — Refer to Notes 5 and 12 to the financial statements

Critical Audit Matter Description

On November 22, 2021, the Company issued an aggregate principal amount of $460 million of 2028 Convertible Notes in a private placement offering to qualified institutional buyers. Under the terms of the 2028 Convertible Notes, upon conversion the Company may choose to pay or deliver cash, shares of common stock, or a combination of cash and shares of common stock. The Company separately accounted for the liability and equity components of the 2028 Convertible Notes by allocating the proceeds between the liability component and the embedded conversion option due to the Company's ability to settle the 2028 Convertible Notes in cash, shares of common stock or a combination of cash and shares of common stock at its option. The Company calculated the amount of the liability component by measuring the fair value of a similar liability that does not have an associated conversion feature by using a binomial lattice model and unobservable inputs. The Company recognized the equity component

as a debt discount measured as the difference between the gross proceeds from the issuance of the 2028 Convertible Notes and the fair value of the liability component on the date of original issuance. At the original issuance date, the estimated fair value of the liability component was $324.8 million and the recognized amount of the equity component was $135.2 million.

To minimize the impact of potential dilution to the Company's common stockholders upon conversion of the 2028 Convertible Notes, the Company entered into separate capped call transactions (the "Capped Call Options"), pursuant to which the Company has the option to purchase its common stock at a price which corresponds to the initial conversion price of the 2028 Convertible Notes, subject to a cap price and certain anti-dilution and other adjustments. The Capped Call Options are considered separate transactions entered into by and between the Company and the Capped Call Option counterparties, and are not part of the terms of the 2028 Convertible Notes. These instruments meet the conditions to be classified in stockholders' equity and are not subsequently remeasured as long as the conditions for equity classification continue to be met. The Company used $66.7 million of the net proceeds of the 2028 Convertible Notes to pay the cost of the Capped Call Options, and the Company recorded a reduction to additional paid-in capital for the same amount.

Given the complexity of identifying and separating the features of the 2028 Convertible Notes and Capped Call Options under accounting principles in the United States of America, and the complex valuation methodology used and significant assumptions made by management in measuring the amounts of the components by estimating the fair value of a similar liability that does not have an associated conversion feature, we identified the 2028 Convertible Notes and Capped Call Options as a critical audit matter. This required a high degree of auditor judgment and an increased extent of effort, including the need to involve our fair value specialists and professionals with expertise in accounting for convertible notes and capped call options.

How the Critical Audit Matter Was Addressed in the Audit

Our audit procedures related to the identification and separation of the features of the 2028 Convertible Notes and Capped Call Options, and the valuation of the amounts of the components, included the following, among others:

- We read the offering memorandum, the convertible notes purchase agreement, the convertible note agreement, the initial purchasers' option exercise notice, the capped call confirmations, and related documents.
- With the assistance of professionals with expertise in accounting for convertible notes and capped call options, we evaluated management's conclusions regarding the accounting treatment applied to the 2028 Convertible Notes and Capped Call Options, including the separation of the 2028 Convertible Notes into a liability component and an equity component, and the separate accounting treatment for the Capped Call Options.
- To test the valuation of the amount of the liability and equity components, our audit procedures included, among others:
  - With the assistance of fair value specialists, we evaluated the reasonableness of the binomial lattice valuation methodology used, and the significant assumptions made for the volatility, the expected term, and the interest rate of a similar non-convertible debt instrument used in estimating the fair value of a similar liability that does not have an associated conversion feature.
  - We tested the source information underlying the estimated fair value of a similar liability that does not have an associated conversion feature and the mathematical accuracy of the calculations.
  - With the assistance of fair value specialists, we developed an estimate of the fair value of a similar liability that does not have an associated conversion feature using independent expectations of the significant assumptions and compared our estimate of fair value to management's estimate.
- We evaluated the sufficiency of the disclosures related to the 2028 Convertible Notes and Capped Call Options in the financial statements.

Revenue – Partnership Arrangements — Refer to Notes 2 and 3 to the financial statements

Critical Audit Matter Description

Partnership arrangements consist of promises to transfer inventory in the form of an energy storage system to a project developer and to separately provide energy optimization services to the ultimate owner of the project after the developer completes the installation of the project. Under partnership arrangements, the Company's customer is the project developer. The Company determined the promise to deliver the inventory as a component of the project for which the customer is responsible to develop is a separate and distinct performance obligation from the promise to provide energy optimization services. The Company allocates revenue between the hardware and energy storage services performance obligations based on the standalone selling price of each performance obligation. The standalone selling price for the hardware is established based on observable pricing. The standalone selling price for the energy optimization services is established using a residual value approach due to the significant variability in the services provided to each individual customer based on the specific requirements of each individual project and the lack of observable standalone sales of such services.

The Company transfers control of the inventory upon delivery and simultaneous transfer of title to the customer. The Company transfers control of its energy optimization services to its customers continuously throughout the term of the contract (a stand-ready obligation), which does not commence until the customer successfully completes the installation of the project. As a result, the time frame between when the Company transfers control of the inventory to the customer upon delivery is generally several months, and can be in excess of one year, before the Company is required to perform any subsequent energy optimization services. Revenue is recognized ratably as control of these services is transferred to its customers based on a time-based output measure of progress of days elapsed over the term of the contract, in an amount that reflects the consideration the Company expects to be entitled to in exchange for its services. For the year ended December 31, 2021, the partnership hardware and service revenue recognized was $107.1 million.

Given management's judgments to determine allocation of revenue between hardware and energy storage services performance obligations based on the standalone selling price of each performance obligation, auditing the judgments and estimates made in allocating revenue involved a high degree of auditor judgment and an increased extent of audit effort.

How the Critical Audit Matter Was Addressed in the Audit

Our audit procedures related to partnership hardware and service revenue included the following, among others:

- For partnership arrangements, we selected a sample of contracts with customers and performed the following procedures:
  - Obtained and read the contracts and contract amendments, if any, and tested management's identification of significant terms and conditions.
  - Tested management's identification of distinct performance obligations by evaluating whether the underlying goods, services, or both were highly interdependent and interrelated.
  - Tested the allocation of the transaction price to each distinct performance obligation by comparing the relative standalone selling prices to the selling prices of similar goods or services.
  - Evaluated management's estimate of standalone selling prices for reasonableness.
  - Evaluated the timing of revenue recognition for each performance obligation through obtaining signed proof of delivery documents.
  - Tested the mathematical accuracy of management's calculation of revenue recognized in the financial statements.
- We evaluated the sufficiency of the disclosures in the financial statements.

/s/DELOITTE & TOUCHE LLP

San Francisco, California

February 28, 2022

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

STEM, INC.
CONSOLIDATED BALANCE SHEETS
(in thousands, except share and per share amounts)

	December 31, 2021	December 31, 2020
ASSETS		
Current assets:		
Cash and cash equivalents	$ 747,780	$ 6,942
Short-term investments	173,008	—
Accounts receivable, net	61,701	13,572
Inventory, net	22,720	20,843
Other current assets (includes $213 and $123 due from related parties as of December 31, 2021 and December 31, 2020, respectively)	18,641	7,920
Total current assets	1,023,850	49,277
Energy storage systems, net	106,114	123,703
Contract origination costs, net	8,630	10,404
Goodwill	1,741	1,739
Intangible assets, net	13,966	12,087
Operating leases right-of-use assets	12,998	358
Other noncurrent assets	24,531	8,282
Total assets	$ 1,191,830	$ 205,850
LIABILITIES AND STOCKHOLDERS' EQUITY (DEFICIT)		
Current liabilities:		
Accounts payable	$ 28,273	$ 13,749
Accrued liabilities	25,993	16,072
Accrued payroll	7,453	5,976
Notes payable, current portion	—	33,683
Convertible promissory notes (includes $0 and $45,271 due to related parties as of December 31, 2021 and December 31, 2020, respectively)	—	67,590
Financing obligation, current portion	15,277	14,914
Deferred revenue, current portion	9,158	36,942
Other current liabilities (includes $306 and $399 due to related parties as of December 31, 2021 and December 31, 2020, respectively)	1,813	1,589
Total current liabilities	87,967	190,515
Deferred revenue, noncurrent	28,285	15,468
Asset retirement obligation	4,135	4,137
Notes payable, noncurrent	1,687	4,612
Convertible notes, noncurrent	316,542	—
Financing obligation, noncurrent	73,204	73,128
Warrant liabilities	—	95,342
Lease liability, noncurrent	12,183	57
Total liabilities	524,003	383,259
Commitments and contingencies (Note 19)		
Stockholders' equity (deficit):		
Preferred stock, $0.0001 par value; 1,000,000 shares authorized as of December 31, 2021 and December 31, 2020, respectively; 0 shares issued and outstanding as of December 31, 2021 and December 31, 2020, respectively	—	—
Common stock, $0.0001 par value; 500,000,000 shares authorized as of December 31, 2021 and December 31, 2020; 144,671,624 and 40,202,785 issued and outstanding as of December 31, 2021 and December 31, 2020, respectively	14	4
Additional paid-in capital	1,176,845	230,620
Accumulated other comprehensive income (loss)	20	(192)
Accumulated deficit	(509,052)	(407,841)
Total stockholders' equity (deficit)	667,827	(177,409)
Total liabilities and stockholders' equity (deficit)	$ 1,191,830	$ 205,850

The accompanying notes are an integral part of these consolidated financial statements.

STEM, INC.
CONSOLIDATED STATEMENTS OF OPERATIONS
(in thousands, except share and per share amounts)

	Years Ended December 31,		
	2021	**2020**	**2019**
Revenue			
Service revenue	$ 20,463	$ 15,645	$ 13,482
Hardware revenue	106,908	20,662	4,070
Total revenue	127,371	36,307	17,552
Cost of revenue			
Cost of service revenue	28,177	21,187	16,958
Cost of hardware revenue	97,947	19,032	3,854
Total cost of revenue	126,124	40,219	20,812
Gross margin	1,247	(3,912)	(3,260)
Operating expenses			
Sales and marketing	19,950	14,829	17,462
Research and development	22,723	15,941	14,703
General and administrative	41,648	14,705	12,425
Total operating expenses	84,321	45,475	44,590
Loss from operations	(83,074)	(49,387)	(47,850)
Other income (expense), net			
Interest expense	(17,395)	(20,806)	(12,548)
Loss on extinguishment of debt	(5,064)	—	—
Change in fair value of warrants and embedded derivative	3,424	(84,455)	1,493
Other expenses, net	898	(1,471)	(503)
Total other income (expense)	(18,137)	(106,732)	(11,558)
Loss before income taxes	(101,211)	(156,119)	(59,408)
Income tax expense	—	(5)	(6)
Net loss	$ (101,211)	$ (156,124)	$ (59,414)
Net loss per share attributable to common shareholders, basic and diluted	$ (0.96)	$ (4.13)	$ (1.51)
Weighted-average shares used in computing net loss per share, basic and diluted	105,561,139	40,064,087	42,811,383

The accompanying notes are an integral part of these consolidated financial statements.

STEM, INC.
CONSOLIDATED STATEMENTS OF COMPREHENSIVE LOSS
(in thousands)

	Years Ended December 31,		
	2021	2020	2019
Net loss	$ (101,211)	$ (156,124)	$ (59,414)
Other comprehensive income (loss):			
Unrealized loss on available-for-sale securities	(175)	—	—
Foreign currency translation adjustment	387	(246)	54
Total comprehensive loss	$ (100,999)	$ (156,370)	$ (59,360)

The accompanying notes are an integral part of these consolidated financial statements.

STEM, INC.
CONSOLIDATED STATEMENTS OF STOCKHOLDERS'EQUITY (DEFICIT)
(in thousands, except share amounts)

	Convertible Preferred Stock		Series 1 Convertible Preferred Stock		Common Stock		Additional Paid-In Capital	Accumulated Other Comprehensive Income (Loss)	Accumulated Deficit	Total Stockholders' Equity (Deficit)
	Shares	Amount	Shares	Amount	Shares	Amount				
Balance as of January 1, 2019	186,466,181	$ 218,931	3,405	$ —	9,583,163	$ —	$ 555	$ —	$ (210,596)	$ (210,041)
Retroactive application of recapitalization (Note 1)	(186,466,181)	(218,931)	(3,405)	—	32,640,569	3	218,928	—	—	$ 218,931
Adjusted balance, beginning of period	—	—	—	—	42,223,732	3	219,483	—	(210,596)	8,890
Effect of exchange transaction (Note 12)	—	—	—	—	(3,368,264)	—	(15,946)	—	10,956	(4,990)
Issuance of warrants to purchase common stock	—	—	—	—		—	1,217	—	—	1,217
Issuance of shares upon conversion of promissory note	—	—	—	—	4,245,330	—	28,144	—	—	28,144
Settlement of litigation	—	—	—	—	(2,905)	—	—	—	—	—
Issuance of common stock upon exercise of stock options and warrants	—	—	—	—	91,302	—	36	—	—	36
Stock-based compensation	—	—	—	—	—	—	1,531	—	—	1,531
Foreign currency translation adjustments	—	—	—	—	—	—	—	54	—	54
Net loss	—	—	—	—	—	—	—	—	(59,414)	(59,414)
Balance as of December 31, 2019	—	—	—	—	43,189,195	3	234,465	54	(259,054)	(24,532)
Effect of exchange transaction (Note 12)	—	—	—	—	(3,448,648)	—	(10,605)	—	7,337	(3,268)
Cancellation of exchange transaction by shareholder	—	—	—	—	184,520	—	—	—	—	—
Recognition of beneficial conversion feature related to convertible notes	—	—	—	—	—	—	1,629	—	—	1,629
Issuance of warrants to purchase common stock	—	—	—	—	—	—	168	—	—	168
Issuance of shares upon exercise of stock options and warrants	—	—	—	—	277,718	1	421	—	—	422
Stock-based compensation	—	—	—	—	—	—	4,542	—	—	4,542
Foreign currency translation adjustments	—	—	—	—	—	—	—	(246)	—	(246)
Net loss	—	—	—	—	—	—	—	—	(156,124)	(156,124)
Balance as of December 31, 2020	—	—	—	—	40,202,785	4	230,620	(192)	(407,841)	(177,409)
Merger and PIPE financing (Note 1)	—	—	—	—	70,428,326	7	248,137	—	—	248,144
Conversion of warrants into common stock upon Merger (Note 13)	—	—	—	—	2,759,970	—	60,568	—	—	60,568
Conversion of convertible notes into common stock (Note 12)	—	—	—	—	10,921,548	1	77,747	—	—	77,748
Exchange of warrants into common stock (Note 13)	—	—	—	—	4,683,349	1	168,646	—	—	168,647
Issuance of common stock warrants for services (Note 13)	—	—	—	—	—	—	9,183	—	—	9,183

The accompanying notes are an integral part of these consolidated financial statements.

Public Warrants exercises (Note 13)	—	—	—	—	12,638,723	1	312,115	—	—	312,116
Issuance of 2028 Convertible Notes, net (Note 12)	—	—	—	—	—	—	130,979	—	—	130,979
Purchase of capped call options (Note 12)	—	—	—	—	—	—	(66,700)	—	—	(66,700)
Stock option exercises, net of statutory tax withholdings	—	—	—	—	2,667,384	—	(9,574)	—	—	(9,574)
Legacy stock warrant exercises (Note 13)	—	—	—	—	369,539	—	418	—	—	418
Stock-based compensation	—	—	—	—	—	—	14,706	—	—	14,706
Unrealized loss on available-for-sale securities	—	—	—	—	—	—	—	(175)	—	(175)
Foreign currency translation gain	—	—	—	—	—	—	—	387	—	387
Net loss	—	—	—	—	—	—	—	—	(101,211)	(101,211)
Balance as of December 31, 2021	—	—	—	—	144,671,624	$ 14	$ 1,176,845	$ 20	$ (509,052)	$ 667,827

The accompanying notes are an integral part of these consolidated financial statements.

STEM, INC.
CONSOLIDATED STATEMENTS OF CASH FLOWS
(in thousands)

	Year Ended December 31,		
	2021	2020	2019
OPERATING ACTIVITIES			
Net loss	$ (101,211)	$ (156,124)	$ (59,414)
Adjustments to reconcile net loss to net cash used in operating activities:			
Depreciation and amortization expense	24,473	17,736	13,889
Non-cash interest expense, including interest expenses associated with debt issuance costs	9,648	10,044	4,759
Stock-based compensation	13,546	4,542	1,531
Change in fair value of warrant liability and embedded derivative	(3,424)	84,455	(1,493)
Noncash lease expense	896	589	906
Accretion expense	229	217	303
Impairment of energy storage systems	4,320	1,395	295
Issuance of warrants for services	9,183	—	—
Net (accretion of discount) amortization of premium on investments	664	—	—
Other	(50)	(129)	(76)
Changes in operating assets and liabilities:			
Accounts receivable	(48,125)	(6,988)	(5,112)
Inventory	(1,877)	(17,263)	(1,553)
Other assets	(24,783)	(5,329)	(1,860)
Right-of-use assets	(199)	—	—
Contract origination costs, net	(2,622)	(2,552)	(1,302)
Accounts payable and accrued expenses	33,462	5,684	10,562
Deferred revenue	(14,967)	31,682	9,007
Lease liabilities	(303)	(646)	(230)
Other liabilities	(126)	(984)	110
Net cash used in operating activities	(101,266)	(33,671)	(29,678)
INVESTING ACTIVITIES			
Purchase of available-for-sale investments	(189,858)	—	—
Sale of available-for-sale investments	16,011	—	—
Purchase of energy storage systems	(3,604)	(6,196)	(40,995)
Capital expenditures on internally-developed software	(5,970)	(5,828)	(5,356)
Purchase of equity method investment	(1,212)	—	—
Purchase of property and equipment	(600)	(12)	(7)
Net cash used in investing activities	(185,233)	(12,036)	(46,358)
FINANCING ACTIVITIES			
Proceeds from exercise of stock options and warrants	148,532	422	36
Payments for taxes related to net share settlement of stock options	(12,622)	—	—
Net contributions from Merger and PIPE financing, net of transaction costs of $58,061	550,322	—	—
Proceeds from financing obligations	7,839	16,222	32,310
Repayment of financing obligations	(9,587)	(10,689)	(7,309)
Proceeds from issuance of convertible notes, net of issuance costs of $14,299, $240 and $2,308 for the years ended December 31, 2021, 2020 and 2019, respectively	446,827	33,081	63,250
Purchase of capped call options	(66,700)	—	—
Proceeds from issuance of notes payable, net of issuance costs of $0, $1,502 and $0 for the years December 31, 2021, 2020 and 2019, respectively	3,930	23,498	4,710
Repayment of notes payable	(41,446)	(22,240)	(25,796)
Net cash provided by financing activities	1,027,095	40,294	67,201
Effect of exchange rate changes on cash and cash equivalents	242	(534)	(170)
Net increase (decrease) in cash and cash equivalents	740,838	(5,947)	(9,005)
Cash and cash equivalents, beginning of period	6,942	12,889	21,894
Cash and cash equivalents, end of period	$ 747,780	$ 6,942	$ 12,889

The accompanying notes are an integral part of these consolidated financial statements.

SUPPLEMENTAL DISCLOSURE OF CASH FLOW INFORMATION			
Cash paid for interest	$ 10,188	$ 9,665	$ 8,937
Cash paid for income taxes	$ —	$ 2	$ 3
NON-CASH INVESTING AND FINANCING ACTIVITIES			
Change in asset retirement costs and asset retirement obligation	$ 231	$ 1,839	$ (636)
Exchange of warrants for common stock	$ 168,647	$ —	$ —
Conversion of warrants upon Merger	$ 60,568	$ —	$ —
Conversion of convertible notes upon Merger	$ 77,748	$ —	$ —
Conversion of accrued interest into outstanding note payable	$ 337	$ 644	$ —
Right-of-use asset obtained in exchange for lease liability	$ 13,337	$ —	$ —
Settlement of warrant liability into common stock due to exercise	$ 167,050	$ —	$ —
Settlement of warrant liability into common stock due to redemption	$ 2,121	$ —	$ —
Issuance of common stock warrants	$ —	$ 168	$ 1,216
Stock-based compensation capitalized to internal-use software	$ 1,160	$ —	$ —
Purchase of energy storage systems in accounts payable	$ —	$ 1,806	$ 950
Conversion of convertible promissory notes and accrued interest into Series D preferred stock	$ —	$ —	$ 28,144

The accompanying notes are an integral part of these consolidated financial statements.

1. BUSINESS

Description of the Business

Stem, Inc. and its subsidiaries (together, "Stem" or the "Company") is one of the largest digitally connected, intelligent energy storage networks, providing customers (i) with an energy storage system, sourced from leading, global battery original equipment manufacturers ("OEMs"), that the Company delivers through its partners, including solar project developers and engineering, procurement and construction firms and (ii) through its Athena® artificial intelligence ("AI") platform ("Athena"), with ongoing software-enabled services to operate the energy storage systems for up to 20 years. In addition, in all the markets where the Company operates its customers' systems, the Company has agreements to manage the energy storage systems using the Athena platform to participate in energy markets and to share the revenue from such market participation.

The Company delivers its battery hardware and software-enabled services through its Athena platform to its customers. The Company's hardware and recurring software-enabled services mitigate customer energy costs through services such as time-of-use and demand charge management optimization and by aggregating the dispatch of energy through a network of virtual power plants. The resulting network created by the Company's growing customer base increases grid resilience and reliability through the real-time processing of market-based demand cycles, energy prices and other factors in connection with the deployment of renewable energy resources to such customers. Additionally, the Company's energy storage solutions support renewable energy generation by alleviating grid intermittency issues and thereby reducing customer dependence on traditional, fossil fuel resources.

The Company operated as Rollins Road Acquisition Company (f/k/a Stem, Inc.) ("Legacy Stem") prior to the Merger (as defined below). Stem, Inc. was incorporated on March 16, 2009 in the State of Delaware and is headquartered in San Francisco, California.

Star Peak Acquisition Corp. Merger

On December 3, 2020, the Company entered into an Agreement and Plan of Merger (the "Merger Agreement") with Star Peak Transition Corp. ("STPK"), an entity listed on the New York Stock Exchange under the trade symbol "STPK", and STPK Merger Sub Corp., a Delaware corporation and wholly-owned subsidiary of STPK ("Merger Sub"), providing for, among other things, and subject to the conditions therein, the combination of the Company and STPK pursuant to the merger of Merger Sub with and into the Company with the Company continuing as the surviving entity (the "Merger").

On April 28, 2021, shareholders of STPK approved the Merger, under which Stem received approximately $550.3 million, net of fees and expenses as follows (in thousands):

	Recapitalization
Cash — STPK trust and working capital cash	$ 383,383
Cash — PIPE (as described below)	225,000
Less: transaction costs and advisory fees paid	(58,061)
Merger and PIPE financing	$ 550,322

Immediately prior to the closing of the Merger, (i) all issued and outstanding shares of Legacy Stem preferred stock, par value $0.00001 per share (the "Legacy Stem Preferred Stock"), were converted into shares of Legacy Stem common stock, par value $0.000001 per share (the "Legacy Stem Common Stock") in accordance with Legacy Stem's amended and restated certificate of incorporation, (ii) all outstanding convertible promissory notes of Legacy Stem (the "Legacy Stem Convertible Notes") were converted into Legacy Stem Preferred Stock in accordance with the terms of the Legacy Stem Convertible Notes and (iii) certain warrants issued by Legacy Stem to purchase Legacy Stem Common Stock and Legacy Stem Preferred Stock (the "Legacy Stem Warrants") were exercised by holders into Legacy Stem Common Stock in accordance with the terms thereof. Upon the consummation of the Merger, each share of Legacy Stem common stock then issued and outstanding was canceled and converted into the right to receive shares of common stock of Stem using an exchange ratio of 4.6432.

In connection with the execution of the Merger Agreement, STPK entered into separate subscription agreements (each, a "Subscription Agreement") with a number of investors (each a "Subscriber"), pursuant to which the Subscribers agreed to purchase, and STPK agreed to sell to the Subscribers, an aggregate of 22,500,000 shares of common stock (the "PIPE Shares"), for a purchase price of $10 per share and an aggregate purchase price of $225.0 million, in a private placement pursuant to the

subscription agreements (the "PIPE"). The PIPE investment closed simultaneously with the consummation of the Merger. The Merger is accounted for as a reverse recapitalization in accordance with U.S. generally accepted accounting principles ("GAAP"). Under this method of accounting, STPK was treated as the "acquired" company for financial reporting purposes. Accordingly, for accounting purposes, the Merger was treated as the equivalent of Stem issuing stock for the net assets of STPK, accompanied by a recapitalization. The net liabilities of STPK of $302.2 million, comprised primarily of the warrant liabilities associated with the Public and Private Placement Warrants discussed in Note 13 - *Warrants*, are stated at historical cost, with no goodwill or other intangible assets recorded.

Liquidity

The accompanying consolidated financial statements have been prepared in accordance with GAAP and with the instructions to Form 10-K and Regulation S-X, assuming the Company will continue as a going concern. As of December 31, 2021, the Company had cash and cash equivalents of $747.8 million, short-term investments of $173.0 million, an accumulated deficit of $509.1 million and net working capital of $935.9 million, with $15.3 million of financing obligation coming due within the next 12 months. During the year ended December 31, 2021, the Company incurred a net loss of $101.2 million and had negative cash flows from operating activities of $101.3 million. However, the net proceeds from the Merger of $550.3 million, the proceeds of $145.3 million from the exercise of Public Warrants (as described in Note 13 - *Warrants*), and the net proceeds of $445.7 million from the issuance of the Company's 0.50% Green Convertible Senior Notes due 2028 (the "2028 Convertible Notes") (as described in Note 12 - *Convertible Promissory Notes*) provided the Company with a significant amount of cash proceeds. As discussed in Note 21 - *Subsequent Events*, the Company completed the acquisition of 100% of the outstanding shares of AlsoEnergy, Inc., ("AlsoEnergy") for an aggregate purchase price of $695.0 million, consisting of approximately 75% in cash. The Company believes that its cash position is sufficient to meet capital and liquidity requirements for at least the next 12 months after the date that the financial statements are available to be issued.

The Company's business prospects are subject to risks, expenses, and uncertainties frequently encountered by companies in the early stages of commercial operations. Prior to the Merger, the Company had been funded primarily by equity financings, convertible promissory notes and borrowings from affiliates. The attainment of profitable operations is dependent upon future events, including obtaining adequate financing to complete the Company's development activities, securing adequate supplier relationships, building its customer base, successfully executing its business and marketing strategy, and hiring and retaining appropriate personnel. Failure to generate sufficient revenues, achieve planned gross margins and operating profitability, control operating costs, or secure additional funding may require the Company to modify, delay or abandon some of its planned future expansion or development, or to otherwise enact operating cost reductions available to management, which could have a material adverse effect on the Company's business, operating results and financial condition.

COVID-19

The ongoing COVID-19 pandemic has resulted and may continue to result in widespread adverse impacts on the global and U.S. economies. Ongoing government and business responses to COVID-19, along with the COVID-19 Omicron variant and resurgence of related disruptions, could have a continued material adverse effect on economic and market conditions and trigger a period of continued global and U.S. economic slowdown.

The Company's industry is currently facing shortages and shipping delays affecting the supply of energy storage systems, batteries, modules and component parts for inverters and battery energy storage systems available for purchase. These shortages and delays can be attributed in part to the COVID-19 pandemic and resulting government action. While a majority of the Company's suppliers have secured sufficient quantities to permit them to continue delivery and installing through the end of 2022, if these shortages and delays persist into 2023, they could adversely affect the timing of when energy storage systems can be delivered and installed and when the Company can begin to generate revenue from those systems. The Company cannot predict the full effect the COVID-19 pandemic will have on its business, cash flows, liquidity, financial condition and results of operations at this time due to numerous uncertainties. The Company will continue to monitor developments affecting its workforce, its customers and its business operations generally, and will take actions it determines are necessary in order to mitigate these effects.

2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Basis of Presentation

The Company's consolidated financial statements have been prepared in accordance with GAAP.

Immaterial Out-of-Period Corrections

During the year ended December 31, 2021, the Company recorded certain out-of-period corrections related to prior interim and annual periods pertaining to the amortization of contract origination costs and valuation of energy storage systems that were decommissioned. The impact of out-of-period corrections to the year ended December 31, 2021 was an increase of $2.8 million to net loss, and increase to cost of service revenue of $1.7 million, and an increase to sales and marketing expenses of $1.1 million. The following table presents the amount of the errors identified for energy storage systems, net and contract origination costs, net as of the end of each period, and the amounts and periods in which the errors related to cost of service revenue and sales and marketing originated (in millions):

(overstatement)/understatement	Year Ended December 31,		
	2020	2019	Periods prior to 2019
Energy storage systems, net	$ (1.7)	$ (1.5)	$ (0.9)
Contract origination costs, net	$ (1.1)	$ (0.3)	$ (0.1)
Cost of service revenue	$ 0.2	$ 0.6	$ 0.9
Sales and marketing	$ 0.8	$ 0.2	$ 0.1

The Company corrected the out of period errors in the quarter ended December 31, 2021. The impact of the out-of-period correction for the quarter ended December 31, 2021 included corrections for the prior quarterly periods presented below. The impact to the quarter ended December 31, 2021, was an increase of $4.2 million to net loss, increase to cost of service revenue of $1.8 million and increase to sales and marketing expenses of $2.4 million. The following table presents the amounts of the errors identified for energy storage systems, net and contract origination costs, net as of the end of each period, as well as the quarterly periods in which the errors related to cost of service revenue and sales and marketing originated (in millions):

(overstatement)/understatement	Quarter ended September 30, 2021	Quarter ended June 30, 2021	Quarter ended March 31, 2021
Energy storage systems, net	$ (1.8)	$ (1.7)	$ (1.7)
Contract origination costs, net	$ (2.4)	$ (1.6)	$ (1.4)
Cost of service revenue	$ 0.1	$ —	$ —
Sales and marketing	$ 0.8	$ 0.2	$ 0.3

The errors and out of period corrections had no impact to the Company's net cash used in operating activities for any of the periods presented. The Company performed a quantitative and qualitative evaluation of these out-of-period adjustments and has concluded that the amounts are not material in relation to the year ended December 31, 2021, or any prior interim or annual periods.

Reclassifications

Certain prior year amounts have been reclassified for consistency with the current year presentation. Such reclassifications have no impact on previously reported net loss, stockholders' equity (deficit), or cash flows.

Principles of Consolidation

The consolidated financial statements include the accounts of the Company, its wholly-owned subsidiaries, and consolidated variable interest entities ("VIEs"). All intercompany balances and transactions have been eliminated in consolidation.

Variable Interest Entities

The Company forms special purpose entities ("SPEs"), some of which are VIEs, with its investors in the ordinary course of business to facilitate the funding and monetization of its energy storage systems. A legal entity is considered a VIE if it has either a total equity investment that is insufficient to finance its operations without additional subordinated financial support or whose equity holders lack the characteristics of a controlling financial interest. The Company's variable interests arise from contractual, ownership, or other monetary interests in the entity. The typical condition for a controlling financial interest ownership is holding a majority of the voting interests of an entity; however, a controlling financial interest may also exist in entities, such as VIEs, through arrangements that do not involve controlling voting interests.

The Company consolidates a VIE if it is deemed to be the primary beneficiary. The Company determines it is the primary beneficiary if it has the power to direct the activities that most significantly impact the VIEs' economic performance and has the obligation to absorb losses or has the right to receive benefits of the VIE that could potentially be significant to the VIE. The Company evaluates its relationships with its VIEs on an ongoing basis to determine whether it is the primary beneficiary.

Equity Method Investments

The Company has ownership interests in SPEs which it does not control. Where the Company holds an interest in these SPEs of greater than 20% and has the ability to exercise significant influence, the Company uses the equity method to account for its investments in these SPEs. Under the equity method of accounting, investments are stated at initial cost and are adjusted for subsequent additional investments and the Company's proportionate share of earnings or losses and distributions. Such proportionate share of earnings or losses is included within other expenses, net in the consolidated statements of operations. The Company considers whether its equity method investments are impaired when events or circumstances suggest that the carrying amount may not be recoverable. An impairment charge is recognized in the consolidated statements of operations for a decline in value that is determined to be other-than-temporary. In determining if and when a decline in the fair value of these investments below their carrying value is other-than-temporary, the Company evaluates the market condition, trends of earnings and cash flows and other key measures of performance and recognizes such loss which is deemed to be other-than-temporary. No such losses have been recognized during the years ended December 31, 2021, 2020, and 2019.

Use of Estimates

The preparation of consolidated financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities, the disclosure of contingent assets and liabilities at the date of the consolidated financial statements, and the reported amounts of revenues and expenses during the reporting period. The Company bases its estimates on historical experience and on various other assumptions believed to be reasonable. Actual results could differ from those estimates and such differences could be material to the financial position and results of operations.

Significant estimates and assumptions reflected in these consolidated financial statements include, but are not limited to, depreciable life of energy systems; the amortization of financing obligations; deferred commissions and contract fulfillment costs; the valuation of energy storage systems, internally developed software, and asset retirement obligations; and the fair value of financial instruments, equity-based instruments, debt, warrant liabilities and embedded derivatives.

Segment Information

Operating segments are defined as components of an entity for which discrete financial information is available that is regularly reviewed by the Chief Operating Decision Maker ("CODM") in deciding how to allocate resources to an individual segment and in assessing performance. The Company's Chief Executive Officer is the CODM. The CODM reviews financial information presented on a consolidated basis for purposes of making operating decisions, allocating resources, and evaluating financial performance. As such, management has determined that the Company operates as one operating segment that is focused exclusively on innovative technology services that transform the way energy is distributed and consumed. Net assets outside of the U.S. were less than 10% of total net assets as of December 31, 2021 and 2020.

Cash and Cash Equivalents

The Company considers all highly liquid investments with an original maturity date of three months or less at the date of purchase to be cash equivalents. Cash and cash equivalents are maintained at financial institutions. The Company maintains all cash in a highly liquid form to meet current obligations.

Short-Term Investments

Investments with a maturity date greater than three months that the Company intends to convert to cash or cash equivalents within a year or less are classified as short-term investments in the Company's consolidated balance sheets. Additionally, in accordance with ASC 320, *Investments - Debt Securities*, the Company has classified all short-term investments as available-for-sale securities and changes in fair market value are reported in other comprehensive income (loss).

The Company utilizes its short-term investments as an alternative form of cash and, if the cash needs arise, could liquidate the investments at any point in time regardless of the contractual maturity of the investments. All of the Company's investments are tradable on an active market and could be sold at fair value at any point in time.

Accounts Receivable, Net

Accounts receivable are recorded at the invoiced amount, net of allowance for doubtful accounts. Accounts receivable also include unbilled accounts receivable, which is composed of the monthly energy optimization services provided and recognized but not yet invoiced as of the end of the reporting period. The allowance for doubtful accounts is based on the Company's best estimate and is determined based upon a variety of factors, including analyses of specific customer receivables, aging, and overall assessments of collectability. Accounts receivable balances are charged against the allowance when the Company believes it is probable that the receivable will not be recovered. The allowance for doubtful accounts balance was $0.1 million as of each December 31, 2021 and 2020.

Concentrations of Credit Risk and Other Uncertainties

Financial instruments that potentially subject the Company to concentration of credit risk consist of cash and cash equivalents and accounts receivable. The Company's cash balances are primarily invested in money market funds or on deposit at high credit quality financial institutions in the U.S. The Company's cash and cash equivalents are held at financial institutions where account balances may at times exceed federally insured limits. Management believes the Company is not exposed to significant credit risk due to the financial strength of the depository institution in which the cash is held. The Company has no financial instruments with off-balance sheet risk of loss.

At times, the Company may be subject to a concentration of credit risk in relation to certain customers due to the purchase of large energy storage systems made by such customers. The Company routinely assesses the creditworthiness of its customers. The Company has not experienced any material losses related to receivables from individual customers, or groups of customers during the years ended December 31, 2021, 2020 and 2019. The Company does not require collateral. Due to these factors, no additional credit risk beyond amounts provided for collection losses is believed by management to be probable in the Company's accounts receivable.

Significant Customers

A significant customer represents 10% or more of the Company's total revenue or accounts receivable, net balance at each reporting date. For each significant customer, revenue as a percentage of total revenue and accounts receivable as a percentage of total accounts receivable are as follows:

	Accounts Receivable December 31,		Revenue Year Ended December 31,		
	2021	2020	2021	2020	2019
Customers:					
Customer A	23 %	*	11 %	*	*
Customer B	15 %	*	10 %	12 %	*
Customer C	13 %	17 %	10 %	25 %	*
Customer D	*	30 %	*	*	*
Customer E	*	20 %	*	*	*

*Total less than 10% for the respective period

Inventory

Inventory consists of batteries and related components either in-process at the Company's OEM suppliers or as a finished product at the Company's warehouse, which are sold and delivered directly to customers under the Company's partnership arrangements as individual assets or assembled systems. Inventory is stated at lower of cost or net realizable value with cost being determined by the specific identification method. The Company periodically reviews its inventory for potentially slow-moving or obsolete items and writes down specific items in inventory to net realizable value based on its assessment of market conditions.

Energy Storage Systems, Net

The Company sells energy optimization services to host customers through the use of energy storage systems installed at customer locations. The Company determined that it does not transfer control of these energy storage systems to the customer, which are operated and controlled via the Company's proprietary cloud-based software ("SaaS") platform; therefore, these

energy storage systems do not qualify as a leased asset. The energy storage systems are stated at cost, less accumulated depreciation and impairment (as applicable).

Energy storage systems, net is comprised of equipment costs, which include components such as batteries, inverters, and other electrical equipment, and associated design, installation, and interconnection costs required to begin providing the energy optimization services to customers.

Depreciation of the energy storage systems is a component of cost of revenues within the consolidated statements of operations and is calculated using the straight-line method over the estimated useful lives of the energy storage systems, or 10 years, once the respective energy storage systems have been installed and interconnected to the power grid, the Company has received permission to operate, and the Company has begun to provide energy optimization services to the customer (i.e., energy storage system is live). Repairs and maintenance costs are expensed as incurred. Impairment charges related to energy storage system that were determined to no longer be recoverable totaled $4.3 million, $1.4 million and $0.3 million for the years ended December 31, 2021, 2020, and 2019, respectively.

Contract Origination Costs, Net

Contract origination costs, net is stated at gross contract origination costs less accumulated amortization. Contract origination costs consists of sales commissions earned by the Company's sales team, as well as related payroll taxes and other relevant fringe benefits that are direct, incremental, and recoverable costs of obtaining a contract with a customer. As a result, these amounts have been capitalized on the consolidated balance sheets. The Company deferred incremental costs of obtaining a contract of $3.0 million and $2.6 million during the years ended December 31, 2021 and 2020, respectively.

Contract origination costs are amortized over the expected period of benefit. The period of benefit is estimated by considering factors such as the timing of fulfillment of performance obligations, historical customer attrition rates, the useful life of the Company's technology, and the impact of competition in its industry. Amortization of contract costs were $3.9 million, $0.8 million and $0.5 million for the years ended December 31, 2021, 2020, and 2019, respectively, and are included in sales and marketing expense in the accompanying consolidated statements of operations. The Company also recorded $0.5 million, $0.1 million and $0.5 million in impairment losses in sales and marketing expense in the statements of operations related to the contract origination costs that were determined to no longer be recoverable during the years ended December 31, 2021, 2020, and 2019, respectively.

Business Combinations

The Company accounts for business acquisitions under ASC 805, *Business Combinations*. The total purchase consideration for an acquisition is measured as the fair value of the assets given, equity instruments issued and liabilities assumed at the acquisition date. Costs that are directly attributable to the acquisition are expensed as incurred. Identifiable assets (including intangible assets), liabilities assumed (including contingent liabilities) and noncontrolling interests in an acquisition are measured initially at their fair values at the acquisition date. The Company recognizes goodwill if the fair value of the total purchase consideration and any noncontrolling interests is in excess of the net fair value of the identifiable assets acquired and the liabilities assumed. The Company recognizes a bargain purchase gain within other income (expense), net, on the consolidated statement of operations if the net fair value of the identifiable assets acquired and the liabilities assumed is in excess of the fair value of the total purchase consideration and any noncontrolling interests. The Company includes the results of operations of the acquired business in the consolidated financial statements beginning on the acquisition date.

Intangible Assets

Internal-use software

The Company capitalizes costs incurred in the development of internal-use software during the application development stage. Costs related to preliminary project activities and post-implementation activities are expensed as incurred. Capitalized internal-use software is amortized on a straight-line basis over the estimated useful life of the software once it is ready for its intended use. The estimated useful life of costs capitalized is generally five years. The Company recorded amortization for internal-use software of $5.0 million, $4.0 million and $3.0 million in cost of revenues in the accompanying consolidated statements of operations for the years ended December 31, 2021, 2020, and 2019, respectively.

Finite-lived Intangible Assets

Finite-lived intangible assets consist of developed technology acquired in a business combination. Finite-lived intangible assets acquired in business combinations are initially recorded at fair value and subsequently presented net of accumulated

amortization. These intangible assets are amortized on a straight-line basis over their estimated useful lives. The Company amortizes its developed technology over five years. These intangible assets were fully amortized as of December 31, 2021. Amortization of these intangible assets was not material for the years ended December 31, 2020 and 2019.

Impairment of Long-Lived Assets

The Company reviews its long-lived assets, which primarily consist of energy storage systems, right-of- use assets, and finite-lived intangible assets for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable or that the useful life is shorter than originally estimated. Recoverability of assets is measured by comparing the carrying amount of an asset to future undiscounted net cash flows expected to be generated by the asset over its remaining useful life.

If such assets are impaired, the impairment recognized is measured by the amount by which the carrying amount of the assets exceeds the fair value of the assets. If the useful life is shorter than originally estimated, the Company depreciates or amortizes the remaining carrying value over the revised shorter useful life. Assets to be disposed of by sale are reflected at the lower of their carrying amount or fair value less cost to sell.

Leases

The Company determines if an arrangement is or contains a lease at inception by assessing whether the arrangement contains an identified asset and whether it has the right to control the identified asset. Right-of-use ("ROU") assets represent the Company's right to use an underlying asset for the lease term and lease liabilities represent the Company's obligation to make lease payments arising from the lease. The classification of the Company's leases as operating or finance leases along with the initial measurement and recognition of the associated ROU assets and lease liabilities is performed at the lease commencement date. The measurement of ROU assets and lease liabilities is based on the present value of future lease payments over the lease term. The ROU asset also includes the effect of any lease payments made prior to or on lease commencement and excludes lease incentives and initial direct costs incurred, as applicable.

As the implicit rate in the Company's leases is generally unknown, the Company uses its incremental borrowing rate based on the information available at the lease commencement date in determining the present value of future lease payments. The Company considers its credit risk, term of the lease, total lease payments and adjusts for the impacts of collateral, as necessary, when calculating its incremental borrowing rates. The lease terms may include options to extend or terminate the lease when it is reasonably certain the Company will exercise any such options. Rent expense for the Company's operating leases is recognized on a straight-line basis over the lease term. Variable lease payments are recorded as an expense in the period incurred.

The Company has elected to not separate lease and non-lease components for any leases within its existing classes of assets and, as a result, accounts for any lease and non-lease components as a single lease component. The Company has also elected to not apply the recognition requirement to any leases within its existing classes of assets with a term of 12 months or less.

Convertible Preferred Stock Warrant Liabilities

The Company evaluates whether its warrants for shares of convertible redeemable preferred stock are freestanding financial instruments that obligate the Company to redeem the underlying preferred stock at some point in the future and determined that each of its outstanding warrants for preferred stock are liability classified. The warrants are subject to re-measurement at each balance sheet date, and any change in fair value is recognized in the change in fair value of warrants and embedded derivatives in the consolidated statements of operations.

As discussed in Note 13 - *Warrants*, upon effectiveness of the Merger, substantially all of the outstanding convertible preferred stock warrants were converted into shares of common stock of Stem. As such, the associated warrant liability was reclassified to additional paid-in-capital upon the Merger and was no longer an outstanding Level 3 financial instrument as of December 31, 2021.

Common Stock Warrants

The Company evaluates common stock warrants under ASC 815-40, *Derivatives and Hedging—Contracts in Entity's Own Equity.* The Company assesses whether common stock warrants are freestanding financial instruments and whether they meet the criteria to be classified in stockholders' equity, or classified as a liability. Where common stock warrants do not meet the conditions to be classified in equity, the Company assesses whether they meet the definition of a liability under ASC 815.

Common stock warrants that meet the definition of a liability are recognized on the balance sheet at fair value. Subsequent changes in their respective fair values are recognized in the consolidated statement of operations at each reporting date.

As indicated in Note 13 - *Warrants*, as part of STPK's initial public offering, the Company issued Public Warrants and Private Warrants, which upon issuance met the criteria for liability classification under ASC 815.

Asset Retirement Obligations

The Company recognizes a liability for the fair value of asset retirement obligations ("ARO") associated with its energy storage systems in the period in which there is a legal obligation associated with the retirement of such assets and the amount can be reasonably estimated. The associated asset retirement costs are capitalized as part of the carrying amount of the energy storage systems and depreciated over the asset's remaining useful life. This liability includes costs related to the removal of its energy storage systems at the conclusion of each respective customer contract. Subsequent to initial measurement, the asset retirement liability is accreted each period and such accretion is recognized as an expense in the consolidated statements of operations. If there are changes in the estimated amount or timing of cash flows, a revision is recorded to both the asset retirement obligation and the asset retirement capitalized cost.

Financing Obligations

The Company has formed various SPEs to finance the development and construction of its energy storage systems. These SPEs, which are structured as limited liability companies, obtain financing in the form of large upfront payments from outside investors and purchase energy storage systems from the Company under master purchase agreements. The Company accounts for the large upfront payments received from the fund investor as a borrowing by recording the proceeds received as a financing obligation, which will be repaid through host customer payments and incentives received from the utilities that will be received by the investor.

The financing obligation is non-recourse once the associated energy storage systems have been placed in-service and the associated customer arrangements have been assigned to the SPE. However, the Company is responsible for any warranties, performance guarantees, accounting, performance reporting, and all other costs associated with the operation of the energy storage systems. Despite such energy storage systems being legally sold to the SPEs, the Company recognizes host customer payments and incentives as revenue during the period as discussed in Note 3 - *Revenue*. The amounts received by the fund investor from customer payments and incentives are recognized as interest using the effective interest method, and the balance is applied to reduce the financing obligation. The effective interest rate is the interest rate that equates the present value of the cash amounts to be received by a fund investor in relation to the underlying Projects with the present value of the cash amounts paid by the investor to the Company, adjusted for any payments made by the Company.

Fair Value of Financial Instruments

Assets and liabilities recorded at fair value in the consolidated financial statements are categorized based upon the level of judgment associated with the inputs used to measure their fair value. The fair value of the Company's financial assets and liabilities reflects management's estimate of amounts that the Company would have received in connection with the sale of the assets or paid in connection with the transfer of the liabilities in an orderly transaction between market participants at the measurement date. In connection with measuring the fair value of its assets and liabilities, the Company seeks to maximize the use of observable inputs (market data obtained from independent sources) and to minimize the use of unobservable inputs (internal assumptions about how market participants would price assets and liabilities).

Hierarchical levels which are directly related to the amount of subjectivity associated with the inputs to the valuation of these assets or liabilities are as follows:

Level 1 — Unadjusted quoted prices in active markets for identical assets or liabilities that the Company has the ability to access as of the measurement date.

Level 2 — Inputs other than quoted prices included within Level 1 that are directly observable for the asset or liability or indirectly observable through corroboration with observable market data.

Level 3 — Unobservable inputs for the asset or liability only used when there is little, if any, market activity for the asset or liability at the measurement date.

This hierarchy requires the Company to use observable market data, when available, and to minimize the use of unobservable inputs when determining fair value. Assets and liabilities measured at fair value are classified in their entirety

based on the lowest level of input that is significant to their fair value measurement. The Company's assessment of the significance of a specific input to the fair value measurement in its entirety requires management to make judgments and consider factors specific to the asset or liability.

Financial assets and liabilities held by the Company measured at fair value on a recurring basis as of December 31, 2021 and 2020, include cash and cash equivalents, short-term investments, warrant liabilities and embedded derivatives which are bifurcated from the host financial instrument.

Revenue Recognition

Revenues are recognized when control of the promised goods or services are transferred to the Company's customers in an amount that reflects the consideration that is expected to be received in exchange for those goods or services. The Company generates all of its revenues from contracts with its customers. The Company recognizes revenue through two types of arrangements with customers, host customer arrangements and partnership arrangements as described below.

Host Customer Arrangements

Host customer contracts are generally entered into with commercial entities that have traditionally relied on power supplied directly from the grid. Host customer arrangements consist of a promise to provide energy optimization services through the Company's proprietary SaaS platform coupled with a dedicated energy storage system owned and controlled by the Company throughout the term of the contract. The host customer does not obtain legal title to, or ownership of the dedicated energy storage system at any point in time. The host customer is the end consumer of the energy that directly benefits from the energy optimization services provided by the Company. The term for the Company's contracts with host customers generally ranges from 5 to 10 years, which may include certain renewal options to extend the initial contract term or certain termination options to reduce the initial contract term.

Although the Company installs an energy storage system at the host customer site in order to provide the energy optimization services, the Company directs how and for what purpose the asset is used through the operation of its SaaS platform and, as such, retains control of the energy storage system; therefore, the contract does not contain a lease. The Company determines the various energy optimization services provided throughout the term of the contract, which may include services such as remote monitoring, performance reporting, preventative maintenance and other ancillary services necessary for the safe and reliable operation of the energy storage system, are part of a combined output of energy optimization services and the Company provides a single distinct combined performance obligation representing a series of distinct days of services.

The Company determines the transaction price at the outset of the arrangement, primarily based on the contractual payment terms dictated by the contract with the customer. Fees charged to customers for energy optimization services generally consist of recurring fixed monthly payments throughout the term of the contract. In certain arrangements, the transaction price may include incentive payments that are earned by the host customer from utility companies in relation to the services provided by the Company. Under such arrangements, the rights to the incentive payments are assigned by the host customer to the Company. These incentives may be in the form of fixed upfront payments, variable monthly payments, or annual performance-based payments over the first five years of the customer contract term. Incentive payments may be contingent on approval from utility companies or actual future performance of the energy storage system.

Substantially all of the Company's arrangements provide customers the unilateral ability to terminate for convenience prior to the conclusion of the stated contractual term or the contractual term is shorter than the estimated benefit period, which the Company has determined to be 10 years based on the estimated useful life of the underlying energy storage systems and the period over which the customer can benefit from the energy optimization services utilizing such energy storage systems. In these instances, the Company determined that upfront incentive payments received from its customers represent a material right that is, in effect, an advance payment for future energy optimization services to be recognized throughout the estimated benefit period. In contracts where the customer does not have the unilateral ability to terminate for convenience without a penalty during the estimated benefit period, the Company determined the upfront incentive payments do not represent a material right for services provided beyond the initial contractual period and are therefore a component of the initial transaction price. The Company revisits its estimate of the benefit period each reporting period. The Company's contracts with host customers do not contain a significant financing component.

The Company transfers control of its energy optimization services to its customers continuously throughout the term of the contract (a stand-ready obligation) and revenue is recognized ratably as control of these services is transferred to its customers, in an amount that reflects the consideration the Company expects to be contractually entitled to in exchange for its services. Monthly incentive payments based on the performance of the energy storage system are allocated to the distinct month in which they are earned because the terms of the payments relate specifically to the outcome from transferring the distinct time increment (month) of service and because such amounts reflect the fees to which the Company expects to be entitled for providing energy optimization services each period, consistent with the allocation objective. Annual variable performance- based payments are estimated at the inception in the transaction price using the expected value method, which takes into consideration historical experience, current contractual requirements, specific known market events and forecasted energy storage system performance patterns, and the Company recognizes such payments ratably using a time-based measure of progress of days elapsed over the term of the contract to the extent that it is probable that a significant reversal of the cumulative revenue recognized will not occur in a future period. At the end of each reporting period, the Company reassesses its estimate of the transaction price. The Company does not begin recognition of revenue until the energy storage system is live (i.e., provision of energy optimization services has commenced) or, as it relates to incentive payments, when approval has been received from the utility company, if later.

Partnership Arrangements

Partnership arrangements consist of promises to transfer inventory in the form of an energy storage system to a "solar plus storage" project developer and separately provide energy optimization services as described previously to the ultimate owner of the project after the developer completes the installation of the project. Under partnership arrangements, the Company's customer is the solar plus storage project developer. The customer obtains legal title to along with ownership and control of the inventory upon delivery and the customer is responsible for the installation of the project. Once installation of the project is complete, the owner of the solar plus storage project provides energy to the end consumer through a separate contractual arrangement directly with the end consumer. The term for the Company's contracts with customers under partnership arrangements generally ranges from 10 to 20 years.

The Company determined the promise to deliver the inventory as a component of the solar plus storage project for which the customer is responsible to develop is a separate and distinct performance obligation from the promise to provide energy optimization services.

The Company determines the transaction price at the outset of the arrangement, primarily based on the contractual payment terms dictated by the contract with the customer. Fees charged for the sale of inventory generally consist of fixed fees payable upon or shortly after successful delivery to the customer. Fees charged to customers for energy optimization services consist of recurring fixed monthly payments throughout the term of the contract. The Company is responsible for designing, procuring, delivering and ensuring the proper components are provided in accordance with the requirements of the contract. Although the inventory is purchased by the Company from a third-party manufacturer, the Company determined it obtains control of the inventory prior to delivery to the customer and is the principal in the arrangement. The Company is fully responsible for responding to and correcting any customer issues related to the delivery of the inventory. The Company holds title and assumes all risks of loss associated with the inventory until the customer accepts the inventory. The Company is primarily responsible for fulfilling the delivery of the inventory to the customer, assumes substantial inventory risks and has discretion in the pricing charged to the customer. The Company has not entered into any partnership arrangements where it is not the principal in the transaction.

The Company allocates revenue between the hardware and energy storage services performance obligations based on the standalone selling price of each performance obligation. The standalone selling price for the hardware is established based on observable pricing. The standalone selling price for the energy optimization services is established using a residual value approach due to the significant variability in the services provided to each individual customer based on the specific requirements of each individual project and the lack of observable standalone sales of such services. The Company's partnership arrangements do not contain a significant financing component.

The Company transfers control of the inventory upon delivery and simultaneous transfer of title to the customer. The Company transfers control of its energy optimization services to its customers continuously throughout the term of the contract (a stand-ready obligation), which does not commence until the customer successfully completes the installation of the project. As a result, the time frame between when the Company transfers control of the inventory to the customer upon delivery is generally several months, and can be in excess of one year, before the Company is required to perform any subsequent energy optimization services. Revenue is recognized ratably as control of these services is transferred to its customers based on a time-based output measure of progress of days elapsed over the term of the contract, in an amount that reflects the consideration the Company expects to be entitled to in exchange for its services.

In some partnership arrangements, the Company charges shipping fees for the inventory. The Company accounts for shipping as a fulfillment activity, since control transfers to the customer after the shipping is complete and includes such amounts within cost of revenue.

Cost of Revenue

Cost of Hardware Revenue

Cost of revenue related to the sale of hardware includes the cost of the hardware sold to project developers, which generally includes the cost to purchase the hardware from a manufacturer, shipping, and other costs required to fulfill the Company's obligation to deliver the hardware to the customer location. Cost of revenue may also include any impairment of hardware held in inventory for sale to a customer. Cost of revenue related to the sale of hardware is recognized when the delivery of the hardware is completed.

Cost of Service Revenue

Cost of revenue related to energy optimization services includes depreciation of the cost of energy storage systems associated with long-term host customer contracts, which includes capitalized fulfillment costs, such as installation services, permitting and other related costs. Cost of revenue may also include any impairment of energy storage systems along with energy storage system maintenance costs associated with the ongoing services provided to customers and other amounts not qualifying for capitalization pursuant to the Company's internal use software capitalization policy. Cost of revenue is recognized as the energy optimization and other supporting services are provided to the Company's customers throughout the term of the contract.

Sales and Marketing

Sales and marketing expense consists primarily of payroll and other related personnel costs, including stock-based compensation, employee benefits, and travel for the Company's sales & marketing department. These costs are recognized in the period incurred. Advertising expenses for the years ended December 31, 2021, 2020, and 2019 were not material.

Research and Development

Research and development expense consists primarily of payroll and other related personnel costs for engineers and third parties engaged in the design and development of products, third-party software, and technologies, including salaries, bonus and stock-based compensation expense, project material costs, services, and depreciation. The Company expenses research and development costs as they are incurred.

General and Administrative

General and administrative expense consists of payroll and other related personnel costs, including salaries, bonuses and stock-based compensation for executive management, legal, finance, and others. In addition, general and administrative expense includes fees for professional services and occupancy costs.

Stock-Based Compensation

The Company recognizes stock-based compensation expense related to employees over the requisite service period based on the grant-date fair value of the awards. The fair value of options granted is estimated using the Black-Scholes option valuation model. The Company recognizes the grant-date fair value of an award as compensation expense on a straight-line basis over the requisite service period, which typically corresponds to the vesting period for the award. The Company elects to account for forfeitures as they occur and, upon forfeiture of an award prior to vesting, the Company reverses any previously recognized compensation expense related to that award.

Income Taxes

The Company uses the asset and liability method of accounting for income taxes based on ASC 740, *Accounting for Income Taxes*. Under the asset and liability method, deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between financial statement carrying amounts and the tax basis of existing assets and liabilities. The Company records a valuation allowance to reduce tax assets to an amount for which realization is more likely than not. There are certain charges that are not deductible for tax purposes.

In evaluating the ability to recover its deferred income tax assets, the Company considers all available positive and negative evidence, including its operating results, ongoing tax planning, and forecasts of future taxable income on a jurisdiction-by-jurisdiction basis. In the event the Company determines that it would be able to realize its deferred income tax assets in the future in excess of their net recorded amount, it would make an adjustment to the valuation allowance that would reduce the provision for income taxes. Conversely, in the event that all or part of the net deferred tax assets are determined not to be realizable in the future, an adjustment to the valuation allowance would be charged to earnings in the period such determination is made.

The Company recognizes the tax benefit from uncertain tax positions in accordance with GAAP, which prescribes a recognition threshold and measurement attribute for the financial statement recognition and measurement of uncertain tax positions taken or expected to be taken in the Company's tax return. No liability related to uncertain tax positions has been recognized in the financial statements.

The Company includes interest and penalties for uncertain tax positions in the financial statements as a component of income tax expense. No accrual has been deemed necessary as of December 31, 2021 and 2020.

Foreign Currency Translation

The Company's foreign subsidiaries financial position and results of operations are measured using the local currency as the functional currency. The functional currency is the currency of the primary economic environment in which an entity's operations are conducted. Assets and liabilities of foreign subsidiaries are translated at exchange rates in effect as of the balance sheet date. Revenues and expenses are translated at average exchange rates in effect during the year. Translation adjustments are recorded within accumulated other comprehensive loss, a separate component of stockholders' equity (deficit).

Net Loss Per Share Attributable to Common Stockholders

Basic net loss per share attributable to common stockholders is calculated by dividing the net loss attributable to common stockholders by the weighted-average number of shares of common stock outstanding for the period, without consideration for potential dilutive securities. Diluted net loss per share is computed by dividing the net loss attributable to common stockholders by the weighted- average number of common shares and common share equivalents of potentially dilutive securities outstanding for the period. For purposes of the diluted net loss per share calculation, convertible notes, warrants, restricted stock units ("RSUs"), and common stock options are considered to be potentially dilutive securities. As the Company was in a net loss position for the years ended December 31, 2021, 2020, and 2019, diluted net loss per share attributable to common stockholders is the same as basic net loss per share attributable to common stockholders because the effects of potentially dilutive securities are antidilutive.

Recently Adopted Accounting Standards

In August 2018, the FASB issued ASU 2018-15, *Intangibles — Goodwill and Other — Internal-Use Software (Subtopic 350-40): Customer's Accounting for Implementation Costs Incurred in a Cloud Computing Arrangement That Is a Service Contract* ("ASU 2018-15"). The intent of this pronouncement is to align the requirements for capitalizing implementation costs incurred in a cloud computing arrangement that is a service contract with the requirements for capitalizing implementation costs incurred to develop or obtain internal-use software as defined in ASC 350-40. Under ASU 2018-15, the capitalized implementation costs related to a cloud computing arrangement will be amortized over the term of the arrangement and all capitalized implementation amounts will be required to be presented in the same line items of the financial statements as the

related hosting fees. ASU 2018-15 is effective for public and private companies' fiscal years beginning after December 15, 2019, and December 15, 2020, respectively, and interim periods within those fiscal years, with early adoption permitted. The Company adopted ASU 2018-15 as of January 1, 2021. The adoption did not have a material effect on the Company's consolidated financial statements.

In December 2019, the FASB issued ASU 2019-12, *Income Taxes (Topic 740): Simplifying the Accounting for Income Taxes* ("ASU 2019-12"). ASU 2019-12 removes certain exceptions to the general principles in Topic 740 and also clarifies and amends existing guidance to improve consistent application. ASU 2019-12 was effective for public entities for interim and annual periods beginning after December 15, 2020, with early adoption permitted. ASU 2019-12 will be effective for private entities for annual periods beginning after December 15, 2021, and interim periods beginning after December 15, 2020, with early adoption permitted. The Company adopted ASU 2019-12 effective May 1, 2021. The adoption of this standard did not have a material impact on the Company's consolidated financial statements.

Recently Issued Accounting Standards

The Company will adopt ASU 2020-06 *Debt—Debt with Conversion and Other Options (Subtopic 470-20) and Derivatives and Hedging—Contracts in Entity's Own Equity (Subtopic 815-40): Accounting for Convertible Instruments and Contracts in an Entity's Own Equity*, effective January 1, 2022 using the modified retrospective approach. As a result of the adoption of ASU 2020-06, the 2028 Convertible Notes will no longer bifurcated into separate liability and equity components in the March 31, 2022 condensed consolidated balance sheet. Rather, the $460.0 million principal amount of the Company's 2028 Convertible Notes will be classified only as a liability prospectively in the balance sheet. Upon adoption of ASU 2020-06, an adjustment will be recorded to the convertible notes liability component, equity component (additional paid-in-capital) and retained earnings. The cumulative effect of the change will be recognized as an adjustment to the opening balance of retained earnings at the date of adoption. The comparative information will not restated and will continue to be presented according to accounting standards in effect for those periods. The adjustment will be calculated based on the carrying amount of the 2028 Convertible Notes as if it had always been treated only as a liability. Interest expense recognized in future periods will be reduced as a result of accounting for the convertible debt instrument as a single liability measured at its amortized cost.

In June 2016, the FASB issued ASU 2016-13, *Financial instruments — Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments*, and subsequent related ASUs, which amends the guidance on the impairment of financial instruments by requiring measurement and recognition of expected credit losses for financial assets held. This ASU is effective for public and private companies' fiscal years, and for interim periods within those fiscal years, beginning after December 15, 2019, and December 15, 2022, respectively. As the Company is no longer an emerging growth company as of January 1, 2022, the Company plans to adopt ASU 2016-13 effective on such date, utilizing the modified retrospective transition method. The Company believes that adoption of ASU 2016-13 will not have a material impact on the Company's consolidated financial statements.

In October 2021, the FASB issued ASU 2021-08, *Business Combinations (Topic 805): Accounting for Contract Assets and Contract Liabilities from Contracts with Customers*. Under ASU 2021-08, an acquirer must recognize and measure contract assets and contract liabilities acquired in a business combination in accordance with Topic 606. The guidance is effective for interim and annual periods beginning after December 15, 2022, with early adoption permitted. As indicated in Note 21 - *Subsequent Events*, the Company completed the acquisition of AlsoEnergy on February 1, 2022. Therefore, the Company plans to adopt ASU 2021-08 on a prospective basis effective January 1, 2022 and is currently assessing the effect, if any, the guidance will have on the Company's consolidated financial statements.

3. REVENUE

Disaggregation of Revenue

The following table provides information on the disaggregation of revenue as recorded in the consolidated statements of operations (in thousands):

	Year ended December 31,		
	2021	2020	2019
Partnership hardware and service revenue	$ 107,135	$ 20,713	$ 4,076
Host customer service revenue	20,236	15,594	13,476
Total revenue	$ 127,371	$ 36,307	$ 17,552

Remaining Performance Obligations

Remaining performance obligations represent contracted revenue that has not been recognized, which includes contract liabilities (deferred revenue) and amounts that will be billed and recognized as revenue in future periods. As of December 31, 2021, the Company had $217.8 million of remaining performance obligations, and the approximate percentages expected to be recognized as revenue in the future are as follows (in thousands, except percentages):

	Total remaining performance obligations	Percent Expected to be Recognized as Revenue		
		Less than one year	Two to five years	Greater than five years
Service revenue	$ 169,758	12 %	50 %	38 %
Hardware revenue	48,039	100 %	— %	— %
Total revenue	$ 217,797			

Contract Balances

Deferred revenue primarily includes cash received in advance of revenue recognition related to energy optimization services and incentives. The following table presents the changes in the deferred revenue balance (in thousands):

	2021	2020	2019
Beginning balance as of Beginning balance as of January 1,	$ 52,410	$ 20,728	$ 11,859
Upfront payments received from customers	89,951	40,481	6,698
Upfront or annual incentive payments received	6,614	8,015	8,240
Revenue recognized related to amounts that were included in beginning balance of deferred revenue	(33,585)	(9,764)	(4,830)
Revenue recognized related to deferred revenue generated during the period	(77,947)	(7,050)	(1,239)
Ending balance as of Ending balance as of December 31,	$ 37,443	$ 52,410	$ 20,728

4. SHORT-TERM INVESTMENTS

The following tables summarize the estimated fair value of the Company's cash equivalents and debt securities and the gross unrealized holding gains and losses as of December 31, 2021 (in thousands):

	Amortized cost	Unrealized gain	Unrealized Loss	Estimated Fair Value
Assets				
Cash equivalents:				
Money market fund	$ 127,261	$ —	$ —	$ 127,261
Total cash equivalents	$ 127,261	$ —	$ —	$ 127,261
Debt securities:				
Corporate debt securities	$ 42,174	$ 11	$ (52)	$ 42,133
Commercial paper	20,743	—	—	20,743
U.S. government bonds	86,265	—	(135)	86,130
Certificate of deposits	21,501	6	—	21,507
Other	2,500	—	(5)	2,495
Total debt securities	$ 173,183	$ 17	$ (192)	$ 173,008
Classified as:				
Cash equivalents				$ 127,261
Short-term debt securities				173,008
Long-term debt securities				—

The Company periodically reviews the available-for-sale securities for other-than-temporary impairment loss. The Company considers factors such as the duration, severity and the reason for the decline in value, the potential recovery period and its intent to sell. For debt securities, it also considers whether (i) it is more likely than not that the Company will be required to sell the securities before recovery of their amortized cost basis, and (ii) the amortized cost basis cannot be recovered as a result of credit losses. During the year ended December 31, 2021, the Company did not recognize any other-than-temporary impairment losses. All securities with unrealized losses have been in a loss position for less than 12 months.

5. FAIR VALUE MEASUREMENTS

Fair value accounting is applied for all financial assets and liabilities that are recognized or disclosed at fair value in the financial statements on a recurring basis. At December 31, 2021 and December 31, 2020, the carrying amount of accounts receivable, other current assets, accounts payable, and accrued and other current liabilities approximated their estimated fair value due to their relatively short maturities. There were no assets or liabilities classified as Level 3 as of December 31, 2021.

The following table provides the financial instruments measured at fair value on a recurring basis (in thousands):

	December 31, 2021			
	Level 1	Level 2	Level 3	Total
Assets				
Cash equivalents:				
Money market fund	$ 127,261	$ —	$ —	$ 127,261
Debt securities				
Corporate debt securities	—	42,133	—	42,133
Commercial paper	—	20,743	—	20,743
U.S. government bonds	—	86,130	—	86,130
Certificate of deposits	—	21,507	—	21,507
Other	—	2,495	—	2,495
Total financial assets	$ 127,261	$ 173,008	$ —	$ 300,269

	December 31, 2020			
	Level 1	Level 2	Level 3	Total
Assets				
Cash equivalents:				
Money market fund	$ 67	$ —	$ —	$ 67
Liabilities				
Convertible preferred stock warrant liability	$ —	$ —	$ 95,342	$ 95,342

The Company's money market funds are classified as Level 1 because they are valued using quoted market prices. The Company's short-term investments consist of available-for-sale securities and are classified as Level 2 because their value is based on valuations using significant inputs derived from or corroborated by observable market data. The convertible preferred stock warrant liabilities are defined as Level 3 in the fair value hierarchy as the valuations are based on significant unobservable inputs, which reflect the Company's own assumptions incorporated in valuation techniques used to determine fair value; further discussion of these assumptions is set forth below. There were no transfers into or out of Level 3 of the fair value hierarchy during the periods presented.

2028 Convertible Notes

In November 2021, the Company issued $460.0 million aggregate principal amount of its 2028 Convertible Notes. Upon issuance, the Company bifurcated the 2028 Convertible Notes for accounting purposes between a liability component and an equity component. The liability component was determined using a binomial lattice model by estimating the fair value of a hypothetical issuance of an identical offering excluding the conversion feature of the 2028 Convertible Notes. The initial carrying amount of the equity component was calculated as the difference between the liability component and the face value of the 2028 Convertible Senior Notes (See Note 12 - *Convertible Promissory Notes*). The estimated fair value of the 2028

Convertible Notes, which differs from their carrying value, is influenced by interest rates, the price of the Company's common stock, the volatility, the expected term, and the prices for the notes observed in the market trading. The estimated fair value of the 2028 Convertible Notes, which are considered Level 2 financial instruments, was $324.8 million at issuance on November 22, 2021, and $447.8 million as of December 31, 2021.

Capped Call Options with respect to the 2028 Senior Notes

In connection with the issuance of the 2028 Convertible Notes, the Company entered into the capped call options with certain financial institutions. The capped calls cover 15,730,390 shares of common stock (subject to anti-dilution and certain other adjustments), which is the same number of shares of common stock that initially underlie the 2028 Convertible Notes. The Capped Calls have an initial strike price of approximately $29.2428 per share, which corresponds to the initial conversion price of the 2028 Convertible Notes, and have a cap price of approximately $49.6575 per share (See Note 12 - *Convertible Promissory Notes*). The strike price and cap price are subject to anti-dilution adjustments generally similar to those applicable to the 2028 Convertible Notes. These instruments meet certain accounting criteria to be classified in stockholders' equity (deficit), and are not subsequently remeasured as long as the conditions for equity classification continue to be met.

Convertible Preferred Stock Warrant Liabilities

As discussed in Note 13 - *Warrants*, upon effectiveness of the Merger, substantially all of the outstanding convertible preferred stock warrants were converted into shares of common stock of Stem. As such, the associated warrant liability was reclassified to additional paid-in-capital upon the Merger and was no longer an outstanding Level 3 financial instrument as of December 31, 2021. The fair value of the convertible preferred stock warrants as of December 31, 2020 was determined using the Black-Scholes method as well as a discount for lack of marketability. Black-Scholes inputs used to value the warrants are based on information from purchase agreements and within valuation reports prepared by an independent third party for the Company. Inputs include exercise price, selection of guideline public companies, volatility, fair value of common or preferred stock, expected dividend rate and risk-free interest rate.

The key assumptions used for the valuation of the preferred stock warrant liabilities upon remeasurement were as follows:

	Year Ended December 31, 2021
Volatility	65.0 %
Risk-free interest rate	0.1 %
Expected term (in years)	1.5
Dividend yield	— %
Discount for lack of marketability	12.3 %

The following table presents the changes in the liability for the Company's warrants during the years ended December 31, 2021 and 2020 (in thousands):

	December 31,	
	2021	2020
Balance as of January 1,	$ 95,342	$ 6,094
Changes in estimated fair value	488	85,623
Assumption of warrant liability upon Merger	302,556	—
Issuance of warrants	—	3,633
Conversion of warrants upon Merger	(60,568)	—
Exchange of warrants	(168,647)	—
Exercise of warrants	(169,171)	(8)
Balance as of December 31,	$ —	$ 95,342

6. GOODWILL AND INTANGIBLE ASSETS, NET

Goodwill

Goodwill consists of the following (in thousands):

	December 31,	
	2021	2020
Goodwill	$ 1,625	$ 1,625
Effect of foreign currency translation	116	114
Total goodwill	$ 1,741	$ 1,739

Intangible Assets, Net

Intangible assets, net, consists of the following (in thousands):

	December 31,	
	2021	2020
Developed technology	$ 500	$ 500
Internally developed software	29,706	22,545
Intangible assets	30,206	23,045
Less: Accumulated amortization	(16,276)	(10,993)
Add: Currency translation adjustment	36	35
Total intangible assets, net	$ 13,966	$ 12,087

Amortization expense for intangible assets was $5.3 million, $4.5 million and $3.1 million for the years ended December 31, 2021, 2020, and 2019, respectively, of which substantially all represents amortization of internally developed software recognized in cost of goods sold in the consolidated statements of operations.

7. LEASES

The Company leases and subleases certain office spaces with lease terms ranging from 3 to 8 years. These leases require monthly lease payments that may be subject to annual increases throughout the lease term. Certain of these leases also include renewal options at the election of the Company to renew or extend the lease for an additional five years. These optional periods have not been considered in the determination of the ROU assets or lease liabilities associated with these leases as the Company did not consider the exercise of these options to be reasonably certain.

The Company performed evaluations of its contracts and determined each of its identified leases are operating leases. For the years ended December 31, 2021, 2020, and 2019, the Company incurred $1.3 million, $0.8 million and $1.2 million, respectively, of rent expense included in operating expenses in the consolidated statements of operations in relation to its operating leases, inclusive of short-term and variable lease expense which was immaterial. Cash paid for amounts included in the measurement of operating lease liabilities for the years ended December 31, 2021, 2020, and 2019 was $0.5 million $0.7 million and $0.9 million, respectively, and was included in net cash used in operating activities in the Company’s consolidated statements of cash flows.

As of December 31, 2021, future payments associated with the Company's operating lease liabilities were as follows (in thousands):

	Operating Leases
2022	$ 1,818
2023	2,473
2024	2,239
2025	2,109
2026	2,172
Thereafter	4,937
Total lease payments	15,748
Less: imputed interest	(2,325)
Total operating lease liability future lease payments	$ 13,423

Reported as of December 31, 2021 and 2020 (in thousands):

	December 31,	
	2021	2020
Current portion of operating lease liabilities included within other current liabilities	$ 1,240	$ 333
Non-current portion of operating lease liabilities	12,183	57
Total	$ 13,423	$ 390

The following summarizes additional information related to operating leases:

	December 31,	
	2021	2020
Weighted average remaining operating lease term (in years)	6.7	0.8
Weighted average discount rate	4.5 %	11.3 %

8. ASSET RETIREMENT OBLIGATION

The information below details the asset retirement obligation for the years ended December 31, 2021 and 2020 as follows (in thousands):

	December 31,	
	2021	2020
Beginning balance at January 1,	$ 4,137	$ 5,759
Asset retirement obligation	—	771
Settlement of asset retirement obligation	—	(1,375)
Retirement cost revaluation	(231)	(1,235)
Accretion expense	229	217
Ending balance at December 31,	$ 4,135	$ 4,137

9. ENERGY STORAGE SYSTEMS, NET

Energy Storage Systems, Net

Energy storage systems, net, consists of the following (in thousands):

	December 31, 2021	December 31, 2020
Energy storage systems placed into service	$ 143,592	$ 144,425
Less: accumulated depreciation	(45,250)	(33,389)
Energy storage systems not yet placed into service	7,772	12,667
Total energy storage systems, net	$ 106,114	$ 123,703

Depreciation expense for energy storage systems was approximately $14.4 million, $13.9 million and $9.7 million for the years ended December 31, 2021, 2020, and 2019, respectively. Depreciation expense is recognized in cost of service revenue.

10. BALANCE SHEET COMPONENTS

Inventory

Inventory consists of the following (in thousands):

	December 31,	
	2021	2020
Work in process inventory	$ 20,582	$ 15,296
Batteries	2,138	5,547
Total inventory	$ 22,720	$ 20,843

Other Current Assets

Other current assets consist of the following (in thousands):

	December 31,	
	2021	2020
Deferred costs with suppliers	$ 13,744	$ 6,204
Prepaid expenses	3,137	698
Utility program deposits	353	891
Due from related parties	213	123
Other	1,194	4
Total other current assets	$ 18,641	$ 7,920

Other Noncurrent Assets

Other noncurrent assets consist of the following (in thousands):

	December 31,	
	2021	2020
Prepaid warranties and maintenance	$ 15,991	$ 1,088
Receivable from SPEs (Note 16)	3,565	3,583
Deferred SPAC costs	—	1,256
Self-generation incentive program deposits	940	1,036
Investment in VIEs	1,924	744
Revolver debt issuance costs	—	73
Property and equipment, net	512	44
Other	1,599	458
Total other noncurrent assets	$ 24,531	$ 8,282

Depreciation expense for property and equipment was immaterial for each of the years ended December 31, 2021, 2020 and 2019.

Accrued Liabilities

Accrued liabilities consist of the following (in thousands):

	December 31,	
	2021	2020
Accrued payables	$ 25,062	$ 9,799
Accrued interest – notes payable	344	6,149
Other accrued liabilities	587	124
Total accrued liabilities	$ 25,993	$ 16,072

Other Current Liabilities

Other current liabilities consist of the following (in thousands):

	December 31,	
	2021	2020
System advances	$ 267	$ 640
Lease liabilities – current portion	1,240	333
Due to related parties	306	399
Other	—	217
Total other current liabilities	$ 1,813	$ 1,589

11. NOTES PAYABLE

Revolving Loan Due to SPE Member

In April 2017, the Company entered into a revolving loan agreement with an affiliate of a member of certain of the Company's special purpose entities ("SPE"). This agreement was, from time to time, subsequently amended. The purpose of this revolving loan agreement was to finance the Company's purchase of hardware for its various energy storage system projects. The agreement had a total revolving loan capacity of $45.0 million that bore fixed interest at 10% with a maturity date of June 2020.

In May 2020, concurrent with the 2020 Credit Agreement discussed below, the Company entered into an amendment to the revolving loan agreement, which reduced the loan capacity to $35.0 million and extended the maturity date to May 2021. The amendment increased the fixed interest rate for any borrowings outstanding more than nine months to 14% thereafter. Additionally, under the original terms of the revolving loan agreement, the Company was able to finance 100% of the value of the hardware purchased up to the total loan capacity. The amendment reduced the advance rate to 85%, with an additional reduction to 70% in August 2020. The amendment was accounted for as a modification of the debt, which did not have a material impact on the consolidated financial statements. As of December 31, 2020, the Company had $7.4 million outstanding under the revolving loan agreement. In April 2021, the Company repaid the remaining outstanding balance of this facility with the proceeds received from the Merger. The facility was terminated after the repayment in April 2021.

Term Loan Due to SPE Member

In December 2018, the Company entered into a term loan in the amount of $13.3 million with an affiliate of a member of certain SPEs with the Company. The term loan bore fixed interest of 12.5% on the outstanding principal balance with a final balloon payment of $3.0 million due at the maturity date of June 30, 2020. In May 2020, the Company repaid the remaining outstanding balance of $5.9 million with the proceeds received through the 2020 Credit Agreement discussed below.

Term Loan Due to Former Non-Controlling Interest Holder

In June 2018, the Company acquired the outstanding member interests of an entity controlled by the Company for $8.1 million. The Company financed this acquisition by entering into a term loan agreement with the noncontrolling member bearing fixed interest of 4.5% per quarter (18.0% per annum) on the outstanding principal balance. The loan required fixed quarterly payments throughout the term of the loan, which was scheduled to be paid in full by April 1, 2026.

In May 2020, the Company amended the term loan and, using the proceeds from the 2020 Credit Agreement discussed below, prepaid $1.5 million of principal and interest on the note, of which $1.0 million was towards the outstanding principal balance, thereby reducing the fixed quarterly payment due to the lender. In relation to this amendment, the Company was required to issue warrants for 400,000 shares of common stock resulting in a discount to the term loan of $0.2 million. As of December 31, 2020, the outstanding balance was $5.8 million. In April 2021, the Company repaid the remaining outstanding balance of this facility with the proceeds received from the Merger. Upon prepayment of this facility, the Company incurred $2.6 million in prepayment penalties that were recorded to loss on extinguishment of debt in the Company's statement of operations. The facility was terminated after the repayment in April 2021.

2020 Credit Agreement

In May 2020, the Company entered into a credit agreement ("2020 Credit Agreement") with a new lender that provided the Company with proceeds of $25.0 million to provide the Company with access to working capital towards the purchase of energy storage system equipment. The 2020 Credit Agreement has a maturity date of the earlier of (1) May 2021, (2) the maturity date of the revolving loan agreement, or (3) the maturity date of the Pre-Merger Convertible Promissory Notes discussed below in Note 12 - *Convertible Promissory Notes*. The loan bore interest of 12% per annum, of which 8% was paid in cash and 4% added back to principal of the loan balance every quarter. The Company used a portion of the proceeds towards payments associated with existing debt as previously discussed. As of December 31, 2020, the outstanding balance was $25.6 million. In April 2021, the Company repaid the remaining outstanding balance of this facility with the proceeds received from the Merger. Upon prepayment of this facility, the Company incurred $1.4 million in prepayment penalties that were recorded to loss on extinguishment of debt in the Company's statement of operations. The facility was terminated after the repayment in April 2021.

2021 Credit Agreement

In January 2021, the Company, through a wholly owned Canadian entity, entered into a credit agreement to provide a total of $2.7 million towards the financing of certain energy storage systems. The credit agreement is structured on a non-recourse basis and the system will be operated by the Company. The credit agreement has a stated interest of 5.45% and a maturity date of June 2031. The Company received an advance under the credit agreement of $1.8 million in January 2021. The repayment of advances received under this credit agreement is determined by the lender based on the proceeds generated by the Company through the operation of the underlying energy storage systems. As of December 31, 2021, the outstanding balance was $1.9 million. The Company was in compliance with all covenants contained in the 2021 Credit Agreement as of December 31, 2021.

The Company's outstanding debt consisted of the following as of December 31, 2021 (in thousands):

	December 31, 2021
Outstanding principal	$ 1,902
Unamortized discount	(215)
Carrying value of debt	$ 1,687

12. CONVERTIBLE PROMISSORY NOTES

As of December 31, 2020, the Company had various convertible notes outstanding to investors. The Company refers to the collective group of all such note instruments as the "Pre-Merger Convertible Promissory Notes." As of December 31, 2020, these Pre-Merger Convertible Promissory Notes had a balance of $67.6 million. During the year ended December 31, 2021, the Company issued additional convertible notes, including convertible promissory notes issued and sold in January 2021 (the "Q1 2021 Convertible Notes") and the 2028 Convertible Notes. Upon effectiveness of the Merger on April 28, 2021, all outstanding Pre-Merger Convertible Promissory Notes were converted to common stock and cancelled (see "—Conversion and Cancellation of Convertible Promissory Notes Upon Merger" below). As of December 31, 2021, the Pre-Merger Convertible Promissory Notes and the Q1 2021 Convertible Notes were no longer outstanding.

Q1 2021 Convertible Notes

In January 2021, the Company issued and sold the Q1 2021 Convertible Notes under the same terms as the then existing Pre-Merger Convertible Promissory Notes to various investors with aggregate gross proceeds of $1.1 million. The Company evaluated the conversion option within the Q1 2021 Convertible Notes and determined the effective conversion price was beneficial to the note holders.

Conversion and Cancellation of Convertible Promissory Notes Upon Merger

Immediately prior to the effectiveness of the Merger, the entire balance of the Company's outstanding Pre-Merger Convertible Promissory Notes issued by Legacy Stem automatically converted into shares of Legacy Stem Common Stock. Upon the effectiveness of the Merger, these shares of Legacy Stem Common Stock automatically converted into 10,921,548 shares of common stock of Stem. The balance associated with the outstanding Pre-Merger Convertible Promissory Notes totaling $77.7 million, including $7.7 million of interest accrued on the notes through the date of Merger, was reclassified to additional paid-in-capital. The unamortized portion of the debt discount associated with the outstanding Q1 2021 Convertible Notes totaling $1.1 million was fully expensed to loss on extinguishment of debt on the Company's statement of operations.

2028 Convertible Notes and Capped Call Options

2028 Convertible Notes

On November 22, 2021, the Company issued $460.0 million aggregate principal amount of its 2028 Convertible Notes in a private placement offering to qualified institutional buyers (the "Initial Purchasers") pursuant to Rule 144A under the Securities Act of 1933, as amended.

The 2028 Convertible Notes are senior, unsecured obligations of the Company and bear interest at a rate of 0.5% per year, payable in cash semi-annually in arrears in June and December of each year, beginning in June 2022. The notes will mature on December 1, 2028, unless earlier repurchased, redeemed or converted in accordance with their terms prior to such date. Upon conversion, the Company may choose to pay or deliver, as the case may be, cash, shares of common stock or a combination of cash and shares of common stock. The Notes are redeemable for cash at the Company's option at any time given certain conditions (as discussed below), at an initial conversion rate of 34.1965 shares of common stock per $1,000 principal amount of 2028 Convertible Notes, which is equivalent to an initial conversion price of approximately $29.24 (the "2028 Conversion Price") per share of the Company's common stock. The conversion rate is subject to customary adjustments for certain events as described in the Indenture.

The Company may redeem for cash all or any portion of the 2028 Convertible Notes, at the Company's option, on or after December 5, 2025 if the last reported sale price of the Company's common stock has been at least 130% of the 2028 Conversion Price then in effect for at least 20 trading days at a redemption price equal to 100% of the principal amount of the 2028 Convertible Notes to be redeemed, plus accrued and unpaid interest.

The Company's net proceeds from this offering were approximately $445.7 million, after deducting the Initial Purchasers' discounts and debt issuance costs. To minimize the impact of potential dilution to the Company's common stockholders upon

conversion of the 2028 Convertible Notes, the Company entered into separate capped calls transactions (the "Capped Calls") as described below.

In accordance with accounting guidance for debt with conversion and other options, the Company separately accounted for the liability and equity components of the 2028 Convertible Notes by allocating the proceeds between the liability component and the equity component, due to the Company's ability to settle the 2028 Convertible Notes in cash, its common Stock, or a combination of cash and common Stock at the option of the Company. The carrying amount of the liability component was calculated by measuring the fair value of a similar liability that does not have an associated conversion feature. The equity component of the 2028 Convertible Notes was recognized as a debt discount and represents the difference between the gross proceeds from the issuance of the 2028 Convertible Notes and the fair value of the liability component of the 2028 Convertible Notes on the date of issuance. The debt discount is amortized to interest expense using the effective interest method over approximately seven years, or the expected life of the 2028 Convertible Notes. The equity component is not remeasured as long as it continues to meet the conditions for equity classification.

After allocating the proceeds of the liability and equity components, the Company further allocated $14.3 million initial purchasers' debt discount and debt issuance cost of $12.4 million and $1.9 million, respectively. The initial purchaser's discount and debt issuance costs primarily consisted of underwriters, advisory, legal, and accounting fees. These costs were allocated to the debt and equity components based on the allocation of the proceeds as follows (in thousands):

	Amount	Equity Component	Debt Component
Initial Purchaser's Debt Discount	$ 12,420	$ 3,650	$ 8,770
Debt Issuance Costs	1,871	550	1,321
Total	$ 14,291	$ 4,200	$ 10,091

The portion allocated to the debt component is amortized to interest expense using the effective interest method over the expected life of the 2028 Convertible Notes, or approximately its seven-year term. The effective interest rate on the liability component of the 2028 Convertible Notes for the period from the date of issuance through December 2028 is 5.96%, which remains unchanged from the date of issuance.

The outstanding 2028 Convertible Notes balances as of December 31, 2021, are summarized in the following table (in thousands):

	December 31, 2021
Debt Component	
Outstanding principal	$ 460,000
Unamortized initial purchaser's debt discount and debt issuance cost	(143,458)
Net carrying amount	$ 316,542

At the original issuance date, the fair value of the debt component of the Company's 2028 Convertible Notes was $324.8 million and the estimated fair value of the equity component was $135.2 million, as measured on the date of issuance, resulting in a total fair value of $460.0 million for the 2028 Convertible Notes. The 2028 Convertible Notes were priced at par at the valuation date resulting in the fair value of the 2028 Convertible Notes equal to the principal amount of $460.0 million. The fair value of the equity component has been calculated as the residual amount between the fair value of the 2028 Convertible Notes and the fair value of the debt component.

The following table presents total interest expense recognized related to the 2028 Convertible Notes during the year ended December 31, 2021 (in thousands):

	December 31, 2021
Cash interest expense	
Contractual interest expense	$ 249
Non-cash interest expense	
Amortization of debt discount and debt issuance cost	$ 1,812
Total interest expense	$ 2,061

Capped Call Options

On November 17, 2021, in connection with the pricing of the 2028 Convertible Notes, and on November 19, 2021, in connection with the exercise in full by the Initial Purchasers of their option to purchase additional Notes, the Company entered into Capped Calls with certain counterparties. The Company used $66.7 million of the net proceeds to pay the cost of the Capped Calls.

The Capped Calls have an initial strike price of $29.2428 per share, which corresponds to the initial conversion price of the 2028 Convertible Notes and is subject to anti-dilution adjustments. The Capped Calls have a cap price of $49.6575 per share, subject to certain adjustments.

The Capped Calls are considered separate transactions entered into by and between the Company and the Capped Calls counterparties, and are not part of the terms of the 2028 Convertible Notes. The Company recorded a reduction to additional paid-in capital of $66.7 million during the year ended December 31, 2021 related to the premium payments for the Capped Calls. These instruments meet the conditions outlined in ASC 815 to be classified in stockholders' equity (deficit) and are not subsequently remeasured as long as the conditions for equity classification continue to be met.

13. WARRANTS

Legacy Stem Warrants

Since inception the Company has issued warrants to purchase shares of Legacy Stem's preferred stock in conjunction with various debt financings. See Note 5 - *Fair Value Measurements,* for further information regarding fair value measurements associated with the resulting warrant liabilities, which are remeasured on a recurring basis each period. The Company has also issued warrants to purchase shares of Legacy Stem's common stock. Upon effectiveness of the Merger, the Company had 50,207,439 warrants outstanding, of which substantially all were converted into 2,759,970 shares of common stock of Stem. Upon conversion of the warrants, the existing warrant liabilities were remeasured to fair value resulting in a gain on remeasurement of $100.9 million and a total warrant liability of $60.6 million, which was then reclassified to additional paid-in-capital. As of December 31, 2021, there were 23,673 Legacy Stem Warrants outstanding. These instruments are exercisable into the Company's common stock and are equity classified.

Public Warrants and Private Placement Warrants

As part of STPK's initial public offering, under the Warrant Agreement dated as of August 20, 2020 (the "Warrant Agreement") and, prior to the effectiveness of the Merger, STPK issued 12,786,168 warrants each of which entitled the holder to purchase one share of common stock at an exercise price of $11.50 per share of common stock (the "Public Warrants"). Simultaneously with the closing of the Initial Public Offering, STPK completed the private sale of 7,181,134 million warrants to STPK's sponsor (the "Private Warrants"). Upon issuance, these warrants met the criteria for liability classification. Upon the effectiveness of the Merger, Stem assumed the outstanding Public Warrants and Private Warrants, which continued to meet the criteria for liability classification, resulting in assumed warrant liabilities of $185.9 million and $116.7 million, respectively, or a total warrant liability of $302.6 million. Such warrants were initially recorded at fair value and remeasured to fair value at each reporting period. The fair value of the Private Warrants was determined using the Black-Scholes method as well as a discount for lack of marketability. Black-Scholes inputs used to value the warrants are based on information from purchase agreements and within valuation reports prepared by an independent third party for the Company. Inputs include exercise price, selection of guideline public companies, volatility, fair value of common stock, expected dividend rate and risk-free interest rate.

On June 25, 2021, the Company entered into an exchange agreement (the "Exchange Agreement") with the holders of the 7,181,134 outstanding Private Placement Warrants, pursuant to which such holders received 4,683,349 shares of the Company's common stock on June 30, 2021, in exchange for the cancellation of the outstanding Private Placement Warrants. The

Exchange Shares were issued in reliance upon the exemption provided by Section 3(a)(9) of the Securities Act of 1933, as amended. Immediately prior to the exchange, the Private Warrants were marked to fair value, resulting in a loss of $52.0 million. As a result of the Exchange Agreement, there were no Private Warrants outstanding as of December 31, 2021.

On August 20, 2021, the Company issued an irrevocable notice for redemption of all 12,786,129 of the Company's outstanding public warrants at 5:00 p.m. Eastern time on September 20, 2021 ("Redemption Date"). Pursuant to the notice of redemption, holders exercised 12,638,723 Public Warrants for a purchase price of $11.50 per share, for proceeds to the Company of approximately $145.3 million. The Company redeemed all remaining outstanding Public Warrants that had not been exercised as of 5:00 p.m. Eastern time on the Redemption Date. As a result of the settlement of the Public Warrants, the Company recorded a gain of $134.9 million on the revaluation of the warrant liability. The Company also recorded a gain of $2.1 million on the redemption of unexercised public warrants. These gains are recorded in "change in fair value of warrants and embedded derivative" in the consolidated statements of operation in the year ended December 31, 2021. The public warrants have been delisted from the NYSE, and there are no public warrants left outstanding.

Warrants Issued for Services

On April 7, 2021, the Company entered into a strategic relationship with an existing shareholder not deemed to be a related party to jointly explore on a non-exclusive basis possible business opportunities to advance projects in the United States, the United Kingdom, Europe and Asia. As consideration for the strategic relationship, upon closing of the Merger, the Company issued warrants to purchase 350,000 shares of the Company's common stock at an exercise price of $0.01 per share. These warrants were deemed to have been fully earned as of the grant date. The warrants were valued at fair market value as of the grant date totaling $9.2 million and recorded to general and administrative expense in the Company's statement of operations. In May 2021, all of these warrants were exercised for shares of the Company's common stock.

14. COMMON STOCK

The Company had reserved shares of common stock for issuance as follows:

	December 31, 2021
Shares reserved for warrants	23,673
Options issued and outstanding	8,766,466
Shares available for future issuance under equity incentive plan	20,844,788
Conversion of 2028 Convertible Notes	20,842,773
Total	50,477,700

As of December 31, 2021, the Company had 23,722,254 shares of common stock reserved for future issuance under equity incentive plans corresponding to the 2021 Equity Incentive Plan. As of December 31, 2021, 1,075,635 stock options and 1,801,831 RSUs had been granted to employees under the 2021 Equity Incentive Plan.

15. STOCK-BASED COMPENSATION

Under both the Stem, Inc. 2009 Equity Incentive Plan (the "2009 Plan") and the Stem Inc. 2021 Equity Incentive Plan (the "2021 Plan," and together with the 2009 Plan, the "Plans"), the Company may grant stock options, stock appreciation rights, restricted stock, restricted stock units ("RSUs") and other awards that are settled in shares of the Company's common stock. The Plans permit net settlement of vested awards, pursuant to which the award holder forfeits a portion of the vested award to satisfy the purchase price (in the case of stock options), the holder's withholding tax obligation, if any, or both. When the holder net settles the tax obligation, the Company pays the amount of the withholding tax to the U.S. government in cash, which is accounted for as an adjustment to additional paid-in-capital. The Company does not intend to grant new awards under the 2009 Plan. At December 31, 2021, 7,754,811 stock options were outstanding under the 2009 Plan. In May 2021, the Company began issuing awards under the 2021 Plan, with 23,722,254 shares reserved thereunder.

Stock Options

Under the Plans, the exercise price of an option cannot be less than 100% of the fair value of one share of common stock for incentive or non-qualified stock options, and not less than 110% of the fair value for stockholders owning greater than 10% of all classes of stock, as determined by the Company's Board of Directors (the "Board"). Options under the Plans generally expire after 10 years. Under the Plans, the Compensation Committee of the Board determines when the options granted will become exercisable. Options granted under the Plans generally vest 1/4 one year from the grant date and then 1/48 each month

over the following three years and are exercisable for 10 years from the date of the grant. The Plans allow for exercise of unvested options with repurchase rights over the restricted common stock issued at the original exercise price. The repurchase rights lapse at the same rate as the options vest.

The following table summarizes the stock option activity for the period ended December 31, 2021:

	Number of Options Outstanding	Weighted-Average Exercise Price Per Share	Weighted-Average Remaining Contractual Life (years)	Aggregate Intrinsic Value (in thousands)
Balances as of December 31, 2020	51,379,939	$ 0.56	7.2	$ 46,516
Retroactive application of recapitalization	(40,314,281)	2.05	—	—
Adjusted Balance as of December 31, 2020	11,065,658	2.61	7.2	46,516
Options granted	1,079,583	28.73		
Options exercised	(3,235,713)	1.64		
Options forfeited	(129,102)	15.18		
Options expired	(13,960)	0.53		
Balances as of December 31, 2021	8,766,466	$ 6.01	7.1	$ 123,570
Options vested and exercisable — December 31, 2021	6,298,675	$ 2.61	6.4	$ 103,100

The weighted-average grant date fair value of stock options granted to employees was $18.84, $3.79 and $1.58 during the years ended December 31, 2021, 2020, and 2019, respectively. The intrinsic value of options exercised was $56.1 million, $1.1 million and less than $0.1 million during the years ended December 31, 2021, 2020, and 2019, respectively. During the year ended December 31, 2021, the Company issued 1,054,594 shares of common stock from the net settlement of 1,648,463 stock options and shares granted. The Company paid $12.6 million in withholding taxes in connection with the net share settlement of these awards.

Significant Assumptions in Estimating Option Fair Value

The Company uses the Black-Scholes model for estimating the fair value of options granted. The weighted-average assumptions used in the Black-Scholes are as follows:

	December 31,		
	2021	2020	2019
Expected volatility	74.00 %	71.41 %	69.10 %
Risk-free interest rate	1.06 %	0.49 %	2.47 %
Expected term (years)	6.23	5.82	5.83
Dividend yield	—	—	—

Restricted Stock Units

RSUs represent a right to receive one share of the Company's common stock that is both non-transferable and forfeitable unless and until certain conditions are satisfied. RSUs generally, either cliff vest on the third anniversary of the award grant date, or vest 1/4 per year over a four-year period, subject to continued employment through each anniversary. During the year ended December 31, 2021, the Company granted RSUs, which vest 1/5 per year over approximately a seven-year period starting in April 2024. The fair value of restricted stock units is determined on the grant date and is amortized over the vesting period on a straight-line basis.

The following table summarizes the RSU activity for the period ended December 31, 2021:

	Number of RSUs Outstanding	Weighted-Average Grant Date Fair Value Per Share
Balances as of December 31, 2020	—	$ —
RSUs granted	1,801,831	36.0
RSUs vested	—	—
RSUs forfeited	(2,154)	26.1
Balances as of December 31, 2021	1,799,677	36.0

The fair value of all RSUs granted during the year ended December 31, 2021 was $64.8 million. During the year ended December 31, 2021, no RSUs vested.

Stock-Based Compensation Expense

The following table summarizes stock-based compensation expense recorded in each component of operating expenses in the Company's consolidated statements of operations and comprehensive loss (in thousands):

	Year Ended December 31,		
	2021	2020	2019
Sales and marketing	$ 1,723	$ 396	$ 364
Research and development	2,367	1,211	901
General and administrative	9,456	2,935	266
Total stock-based compensation expense	$ 13,546	$ 4,542	$ 1,531

As of December 31, 2021, the Company had approximately $21.1 million of remaining unrecognized stock-based compensation expense for stock options, which is expected to be recognized over a weighted average period of 3.2 years. As of December 31, 2021, the Company had approximately $56.5 million of remaining unrecognized stock-based compensation expense for RSUs, which is expected to be recognized over a weighted average period of 4.9 years. Research and development expenses of $1.2 million corresponding to internal-use software, were capitalized during the year ended December 31, 2021.

16. SPECIAL PURPOSE ENTITIES

The Company has formed various SPEs to finance the development and construction of its energy storage systems. These SPEs, which are structured as limited liability companies, obtain financing from outside investors and purchase projects from the Company under master purchase agreements by making an upfront payment to the Company for such energy storage systems. As discussed in Note 2 - *Summary of Significant Accounting Policies*, the Company accounts for the large upfront payment received from the SPE as a financing obligation. The legal purchase of the energy storage system does not affect the Company's legal or constructive obligation to the host customer.

Consolidated VIE

In September 2013, the Company entered into agreements to form SCF 1, LLC ("SCF 1") and consolidated this SPE under the VIE consolidation model. During 2018, the Company acquired the outstanding non-controlling interests of SCF 1 which remained a VIE upon reconsideration at the acquisition.

As of December 31, 2021 and 2020, the Company's consolidated total assets include the assets of SCF 1 that can only be used to settle the liabilities, if any, of SCF 1. The assets and liabilities of SCF 1 are comprised primarily of the following:

	December 31,	
	2021	2020
Energy storage systems, net	$ 649	$ 1,463
Deferred revenue, current	$ 283	$ 283
Deferred revenue, noncurrent	$ 753	$ 1,047
Other liabilities	$ 159	$ 239

Unconsolidated VIEs

SPV II, SPV III, and SPV IV

On January 23, 2015, June 7, 2016, and June 30, 2017 the Company entered into agreements to form three Limited Liability Companies: Stem Finance SPV II, LLC ("SPV II"), Stem Finance SPV III, LLC ("SPV III"), and Generate-Stem LCR, LLC ("SPV IV"), respectively. These agreements are accounted for as unconsolidated VIEs because the Company lacks the power to direct the activities that most significantly impact the economics of these entities. Although the Company is not the primary beneficiary of these entities, due to its significant continuing involvement in the generation of cash flows of the energy storage systems and legal responsibilities under the host customer contract, the Company is required to include the assets, liabilities, revenues, and expenses of these entities in its consolidated financial statements. The significant activities involve deciding which energy storage systems to be purchased by the SPE and setting of the annual operating budgets which govern the ongoing operation and maintenance of the energy storage systems. Both of these activities significantly impact the revenue, expenses, and resulting residual returns or losses that will accrue to the investors of the SPE and require approval by both Stem and the other third-party investor. Stem, the non-managing member of the SPE, shares power through its rights to (i) agree on SPE purchases of energy storage systems in the master purchase agreement, and (ii) approve the annual operating budgets in the operating and maintenance agreement. The other investor shares power through its rights as the managing member in the SPE. As a result, power is shared with the other investors in the SPE who are not considered related parties (including de facto agency relationships) of the Company. Investments in such SPEs are accounted for under the equity method of accounting and are recorded within other noncurrent assets on the consolidated balance sheets. The Company's maximum loss exposure from these entities is limited to the aggregate carrying amount of its equity method investments. As of December 31, 2021, the Company had not provided, and is not required to provide, financial support through a liquidity arrangement or otherwise, to its SPEs, including circumstances in which it could be exposed to further losses (e.g., cash shortfalls). The Company's cumulative share of the earnings/(losses) in SPV II, SPV III and SPV IV was $0.1 million, $0.1 million, and $0.2 million for the years ended December 31, 2021, 2020, and 2019, respectively.

Copec

During March 2020, the Company entered into the JV Agreement with *Compania de Petroleos de Chile Copec S.A.* ("Copec"), a leading wholesaler and distributor of petroleum products, that supplies fuel, lubricants, and other retail services such as carwash and foods through its series of service stations. The Company operates more than 650 service stations in Chile and more than 2,500 through different subsidiaries companies around South America, Central America, and the United States.

The purpose of the JV Agreement is to form an entity with equity contributions from both Stem and Copec to explore and develop business opportunities within the commercial and industrial space, including utilities and grid operators, in Latin America with the focus of providing intelligent energy storage solutions that leverage advanced software analytics and controls (principally through the Athena Platform developed by Stem). Stem's technology and expertise will be combined with the strength of Copec's scale, distribution network, energy knowledge and other expertise areas to develop business in certain territories as defined in the JV Agreement.

The JV entity is a VIE and the Company holds a variable interest in the JV Entity. However, the Company does not have the power to direct activities that most significantly impact the economics of the JV Entity and, as such, is not the primary beneficiary. Accordingly, the Company does not consolidate the JV Entity. The Company has concluded that it has the ability to exercise significant influence over the JV Entity, and accounts for the investment using the equity method.

The following table summarizes additional information about the Company's equity method investments, SPV II, SPV III, SPV IV and Copec:

	SPV II	SPV III	SPV IV	COPEC
Date formed	January 23, 2015	June 7, 2016	June 30, 2017	March 24, 2020
Initial ownership %	49 %	50 %	50 %	49 %
Stem's interest	100% of Class A shares	100% of Class B shares	100% of Class B shares	100% of Class A shares
Initial distributions:				
Class A	10% (Stem)	80% (Stem — 50%)	97.5 %	To be determined
Class B	90 %	20% (Stem — 100%)	2.5% (Stem)	N/A

As of December 31, 2021 and 2020, the Company's investment in its unconsolidated SPE's, recorded within other noncurrent assets on the consolidated balance sheets, was as follows (in thousands):

	December 31,	
	2021	2020
Investment in SPV II	$ —	$ —
Investment in SPV III	421	487
Investment in SPV IV	291	257
Copec	1,212	—
Total equity method investments	$ 1,924	$ 744

As discussed in Note 2 - *Summary of Significant Accounting Policies*, the Company accounts for the legal sales of the energy storage systems to the SPEs as a financing obligation. This is because the Company has significant continuing involvement in the generation of cash flows of the energy storage systems and continue to be legally responsible under the host customer contract. Accordingly, in addition to the equity method investment, the Company has the following financing obligations associated with energy storage systems legally sold to the unconsolidated SPEs (in thousands):

	December 31,	
	2021	2020
Financing obligation, current portion	$ 15,277	$ 14,914
Financing obligation, noncurrent	$ 73,204	$ 73,128

Interest expense related to the financing obligations was $8.5 million, $6.9 million, and $5.8 million for the years ended December 31, 2021, 2020, and 2019, respectively.

As a result of being the accounting owner of energy storage systems sold to the SPEs and retaining the obligation to provide energy optimization services to host customers, the Company records the carrying value of energy storage system assets and obligations under the customer host contracts on its consolidated balance sheet. These balances were as follows as of December 31, 2021 and 2020 (in thousands):

	December 31,	
	2021	2020
Energy storage systems, net	$ 92,426	$ 91,593
Deferred revenue, current	$ 4,417	$ 3,713
Deferred revenue, noncurrent	$ 10,835	$ 8,265
Other liabilities	$ 3,586	$ 3,178

Because the Company is the legal party responsible for providing services to the host customer and significantly involved in generating the revenue under the host customer arrangements, the Company records the revenue associated with services, and separately records payments to the VIE as debt and interest payments. Revenues recognized by the Company associated with energy storage systems legally sold to the unconsolidated SPEs were $16.9 million, $12.8 million, and $8.8 million for the years ended December 31, 2021, 2020, and 2019, respectively. Such revenues are inclusive of incentive fees, consistent with the Company's revenue policy. Depreciation expense recognized within cost of service revenue by the Company for the energy storage systems legally sold to the unconsolidated SPEs was $12.8 million, $11.8 million and $7.1 million for the years ended December 31, 2021, 2020, and 2019, respectively.

17. NET LOSS PER SHARE

The following table sets forth the computation of basic and diluted net loss per share attributable to common stockholders (in thousands, except share and per share amounts):

	Year Ended December 31,		
	2021	2020	2019
Numerator - Basic and Diluted:			
Net loss	$ (101,211)	$ (156,124)	$ (59,414)
Less: Deemed Dividend	—	(9,484)	(5,353)
Net loss attributable to common stockholders, basic and diluted	(101,211)	(165,608)	(64,767)
Denominator:			
Weighted-average number of shares outstanding used to compute net loss per share attributable to common stockholders, basic and diluted	105,561,139	40,064,087	42,811,383
Net loss per share attributable to common stockholders, basic and diluted	$ (0.96)	$ (4.13)	$ (1.51)

The following potentially dilutive shares were not included in the calculation of diluted shares outstanding for the periods presented as the effect would have been anti-dilutive:

	December 31,		
	2021	2020	2019
Outstanding Pre-Merger Convertible Promissory Notes	—	10,495,111	5,202,697
Outstanding 2028 Convertible Notes	15,730,390	—	—
Outstanding stock options	8,766,466	11,065,658	9,227,850
Outstanding warrants	23,673	10,832,616	7,672,810
Outstanding RSUs	1,799,677	—	—
Total	26,320,206	32,393,385	22,103,357

18. INCOME TAXES

The components of loss before provision for income taxes for the years ended December 31, 2021, 2020, and 2019 are as follows (in thousands):

	December 31,		
	2021	2020	2019
Domestic	$ (101,211)	$ (156,119)	$ (59,408)
Foreign	—	—	—
Loss before income taxes	$ (101,211)	$ (156,119)	$ (59,408)

Due to the Company's net losses, the Company did not record a provision for federal income taxes during the years ended December 31, 2021, 2020 and 2019, respectively. The Company continues to maintain a full valuation allowance for its net U.S. federal and state deferred tax assets.

The components of the provision for income tax expense for the years ended December 31, 2021, 2020, and 2019 are as follows (in thousands):

	December 31,		
	2021	2020	2019
Current:			
Federal	$ —	$ —	$ —
State	—	5	6
Total current	—	5	6
Deferred:			
Federal	—	—	—
State	—	—	—
Total deferred	—	—	—
Total provision for income taxes	$ —	$ 5	$ 6

The effective tax rate of the Company's provision (benefit) for income taxes differs from the federal statutory rate as follows:

	December 31,		
	2021	2020	2019
Statutory rate	21.00 %	21.00 %	21.00 %
State tax	3.15 %	3.19 %	7.13 %
Foreign income and withholding taxes	1.61 %	0.41 %	0.08 %
Stock-based compensation	6.17 %	(0.60)%	(0.51)%
Change in fair value of warrants	0.71 %	(11.36)%	0.53 %
Other	(1.19)%	— %	(0.04)%
Non-deductible interest expense	(2.53)%	(1.51)%	(2.63)%
Valuation allowance	(28.92)%	(11.13)%	(25.56)%
Total	— %	— %	— % — %

Deferred income taxes arise from temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for income tax reporting purposes, as well as net operating losses ("NOLs") and tax credit carryforwards.

Significant components of the Company's deferred tax assets and liabilities as of December 31, 2021 and 2020 are as follows (in thousands):

	December 31,	
	2021	2020
Deferred tax assets:		
Net operating losses	$ 92,160	$ 59,960
Tax credits	741	761
Depreciable assets	604	635
Operating lease liabilities	3,558	—
Accruals and allowances	1,803	575
Stock-based compensation	1,359	83
Deferred revenue	24,734	27,962
Interest expense	1,209	—
Other	3,989	3,035
Total gross deferred tax assets	130,157	93,011
Less: Valuation allowance	(125,082)	(91,315)
Net deferred tax assets	5,075	1,696
Deferred tax liabilities:		
Amortization of asset retirement obligation	(768)	(944)
Intangibles	(862)	(752)
Right-of-use assets	(3,445)	—
Total gross deferred tax liabilities	(5,075)	(1,696)
Net deferred taxes	$ —	$ —

As of December 31, 2021 and 2020, the Company had federal NOL carryforwards of approximately $300.8 million and $199.8 million, respectively, and state NOL carryforwards of approximately $274.6 million and $200.5 million, respectively. The federal and state NOL carryforwards will both begin to expire in 2029. As of December 31, 2021 and 2020, the Company had federal research and development tax credit carryforwards of $0.7 million and $0.7 million, respectively, which begin to expire in 2029 if not utilized. As of December 31, 2021 and 2020, the Company had foreign NOL carryforwards of approximately $9.0 million and zero, respectively. As of December 31, 2021 and 2020, the Company had California research and development tax credit carryforwards of $0.7 million and $0.7 million, respectively, which do not expire. As of December 31, 2021 and 2020, the Company had California Enterprise Zone tax credits of zero and $0.1 million, respectively, which began to expire in 2021.

In assessing the realizability of deferred tax assets, management considers whether it is more likely than not that some portion or all of the deferred tax assets will not be realized. As a result of a history of taxable losses and uncertainties as to future profitability, the Company recorded a full valuation allowance against its deferred tax assets. The valuation allowance was $125.1 million and $91.3 million as of December 31, 2021 and 2020, respectively.

Utilization of the NOL carryforwards and tax credit forwards may be subject to a substantial annual limitation due to ownership change limitations that may have occurred or that could occur in the future, as required by the Internal Revenue Code Section 382, as well as similar state provisions. In general, an “ownership change,” as defined by the code, results from a transaction or series of transactions over a three- year period resulting in an ownership change of more than 50 percentage points of the outstanding stock of a company by certain stockholders or public groups. Any limitation may result in expiration of all or a portion of the NOL or tax credit carryforwards before utilization. The Company has not performed a detailed analysis to determine whether an ownership change under Section 382 of the Code has previously occurred. As a result, the Company’s ability to utilize existing carryforwards could be restricted.

The Company had gross unrecognized tax benefits of $0.7 million and $0.8 million as of December 31, 2021 and 2020, respectively. There were no material additions, reductions or settlements of unrecognized tax benefits for years ended December 31, 2021 and 2020. The Company expects resolution of unrecognized tax benefits, if created, would occur while the full valuation allowance of deferred tax assets is maintained. The Company does not expect to have any unrecognized tax benefits that, if recognized, would affect the effective tax rate. As of December 31, 2021, the Company does not have a liability for potential penalties or interest. The Company does not expect its unrecognized tax benefits to change significantly over the next 12 months.

In the normal course of business, the Company is subject to examination by taxing authorities throughout the United States of America. The Company is not currently under audit by the Internal Revenue Service or similar state or local authorities in relation to its income taxes. The tax return years 2016 through 2020 remain open to examination by the major domestic taxing jurisdictions to which the Company is subject. Net operating losses generated on a tax return basis by the Company for calendar years 2009 through 2021 remain open to examination by the major domestic taxing jurisdictions.

19. COMMITMENTS AND CONTINGENCIES

Contingencies

The Company is party to various legal proceedings from time to time arising in the ordinary course of its business. A liability is accrued when a loss is both probable and can be reasonably estimated. Management believes that the probability of a material loss with respect to any currently pending legal proceeding is remote. However, litigation is inherently uncertain and it is not possible to definitively predict the ultimate disposition of any of these proceedings. The Company does not believe that there are any pending legal proceedings or other loss contingencies that will, either individually or in the aggregate, have a material adverse effect on the Company's consolidated financial statements.

20. EMPLOYER RETIREMENT PLAN

The Company sponsors a 401(k) profit sharing plan covering all eligible employees. Participants may elect to defer a percentage of their compensation ranging from 1% to 75%, up to the maximum allowable by law by making contributions to the plan. The Company may match, at its discretion, the employee contributions according to the terms of the plan. During the years ended December 31, 2021, 2020, and 2019, the Company did not match any of its employees' contributions.

21. SUBSEQUENT EVENTS

On February 1, 2022, the Company completed the acquisition of 100% of the outstanding shares of AlsoEnergy for an aggregate purchase price of $695.0 million, consisting of approximately 75% in cash and approximately 25% in shares of the Company's common stock. The acquisition was structured on a cash-free, debt free basis and subject to other customary adjustments as set forth in the purchase agreement.

The transaction combines the Company's storage optimization capabilities with AlsoEnergy's solar asset performance monitoring and control software. The Company will complete the initial accounting for the acquisition during the first quarter of 2022.

ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURES

ITEM 9A. CONTROLS AND PROCEDURES

Evaluation of Disclosure Controls and Procedures

We maintain disclosure controls and procedures (Disclosure Controls) within the meaning of Rules 13a-15(e) and 15d-15(e) of the Exchange Act. Our Disclosure Controls are designed to provide reasonable assurance that information required to be disclosed by us in the reports we file or submit under the Exchange Act, such as this Annual Report on Form 10-K, is recorded, processed, summarized and reported within the time periods specified in the Securities and Exchange Commission's rules and forms. Our Disclosure Controls are also designed to provide reasonable assurance that such information is accumulated and communicated to our management, including our Chief Executive Officer ("CEO") and Chief Financial Officer ("CFO"), as appropriate, to allow timely decisions regarding required disclosure.

Based on management's evaluation (under the supervision and with the participation of our CEO and our CFO) as of December 31, 2021, of the effectiveness of the design and operation of our Disclosure Controls, our CEO and CFO have concluded that, as of the end of the period covered by this Report, our Disclosure Controls were not effective as of December 31, 2021 due to material weaknesses identified in the Company's internal control over financial reporting as disclosed below.

Internal Control over Financial Reporting

Our management is responsible for establishing and maintaining adequate internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) ("ICFR"). Our internal control over financial reporting includes policies and procedures designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external reporting purposes in accordance with generally accepted accounting principles.

This report does not include a report of management's assessment regarding ICFR, as allowed by the SEC for reverse acquisitions between an issuer and a private operating company when it is not possible to conduct an assessment of the private operating company's ICFR in the period between the consummation date of the reverse acquisition and the date of management's assessment of ICFR (see Section 215.02 of the SEC Division of Corporation Finance's Regulation S-K Compliance & Disclosure Interpretations). We completed the Merger on April 28, 2021. See Item 1. Business — History" of this Form 10-K. Prior to the Merger, we were known as Star Peak Energy Transition Corp., a special purpose acquisition company formed for the purpose of effecting a merger, capital stock exchange, asset acquisition, stock purchase, reorganization, or similar business combination involving one or more businesses. As a result, previously existing internal controls are no longer applicable or comprehensive enough as of the assessment date, as our operations prior to the Merger were insignificant compared to those of the consolidated entity post-Merger. The design of ICFR for the Company post-Merger has required and will continue to require significant time and resources from management and other personnel. As a result, management was unable, without incurring unreasonable effort or expense, to conduct an assessment of our ICFR as of December 31, 2021. The Company intends to conduct a management assessment regarding ICFR as of December 31, 2022.

Despite not conducting a formal assessment regarding ICFR, management identified the following material weaknesses in its internal controls that existed as of December 31, 2021: (i) accounting for energy storage systems, deferred cost of goods sold and inventory, (ii) ineffective internal controls over review of the Company's consolidated financial statements and related disclosures, (iii) a lack of formality in our internal control activities, especially related to management review-type controls, and (iv) ineffective internal controls over the review of certain revenue recognition calculations.

With respect to energy storage systems, inventory and deferred cost of goods sold, we did not properly track inflows and outflows, including the valuation of energy storage systems, due in part to the systems that the Company used to track and value energy storage systems and inventory. With respect to a lack of formality in our control activities, we did not sufficiently establish formal policies and procedures to design effective controls, establish responsibilities to execute these policies and procedures and hold individuals accountable for performance of these responsibilities, including over review over revenue recognition and internal-use capitalized software calculations. We had multiple control deficiencies aggregating to a material weakness over ineffective control activities.

Remediation Activities

We have remediated material weaknesses related to (i) ineffective internal controls over accounting for complex and significant transactions, and (ii) ineffective internal controls over the review of internal-use capitalized software calculations that were previously identified during the course of preparing our financial statements as of and for the year ended December

31, 2020 (our prior year end). Our remediation efforts included implementing, under the direction of our CFO, enhanced review procedures and documentation standards to monitor and review all complex and significant transactions. Our management took further action by performing a robust review of all internal controls to strengthen documentation, validate processes and communicate accountability for performance of internal control responsibilities. Further, we engaged outside service providers to assist in evaluating and documenting processes and controls, identifying and addressing control gaps and strengthening the overall quality of documentation that evidences control activities.

Our management, with oversight of the Audit Committee of the Board, continues to devote significant time, attention and resources to remediating the aforementioned material weaknesses in its internal control over financing reporting and believes that we have made significant progress to that end. The material weaknesses will be considered remediated when management designs and implements effective controls that operate for a sufficient period of time and management has concluded, through testing, that these controls are effective. As of December 31, 2021, the Company had initiated the following steps intended to remediate the material weaknesses described above and strengthen its internal control over financial reporting that, as of December 31, 2021, had not yet been fully implemented or had not been in place for a sufficient period of time to demonstrate that they were having their desired effect:

- Develop and deliver internal control training to management and finance/accounting personnel, focusing on a review of management's and individual roles and responsibilities related to internal control over financial reporting.
- Hire, train and develop experienced accounting executives and personnel with a level of public accounting knowledge and experience in the application of US GAAP commensurate with our financial reporting requirements and the complexity of our operations and transactions.
- Establish and implement policies and practices to attract, develop and retain competent public accounting personnel.
- Engage a qualified third party Sarbanes-Oxley ("SOX") compliance firm to assist us in bolstering and implementing our SOX compliance program, with a focus on documenting processes and controls, identifying and addressing control gaps, formalizing the internal control activities and strengthening the overall quality of documentation that evidences control activities.
- Perform a financial statement risk assessment and scoping exercise to identify and assess the risks of material misstatements in our financial statements to better ensure that the appropriate effort and resources are dedicated to addressing risks of material misstatements.
- Establish a disclosure committee comprised of our CEO, CFO, Chief Legal Officer, Chief Accounting Officer and other senior finance/accounting personnel to, among other things, review and, as necessary, help revise the Company's controls and other procedures to ensure that information required by us to be disclosed is recorded, processed, summarized and reported accurately and on a timely basis.
- Implement a Section 302 sub-certification program to reinforce the Company's culture of compliance.
- Implement processes to improve monitoring activities involving the review and supervision of our accounting operations, including increased and enhanced balance sheet reviews to allow more focus on quality account reconciliations and enhanced monitoring of our internal control over financial reporting.
- Implement new accounting applications to enhance and streamline the order-to-cash and commissions processes.

Changes in Internal Control over Financial Reporting

Other than the material weaknesses and remediation actions as described above, there were no changes in our internal controls over financial reporting during the fourth quarter of 2021, that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

Inherent Limitations on Effectiveness of Internal Controls

Our management, including the CEO and CFO, does not expect that our disclosure controls or our internal control over financial reporting will prevent or detect all errors and all fraud. A control system, no matter how well designed and operated, can provide only reasonable, not absolute, assurance that the control system's objectives will be met. The design of a control system must reflect the fact that there are resource constraints, and the benefits of controls must be considered relative to their costs. Furthermore, because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that misstatements due to error or fraud will not occur or that all control issues and instances of fraud, if any, have been detected. The design of any system of controls is based in part on certain assumptions about the likelihood of future events, and there can be no assurance that any design will succeed in achieving its stated goals under all potential future conditions. Projections of any evaluation of the effectiveness of controls to future periods are subject to risks. Over time,

controls may become inadequate because of changes in business conditions or deterioration in the degree of compliance with policies or procedures.

ITEM 9B. OTHER INFORMATION

None.

ITEM 9C. DISCLOSURE REGARDING FOREIGN JURISDICTIONS THAT PREVENT INSPECTIONS

Not applicable.

Part III

ITEM 10. DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE

See “Item I. Business —Information About Our Executive Officers” of this Report of this Report for information regarding the executive officers of Stem. The other information required for this Item will be included in the 2022 Proxy Statement and is incorporated by reference.

We maintain a Code of Business Conduct and Ethics that applies to all employees, officers and directors. Our Employee Code of Conduct is published on our website at investors.stem.com/governance. We intend to disclose on our website future amendments to certain provisions of our Employee Code of Conduct, or waivers of such provisions granted to executive officers and directors, in accordance with SEC rules.

ITEM 11. EXECUTIVE COMPENSATION

The information required for this Item will be included in the 2022 Proxy Statement and is incorporated by reference.

ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNER AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS

The information required for this item will be included in the 2022 Proxy Statement and is incorporated by reference.

ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS, AND DIRECTOR INDEPENDENCE

The information required for this Item will be included in the 2022 Proxy Statement and is incorporated by reference.

ITEM 14. PRINCIPAL ACCOUNTANT FEES AND SERVICES

The information required for this Item will be included in the 2022 Proxy Statement and is incorporated by reference.

PART IV

ITEM 15. EXHIBITS, FINANCIAL STATEMENT SCHEDULES

(a)(1) Financial Statements: The financial statements filed as part of this Report are listed on the index to financial statements on page 52.

(2) Financial Schedules: All schedules have been omitted because they are not required, not applicable, not present in amounts sufficient to require submission of the schedule, or the required information is otherwise included.

(b) Exhibits. The exhibits listed on the Exhibit Index are included, or incorporated by reference, in this Report.

ITEM 16. FORM 10-K SUMMARY

None.

EXHIBIT INDEX

Exhibit No.	Description
3.1	Second Amended and Restated Certificate of Incorporation, dated April 28, 2021 (incorporated by reference to Exhibit 3.1 to the Current Report on Form 8-K filed on May 4, 2021).
3.2	Second Amended and Restated by-Laws, dated April 28, 2021 (incorporated by reference to Exhibit 3.2 to the Current Report on Form 8-K filed on May 4, 2021).
4.1	Indenture dated as of November 22, 2021, between the Company and U.S. Bank National Association, as trustee (incorporated by reference to Exhibit 4.1 to Stem's Current Report on Form 8-K filed on November 22, 2021).
4.2	Form of 0.50% Convertible Senior Note due 2028 (included in Exhibit 4.1).
4.3*	Description of the Registrant's Securities.
10.1	Form of Confirmation for Capped Call Transactions (incorporated by reference to Exhibit 10.1 to Stem's Current Report on Form 8-K filed on November 22, 2021).
10.2	Purchase Agreement dated as of November 17, 2021, between the Company and the Initial Purchasers (incorporated by reference to Exhibit 10.2 to Stem's Current Report on Form 8-K filed on November 22, 2021).
10.3*	Stock Purchase Agreement dated as of December 16, 2021, by and between the Company, the selling stockholders of AlsoEnergy, Inc. identified therein, and the sellers' representatives identified therein.
10.4†*	Stem, Inc. 2009 Equity Incentive Plan.
10.5†*	Form of Stock Option Agreement under the Stem, Inc. 2009 Equity Incentive Plan.
10.6†	Stem, Inc. 2021 Equity Incentive Plan (incorporated by reference to Exhibit 10.1 to Stem's Registration Statement on Form S-8 filed on July 2, 2021)
10.7†	Form of Stock Option Agreement under the Stem, Inc. 2021 Equity Incentive Plan (incorporated by reference to Exhibit 10.1 to Stem's Quarterly Report on Form 10-Q filed on August 11, 2021).
10.8†	Form of Restricted Stock Unit Award Agreement under the Stem, Inc. 2021 Equity Incentive Plan (incorporated by reference to Exhibit 10.1 to Stem's Quarterly Report on Form 10-Q filed on August 11, 2021).
10.9	Investor Rights Agreement dated April 28, 2021, by and among the Company and certain of its stockholders (incorporated by reference to Exhibit 10.3 of the Company Current Report on Form 8-K filed on May 4, 2021)
10.10†*	Form of Indemnification Agreement.
10.11†*	Form of Executive Employment Agreement.
16	Letter from WithumSmith+Brown, PC to the SEC (incorporated by reference to Exhibit 16 to the Current Report on Form 8-K filed on August 11, 2021).
21*	Subsidiaries of the Registrant.
23*	Consent of Independent Registered Public Accounting Firm.
24*	Powers of Attorney.
31.1	Certification of Chief Executive Officer Pursuant to Rules 13a-14(a) and 15d-14(a) under the Securities Exchange Act of 1934, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
31.2	Certification of Chief Financial Officer Pursuant to Rules 13a-14(a) and 15d-14(a) under the Securities Exchange Act of 1934, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
32.1	Certification of Chief Executive Officer Pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

32.2	Certification of Chief Financial Officer Pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
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 Label Linkbase Document
101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase Document
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)

*Filed herewith

** Furnished herewith

† Management or compensatory plan or arrangement

SIGNATURE

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the Registrant has duly caused this Report to be signed on its behalf by the undersigned, thereunto duly authorized.

Date: February 28, 2022

STEM, INC.

By: /s/ William Bush
William Bush
Chief Financial Officer

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

Name	Title
*	Chief Executive Officer and Director
John Carrington	(Principal Executive Officer)
/s/ William Bush	Chief Financial Officer
William Bush	(Principal Financial Officer)
/s/Rahul Shukla	Chief Accounting Officer
Rahul Shukla	(Principal Accounting Officer)
*	Chairman of the Board
David Buzby	
*	Director
Adam E. Daley	
*	Director
Anil Tammineedi	
*	Director
Michael E. Morgan	
*	Director
Laura D'Andrea Tyson	
*	Director
Lisa L. Troe	
*	Director
Jane Woodward	

/s/ Saul R. Laureles February 28, 2022

* By Saul R. Laureles, Attorney-in-Fact

Exhibit 4.3

DESCRIPTION OF SECURITIES

The following summary of the material terms of securities Stem, Inc. ("Stem," the "Company" or "our") is not a complete summary of the rights and preferences of such securities, and is qualified by reference to our Amended and Restated Charter, our Amended and Restated Bylaws, each as amended to date and filed as exhibits to our Annual Reports on Form 10-K and Quarterly Reports on Form 10-Q, and the warrant-related documents described in this summary. This section also summarizes relevant provisions of the Delaware General Corporation Law ("DGCL"). The terms of the DGCL are more detailed than the general information provided below. Therefore, you should carefully consider the actual provisions of these laws.

Authorized Stock

Our Amended and Restated Charter authorizes the issuance of 501,000,000 shares, consisting of (i) 1,000,000 shares of preferred stock, par value $0.0001 per share, and (ii) 500,000,000 shares of common stock, par value $0.0001 per share.

Common Stock

Holders of Stem common stock are entitled to one vote for each share held of record on all matters submitted to a vote of stockholders, including the election or removal of directors. Holders of Stem common stock do not have cumulative voting rights in the election of directors, meaning that the holders of a majority of the shares voting for the election of directors can elect all of the candidates standing for election.

Holders of Stem common stock do not have preemptive, subscription, redemption or conversion rights. Such common stock is not subject to further calls or assessment by the Company. There are no redemption or sinking fund provisions applicable to Stem common stock. The rights, powers, preferences and privileges of holders of Stem common stock are subject to those of the holders of any shares of Stem preferred stock that we may authorize and issue in the future.

In the event of the Company's liquidation, dissolution or winding up, and after payment in full of all amounts required to be paid to creditors and to the holders of preferred stock having liquidation preferences, if any, holders of Stem common stock are be entitled to receive *pro rata* our remaining assets available for distribution.

Stem common stock is listed on the New York Stock Exchange (the "NYSE"), where it is traded under the symbol "STEM." Any additional common stock that Stem will issue will also be listed on the NYSE.

Preferred Stock

Our Amended and Restated Charter authorizes Stem's board of directors (the "Stem Board") to establish one or more series of preferred stock (including convertible preferred stock). Unless required by law or by the NYSE, the authorized shares of preferred stock will be available for issuance without further action by the holders of Stem common stock. The Stem Board has the discretion to determine the powers, preferences and relative, participating, optional and other special rights, and the qualifications, limitations or restrictions thereof, including, without limitation, voting rights, dividend rights, conversion rights, redemption privileges and liquidation preferences, of each series of preferred stock, including, without limitation:

a. the designation of the series;

b. the number of shares of the series, which the Stem Board may, except where otherwise provided in the preferred stock designation, increase (but not above the total number of authorized shares of the class) or decrease (but not below the number of shares then outstanding);

c. whether dividends, if any, will be cumulative or non-cumulative and the dividend rate of the series;

d. the dates at which dividends, if any, will be payable;

e. the redemption rights and price or prices, if any, for shares of the series;

f. the terms and amounts of any sinking fund provided for the purchase or redemption of shares of the series;

g. the amounts payable on shares of the series in the event of any voluntary or involuntary liquidation, dissolution or winding-up of the Company's affairs;

h. whether the shares of the series will be convertible into shares of any other class or series, or any other security, of the Company or any other corporation, and, if so, the specification of the other class or series or other security, the conversion price or prices or rate or rates, any rate adjustments, the date or dates as of which the shares will be convertible and all other terms and conditions upon which the conversion may be made;

i. restrictions on the issuance of shares of the same series or of any other class or series; and the voting rights, if any, of the holders of the series.

The Company could issue a series of preferred stock that could, depending on the terms of the series, impede or discourage an acquisition attempt or other transaction that some, or a majority, of the holders of Stem common stock might believe to be in their best interests or in which the holders of Stem common stock might receive a premium for Stem common stock over the market price of such common stock. Additionally, the issuance of preferred stock could adversely affect the rights of holders of our common stock by restricting dividends on our common stock, diluting the voting power of such common stock or subordinating the liquidation rights of such common stock. As a result of these or other factors, the issuance of preferred stock could have an adverse effect on the market price of our common stock.

Legacy Warrants

Each of the Company's 23,604 Legacy Stem Warrants are exercisable for one share of Stem common stock at a price $7.07 per share. Holders of such warrants do not have the rights or privileges of holders of Stem common stock and any voting rights until they exercise such warrants and receive shares of Stem common stock.

Dividends

The DGCL permits a corporation to declare and pay dividends out of "surplus" or, if there is no "surplus", out of its net profits for the fiscal year in which the dividend is declared and/or the preceding fiscal year. "Surplus" is defined as the excess of the net assets of the corporation over the amount determined to be the capital of the corporation by the board of directors. The capital of the corporation is typically calculated to be (and cannot be less than) the aggregate par value of all issued shares of capital stock. Net assets equals the fair value of the total assets minus total liabilities. The DGCL also provides that dividends may not be paid out of net profits if, after the payment of the dividend, capital is less than the capital represented by the outstanding stock of all classes having a preference upon the distribution of assets.

The Company has not paid any cash dividends on its common stock to date. Declaration and payment of any dividend in the future will be subject to the discretion of the Stem Board. The time and amount of dividends will be dependent upon the Company's financial condition, operations, cash requirements and availability, debt repayment obligations, capital expenditure needs and restrictions in the Company's debt instruments, industry trends, the provisions of Delaware law affecting the payment of distributions to stockholders and any other factors the Stem Board may consider relevant. In addition, the Stem Board is not currently contemplating and does not anticipate declaring any stock dividends in the foreseeable future. Further, the Company's ability to declare dividends may be

limited by restrictive covenants contained in the agreements governing the indebtedness of the Company's subsidiaries.

Annual Stockholder Meetings

Our Amended and Restated Bylaws provide that annual stockholder meetings will be held at a date, time and place, if any, as exclusively selected by the Stem Board. To the extent permitted under applicable law, the Company may conduct meetings by remote communications, including by webcast.

Anti-Takeover Effects of the Company's Amended and Restated Charter and Amended and Restated Bylaws and Certain Provisions of Delaware Law

The Amended and Restated Charter, Amended and Restated Bylaws, and the DGCL contain provisions, as summarized in the following paragraphs, that are intended to enhance the likelihood of continuity and stability in the composition of the Stem Board and to discourage certain types of transactions that may involve an actual or threatened acquisition of the Company. These provisions are intended to avoid costly takeover battles, reduce the Company's vulnerability to a hostile change of control and enhance the ability of the Stem Board to maximize stockholder value in connection with any unsolicited offer to acquire the Company. However, these provisions may have an anti-takeover effect and may delay, deter, or prevent a merger or acquisition of the Company by means of a tender offer, a proxy contest or other takeover attempt that a stockholder might consider in its best interest, including those attempts that might result in a premium over the prevailing market price for the shares of our common stock held by stockholders.

Authorized but Unissued Capital Stock

Delaware law does not require stockholder approval for any issuance of authorized shares.

However, the listing requirements of NYSE, which would apply so long as our common stock remains listed on the NYSE, require stockholder approval of certain issuances equal to or exceeding 20% of the then-outstanding voting power of the Company's capital stock or the-then outstanding number of shares of our common stock. These additional shares may be used for a variety of corporate purposes, including future public offerings, to raise additional capital or to facilitate acquisitions.

The Stem Board may generally issue preferred shares on terms calculated to discourage, delay or prevent a change of control of the Company or the removal of its management. Moreover, the Company's authorized but unissued shares of preferred stock will be available for future issuances without stockholder approval and could be utilized for a variety of corporate purposes, including future offerings to raise additional capital, to facilitate acquisitions and employee benefit plans.

One of the effects of the existence of unissued and unreserved common stock or preferred stock may be to enable the Stem Board to issue shares to persons friendly to current management, which issuance could render more difficult or discourage an attempt to obtain control of the Company by means of a merger, tender offer, proxy contest or otherwise, and thereby protect the continuity of the Company's management and possibly deprive the Company's stockholders of opportunities to sell their shares of our common stock at prices higher than prevailing market prices.

Classified Board of Directors

Our Amended and Restated Charter provides that the Stem Board is classified into three classes of directors, with the classes to be as nearly equal in number as possible, and with each director serving a three-year term. As a result, approximately one-third of the Stem Board will be elected each year. The classification of directors will make it more difficult for stockholders to change the composition of the Stem Board. Our Amended and Restated Charter and amended and restated bylaws provide that, subject to any rights of holders of preferred stock to elect additional directors under specified circumstances, the number of directors will be fixed from time to time exclusively pursuant to a resolution adopted by the Stem Board.

Business Combinations

The Company is a Delaware corporation and is subject to the provisions of Section 203 of the DGCL, which regulates corporate takeovers. This statute prevents certain Delaware corporations, under certain circumstances, from engaging in a "business combination" with:

a. a stockholder who owns 20% or more of the Company's outstanding voting stock (otherwise known as an "interested stockholder");

b. an affiliate of an interested stockholder; or

c. an associate of an interested stockholder, for three years following the date that the stockholder became an interested stockholder.

A "business combination" includes a merger or sale of more than 10% of the Company's assets. However, the above provisions of Section 203 do not apply if:

a. the Stem Board approves the transaction that made the stockholder an "interested stockholder, prior to the date of the transaction;"

b. after the completion of the transaction that resulted in the stockholder becoming an interested stockholder, that stockholder owned at least 85% of the Company's voting stock outstanding at the time the transaction commenced, other than statutorily excluded shares of Stem common stock; or

c. on or subsequent to the date of the transaction, the initial business combination is approved by the Stem Board and authorized at a meeting of the Company's stockholders, and not by written consent, by an affirmative vote of at least two-thirds (2/3) of the outstanding voting stock not owned by the interested stockholder.

Amendments to the Certificate of Incorporation and Bylaws

Any amendment to our Amended and Restated Charter will be required to be approved by a majority of the Stem Board as well as, if required by law or the Amended and Restated Charter, a majority of the outstanding shares entitled to vote on the amendment and a majority of the outstanding shares of each class entitled to vote thereon as a class, except that the amendment of provisions to board classification, stockholder action, certificate amendments, and liability of directors must be approved by not less than 66 2/3% of the outstanding shares entitled to vote on the amendment, voting together as a single class. Any amendment to our Amended and Restated Bylaws will be required to be approved by either a majority of the Stem Board or not less than 66 2/3% of the outstanding shares entitled to vote on the amendment, voting together as a single class.

Removal of Directors; Vacancies

Under the DGCL, and as provided in our Amended and Restated Charter, a director serving on a classified board may be removed by the stockholders only for cause and only by the affirmative vote of holders of at least 66 2/3% of the voting power of all outstanding shares of stock entitled to vote generally in the election of directors, voting together as a single class. In addition, our Amended and Restated Charter provides that any newly created directorship on the Stem Board that results from an increase in the number of directors and any vacancies on the Stem Board will be filled only by the affirmative vote of a majority of the remaining directors then in office or by a sole remaining director (and not by stockholders) even if less than a quorum.

No Cumulative Voting

Under Delaware law, the right to vote cumulatively does not exist unless the certificate of incorporation specifically authorizes cumulative voting. Neither our Amended and Restated Charter nor our Amended and Restated Bylaws permit cumulative voting.

No Written Consent of Stockholders

Our Amended and Restated Charter provides that all stockholder actions be taken by a vote of the stockholders at an annual or special meeting, and that stockholders may not take any action by written consent in lieu of a meeting. This limit may lengthen the amount of time required to take stockholder actions and would prevent the amendment of our Amended and Restated Bylaws or removal of directors by our stockholders without holding a meeting of stockholders.

Special Stockholder Meetings

Our Amended and Restated Charter provides that special meetings of the Company's stockholders may be called at any time only by or at the direction of the chief executive officer, the Stem Board or the chairperson of the Stem Board pursuant to a resolution adopted by a majority of the Stem Board. Our Amended and Restated Bylaws provide that the business transacted at a special meeting shall be limited to the matters so stated in the notice for such meeting. These provisions may have the effect of deferring, delaying or discouraging hostile takeovers, or changes in control or management of the Company.

Requirements for Advance Notification of Director Nominations and Stockholder Proposals

Our Amended and Restated Bylaws establish advance notice procedures with respect to stockholder proposals and the nomination of candidates for election as directors, other than nominations made by or at the direction of the Stem Board or a committee of the Stem Board. In order for any matter to be "properly brought" before a meeting, a stockholder must comply with advance notice requirements and provide the Company with certain information. Generally, to be timely, a stockholder's notice must be received at the Company's principal executive offices not less than 90 days nor more than 120 days prior to the first anniversary date of the immediately preceding annual meeting of stockholders. Our Amended and Restated Bylaws also specify requirements as to the form and content of a stockholder's notice. Our Amended and Restated Bylaws allow the Stem Board to adopt rules and regulations for the conduct of meetings as it deems appropriate which may have the effect of precluding the conduct of certain business at a meeting if the rules and regulations are not followed. These provisions may also defer, delay, or discourage a potential acquirer from conducting a solicitation of proxies to elect the acquirer's own slate of directors or otherwise attempting to influence or obtain control of the Company.

Dissenters' Rights of Appraisal and Payment

Under the DGCL, with certain exceptions, the Company's stockholders have appraisal rights in connection with a merger or consolidation of the Company. Pursuant to the DGCL, stockholders who properly request and perfect appraisal rights in connection with such merger or consolidation will have the right to receive payment of the fair value of their shares as determined by the Delaware Court of Chancery.

Stockholders' Derivative Actions

Under the DGCL, any of the Company's stockholders may bring an action in the Company's name to procure a judgment in the Company's favor, also known as a derivative action, provided that the stockholder bringing the action is a holder of the Company's shares at the time of the transaction to which the action relates or such stockholder's stock thereafter devolved by operation of law.

Exclusive Forum

Our Amended and Restated Charter provides that unless the Company consents to the selection of an alternative forum, any (1) derivative action or proceeding brought on behalf of the Company, (2) action asserting a claim of breach of a fiduciary duty owed by any director, officer or other employee of the Company or its stockholders, (3) action asserting a claim against our Amended and Restated Charter or our Amended and Restated Bylaws, or (4)

action asserting a claim against the Company, its directors, officers or employees governed by the internal affairs doctrine and, if brought outside of Delaware, the stockholder bringing the suit will be deemed to have consented to service of process on such stockholder's counsel except (A) as to which the Court of Chancery in the State of Delaware determines that there is an indispensable party not subject to the jurisdiction of the Court of Chancery (and the indispensable party does not consent to the personal jurisdiction of the Court of Chancery within 10 days following such determination), (B) which is vested in the exclusive jurisdiction of a court or forum other than the Court of Chancery, (C) for which the Court of Chancery does not have subject matter jurisdiction, or (D) any action arising under the Securities Act, as amended, as to which the Court of Chancery and the federal district court for the District of Delaware shall have concurrent jurisdiction. In addition, the provisions described above will not apply to suits brought to enforce a duty or liability created by the federal securities laws or any other claim for which the federal courts have exclusive jurisdiction.

Conflicts of Interest

Delaware law permits corporations to adopt provisions renouncing any interest or expectancy in certain opportunities that are presented to the corporation or its officers, directors, or stockholders. Our Amended and Restated Charter, to the extent allowed by Delaware law, renounces any interest or expectancy that the Company has in, or right to be offered an opportunity to participate in, specified business opportunities that are from time to time presented to the Company's officers, directors or their respective affiliates in circumstances where the application of any such doctrine would conflict with any fiduciary duties or contractual obligations they may have, and the Company renounces any expectancy that any of the directors or officers of the Company will offer any such corporate opportunity of which they may become aware to the Company, except with respect to any of the directors or officers of the Company regarding a corporate opportunity that was offered to such person solely in his or her capacity as a director or officer of the Company and (i) such opportunity is one the Company is legally and contractually permitted to undertake and would otherwise be reasonable for it to pursue and (ii) the director or officer is permitted to refer that opportunity to the Company without violating any legal obligation.

Limitations on Liability and Indemnification of Officers and Directors

The DGCL authorizes corporations to limit or eliminate the personal liability of directors to corporations and their stockholders for monetary damages for breaches of directors' fiduciary duties, subject to certain exceptions. Our Amended and Restated Charter includes a provision that eliminates the personal liability of directors for monetary damages for any breach of fiduciary duty as a director, except to the extent such exemption from liability or limitation thereof is not permitted under the DGCL. The effect of these provisions is to eliminate the rights of the Company and its stockholders, through stockholders' derivative suits on the Company's behalf, to recover monetary damages from a director for breach of fiduciary duty as a director, including breaches resulting from grossly negligent behavior. However, exculpation does not apply to any director if the director has acted in bad faith, knowingly or intentionally violated the law, authorized illegal dividends or redemptions or derived an improper benefit from his or her actions as a director.

The Company's amended and restated bylaws provide that the Company must indemnify and advance expenses to the Company's directors and officers to the fullest extent authorized by the DGCL. The Company also is expressly authorized to carry directors' and officers' liability insurance providing indemnification for the Company's directors, officers and certain employees for some liabilities. The Company believes that these indemnification and advancement provisions and insurance are useful to attract and retain qualified directors and executive officers.

The limitation of liability, advancement and indemnification provisions in the Amended and Restated Charter and amended and restated bylaws may discourage stockholders from bringing a lawsuit against directors for breach of their fiduciary duty.

These provisions also may have the effect of reducing the likelihood of derivative litigation against directors and officers, even though such an action, if successful, might otherwise benefit the Company and its stockholders. In addition, your investment may be adversely affected to the extent the Company pays the costs of settlement and damage awards against directors and officers pursuant to these indemnification provisions.

Exhibit 10.3
Execution Version

STOCK PURCHASE AGREEMENT
among
THE SELLERS named herein
and
ROBERT SCHAEFER AND CLAIRVEST GP MANAGECO INC., as Sellers' Representatives
and
STEM, INC.

dated as of
December 16, 2021

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STOCK PURCHASE AGREEMENT

This **STOCK PURCHASE AGREEMENT** (this "**Agreement**"), dated as of December 16, 2021 is entered into among (i) the Persons named on Exhibit "A" (each individually a "**Seller**" and, collectively, the "**Sellers**"), (ii) Robert Schaefer and Clairvest GP Manageco Inc. (the "**Sellers' Representatives**"), and (iii) **Stem, Inc.**, a Delaware corporation (the "**Buyer**").

Recitals

WHEREAS, each Seller owns the number of shares of (i) Series A Common Stock, $0.0001 par value, (ii) Series B Common Stock, $0.0001 par value (iii) Series A Preferred Stock, $0.0001 par value, and (iv) Series B Preferred Stock, $0.0001 par value, set forth opposite his, her, or its name in columns (B), (C), (D) and (E), on the attached Exhibit "A" and at Closing, following the Pre-Closing Reorganization, each Seller will own the number of shares of Common Stock, no par value, set forth opposite such Seller's name on the Final Allocation Schedule as determined in a manner consistent with the Allocation Spreadsheet which shares (the "**Shares**"), together with the Series B Preferred Stock to be purchased pursuant to Section 2.5(a)(viii) below, will comprise all of the issued and outstanding shares of capital stock of Also Energy Holdings, Inc., a Delaware corporation (the "**Company**");

WHEREAS, Buyer desires to purchase from each Seller, and each Seller desires to sell to Buyer, all of the Shares of the Company owned by him, her, or it, on the terms and subject to the conditions set forth herein;

WHEREAS, as a condition and inducement to Buyer's willingness to enter into this Agreement, Robert Schaefer will enter into an employment agreement with Buyer on the Closing Date based on the terms set forth in the term sheet attached as Exhibit "F" hereto (the "**Employment Agreement**");

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

A. Definitions

The following terms have the meanings specified or referred to in this Article 1:

"**AAA**" has the meaning set forth in Section 9.13.

"**Action**" means any claim, action, suit, inquiry, proceeding, audit or investigation by or before any Governmental Authority, or any other arbitration, mediation or similar proceeding.

"**Affiliate**" means (whether capitalized or not), with respect to any Person, any other Person that, directly or indirectly, through one or more intermediaries, Controls, is Controlled by, or is under common Control with, such first Person.

"**Affiliate Agreements**" has the meaning set forth in Section 3.22.

"**Aggregate Option Exercise Price**" means the aggregate exercise price of all Options that are outstanding immediately prior to Closing.

"**Aggregate Option Cash Consideration**" has the meaning set forth in Section 2.5(a)(vi).

"**Allocation Spreadsheet**" means the Excel spreadsheet titled "ASPEN SPA Schedules v09 (2021.12.15)" delivered to Buyer by Sellers' Representative concurrently with the execution of this Agreement.

"**Agreement**" has the meaning set forth in the preamble.

"**Anti-Bribery Laws**" has the meaning set forth in Section 3.23.

"**Applicable Accounting Principles**" has the meaning set forth in the definition of Net Working Capital.

"**Audited Financial Statements**" means the audited consolidated financial statements of the Company and its Subsidiaries prepared in accordance with GAAP for the years ended December 31, 2020, 2019 and 2018 including a balance sheet of the Company as at the last day of such period, the statement of earnings and deficit and the statement of cash flow of the Company for the period then ended and the notes thereto, together with all related notes and schedules thereto, accompanied by the reports thereon of the Sellers' independent auditors, copies of which financial statements have been made available to Buyer.

"**Balance Sheet**" means the consolidated balance sheet of the Company and its Subsidiaries as of the Balance Sheet Date.

"**Balance Sheet Date**" has the meaning set forth in the definition of "Unaudited Financial Statements" in this Article 1.

"**Benefit Plan**" has the meaning set forth in Section 3.18(a).

"**Business**" means the business of the Company and its Subsidiaries as currently conducted, including, providing asset management, monitoring, control, operational data analytics, operational portfolio management platform services and data for purposes of financial reporting on a portfolio-level basis for the photovoltaic markets spanning the residential, commercial, industrial and utility sectors and any part thereof that monitor and manage renewable energy systems.

"**Business Day**" means any day other than Saturday, Sunday or any statutory or civic holiday on which commercial banking institutions located in the State of Colorado, State of New York or the Province of Ontario are authorized or required by Law to be closed.

"**Buyer**" has the meaning set forth in the preamble.

"**Buyer 30-Day VWAP**" means the simple average of the volume weighted average price of the Buyer's common stock for each trading day in December of 2021.

"**Buyer Benefit Plans**" has the meaning set forth in Section 5.4(b).

"**Buyer Common Stock**" means the common stock of the Buyer.

"**Buyer Disclosure Schedules**" means the disclosure schedules delivered by the Buyer concurrently with the execution and delivery of this Agreement.
"**CARES Act**" means the Coronavirus Aid, Relief, and Economic Security Act of 2020 (H.R. 748) and any similar or successor Law or executive order or executive memo (including the Memorandum on Deferring Payroll Tax Obligations in Light of the Ongoing COVID-19 Disaster, dated August 8, 2020, and IRS Notice 2020-65) in any U.S. jurisdiction, and any subsequent Law intended to address the consequences of COVID-19, including the Health and Economic Recovery Omnibus Emergency Solutions Act and the Health, Economic Assistance, Liability, and Schools Act.
"**Cash**" means all cash, cash equivalents and marketable securities of the Company determined in accordance with GAAP; *provided*, *however*, that Cash shall not include the amount of checks, drafts and wire transfers, in each case, to the extent issued but uncleared, by the Company as of immediately prior to the Closing and any Restricted Cash.
"**Clairvest Entities**" means, collectively, Clairvest Equity Partners V Limited Partnership, Clairvest Equity Partners V-A Limited Partnership and CEP V Co-Investment Holdings Limited Partnership.
"**Closing**" has the meaning set forth in Section 2.4.
"**Closing Date**" has the meaning set forth in Section 2.4.
"**Closing Date Net Working Capital**" has the meaning set forth in Section 2.7(a).
"**Closing Debt**" has the meaning set forth in Section 2.7(a).
"**Closing Purchase Price Amount**" has the meaning set forth in Section 2.7(a).
"**Closing Purchase Price Statement**" has the meaning set forth in Section 2.3.
"**Closing Transaction Expenses**" has the meaning set forth in Section 2.7(a).
"**Code**" means the Internal Revenue Code of 1986, as amended.
"**Common Stock**" means, collectively, the Series A Common Stock and the Series B Common Stock.
"**Company**" has the meaning set forth in the recitals.
"**Company Continuing Employee**" has the meaning set forth in Section 5.4(a).
"**Company Intellectual Property**" means Intellectual Property that is used by or currently being developed for use in the Business by the Company or its Subsidiaries.
"**Company Registered Intellectual Property**" has the meaning set forth in Section 3.12(a).
"**Competing Transaction**" has the meaning set forth in Section 5.15.
"**Confidentiality Agreement**" means that certain Confidentiality Agreement dated as of September 14, 2021 by and between Buyer and William Blair & Company, L.L.C., on behalf of the Company.
"**Contract**" means any written or oral agreement, commitment, engagement, contract, franchise, license, lease, obligation, note, bond, mortgage, indenture, undertaking or joint venture to which the Company or any of its Subsidiaries is a party or by which the Company or any of its Subsidiaries is bound or affected or to which any of their respective properties or assets is subject.
"**Control**":

a. when applied to the relationship between a Person and a company, means the beneficial ownership by that Person at the relevant time of stock, units, securities or other equity interests of that company carrying more than the greater of (i) a majority of the voting rights ordinarily exercisable at meetings of shareholders or members of that company and (ii) the percentage of voting rights ordinarily exercisable at meetings of shareholders or members of that company that are sufficient to elect a majority of the directors or managers, as applicable;

b. when applied to the relationship between a Person and a partnership or joint venture, means the beneficial ownership by that Person at the relevant time of more than fifty percent (50%) of the ownership interests of the partnership or joint venture in circumstances where it can reasonably be expected that that Person directs the affairs of the partnership or joint venture; and
c. when applied to the relationship between a Person and a limited partnership, means that Person is the general partner of, or Controls the general partner of, such limited partnership.

"**COVID-19**" means SARS-CoV-2 or COVID-19, and any evolutions, variants or mutations thereof or related or associated epidemics, pandemics or disease outbreaks.

"**COVID-19 Measures**" means any quarantine, "shelter in place", "stay at home", workforce reduction, social distancing, shut down, closure, sequester, safety or similar Law, guideline or recommendations by any Governmental Authority, including the Centers for Disease Control and Prevention and the World Health Organization or other reasonable actions taken, in each case, in connection with or in response to COVID-19 and any evolutions, variants or mutations thereof or related or associated epidemics, pandemics or disease outbreaks, including the CARES Act and Families First Coronavirus Response Act or any disaster plan of the Company or its Subsidiaries or any change in applicable Laws related thereto or in connection therewith.

"**Data Room**" means the electronic documentation site established by Donnelly Financial Solutions, as in effect at 11:59 p.m. (ET) on the date that is two (2) Business Days prior to the date hereof.

"**Debt**" means (i) all indebtedness for borrowed money, all indebtedness represented by bonds, debentures, notes, or similar instruments, (ii) all obligations of such Person to pay the deferred purchase price of property or services, excluding trade payables incurred in the ordinary course of business, (iii) all obligations with respect to interest-rate hedging, swaps or similar financial arrangements (valued at the termination value thereof and net of all payments owed to the Company or its Affiliates thereunder), (iv) any liability in respect of accrued but unpaid bonuses for the prior fiscal year and for the period commencing on first day of fiscal year and ending on the Closing Date, and any employment Taxes payable by the Company or any of its Subsidiaries with respect to the foregoing, (v) all unpaid management fees and accrued but unpaid dividends or distributions to equityholders of the Company, (vi) all indebtedness created or arising under any conditional sale or other title retention agreement with respect to property acquired by the Company or any of its Subsidiaries, (vii) the pre-Closing income Tax liabilities of the Company and its Subsidiaries, to the extent unpaid at Closing, (viii) all liabilities and obligations for the deferred purchase price of property or services, whether contingent or absolute, and including any conditional sale, title retention agreement, earn-outs, revenue sharing payments or transaction, retention or similar bonuses payable in connection therewith, (ix) the amount of any payroll Taxes of the Company or its Subsidiaries deferred pursuant to the CARES Act or similar Laws, and (x) any unpaid principal amount of accrued interest, premiums, breakage fees, penalties and other fees, expenses (if any), and other payment obligations and amounts due (including such amounts that would become due as a result of the consummation of the transactions contemplated by this Agreement), in each case, in respect of the foregoing liabilities and obligations; *provided that* for greater certainty "Debt" shall not include deferred revenue of the Company or any items that are included in the calculation of Net Working Capital or Transaction Expenses.

"**Deficiency**" has the meaning set forth in Section 2.8(b)(ii).

"**Disclosure Schedules**" means the disclosure schedules delivered by Sellers concurrently with the execution and delivery of this Agreement.

"**Dispute Notice**" has the meaning set forth in Section 2.7(c).
"**Employment Agreement**" has the meaning set forth in the recitals.
"**Encumbrance**" means any lien, pledge, mortgage, deed of trust, security interest, charge, claim, easement, encroachment or other similar encumbrance.
"**Environmental Law**" means any applicable Law, and any Governmental Order or binding agreement with any Governmental Authority: (a) relating to pollution (or the cleanup thereof) or the protection of natural resources, endangered or threatened species, human health or safety, or the environment (including ambient air, soil, surface water or groundwater, or subsurface strata); or (b) concerning the presence of, exposure to, or the management, manufacture, use, containment, storage, recycling, reclamation, reuse, treatment, generation, discharge, transportation, processing, production, disposal or remediation of any Hazardous Materials. The term "Environmental Law" includes, without limitation, the following (including their implementing regulations and any state analogs): the *Comprehensive Environmental Response, Compensation, and Liability Act of 1980*, as amended by the *Superfund Amendments and Reauthorization Act of 1986*, 42 U.S.C. §§ 9601 et seq.; the *Solid Waste Disposal Act*, as amended by the *Resource Conservation and Recovery Act of 1976*, as amended by the *Hazardous and Solid Waste Amendments of 1984*, 42 U.S.C. §§ 6901 et seq.; the *Federal Water Pollution Control Act of 1972*, as amended by the *Clean Water Act of 1977*, 33 U.S.C. §§ 1251 et seq.; the *Toxic Substances Control Act of 1976*, as amended, 15 U.S.C. §§ 2601 et seq.; the *Emergency Planning and Community Right-to-Know Act of 1986*, 42 U.S.C. §§ 11001 et seq.; the *Clean Air Act of 1966*, as amended by the *Clean Air Act Amendments of 1990*, 42 U.S.C. §§ 7401 et seq.; and the *Occupational Safety and Health Act of 1970*, as amended, 29 U.S.C. §§ 651 et seq.
"**Equity Security**" means, as applicable, (a) any capital stock, membership interests or other share or equity capital, (b) any securities directly or indirectly convertible into, exercisable for or exchangeable for any capital stock, membership interests or other share or equity capital or containing any profit participation features, (c) any rights, options, puts, pledges, warrants directly or indirectly to subscribe for or to purchase any capital stock, membership interests, other share or equity capital or securities containing any profit participation features or to subscribe for or to purchase any securities directly or indirectly convertible into, exercisable for or exchangeable for any capital stock, membership interests, other share or equity capital or securities containing any profit participation features or (d) any share, interest or unit appreciation rights, phantom share rights or other similar rights.
"**ERISA**" means the *Employee Retirement Income Security Act of 1974*, as amended, and the regulations promulgated thereunder.
"**ERISA Affiliate**" means any trade or business, whether or not incorporated, under common control with the Company or any of its Subsidiaries and that, together with the Company or any of its Subsidiaries, is treated as a single employer within the meaning of Section 414(b), (c), (m) or (o) of the Code.
"**Escrow Agent**" means Citibank, N.A.
"**Escrow Agreement**" means the escrow agreement to be entered into on the Closing Date by and among the Escrow Agent, Buyer and Sellers' Representatives, substantially in the form of Exhibit "C" attached hereto, with such changes proposed by the Escrow Agent (if any) that are reasonably acceptable to Buyer and Sellers' Representatives.
"**Escrow Amount**" means two million dollars ($2,000,000), to be held in accordance with the terms of the Escrow Agreement.
"**Estimated Cash**" means the Sellers' good faith estimate of Cash as of immediately prior to the Closing.

"**Estimated Debt**" means Sellers' good faith estimate of Debt as of immediately prior to the Closing.
"**Estimated Net Working Capital**" means Sellers' good faith estimate of Net Working Capital as of immediately prior to the Closing.
"**Estimated Purchase Price**" has the meaning set forth in Section 2.3.
"**Estimated Transaction Expenses**" means Sellers' good faith estimate of Transaction Expenses as of the Closing.
"**Final Allocation Schedule**" means a schedule to be delivered to the Buyer concurrently with the Closing Purchase Price Statement setting forth the number of shares of Buyer Common Stock and the amount of cash to be paid or issued to each Seller and Optionholder in exchange for their Common Stock, Options and Series B Preferred Stock, which shall be prepared in accordance with the Allocation Spreadsheet, the Preliminary Allocation Schedule and Section 2.6, as applicable.
"**Final Closing Statement**" has the meaning set forth in Section 2.8(a).
"**Final Purchase Price**" has the meaning set forth in Section 2.8(a).
"**Financial Statements**" means the Audited Financial Statements and the Unaudited Financial Statements.
"**FIRPTA Certificate**" means a duly executed certificate of the Company in customary form in compliance with Treasury Regulations Section 1.1445-2(c)(3) certifying that the Shares are not, and have not been at any time during the applicable period specified in Section 897(c)(1)(A)(II) of the Code, a "United States real property interest" within the meaning of Section 897(c) of the Code.
"**Fully Diluted Shares**" means the aggregate number of Shares outstanding at the Closing assuming the exercise of all Options that are outstanding immediately prior to the Closing (which number of Shares will be confirmed to Buyer by Sellers' Representatives in writing not later than four (4) Business Days prior to the Closing Date).
"**Fundamental Representations**" means the representations set forth in Section 3.1 (Ownership of Shares), other than Section 3.1(c), Section 3.2 (Organization and Authority of Sellers), Section 3.3 (Organization and Qualification of the Company), Section 3.4 (Capitalization) and Section 3.24 (Brokers).
"**GAAP**" means accounting principles generally accepted in the United States, as consistently applied throughout the relevant period.
"**Governmental Authority**" means any federal, state, local or foreign government or political subdivision thereof, or any agency or instrumentality of such government or political subdivision, or any self-regulated organization or other non-governmental regulatory authority or quasi-governmental authority (to the extent that the rules, regulations or orders of such organization or authority have the force of Law), or any arbitrator, court or tribunal of competent jurisdiction.
"**Governmental Order**" means any order, writ, judgment, injunction, decree, stipulation, determination or award entered by or with any Governmental Authority.
"**Harmful Code**" is any "back door," "drop dead device," "time bomb," "Trojan horse," "virus," or "worm" (as such terms are commonly understood in the software industry) or any other code designed or intended to maliciously undertake any of the following functions: (i) disrupting, disabling, harming, or otherwise impeding in any manner the operation of, or providing unauthorized access to, a computer system or network or other device on which such code is stored or installed; or (ii) damaging or destroying any data or file without the user's consent.
"**Hazardous Materials**" means: (a) any material, substance, chemical, waste, product, derivative, compound, mixture, solid, liquid, mineral or gas, in each case, whether naturally

occurring or man-made, that is hazardous, acutely hazardous, toxic, or words of similar import or regulatory effect under Environmental Laws; and (b) any petroleum or petroleum-derived products, radon, radioactive materials or wastes, asbestos in any form, lead or lead-containing materials, urea formaldehyde foam insulation and polychlorinated biphenyls.

"**HSR Act**" means the *Hart-Scott-Rodino Antitrust Improvements Act of 1976*, as amended, and the rules and regulations promulgated thereunder.

"**Independent Accountant**" means PricewaterhouseCoopers LLP or, if it is unable to serve, Buyer and Sellers' Representatives shall appoint by mutual agreement the office of an impartial nationally recognized firm of independent certified public accountants other than Sellers' accountants or Buyer's accountants.

"**Insurance Policies**" has the meaning set forth in Section 3.14.

"**Intellectual Property**" means all intellectual property rights and assets, and all rights, interests and protections that are associated with, similar to, or required for the exercise of, any of the foregoing, however arising, pursuant to the Laws of any jurisdiction throughout the world, whether registered or unregistered, including any and all: (a) trademarks, service marks, trade names, brand names, logos, trade dress, design rights (including, without limitation, in relation to hardware design) and other similar designations of source, sponsorship, association or origin, together with the goodwill connected with the use of and symbolized by, and all registrations, applications and renewals for, any of the foregoing; (b) Internet domain names, whether or not trademarked or registered, web addresses, web pages, websites and related content, accounts with Twitter, Facebook and other social media companies and the content found thereon and related thereto, and URLs; (c) works of authorship, expressions, designs and design registrations, whether or not copyrightable, and all registrations, applications for registration and renewals of such copyrights; (d) inventions, discoveries, trade secrets, business and technical information and know-how, databases, data collections and other confidential and proprietary information and all rights therein; and (e) software and firmware, including data files, source code, object code, application programming interfaces, architecture, files, records, schematics, computerized databases and other related specifications and documentation.

"**International Plan**" has the meaning set forth in Section 3.18(a).

"**IRS**" has the meaning set forth in Section 3.18(a).

"**IT Systems**" means the computer, information technology, and data processing systems, facilities and services used and controlled by the Company and/or its Subsidiaries in the conduct of its Business, including all software, systems hardware, networks, interfaces, platforms and related systems and services.

"**Knowledge of Sellers or Sellers' Knowledge**" or any other similar knowledge qualification, means the actual knowledge, after reasonable inquiry, of Robert Schaefer, Holden Caine, Brian Musfeldt, Kevin Smart, Dan Sweeney and Matthew Brocklehurst.

"**Law**" means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, other requirement or rule of law of any Governmental Authority.

"**Losses**" means actual out-of-pocket losses, damages, liabilities, Taxes, costs or expenses, including reasonable attorneys' fees.

"**Management Sellers**" means, collectively, Robert Schaefer, Holden Caine, Ali Seymen Ertaş, Jennifer Park and William Kevin Smart.

"**Material Adverse Effect**" means any event, occurrence, fact, condition or change that is, or would reasonably expected to be, individually or in the aggregate, materially adverse to (a) the business, results of operations, financial condition or assets of the Company and its Subsidiaries taken as a whole, or (b) the ability of Sellers to consummate the transactions contemplated hereby; *provided* that, with respect to the foregoing clause (a) only, "Material Adverse Effect"

shall not include any event, occurrence, fact, condition or change, directly or indirectly, to the extent arising out of or attributable to: (A) general economic or political conditions; (B) conditions generally affecting the industries in which the Company and its Subsidiaries operate; (C) any changes in financial, banking or securities markets in general, including any disruption thereof and any decline in the price of any security or any market index or any change in prevailing interest rates; (D) acts of war (whether or not declared), armed hostilities or terrorism, or the escalation or worsening thereof; (E) any natural or man-made disaster, illness, disease, epidemic, pandemic (including COVID-19 or any COVID-19 Measures or other restrictions to the extent relating to, or arising out of, any outbreak of illness, epidemic, pandemic, or other public health event (including COVID-19) or any material worsening of any of the foregoing), or acts of God, or any escalation or worsening thereof; (F) any acts or omissions of Buyer or any of its Affiliates; (G) any changes in applicable Laws or accounting rules (including GAAP) or the enforcement, implementation or interpretation thereof first publicly announced or proposed after the date hereof; (H) the announcement, pendency or completion of the transactions contemplated by this Agreement, including losses or threatened losses of employees, customers, suppliers, distributors or others having relationships with the Company; or (I) any failure by the Company to meet any internal or published projections, forecasts or revenue or earnings predictions (provided that the underlying causes of such failures (subject to the other provisions of this definition) shall not be excluded); *provided*, that any event, occurrence, fact, condition or change referred to in clauses (i)(A) through (E) shall be taken into account in determining whether a "Material Adverse Effect" has occurred to the extent that such event, occurrence, fact, condition or change has a material and disproportionate effect on the Company and its Subsidiaries (taken as a whole) compared to other participants in the industries in which the Business is conducted.

"**Material Contracts**" has the meaning set forth in Section 3.10(a).

"**Material Customer**" means the top ten (10) customers by revenue of the Business for the fiscal year ending on December 31, 2020 and for the ten (10) month period ending October 31, 2021.

"**Material Supplier**" means entities with which the Company or its Subsidiaries have an agreement for the supply of goods or services pursuant to which the Company or its Subsidiaries are reasonably expected to make payments in excess of five hundred thousand dollars ($500,000) per year or any single-source supplier on whom the Company or its Subsidiaries is commercially dependent.

"**Net Working Capital**" means the consolidated current assets of the Company and its Subsidiaries determined as of immediately prior to the Closing less the consolidated current liabilities of the Company and its Subsidiaries as of immediately prior to the Closing, in each case, determined in accordance with GAAP and applied consistent with the methodologies, practise and principles set forth in the Reference Schedule (provided, that in the event of a conflict between GAAP and such methodologies, the Reference Schedule shall control, except to the extent that individual line items in the Reference Schedule are not calculated in accordance with GAAP (in which case GAAP shall control with respect to the calculation of those individual line items)(the "**Applicable Accounting Principles**")) and which, for greater certainty, shall not include any items that are included in Cash, Debt or Transaction Expenses and shall not include any deferred revenue, deferred rent, current or deferred Tax assets or current or deferred Tax liabilities.

"**Net Working Capital Target**" means eight million two hundred and seventy-two thousand dollars ($8,272,000).

"**Non-Specified Optionholder**" means any Optionholder that is not a Specified Optionholder.

"**Non-Specified Option Cash Consideration**" has the meaning set forth in Section 2.6(a)(ii).

"**Open Source Code**" means Open Source Software, or the code thereof. Open Source Software and Open Source Code include software and code, respectively, that is licensed under any license that conforms to the Open Software Initiative (OSI) definition of open source software, and any versions of the GNU General Public License, GNU Lesser General Public License, Mozilla License, Common Public License, Apache License, BSD License, Artistic License or Sun Community Source License.
"**Option**" means an option to purchase a share of Common Stock granted pursuant to the Stock Option Plan.
"**Option Consideration**" means the Non-Specified Option Cash Consideration, the Specified Option Cash Consideration and the Specified Option Stock Consideration.
"**Optionholder**" means a holder of Options.
"**Outside Date**" means June 16, 2022.
"**Permits**" means all permits, licenses, franchises, approvals, authorizations, waivers, concessions, exemptions, orders, registrations, notices and consents required to be obtained from Governmental Authorities.
"**Permitted Encumbrances**" has the meaning set forth in Section 3.11(a).
"**Person**" means an individual, corporation, partnership, joint venture, limited liability company, Governmental Authority, unincorporated organization, trust, association or other entity.
"**Personal Information**" means any information defined as "personal data", "personally identifiable information" or "personal information," any substantial equivalent of these terms, or any other protected information, as defined under any Privacy Laws, including any information that identifies, relates to, describes, is reasonably capable of being associated with, or could reasonably be linked with any individual or household.
"**Post-Closing Statement**" has the meaning set forth in Section 2.7(a).
"**Pre-Closing Reorganization**" has the meaning set forth in Section 5.17.
"**Pre-Closing Tax Liability Amount**" means, without duplication, all unpaid liabilities for Taxes of the Company and its Subsidiaries (whether or not yet due) with respect to any Pre-Closing Tax Period or portion thereof, and the amount of any payroll taxes deferred under the CARES Act; *provided*, that the Pre-Closing Tax Liability Amount shall (a) with respect to the portion of any Straddle Period, be calculated consistent with the principles of Section 5.13(b), (b) take into account any Taxes of the Company or any of its Subsidiaries arising from the inclusion of any item of income in, or the exclusion of any item of deduction or expense from, taxable income for any taxable period (or portion thereof) ending after the Closing, in either case, to the extent resulting from an action or election taken or made before the Closing, or otherwise attributable to any Pre-Closing Tax Period, including, for the avoidance of doubt, any Taxes on revenue accrued as of the Closing or any payments received on or prior to the Closing, (c) be calculated in accordance with the past practice (including reporting positions, jurisdictions and types of Taxes, elections and accounting methods) of the Company and its Subsidiaries in preparing Tax Returns, except to the extent not reportable at a "substantial authority" or higher standard, (d) exclude any Taxes attributable to transactions, other than the Pre-Closing Reorganization, entered into by the Company or any Subsidiary outside the ordinary course of business on the Closing Date after the Closing, and (e) be calculated by (x) assuming the Tax year of each Subsidiary of the Company that is a "controlled foreign corporation" within the meaning of Section 957 of the Code ends on the Closing Date, and using an interim closing of the books method for any partnership or other pass-through entity in which the Company holds a direct or indirect equity interest and (y) including Taxes required to be paid as a result of an election, if any, pursuant to Section 965(h) of Code (including any such Taxes that are required to be paid with respect to any Tax period ending after the Closing Date).

"**Pre-Closing Tax Period**" means any taxable year or period that ends on or before the Closing Date and, with respect to any Straddle Period, the portion of such Straddle Period ending on and including the Closing Date.
"**Preliminary Allocation Schedule**" means the schedule set forth in Exhibit "A" listing, for each Seller or Specified Optionholder,

a. in column (A), his, her or its name,
b. in columns (B) through (F), the number of shares of Series A Common Stock, Series B Common Stock, Series A Preferred Stock and Series B Preferred Stock owned by such Seller and/or Options owned by such Specified Optionholder on the date hereof, as applicable;
c. in column (G), the percentage of the Purchase Price that it will receive under this Agreement in the form of Buyer Common Stock (the "**Stock Percentage**"); and
d. in column (H), the percentage of the Purchase Price that it will receive under this Agreement in the form of cash (the "**Cash Percentage**").

"**Privacy Laws**" means any Laws and guidelines from Governmental Authorities relating to privacy, data security, data protection, sending solicited or unsolicited electronic mail and text messages, cookies, trackers and collection, processing, transfer, disclosure, sharing, storing, security and use of Personal Information as applicable in all relevant jurisdictions, including the European General Data Protection Regulation of April 27, 2016 (Regulation (EU) 2016/679) and/or any implementing or equivalent national Laws, the Brazilian General Data Protection Law (Lei Geral de Proteção de Dados Pessoais), as well as U.S. federal and state Laws, in particular the California Consumer Privacy Act of 2018, the California Privacy Rights Act, when applicable (and no later than as of January 1, 2023), and the New York SHIELD Act.
"**Pro Rata Share**" means the percentage for each Seller or Optionholder as set forth in the column with the heading "Pro Rata Share" on the Final Allocation Schedule, which percentage shall represent such Seller's or Optionholder's Fully Diluted Shares (for the avoidance of any doubt, excluding any shares of Series B Preferred Stock) of the equity securities of the Company (calculated in accordance with the Company's organizational documents).
"**Proprietary Product**" shall mean any product, technology or service currently being marketed, sold, licensed or developed by the Company or its Subsidiaries.
"**Purchase Price**" has the meaning set forth in Section 2.2.
"**Qualified Benefit Plan**" has the meaning set forth in Section 3.18(b).
"**Real Property**" means the real property owned, leased or subleased by the Company or any of its Subsidiaries, together with all buildings, structures and facilities located thereon.
"**Reference Schedule**" means the illustrative calculations of net Debt and Net Working Capital set forth on Exhibit "B".
"**Registration Rights and Lock-Up Agreement**" has the meaning set forth in 5.19(c).
"**Regulatory Law**" means the Sherman Act, as amended, the Clayton Act, as amended, the HSR Act, the Federal Trade Commission Act, as amended, and any other Law, domestic or foreign, that is designed or intended to prohibit, restrict or regulate (a) foreign investment or (b) actions having the purpose or effect of monopolization, restraint of trade or lessening of competition.
"**Related Party**," with respect to any specified Person, means: (i) any Affiliate of such specified Person, or any director, executive officer, general partner or managing member of such Affiliate; (ii) any Person who serves as a director, executive officer, partner, member or in a similar capacity of such specified Person; (iii) any immediate family member of a Person described in clause (ii); or (iv) any other Person who holds, individually or together with any Affiliate of such other Person and any member(s) of such Person's immediate family, more than 5% of the outstanding voting equity or ownership interests of such specified Person, but excluding, in the

case of the Clairvest Entities, any Person who is a limited partner of any limited partnership of which Clairvest Group Inc. (or an Affiliate thereof) acts as general partner.
"**Remaining Amount**" has the meaning set forth in Section 2.8(b)(ii).
"**Representative**" means, with respect to any Person, any and all directors, officers, employees, consultants, financial advisors, counsel, accountants and other agents of such Person.
"**Review Period**" has the meaning set forth in Section 2.7(b).
"**Restricted Cash**" means all Cash that is not freely useable and available to the Company because (i) it is subject to restrictions, limitations or taxes on use or distribution either by contract, for regulatory or legal purposes, or (ii) is Cash that is collected from customers in advance, is being held on behalf of customers and represents a liability to such customers, but excluding any deferred revenue.
"**SEC Documents**" has the meaning set forth in Section 4.6.
"**Security Incident**" means (a) the theft, loss, misuse, or unauthorized destruction or altercation of Personal Information or third party confidential information, (b) the accidental, unauthorized and/or unlawful access, disclosure or handling of Personal Information or third party confidential information, or (c) any other act or omission that materially compromises the security, confidentiality and/or integrity of Personal Information or third party confidential information, and includes, among other things, the loss of paper files and portable devices, such as laptops and CDs, containing personal data or third party confidential information.
"**Sellers**" has the meaning set forth in the preamble.
"**Sellers' Representatives**" has the meaning set forth in the preamble.
"**Sellers' Representatives Holdback Amount**" means $500,000.
"**Series A Common Stock**" means the shares of Series A common stock of the Company, with a par value of $0.0001 per share.
"**Series A Preferred Stock**" means the shares of Series A preferred stock of the Company, with a par value of $0.0001 per share.
"**Series B Common Stock**" means the shares of Series B common stock of the Company, with a par value of $0.0001 per share.
"**Series B Preferred Stock**" means the shares of Series B preferred stock of the Company, with a par value of $0.0001 per share.
"**Series B Preferred Stock Amount**" means the aggregate value of the cash and Buyer Common Stock (assuming a price per share equal to the Buyer 30-Day VWAP) payable to holders of Series B Preferred Stock in accordance with the organizational documents of the Company in connection with the transactions contemplated by this Agreement in exchange for their Series B Preferred Stock, which amount will be paid in accordance with Section 2.5(a)(viii) and as set forth in the Final Allocation Schedule.
"**Series C Preferred Stock**" means the shares of Series C preferred stock of the Company, with a par value of $0.0001 per share.
"**Settlement Date**" has the meaning set forth in Section 2.8(a).
"**Share Amount**" means an amount equal to the (i) sum of (x) the Estimated Purchase Price, and (y) the Aggregate Option Exercise Price, divided by (ii) the Fully Diluted Shares.
"**Shares**" has the meaning set forth in the recitals.
"**Specified Debt**" means the amount necessary to discharge the Debt set forth on Section 1.1(b) of the Disclosure Schedules on the Closing Date, which shall be the aggregate amount set forth in the payoff letters contemplated by Section 2.5(a)(ii).
"**Specified Option Cash Consideration**" has the meaning set forth in Section 2.6(b)(i).
"**Specified Option Stock Consideration**" has the meaning set forth in Section 2.6(b)(ii).

"**Specified Optionholder**" means Kevin Smart, Ali Seymen Ertas, Jennifer Park, Brian Musfeldt, Daniel Sweeney, Mesa Scharf, Matthew Brocklehurst, Olaf Donner and Sushain Sharma.
"**Stockholders' Agreement**" means the amended and restated stockholders' agreement of the Company dated April 15, 2021 by and among the Clairvest Entities, 2431334 Ontario Inc. and the Management Sellers.
"**Stock Option Plan**" means the Also Energy Holdings, Inc. Amended and Restated Stock Option Plan.
"**Straddle Period**" has the meaning set forth in Section 5.16(b).
"**Subsidiary**" means at any time, any partnership, limited partnership, joint venture, sole proprietorship, limited liability company, corporation or company with or without share capital, unincorporated association or trust Controlled, directly or indirectly, by the Company.
"**Surplus**" has the meaning set forth in Section 2.8(b)(i).
"**Taxes**" means (i) all federal, state, local, foreign and other income, gross receipts, sales, use, production, ad valorem, transfer, franchise, registration, profits, license, lease, service, service use, withholding, payroll, employment, social security (or similar, including FICA), unemployment, estimated, excise, severance, disability, environmental, stamp, occupation, premium, property (real or personal), real property gains, windfall profits, customs, value added, duties or other taxes, fees, assessments or charges of any kind whatsoever imposed by any Governmental Authority (whether imposed directly or through withholding), together with any interest, additions or penalties with respect thereto and any interest in respect of such additions or penalties, in each case, whether or not disputed, and (ii) any liability for payment of amounts described in clause (i) whether as a result of transferee, successor joint or secondary liability, of being a member of an affiliated, consolidated, combined or unitary group for any period, pursuant to a contractual obligation or otherwise through operation of Law.
"**Tax Return**" means any return, declaration, report, claim for refund, information return or statement or other document required to be filed with respect to Taxes, including any schedule or attachment thereto, and including any amendment thereof.
"**Transaction Expenses**" means, without duplication, any fees, costs and expenses incurred (whether or not invoiced or accrued for) or subject to reimbursement by or on behalf of the Company or its Subsidiaries, in each case in connection with the transactions contemplated by this Agreement (or any prior sale process of the Company) and not paid prior to the Closing, including any (a) brokerage fees, commissions, finders' fees, or financial advisory fees, and, in each case, related costs and expenses; (b) fees, costs and expenses of counsel, consultants, investment bankers, experts, auditors, accountants or other advisors or service providers; (c) unpaid amounts owing or that may become owed, payable or otherwise due, directly or indirectly, by the Company to Sellers' Representatives or any Seller or any Affiliate of any Seller; (d) fees, costs and expenses or payments of the Company related to any transaction bonus, discretionary bonus, stay bonus, change of control, retention, severance or other compensatory payment or employment cost not captured in Net Working Capital made to any current or former employee, officer, director or consultant of the Company or any of its Affiliates as a result of the transactions contemplated by this Agreement, including the employer portion of all Taxes accrued in connection therewith or otherwise payable in respect of the Options; (e) 50% of any Transfer Taxes due by the Company in connection with the transactions contemplated hereby; (f) the cost of the D&O Tail Policy; and (g) any fees or expenses associated with obtaining the release and termination of any Encumbrances in connection with the transactions contemplated hereby.

"**Treasury Regulations**" means the regulations, including temporary regulations and, to the extent taxpayers are permitted to rely on them, proposed regulations, promulgated under the Code.
"**Unaudited Financial Statements**" means the unaudited consolidated financial statements of the Company and its Subsidiaries for the nine (9)-month period ended September 30, 2021 (the "**Balance Sheet Date**"), including a balance sheet of the Company as at the last day of such period, the statement of earnings and deficit and the statement of cash flow of the Company for the period then ended.
"**WARN**" means the Worker Adjustment and Retraining Notification Act, and any comparable foreign, state or local Law.

A. Purchase and sale

a. Purchase and Sale

On and subject to the terms and conditions set forth herein, at the Closing, Buyer agrees (i) to purchase from each Seller, and each Seller agrees to sell, transfer, assign, convey and deliver, the number of Shares set forth opposite such Seller's name in the Final Allocation Schedule, and (ii) to cause the Company to purchase from each holder of Series B Preferred Stock, and each such holder agrees to transfer to sell, transfer, assign, convey and deliver to the Company, all of the Series B Preferred Stock set forth opposite such Seller's name in the Final Allocation Schedule (which Series B Preferred Stock, together with such Shares, shall constitute 100% of the capital stock of the Company at Closing), in each case free and clear of all Encumbrances.

a. Purchase Price

The aggregate purchase price for the Shares and Options to be paid by Buyer hereunder shall be equal to:

a. $695,000,000;
b. plus the amount, if any, by which the Closing Date Net Working Capital is greater than the Net Working Capital Target**;**
c. minus the amount, if any, by which the Closing Date Net Working Capital is less than the Net Working Capital Target**;**
d. minus the amount equal to the Closing Debt;
e. minus the amount equal to the Closing Transaction Expenses;
f. plus the amount equal to the Closing Cash;
g. minus the Escrow Amount;
h. minus the Sellers' Representative Holdback Amount; and
i. minus the Series B Preferred Stock Amount.

(the amount calculated pursuant to this Section, the "**Purchase Price**").

a. Estimated Purchase Price

a. The parties hereto agree that no later than four (4) Business Days prior to the anticipated Closing Date, Sellers' Representatives shall prepare and deliver a certificate to Buyer, certified by a senior officer of the Company setting forth (a) the Estimated Net Working Capital, (b) the Estimated Debt, (c) the Estimated Transaction Expenses (including the name, amount and wire instructions for each payee), (d) the Estimated Cash, and (e) Sellers' resulting

good faith calculation of the Purchase Price as of the Closing Date pursuant to Section 2.2 (such calculation, the "**Estimated Purchase Price**"), together with reasonable supporting detail (the "**Closing Purchase Price Statement**"). The Closing Purchase Price Statement will be prepared in accordance with this Agreement and the Applicable Accounting Principles. Buyer and its Representatives shall have a reasonable opportunity to review and to discuss with Sellers and their Representatives (i) the work papers used in the preparation of the Closing Purchase Price Statement and the calculation of the Estimated Net Working Capital, Estimated Debt, Estimated Transaction Expenses, and Estimated Cash, and (ii) the relevant books and records of the Company. Sellers and their Representatives shall reasonably assist Buyer and its Representatives in their review of the Closing Purchase Price Statement. Sellers' Representatives shall consider in good faith any comments or objections to any amounts set forth on the Closing Purchase Price Statement notified to it by Buyer prior to the Closing and if, prior to the Closing, Sellers' Representatives and Buyer agree to make any modification to the Closing Purchase Price Statement, then the Closing Purchase Price Statement as so modified shall be deemed to be the Closing Purchase Price Statement for purposes of calculating the Estimated Purchase Price. If Buyer and Sellers' Representatives fail to agree upon the amounts set forth in the Closing Purchase Price Statement at least two (2) Business Days prior to the anticipated Closing Date, then, subject to the satisfaction or waiver (if permissible) of the conditions set forth in Article 6 at the Closing, the Closing Date shall proceed at the agreed upon time (or at such time and on such date as otherwise contemplated by Section 2.4 hereof) and the Estimated Purchase Price set forth in the Closing Purchase Price Statement delivered by Sellers' Representatives shall be paid at the Closing. The Sellers acknowledge and agree that Buyer shall not be deemed to have agreed to any of the amounts or calculations set forth in the Closing Purchase Price Statement or the calculation of the components of the Estimated Purchase Price therein by virtue of having proposed any revisions (whether or not accepted) pursuant to the foregoing and the use of such Closing Purchase Price Statement (whether it includes any revisions proposed by Buyer or not) shall not in any way prejudice Buyer's right to disagree with, dispute or change any amount in the Post-Closing Statement delivered by Buyer pursuant to Section 2.6(a). For the avoidance of doubt, any failure of Buyer to raise any objection or dispute with respect to the Closing

Purchase Price Statement shall not in any way prejudice Buyer's right to disagree with, dispute or change any amount in the Post-Closing Statement delivered by Buyer pursuant to Section 2.6(a).

b. Concurrently with the delivery of the Closing Purchase Price Statement, the Company shall also deliver to Buyer the Final Allocation Schedule. The Sellers acknowledge and agree that Buyer shall be entitled to conclusively rely on the Final Allocation Schedule as setting forth a true, complete and accurate listing of all items set forth in and amounts and percentiles payable to the Sellers and Optionholders in connection with the transactions contemplated by this Agreement pursuant to the Stockholders Agreement and the Company's other organizational documents, regardless of any conflict between the Final Allocation Schedule and the actual provisions of such contracts and organizational documents, and that upon payment or issuances to the Sellers and Optionholders of the consideration set forth in the Final Allocation Schedule, and the payment of all other amounts contemplated in Section 2.5(a), Buyer shall be deemed to have satisfied its obligation to pay the Purchase Price under this Agreement (subject to any adjustment contemplated herein). The Sellers acknowledge and agree that under no circumstances shall the Buyer be responsible for paying any consideration in excess of the Purchase Price, as calculated in accordance with Section 2.2.

b. Closing

Subject to the terms and conditions of this Agreement, the purchase and sale of the Shares contemplated hereby (the "**Closing**") shall take place remotely via the electronic exchange of documents and signatures in "pdf" format on the second (2nd) Business Day after the last of the conditions to Closing set forth in Article 6 have been satisfied or waived (other than conditions which, by their nature, are to be satisfied on the Closing Date), or at such other time or on such other date or at such other place as Sellers' Representatives and Buyer may mutually agree upon in writing (the day on which the Closing takes place being the "**Closing Date**").

a. Closing Actions and Deliveries.

a. Buyer Actions and Deliveries. At the Closing, Buyer shall:

i. pay, on behalf of the Company and its Subsidiaries, as applicable, by wire transfer of immediately available funds, an amount sufficient to pay the amount of Estimated Transaction Expenses estimated by Sellers' Representatives in the Closing Purchase Price Statement (or otherwise agreed pursuant to Section 2.3) to each applicable Person identified by Sellers' Representatives that has submitted to Buyer a final invoice for such Estimated Transaction Expense and to the account or accounts specified by Sellers' Representatives at

least three (3) Business Days prior to the Closing Date;

ii. pay, on behalf of the Company, an amount equal to the Specified Debt to the extent set forth in the Payoff Letters delivered by Sellers' Representatives, by wire transfer of immediately available funds to the bank account or accounts specified by the holders of such Specified Debt in writing at least three (3) Business Days prior to the Closing Date;

iii. pay the Escrow Amount to the Escrow Agent to be held by the Escrow Agent in an escrow account in accordance with the terms of this Agreement and the Escrow Agreement;

iv. pay to the Sellers' Representatives an amount equal to the Sellers' Representatives Holdback Amount in cash to an account designated in writing by Sellers' Representatives no later than three (3) Business Days prior to the Closing Date;

v. pay to each Seller such Seller's Pro Rata Share of the Estimated Purchase Price, which will be satisfied by:

1. issuing, or causing to be issued, to each Seller such number of book-entry shares of Buyer Common Stock having a value equal to the quotient of (i) the product of (A) such Seller's Pro Rata Share of the Estimated Purchase Price, and (B) such Seller's Stock Percentage, divided by (ii) the Buyer 30-Day VWAP;
2. paying to each Seller directly by wire transfer of immediately available funds to the account(s) specified by Sellers' Representatives no later than three (3) Business Days prior to the Closing Date an amount in cash equal to the product of (i) such Seller's Pro Rata Share of the Estimated Purchase Price, and (ii) such Seller's Cash Percentage;

vi. pay to the Company the sum of the aggregate Non-Specified Option Cash Consideration and the aggregate Specified Option Cash Consideration (collectively, the "**Aggregate Option Cash Consideration**") in cash in accordance with Section 2.6;

vii. issue, or cause to be issued, to each Specified Optionholder such number of book-entry shares of Buyer Common Stock representing the applicable

Specified Option Stock Consideration as determined in accordance with Section 2.6 below;

viii. pay or issue to the applicable Sellers cash and Buyer Common Stock with a value equal to the Series B Preferred Stock Amount, which amount shall be allocated among the holders of such Series B Preferred Stock consistent with the Final Allocation Schedule, provided that the Final Allocation Schedule shall provide that:

1. 70% of the Series B Preferred Stock Amount payable to each holder of Series B Preferred Stock shall be satisfied in cash by wire transfer of immediately available funds to the account(s) specified by Sellers' Representatives no later than three (3) Business Days prior to the Closing Date; and
2. the remainder of the Series B Preferred Stock Amount payable to each holder of Series B Preferred Stock (the "**Remainder**") shall be satisfied through the issuance to such holder of a number of book-entry shares Buyer Common Stock equal to (A) the value of the Remainder payable to such holder, divided by (B) the Buyer 30-Day VWAP.

ix. deliver to Sellers' Representatives the Escrow Agreement, duly executed by Buyer; and

x. deliver to Sellers' Representatives the certificate contemplated by Section 6.3(c), duly executed by an authorized officer of Buyer.

b. Sellers' Actions and Deliveries. At the Closing, Sellers' Representatives shall deliver or cause to be delivered to Buyer (on behalf of Sellers):

i. the Escrow Agreement, duly executed by Sellers' Representatives;

ii. the Registration Rights and Lock-Up Agreement, duly executed by each Seller;

iii. the certificates contemplated by Section 6.2(c), duly executed by each Seller or an executive officer of each Seller, as applicable;

iv. stock certificates representing the Shares sold by Sellers pursuant to Section 2.1, duly endorsed in blank for transfer and any other appropriate instruments of transfer, in form and substance reasonably satisfactory to Buyer, to transfer the Shares to Buyer;

v. the written resignation of those officers and directors of the Company, effective as of the Closing Date, requested in writing by Buyer at least three (3) Business Days prior to the Closing, in form and substance reasonably satisfactory to Buyer;

vi. copies of payoff letters for the Specified Debt and any necessary Uniform Commercial Code authorizations or other releases as may be reasonably required to evidence the satisfaction of such Specified Debt, each in form and substance reasonably satisfactory to Buyer (collectively, the "**Payoff Letters**");

vii. an Option Termination Agreement in the form of Exhibit "D", (each, an "**Option Termination Agreement**"), duly executed by each Specified Optionholder and the Non-Specified Optionholders set forth on Schedule 2.5(b)(vii) of the Disclosure Schedules;

viii. an Accredited Investor Questionnaire, in a form reasonably satisfactory to the Buyer (each, and "**Accredited Investor Questionnaire**"), duly executed by each Seller and/or Specified Optionholder representing and confirming that such Seller and/or Specified Optionholder is an "accredited investor" as such term is defined in Rule 501(a) of Regulation D promulgated under the Securities Act;

ix. duly adopted resolutions of the Board of Directors of the Company (or a committee thereof) providing that each Option (whether or not vested and exercisable) that is outstanding and unexercised immediately prior to the Closing Date, shall be automatically converted into the right of the holder of such Option to receive from Buyer the consideration contemplated in Section 2.6;

x. the Employment Agreement, duly executed by Robert Schaefer; and

xi. the FIRPTA Certificate; and

xii. a valid, executed copy of IRS Form W-9 or applicable W-8 Form from each Seller.

b. Treatment of the Options

a. Each Option held by a Non-Specified Optionholder that is outstanding immediately prior to the Closing, whether vested or unvested, shall be cancelled as of the Closing and converted into the right of the applicable Optionholder to receive, subject to delivery to the Company and the Buyer

of an Option Termination Agreement, an amount equal to the product of:

i. the total number of Shares subject to such Option as of immediately prior to the Closing, and

ii. the excess, if any, of the Share Amount over the exercise price per share of such Option (the "**Non-Specified Option Cash Consideration**"),

and as of the Closing each Optionholder shall cease to have any rights with respect thereto, other than the right to receive the Non-Specified Option Cash Consideration (it being understood that any Option that is outstanding immediately prior to the Closing that has an exercise price per share that is equal to or greater than the Share Amount shall be cancelled as of the Closing without the payment of any consideration).

a. Each Option held by a Specified Optionholder that is outstanding immediately prior to the Closing, whether vested or unvested, shall be cancelled as of the Closing and converted into the right of the applicable Specified Optionholder to receive, subject to delivery to the Company and the Buyer of an Option Termination Agreement:

   i. an amount of cash equal to (A) the product of (x) the total number of Shares subject to such Option as of immediately prior to the Closing, and (y) the excess, if any, of the Share Amount over the exercise price per share of such Option multiplied by (B) such Specified Optionholder's Cash Percentage (the "**Specified Option Cash Consideration**"); and

   ii. such number of book-entry shares of Buyer Common Stock having a value equal to the (A) the product of (x) the total number of Shares subject to such Option as of immediately prior to the Closing, and (y) the excess, if any, of the Share Amount over the exercise price per share of such Option multiplied by (B) such Specified Optionholder's Stock Percentage, divided by (C) the Buyer 30-Day VWAP (the "**Specified Option Stock Consideration**");

b. At the Closing, Buyer shall pay the Aggregate Option Cash Consideration to the Company in cash, and Buyer shall cause the Company to pay the applicable portion of the Aggregate Option Cash Consideration, to each Optionholder on the Closing Date to the extent reasonably practicable during the next regularly scheduled payroll cycle of the Company, following the Closing Date through the Company's payroll system, in each case in a manner consistent with the Final Allocation Schedule, less any applicable withholding Taxes.

c. Notwithstanding the foregoing, at Sellers' Representatives' direction, the Final Allocation Schedule may allocate the aggregate amount of the Non-Specified Option Cash Consideration and the Specified Option Cash Consideration among the Optionholders in a manner that is different than would otherwise be determined pursuant to this Section 2.6 only to the extent that the Buyer receives prior written evidence satisfactory to the Buyer that any Optionholder disadvantaged or prejudiced by such re-allocation has consented to, and released any claims with respect to, such alternative allocation.

d. Prior to the Closing, the Company shall take all actions necessary to effectuate the provisions of this Section 2.6 and to ensure that neither Buyer nor its Affiliates will, as of the Closing, be bound by any rights under the Stock Option Plan or any other plan, program or arrangement for the issuance or grant of any interest in respect of the Shares or other rights in respect of the capital stock of the Company, except with respect to payment or issuance of the Option Consideration in accordance with Section 2.6.

e. Following Closing, Sellers' Representatives shall be entitled to deposit with the Company all or any portion of (i) the Sellers' Representative Holdback Amount deposited with Sellers' Representatives pursuant to Section 2.5(a)(iv), (ii) the Escrow Amount released to Sellers' Representative pursuant to Section 2.8(c), and (iii) the Surplus deposited with Sellers' Representative pursuant to Section 2.8(b)(i), to the extent any such amounts become payable to an Optionholder in connection with the transactions contemplated by this Agreement (provided that such Optionholder continues to be employed by the Company or its Subsidiaries on the date of such deposit). Upon receipt of such deposit by the Company, and delivery by Sellers' Representatives of written instructions to the Buyer with respect to the allocation of such amounts to the Optionholders (the "**Post-Closing Payment Instructions**"), Buyer agrees to cause the Company to pay the amounts so deposited to the Optionholders specified in such Post-Closing Payment Instructions through the Company's payroll system during the next regularly scheduled payroll cycle of the Company, in each case in a manner consistent with the Post-Closing Payment Instructions, less any applicable withholding Taxes; provided that Buyer shall have no liability to any Seller or Optionholder for delivery of such amounts in accordance with the Post-Closing Payment Instructions, and the Sellers' Representatives shall be solely responsible for any claims or liabilities relating to the same.

c. Post-Closing Statement.

a. Not later than ninety (90) calendar days after the Closing Date, Buyer shall cause to be prepared and delivered to Sellers' Representatives a statement, setting forth Buyer's good faith calculation of (A) Net Working Capital as of immediately prior to the Closing (the "**Closing Date Net Working Capital**"), (B) Debt as of immediately prior to the Closing (the "**Closing Debt**"), (C) Transaction Expenses as of the Closing (the "**Closing Transaction Expenses**"), (D) Cash as of immediately prior to the Closing (the "**Closing Cash**"), and (E) the resulting calculation of the Purchase Price (the "**Closing Purchase Price Amount**"), together with reasonable supporting detail (the "**Post-Closing Statement**"). The Post-Closing Statement shall be prepared in accordance with this Agreement and the Applicable Accounting Principles. Sellers shall and shall cause their Representatives to reasonably cooperate with Buyer and its Representatives to the extent required to prepare the Post-Closing Statement.

b. Upon receipt of the Post-Closing Statement, Sellers' Representatives shall have thirty (30) calendar days (the "**Review Period**") to review such Post-Closing Statement and related computations of the Closing Date Net Working Capital, the Closing Debt, the Closing Transaction Expenses, the Closing Cash, and the resulting Closing Purchase Price Amount. In connection with the review of the Post-Closing Statement, Buyer shall and shall cause its Representatives to reasonably cooperate with Sellers' Representatives and their Representatives and to provide Sellers' Representatives and their Representatives reasonable access to the individuals responsible for the preparation of the Post-Closing Statement and the relevant work papers of Buyer and their Representatives used in connection with the preparation of the Post-Closing Statement.

c. If Sellers' Representatives notify Buyer that Sellers' Representatives agree with the Post-Closing Statement within the Review Period or fail to deliver notice to Buyer of their disagreement therewith within such Review Period, the Post-Closing Statement shall be conclusive and binding on Sellers and Buyer and the parties hereto (absent fraud or manifest error) shall be deemed to have agreed thereto, in the first case, on the date Buyer receive the notice and, in the second case, on such thirtieth (30th) day and the Post-Closing Statement shall be deemed the Final Closing Statement for purposes of Section 2.8. If Sellers' Representatives have any objection to the Post-Closing Statement on the basis that the Post-Closing Statement or

any element thereof contains computational errors or was not prepared in accordance with this Agreement and the Applicable Accounting Principles, then Sellers' Representatives shall notify Buyer of their disagreement within such thirty (30) day period together with reasonable particulars and supporting detail of the basis of such dispute in writing (the "**Dispute Notice**"), including Sellers' Representatives' position on the amounts in dispute and the reasons supporting Sellers' Representatives' position. In such event, Sellers' Representatives and Buyer shall attempt, in good faith, to resolve their differences with respect thereto within thirty (30) days after the receipt by Buyer or Sellers' Representatives' Dispute Notice. Any component of the Closing Purchase Price Amount not identified by the Sellers' Representatives as being in dispute in the Dispute Notice shall be conclusive and binding on the Sellers and the Buyer (absent fraud or manifest error).

d. Any disagreement over the Post-Closing Statement on the basis referred to in Section 2.7(c) not resolved by Buyer and Sellers' Representatives within such thirty (30)-day period shall be submitted to the Independent Accountant, acting as an expert and not as an arbitrator, to determine such dispute, and such determination shall be final, binding and non-appealable by the parties hereto (absent fraud or manifest error); *provided*, that the foregoing shall not prohibit any party to this Agreement from bringing any Action seeking an injunction or specific performance (x) in connection with an actual or threatened breach by a party of the terms and conditions set forth in this Section 2.6 or (y) to enforce any final determination by the Independent Accountant, in each case, in any court or other tribunal of competent jurisdiction and otherwise in accordance with Section 9.13. The Independent Accountant shall only consider those items identified on the Dispute Notice that remain in dispute after the thirty (30) day negotiation period. The Independent Accountant shall allow Buyer and Sellers' Representatives to present their respective positions regarding the dispute (provided that, for greater certainty, such presentations are limited to matters described in Sellers' Representatives' Dispute Notice that remain in dispute). In resolving any dispute, the Independent Accountant shall apply the definitions and provisions of this Agreement concerning determination of the amounts set forth in the Post-Closing Statement and the decision of the Independent Accountant shall be solely based on whether (i) such item objected to was prepared in accordance with the guidelines set forth in this Agreement,

including the Applicable Accounting Principles, or (ii) the item objected to contains a computational error. The Independent Accountant's determination shall be made solely in accordance with the terms and procedures set forth in this Agreement and based solely on the presentations and supporting materials provided by Buyer and Sellers' Representatives in accordance with the terms and procedures set forth in this Agreement (i.e., not on the basis of an independent review). Within five (5) calendar days of the appointment of the Independent Accountant, the Independent Accountant shall set a schedule for written submissions, which submissions shall be transmitted simultaneously to the Independent Accountant and Buyer or Sellers' Representatives, as the case may be. The Independent Accountant may not assign a value to any item greater than the greatest value for such item claimed by Buyer or Sellers' Representatives or less than the smallest value for such item claimed by Buyer or Sellers' Representatives. Buyer and Sellers' Representatives shall use commercially reasonable efforts to cause the Independent Accountant to complete its work and render its determination within twenty (20) calendar days after the submission of any dispute to the Independent Accountant. The fees and disbursements of the Independent Accountant shall be allocated between Buyer, on the one hand, and Sellers' Representative based on the percentage which the portion of the contested amount not awarded to each party bears to the amount actually contested by or on behalf of such party.

d. Post-Closing Adjustment.
    a. The Post-Closing Statement as agreed by Buyer and the Sellers' Representatives or as determined by the Independent Accountant is referred to herein as the "**Final Closing Statement**" and (i) the Net Working Capital set forth on such Final Closing Statement shall be deemed the final Net Working Capital, (ii) the Debt set forth on such Final Closing Statement shall be deemed the final Debt, (iii) the Transaction Expenses set forth on such Final Closing Statement shall be deemed the final Transaction Expenses, (iv) the Cash set forth on such Final Closing Statement shall be deemed the final Cash, and (v) the Purchase Price set forth on such Final Closing Statement shall be deemed the final Purchase Price (the "**Final Purchase Price**"). On the fifth (5th) Business Day following the determination of the Final Closing Statement (the "**Settlement Date**"), the payments contemplated by Section 2.8(b) shall be made.
    b. On the Settlement Date,

i. if the Final Purchase Price is greater than the Estimated Purchase Price (such difference, the "**Surplus**"), Buyer shall deposit, or cause to be deposited, with Sellers' Representatives, by wire transfer of immediately available funds to the account specified by Sellers' Representatives, an amount equal to such Surplus; and

ii. if the Final Purchase Price is less than the Estimated Purchase Price (such difference the "**Deficiency**"), then Buyer and Sellers' Representatives shall cause the Escrow Agent to release an amount of cash equal to the Deficiency from the Escrow Amount to Buyer, by wire transfer of immediately available funds to an account designated in writing by Buyer to Sellers' Representatives and the Escrow Agent; *provided*, that to the extent that the Deficiency is greater than the Escrow Amount (such difference the "**Remaining Amount**"), then Sellers' Representative shall also pay an amount of cash equal to the Remaining Amount concurrently with the foregoing release by the Escrow Agent by wire transfer of immediately available funds to an account designated in writing by Buyer to Sellers' Representatives.

c. Subsequent to the adjustments being made in accordance with this Section 2.8, the parties will direct the Escrow Agent to release the residual balance of the Escrow Amount to the Sellers' Representatives contemporaneously with the adjustments contemplated by this Section 2.8 in accordance with the Escrow Agreement.

e. Withholding.

Buyer (and any of its Affiliates and any applicable withholding agent) and the Company, as applicable, shall be entitled to deduct and withhold, or cause to be deducted and withheld, in good faith, from the consideration otherwise payable pursuant to this Agreement such amounts as it is required to deduct and withhold with respect to the making of such payment under applicable Law. To the extent that amounts are so deducted or withheld and paid to (or deposited with) the appropriate governmental authority, such withheld amounts shall be treated for all purposes of this Agreement as having been paid to such withholding payee in respect of which such deduction and withholding was made. Provided that the relevant Person has provided the Buyer or other applicable withholding agent a valid, executed IRS Form W-9 or W-8 reflecting that the relevant Person is not subject to backup withholding, prior to making any withholding, the Buyer shall (a) provide the relevant Person from which such withholding would be made with reasonable advance notice of its intent to withhold (taking into account the relevant facts and circumstances) and (b) cooperate in good faith with the relevant Person from which such withholding will be made to eliminate or mitigate any required withholding under applicable law.

A. Representations and warranties of seller

Except as set forth in the Disclosure Schedules, each Seller (severally but not jointly as to himself, herself or itself), represents and warrants to Buyer as follows:

a. Ownership of Shares
    a. As of the date of this Agreement, such Seller is the owner of record and beneficial owner of all of the Shares and Series B Preferred Stock listed as owned by it in columns (B), (C), (D) and (E) of the Preliminary Allocation Schedule attached hereto, free and clear of all Encumbrances, and such Shares when taken together with all other Shares and Series B Preferred Stock listed in columns (B), (C), (D) and (E) of the Preliminary Allocation Schedule, constitute all of the outstanding Shares and Series B Preferred Stock of the Company as of the date of this Agreement. Except as contemplated by the Stockholders' Agreement, no Seller has granted a currently effective power of attorney or proxy to any Person with respect to all or any portion of its Shares or Series B Preferred Stock.
    b. As of the Closing Date, and after giving effect to the Pre-Closing Reorganization, such Seller will be the owner of record and beneficial owner of the Shares and Series B Preferred Stock set forth on the Final Allocation Schedule, free and clear of all Encumbrances and, upon the consummation of the purchase and sale of the Shares hereunder, Buyer will hold good and valid title to the Shares to be acquired by it pursuant to Section 2.1, free and clear of all Encumbrances other than any Encumbrances arising from any arrangements made by Buyer or its Affiliates.
    c. The Pre-Closing Reorganization and the Final Allocation Schedule have been conducted and prepared in accordance with the relevant provisions of the organizational documents of the Company as in effect as of the date hereof. The capitalization of the Company after the completion of the Pre-Closing Reorganization and as set forth on the Final Allocation Schedule, will not entitle any Seller or Optionholder to more or less of the Purchase Price than such Person would have been entitled if the Estimated Purchase Price were allocated in accordance with the capitalization of the Company as of the date hereof and as set forth on the Preliminary Allocation Schedule.
b. Organization and Authority of Seller
    a. Such Seller, if not a natural Person, is duly organized, validly existing and in good standing under the Laws of its jurisdiction of incorporation or organization.
    b. Such Seller has all requisite power and authority (or, in the case of a Seller that is a natural Person, capacity) to enter into this Agreement, to carry out such Seller's obligations

hereunder and to consummate the transaction contemplated hereby. The execution and delivery by such Seller of this Agreement, the performance by such Seller of its obligations hereunder and the consummation by such Seller of the transactions contemplated hereby have been (in the case of a Seller that is not a natural person) duly authorized by such Seller. This Agreement has been duly executed and delivered by such Seller, and (assuming due authorization, execution and delivery by Buyer) this Agreement constitutes a legal, valid and binding obligation of such Seller, enforceable against such Seller in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar Laws affecting creditors' rights generally and by general principles of equity (regardless of whether enforcement is sought in a proceeding at law or in equity).

c. Organization and Qualification of the Company

The Company and each of its Subsidiaries is:

a. a corporation or other entity duly incorporated or organized, as applicable, validly existing and in good standing under the laws of the jurisdiction of its incorporation or organization and has all corporate power and capacity to carry on its business as now conducted and to own, lease and operate its assets and properties; and
b. duly qualified to carry on business and is in good standing in each jurisdiction in which the character of its assets and properties, owned, leased, licensed or otherwise held, or the nature of its activities, makes such qualification necessary, in each case in all material respects.

d. Capitalization

a. The authorized capital stock of the Company as of the date of this Agreement consists of (i) 6,000,000 shares of Series A Common Stock (ii) 24,000,000 shares of Series B Common Stock, (iii) 5,000,000 shares of Series A Preferred Stock, (iv) 2,000,000 shares of Series B Preferred Stock, and (v) 1,000,000 shares of Series C Preferred Stock. All of the Shares and Series B Preferred Stock outstanding as of the date of this Agreement have been duly authorized, are validly issued, fully paid and non-assessable, and all of the Shares and Series B Preferred Stock issued following the date of this Agreement in connection with the Pre-Closing Reorganization will be duly authorized, validly issued, fully paid and non-assessable. None of the Shares or Series B Preferred Stock outstanding as of the date of this Agreement or as of Closing are or will be subject to, nor issued in violation of, any purchase option, call option, right of first refusal, pre-emptive right, subscription right or any similar right. All of the Shares and Series B Preferred

Stock have been offered, sold and delivered by the Company or a Subsidiary in compliance with all applicable federal and state securities laws.

b. Except as set forth in Section 3.4(b) of the Disclosure Schedules, or for any shares of Common Stock issued to Sellers in accordance with the Pre-Closing Reorganization, there are no outstanding or authorized Equity Securities or other rights, agreements, arrangements or commitments of any character relating to the capital stock of the Company or obligating any Seller or the Company to issue or sell any shares of capital stock of, or any other interest in, the Company. The Company does not have outstanding or authorized any stock appreciation, phantom stock, profit participation or similar rights. Except for the Stockholders' Agreement, there are no voting trusts, stockholder agreements, proxies or other agreements or understandings in effect with respect to the voting, redemption, repurchase or transfer of any of the Shares or Series B Preferred Stock. None of the Shares, Series B Preferred Stock or Options of the Company or any of its Subsidiaries have been issued in violation of any rights, agreements, arrangements or commitments under any provision of applicable Law, the certificate of incorporation or bylaws or equivalent organizational documents of the Company or any of its Subsidiaries or any Contract to which the Company or any of its Subsidiaries is a party or by which the Company or any of its Subsidiaries is bound.

c. Section 3.4(c) of the Disclosure Schedules sets forth a complete and accurate list of outstanding Options and, for each Option, provides the following information: (i) the name of the holder; (ii) type of award; (iii) grant date; (iv) number of shares of capital stock of the Company subject to such award; (v) vesting schedule (including any acceleration provisions) and (vi) the exercise price and expiration date (if applicable).

e. Subsidiaries

a. A true and complete list of all Subsidiaries of the Company is set out in Section 3.5 of the Disclosure Schedules, and the following information with respect to each Subsidiary is set forth therein: (A) its name; (B) the number, type and percentage of each class of outstanding shares or other interests owned directly or indirectly by the Company; and (C) its governing jurisdiction.

b. Other than the Subsidiaries set out in Section 3.5 of the Disclosure Schedules, the Company has no direct or indirect Subsidiaries nor does it own any direct or indirect Equity Securities of any kind in any Person.

c. The Company, directly or indirectly, owns all of the issued and outstanding shares and other interests of each of its Subsidiaries, free and clear of any Encumbrances (other than Permitted Encumbrances) and all of the issued and outstanding shares or interests directly or indirectly owned by the Company have been duly authorized and validly issued and are fully paid and non-assessable shares or interests, and no such shares or interests have been issued in violation of, any purchase option, call option, right of first refusal, pre-emptive right, subscription right or any similar right.

d. There are no Contracts, arrangements or restrictions that require the Company's Subsidiaries to issue, sell or deliver any shares or other interests of such Subsidiaries, or any securities convertible into or exchangeable for, any shares or other interests of such Subsidiaries.

f. No Conflicts; Consents

a. The execution, delivery and performance by such Seller of this Agreement, and the consummation of the transactions contemplated hereby, do not and will not: (a) result in a violation or breach of any provision of the certificate of incorporation or by-laws of the Company or any of its Subsidiaries; (b) result in a material violation or breach of any provision of any Law or Governmental Order applicable to the Company or any of its Subsidiaries (assuming the expiration or termination of the applicable waiting period under the HSR Act); or (c) except as set forth in Section 3.6 of the Disclosure Schedules, require the consent, notice or other action by any Person under, conflict in any material respect with, result in a material violation or material breach of, constitute a material default under (whether after the giving of notice, lapse of time or both), result in the termination, amendment, modification, acceleration or cancellation of, allow the imposition of any fees or penalties, require the offering or making of any payment or redemption, give rise to any increased, guaranteed, accelerated or additional rights or entitlements of any Person or otherwise adversely affect any rights of the Company or its Subsidiaries under, any Contract, except as would not be material to the Company and its Subsidiaries taken as a whole, or result in the creation of any Encumbrance on any property, asset or right of the Seller or the Company or any of its Subsidiaries. No material consent, approval, Permit, Governmental Order, declaration or filing with, or notice to, any Governmental Authority is required by or with respect to the Company or any of its Subsidiaries in connection with the execution and delivery of this Agreement and the consummation of the

transactions contemplated hereby, except for (i) filings required to be made under the HSR Act and (ii) such filings as may be required by any applicable federal or state securities or "blue sky" Laws.

b. The execution, delivery and performance by such Seller of this Agreement, and the consummation of the transactions contemplated hereby, do not and will not: (a) if such Seller is not a natural Person, result in a violation or breach of any provision of the organizational documents of such Seller; (b) result in a violation or breach of any Law or Governmental Order applicable to such Seller (assuming the expiration or termination of any applicable waiting period under the HSR Act); or (c) require the consent, notice or other action by any Person under, conflict in any material respect with, result in a material violation or breach of, constitute a material default under or result in the acceleration of any Contract to which such Seller is a party or by which such Seller may be bound. No material consent, approval, Permit, Governmental Order, declaration or filing with, or notice to, any Governmental Authority is required by or with respect to such Seller in connection with the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby, except for (i) any filings required to be made under the HSR Act and (ii) such filings as may be required by any applicable federal or state securities or "blue sky" Laws.

g. Financial Statements

a. True, correct and complete copies of the Audited Financial Statements and Unaudited Financial Statements are attached as Section 3.7(a) of the Disclosure Schedules. The Audited Financial Statements and Unaudited Financial Statements have been prepared in accordance with GAAP applied on a consistent basis throughout the periods covered thereby, except as may be indicated in the notes thereto, and fairly present, in all material respects, the financial position of the Company and the results of its operations as of the dates and throughout the periods indicated, in all material respects, subject, in the case of the Unaudited Financial Statements, to (i) normal and recurring year-end adjustments that will not, individually or in the aggregate, be material, (ii) non-GAAP measures included therein, including BBEBITDA and Adjusted EBITDA, and (iii) the classification of certain assets and liabilities as current or long-term other than in accordance with GAAP.

b. The accounts receivable reflected on the Balance Sheet and all accounts receivable arising after the Balance Sheet Date are *bona fide* and arose from the provision of services in the ordinary course of business and collectible in the

ordinary course of business, subject to a reserve for bad debts shown on the Balance Sheet or, with respect to accounts receivable arising after the Balance Sheet Date, on the accounting records of the Company. There is no material contest, claim or right to set-off, other than returns and claims in the ordinary course of business consistent with past practice, under any agreement with any obligor of such accounts receivable relating to the amount or validity of such account receivable, and, to the Sellers' Knowledge, no bankruptcy, insolvency or similar Actions have been commenced by or against any such obligor.

c. The Company maintains books and records in accordance with GAAP, which are complete in all material respects, and internal accounting controls that are designed to provide reasonable assurance that (i) transactions are executed with management's authorization, (ii) transactions are recorded as necessary to permit preparation of their financial statements and to maintain accountability for their assets, (iii) access to their assets is permitted only in accordance with management's authorization and (iv) the reporting of their assets is compared with existing assets at regular intervals. The Audited Financial Statements and Unaudited Financial Statements were derived from such books and records.

d. In the three (3) fiscal years completed prior to the fiscal year in which the Closing occurs and through the Balance Sheet Date, there has not been (x) any material deficiency the Company's internal accounting controls, (y) any fraud or other wrongdoing that involves any of the management or other employees of the Company who have a role in the preparation of the financial statements or the internal accounting controls used by the Company, or (z) any claim or allegation regarding any of the foregoing.

e. Neither the Company nor any of its Subsidiaries has any outstanding and unforgiven loans that were granted pursuant to the CARES Act or similar laws (including pursuant to the Paycheck Protection Program). All information submitted by the Company or its Subsidiaries to any Governmental Authority in connection with the provision of any federal, state and local COVID-19 related relief was true and correct at the time of submission, including any and all certifications made by the Company or such Subsidiary on any application form submitted in connection therewith. The Company or its applicable Subsidiary has submitted all attestation documentation required with respect to receipt and retention of any such relief, and has complied with all applicable Laws and guidance promulgated with respect to such relief.

h. Absence of Undisclosed Liabilities

Neither the Company nor or any of its Subsidiaries has any liabilities, obligations or commitments of any type or nature, whether accrued, absolute, contingent or otherwise required by GAAP to be reflected in a consolidated balance sheet of the Company and its Subsidiaries or disclosed in the notes thereto, except (i) those which are adequately reflected or reserved against in the Balance Sheet as of the Balance Sheet Date; and (ii) those which have been incurred in the ordinary course of business since the Balance Sheet Date and which are not material in amount.

a. Absence of Certain Changes, Events and Conditions

Except as set forth in Section 3.9 of the Disclosure Schedules, from the Balance Sheet Date and through the date of this Agreement, except for pursuing the transactions contemplated by this Agreement, the Company has operated its business in the ordinary course of business in all material respects consistent with past practice. Since the Balance Sheet Date, except as set forth in Section 3.9 of the Disclosure Schedules, the Company has not (a) suffered any change in its business, results of operations or condition (financial or otherwise) which changes, individually or in the aggregate, have had or would reasonably be expected to have a Material Adverse Effect or (b) taken any action that, if taken during the period from the date hereof through the Closing, would require Buyer's consent under Section 5.1.

a. Material Contracts

a. Except as set forth on each of the respective subsections of Section 3.10(a) of the Disclosure Schedules, none of the Company nor any of its Subsidiaries is party to or bound by any of the following (each, a "**Material Contract**" and, collectively, the "**Material Contracts**"):

i. Contracts relating to the borrowing of money or otherwise to the incurring of indebtedness or the mortgaging, pledging or otherwise placing of an Encumbrance on any material asset or portion of the material assets of the Company or its Subsidiaries, providing any other guaranty or any surety, letter of credit or similar obligation;

ii. Contracts for the purchase of materials, supplies or services which requires payment of more than two hundred and fifty thousand dollars ($250,000), in the case of any single Contract or, in the case of multiple Contracts with one counterparty, in excess of five hundred thousand dollars ($500,000) in the aggregate (in each case other than purchase orders entered into in the ordinary course of business);

iii. Contracts of the Business requiring provision by the Company or any of its Subsidiaries to any Person of goods or services or payments having a fair market value in excess of two hundred and fifty thousand dollars ($250,000) per year;

i. Contracts that relate to the acquisition or disposition of any business or a material amount of shares or assets of any other Person consummated in the last four (4) years or that has not yet been consummated

or relates to any business acquisition or that provides for additional payments, incentives or earnouts by the Company or any of its Subsidiaries and is still in effect;

ii. Contracts which are contingent upon, or accelerated or amended by, a change of control of the Company;

iii. Contract for the purchase or sale of any equipment or fixed or capital assets having a fair market value in excess of two hundred and fifty thousand dollars ($250,000);

iv. any partnership, joint venture or similar arrangement;

v. Contracts relating to any interest rate, foreign exchange, derivatives or hedging transaction;

vi. license of any Intellectual Property or Proprietary Product to or from the Company or any of its Subsidiaries (other than the license to the Company or any of its Subsidiaries of standard, generally commercially available, "off-the-shelf" third-party products);

vii. Contracts to make any gift of any of its property;

viii. Contracts, option, right of first refusal, or any other right of another Person binding upon or which at any time in the future may become binding upon the Company or any of its Subsidiaries to sell, transfer, assign, pledge, hypothecate, charge, mortgage or in any other way dispose of or encumber any of its material assets;

ix. Contracts (including any non-compete, exclusivity or other Contract) that limits or prohibits the Company or any of its Subsidiaries from freely engaging in the Business anywhere in the world or from soliciting the business or employees of any Person (other than non-solicitation covenants in non-disclosure or confidentiality agreements entered into in the ordinary course of business), or that grants any Person "most favored nation" status or any type of special discount rights;

x. Contracts with Governmental Authorities (other than customer Contracts with Governmental Authorities requiring payments to the Company or its Subsidiaries of less than one hundred thousand dollars ($100,000) per annum);

xi. Affiliate Agreements;

xii. Contract relating to settlement of any administrative or judicial proceedings or any other dispute relating

to the operation of the Business within the past three (3) years;

xiii. Contracts with any labor union, works council or similar labor organization; and

xiv. Contracts for the employment or consulting services of any individual on a full-time, part-time, consulting or other basis providing for compensation in excess of one hundred and seventy-five thousand dollars ($175,000) on an annual basis or providing severance benefits.

b. The Company is not and has not been alleged in writing to be, and to Sellers' Knowledge, no other party is, in breach of or default under, in any material respect, any Material Contract and no event has occurred that, with the lapse of time or the giving of notice or both, would constitute a material default thereunder by the Company or any of its Subsidiaries, or to Sellers' Knowledge, by any other party thereto. Each of the Material Contracts is a valid and binding obligation of the Company, is in full force and effect and is enforceable against the Company and, to Sellers' Knowledge, the other parties thereto, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar Laws affecting creditors' rights generally and by general principles of equity (regardless of whether enforcement is sought in a proceeding at law or in equity). The Sellers have delivered or made available to the Buyer true and complete copies of all Material Contracts, including any amendments thereto. Except as disclosed in Section 3.10(b) of the Disclosure Schedules, neither the Company nor any of its Subsidiaries has received any notices seeking (i) to excuse a third party's non-performance, or delay a third party's performance, under existing Material Contracts due to interruptions cause by COVID-19 or (ii) to modify any existing contractual relationships due to COVID-19.

b. Title to Assets; Real Property

a. The Company and its Subsidiaries have good and valid title to, or a valid leasehold interest in, all Real Property and tangible personal property and other assets used in the operation of the Business, including those reflected in the Balance Sheet or acquired after the Balance Sheet Date, other than inventory sold or otherwise disposed of in the ordinary course of business since such date. The assets owned or leased by the Company and its Subsidiaries constitute all of the assets necessary for the Company and its Subsidiaries to carry on their respective businesses as currently conducted. All such properties and assets (including leasehold interests) are free and clear of

Encumbrances except for the following (collectively referred to as "**Permitted Encumbrances**"):

i. those items set forth in Section 3.11(a) of the Disclosure Schedules;

ii. liens for Taxes not yet due and payable or being contested in good faith by appropriate procedures and, with respect to any such liens being contested in good faith, for which adequate reserves have been established in the books and records of the Company and its Subsidiaries;

iii. mechanics, carriers', workmen's, repairmen's or other like liens arising or incurred in the ordinary course of business that are not yet due and payable, or the amount or validity of which is being contested in good faith by appropriate proceedings by the Company or any Subsidiary, and, with respect to any such liens being contested in good faith, for which adequate reserves have been established in the books and records of the Company and its Subsidiaries;

iv. easements, rights of way, zoning ordinances and other similar encumbrances affecting Real Property that are imposed by Governmental Authorities, other than those which materially and adversely impact the present use of such real property by, or the prevent the operation of the business of, the Company and its Subsidiaries;

v. other than with respect to owned Real Property, liens arising under original purchase price conditional sales contracts and equipment leases with third parties entered into in the ordinary course of business; or

vi. other imperfections of title or Encumbrances of public record, if any, that do not materially impair the value of or continued use and operation of the properties or assets.

b. Section 3.11(b) of the Disclosure Schedules lists the street address of each parcel of leased Real Property, and a list, as of the date of this Agreement, of all leases for each parcel of leased Real Property (collectively, "**Leases**"), including the identification of the lessee and lessor thereunder. Each of the Company and its Subsidiaries has good and marketable leasehold title to all such leased Real Property, in each case, free and clear of all Encumbrances except Permitted Encumbrances. No parcel of such leased Real Property is subject to any governmental decree or order to be sold or is being condemned, expropriated, re-zoned or otherwise taken by any public authority with or without

payment of compensation therefore, nor, to the knowledge of the Sellers, has any such condemnation, expropriation or taking been proposed.

c. Each Lease is in full force and effect and there is no material default under any Lease either by the Company or its Subsidiaries, or to Sellers' Knowledge, by any other party thereto, and no event has occurred that, with the lapse of time or the giving of notice or both, would constitute a material default thereunder by the Company or any of its Subsidiaries, or to Sellers' Knowledge, by any other party thereto.

i. Except as set forth in Section 3.11(d) of the Disclosure Schedules, there are no subleases, licenses, concessions or other written agreements granting to any party the right of use or occupancy of any portion of the Real Property or any right of first refusal, options to purchase or other similar rights to purchase any Real Property or any portion thereof or interest therein.

i. None of the Company nor any of its Subsidiaries own, nor have they ever owned, any Real Property.

i. Intellectual Property

i. Schedule 3.12(a) sets forth a list of the following Intellectual Property, both United States and foreign, that is owned by the Company or its Subsidiaries, along with (1) the record owner of each such item of Intellectual Property, (2) the jurisdiction in which each such item of Intellectual Property has been registered or filed, and (3) the applicable registration, application or serial number or similar identifier: (i) all patents and pending patent applications; (ii) all trademark registrations, Internet domain name registrations and social media identifiers, and pending trademark applications; and (iii) all copyright registrations. For purposes of this Agreement, the term "**Company Registered Intellectual Property**" shall mean the items described in clauses (i), (ii) and (iii) above, collectively. In addition, Schedule 3.12(a) sets out a list of all material copyright works of proprietary software or software code and related documentation, invention disclosure statements, and trademarks and service marks which are not the subject of a pending application or registration, in each instance, constituting Company Intellectual Property owned by the Company or its Subsidiaries.

ii. The Company Intellectual Property, including the Intellectual Property set out in Schedule 3.12(a) and Material Contracts relating to the license to the Company and its Subsidiaries of Intellectual Property set out in Schedule 3.10(a)(ix) are the only Intellectual Property assets necessary for and material to enable the Company

and its Subsidiaries to own and operate the Business as currently conducted, provided, however, that the foregoing representation and warranty in this Section 3.12(b) shall not constitute or be deemed or construed as any representation or warranty with respect to infringement, misappropriation, dilution or violation of any Intellectual Property (which is addressed in Section 3.12(f)).

iii. The proprietary software owned by the Company and its Subsidiaries of the Proprietary Products, together with third party software set out in Schedule 3.10(a)(ix) incorporated in or used by the Company and its Subsidiaries with the Proprietary Products, including development tools and utilities, constitute all material software necessary for the maintenance, modification, development and enhancement of the software of the Proprietary Products in connection with the operation of the Business as conducted at Closing.

iv. Except as set forth on Schedule 3.12(d), each item of the Company Intellectual Property owned by the Company or its Subsidiaries is owned solely the Company and/or its Subsidiaries. The Company Registered Intellectual Property is in all material respects subsisting, in full force and effect (except with respect to applications), and has not expired or been cancelled or abandoned. All material maintenance and renewal fees due for payment prior to the Closing Date have been paid to the relevant patent, copyright, trademark or other authorities in the United States or foreign jurisdictions, as the case may be, for the purposes of maintaining the Company Registered Intellectual Property.

v. Subject to Section 3.12(f), the Company or its Subsidiaries own, or have valid rights to use, all of the Intellectual Property necessary to conduct the Business as currently conducted.

vi. Except as set out in Schedule 3.12(f), to Sellers' Knowledge, (i) the Company Intellectual Property and the operation of the Business as conducted in the past three (3)-years and as currently conducted has not and does not infringe upon, misappropriate or otherwise violate in any material respect any Intellectual Property of any Person, and (ii) no Person is misappropriating, infringing, or violating any material Company Intellectual Property owned by the Company or its Subsidiaries or licensed exclusively to the Company or its Subsidiaries in any material respect.

vii. There no Actions pending or, to Sellers' Knowledge, threatened against the Company or any of its Subsidiaries: (i) challenging the use, ownership, validity, enforceability or registrability (excluding official Actions issued by an

intellectual property office in prosecution of any pending application) of any Company Intellectual Property owned by the Company or its Subsidiaries or, to Sellers' Knowledge, licensed to the Company or its Subsidiaries pursuant to a Material Contract relating to Intellectual Property set out in Schedule 3.10(a)(ix) or (ii) alleging that the Company Intellectual Property owned by the Company or its Subsidiaries or, to Sellers' Knowledge, licensed to the Company or its Subsidiaries pursuant to a Material Contract relating to Intellectual Property set out in Schedule 3.10(a)(ix) or the conduct of the Business dilutes, misappropriates, infringes, violates or constitutes the unauthorized use of the Intellectual Property of any Person.

viii. None of the Companies nor any of its Subsidiaries is a party to any settlement, covenant not to sue, consent, decree, stipulation or judgment which (A) permits third Persons to use any of the Company Intellectual Property, (B) restricts the Company's or any of its Subsidiary's rights to use any Company Intellectual Property or (C) requires any future payment by any of the Company or any of its Subsidiaries to any Person in connection with the use or enforcement of any Company Intellectual Property.

ix. Each item of Company Intellectual Property owned by the Company or its Subsidiaries or, to Sellers' Knowledge, licensed to the Company or its Subsidiaries pursuant to a Material Contract relating to Intellectual Property set out in Schedule 3.10(a)(ix), is free and clear of all Encumbrances (other than Permitted Encumbrances).

x. Each current employee of the Company and its Subsidiaries has executed agreements which include provisions regarding, or is otherwise subject to confidentiality and nondisclosure undertakings relating to the disclosure of confidential information and trade secrets constituting Company Intellectual Property owned by the Company or its Subsidiaries. Other than under a confidentiality or nondisclosure agreement or contractual provision relating to confidentiality and nondisclosure, to Sellers' Knowledge, there has been no disclosure by the Company or any of its Subsidiaries to any third Person of material confidential information or trade secrets of the Company or its Subsidiaries related to any Proprietary Product, nor has there been any unauthorized disclosure by the Company or any of its Subsidiaries to any third Person of material confidential information of any other Person to whom any of the Company or any of its Subsidiaries has a confidentiality obligation under a Contract. All current employees of the Company and its Subsidiaries who have designed, written, tested or worked on any software or

software code constituting any material Company Intellectual Property have executed a written assignment, transfer, proprietary information and inventions agreement or similar contract in favor of the Company or its Subsidiaries, and have validly assigned to the Company or its Subsidiaries in writing all of their right, title and interest in and to the portions of such material Company Intellectual Property developed by them in the course of their work for the Company and its Subsidiaries**.**

xi. Schedule 3.12(k) sets forth a list of each Contract entered into by the Company or any of its Subsidiaries to grant to a third party access or a license to any source code for computer software owned by the Company or its Subsidiaries and incorporated in a Proprietary Product, including any escrow arrangement for the storage and conditional release of any of such source code. Except as set forth in Schedule 3.12(k), no source code for such software is subject to a source code escrow and the source code has been disclosed by the Company or its Subsidiaries to any third party except to a third party service provider hosting a software repository for use by the Company or its Subsidiaries or in the form of source code escrow deposit materials provided to a customer of the Business.

xii. The source code for all Proprietary Products that includes software incorporates or includes comments or other documentation that would assist a programmer of commercially reasonable competence in supporting, maintaining and enhancing the Proprietary Products.

xiii. Schedule 3.12(m) sets forth a list of (i) each item of Open Source Code that is contained in or provided by the Company or its Subsidiaries with any Proprietary Product distributed by the Company or its Subsidiaries to a third party and (ii) the Proprietary Product to which each such item of Open Source Code relates. None of the Proprietary Products distributed by the Company or its Subsidiaries to a third party is subject to any Open Source Code license which requires the license of such Proprietary Products or any portion thereof (other than the Open Source Code) for the purpose of making modifications or derivative works, require the distribution of such Proprietary Products or any portion thereof (other than the Open Source Code) without charge, require or condition the disclosure, licensing or distribution of any source code or any portion of any Proprietary Product (other than the Open Source Code) or otherwise impose a material limitation, restriction or condition on the right of the Company or its Subsidiaries to distribute a Proprietary Product or any portion thereof (other than the Open Source Code) or require the public

disclosure of source code for any Proprietary Product or any portion thereof (other than the Open Source Code).

xiv. The Company and its Subsidiaries have taken commercially reasonable steps to protect and maintain confidential information and trade secrets for material Company Intellectual Property that are considered to be trade secrets or confidential information.

i. Information Technology, Data Privacy and Cybersecurity

i. The Company and its Subsidiaries take commercially reasonable steps and implement commercially reasonable safeguards to ensure that the IT Systems are substantially free from Harmful Code.

ii. The IT Systems are in good working condition and are sufficient for the needs of the Business, including as to data processing, data transport, data storage, capacity and scalability.

iii. In the three (3)-year period prior to the date of this Agreement, there has been no failure, breakdown or continued substandard performance of any IT System that has caused a material disruption or interruption in or to the Business. In the three (3)-year period prior to the date of this Agreement, neither the Company nor its Subsidiaries has experienced a Security Incident, no Person has gained unauthorized access to any of the IT Systems, and neither the Company nor its Subsidiaries is aware of any facts suggesting the likelihood of the foregoing. No circumstance has arisen in which Privacy Laws would require the Company or its Subsidiaries to notify a person or Governmental Authority of a Security Incident.

iv. The Company and its Subsidiaries take commercially reasonable steps to provide for the back-up of data and information critical to the conduct of the Business to avoid disruption to, or interruption in, the conduct of the Business.

v. The Company and its Subsidiaries, and their respective officers, employees, and any processors acting on their behalf are in compliance and have complied with all applicable Privacy Laws.

vi. The Company and its Subsidiaries have in place policies and procedures for the proper collection, processing, transfer, disclosure, sharing, storing, security and use of Personal Information that comply with Privacy Laws in all material respects. All Personal Information collected, processed, transferred, disclosed, shared, stored, protected and used by the Company and its Subsidiaries is protected by commercially reasonable security safeguards (which are commensurate to its level of sensitivity) and has at all times

been collected, processed, transferred, disclosed, shared, stored, protected and used in compliance with Privacy Laws.

vii. The Company and its Subsidiaries have implemented technical, physical, and organizational measures and security systems and technologies in compliance with all data security requirements under Privacy Laws to ensure the integrity and security of such Personal Information and all Company data and to prevent any material destruction, loss, alteration, corruption or misuse of or unauthorized disclosure or access thereto in compliance with Privacy Laws.

viii. The Company and its Subsidiaries have not been and are not currently: (1) under audit or investigation by any authority, including regarding collection, processing, transfer, disclosure, sharing, storing, protection and use of Personal Information, or (2) subject to any third party notification, claim, demand, audit or action in relation to Personal Information, including a notification, a claim, a demand, or an action alleging that the Company or its Subsidiaries have collected, processed, transferred, disclosed, shared, stored or used Personal Information in violation of applicable Privacy Laws.

ix. The performance of this Agreement will not violate (a) any Privacy Laws, or (b) any other privacy or data security requirements or obligations imposed under any Material Contract. Upon execution of this Agreement, the Company and its Subsidiaries shall continue to have the right to use and process any Personal Information collected, processed or used by the Company or its Subsidiaries before the signature date of this Agreement in the ordinary course of business.

x. The Company and its Subsidiaries own or have a license, lease, service agreement or other contractual arrangement in place to use all of the IT Systems in the operation of the Business.

xi. The Company and its Subsidiaries own or have a license, lease, service agreement or other contractual arrangement in place to use all of the IT Systems in the operation of the Business as currently conducted.

ii. Insurance

Section 3.14 of the Disclosure Schedules sets forth a list, as of the date hereof, of all insurance policies maintained by the Company and its Subsidiaries or with respect to which the Company or any of its Subsidiaries is a named insured or otherwise the beneficiary of coverage (collectively, the "**Insurance Policies**"). Such Insurance Policies are in full force and effect on the date of this Agreement and all premiums due on such Insurance Policies have been paid. The Company has not received notice of the proposed termination of, or material premium increases with respect to such Insurance Policies. There are no pending material claims under the

Insurance Policies by the Company or its Subsidiaries as to which the insurers have denied liability.

i. Legal Proceedings; Governmental Orders
   i. Except as set forth in Section 3.15(a) of the Disclosure Schedules, as of the date of this Agreement, there are no, and in the last three (3) years there have been no, Actions pending or, to Sellers' Knowledge, threatened against or by the Company or any of its Subsidiaries affecting any of their respective properties or assets (or by or against Seller or any Affiliate thereof and relating to the Company or any of its Subsidiaries).
   ii. There are no outstanding Governmental Orders and no unsatisfied judgments, penalties or awards against or affecting the Company or any of its Subsidiaries or any of their respective properties or assets which would be material to the Company or its Subsidiaries taken as a whole.
   iii. There is no Action pending or, to the Knowledge of the Sellers, threatened seeking to prevent, hinder, modify, delay or challenge the transactions contemplated by this Agreement.
   iv. There is no Action by the Company or any of its Subsidiaries pending, or which the Company or any of its Subsidiaries has commenced preparations to initiate, against any other Person.

ii. Compliance With Laws; Permits
   i. The Company and its Subsidiaries are in compliance in all material respects with all Laws applicable to it or its business, properties or assets. None of the Company, any of its Subsidiaries or any of its or their executive officers has received during the past three (3) years, nor is there any reasonable basis for, any notice, order, complaint or other communication from any Governmental Authority or any other Person that the Company or any of its Subsidiaries is not in compliance in any material respect with any Law applicable to it.
   ii. All Permits required for the Company and its Subsidiaries to conduct the Business have been obtained by it and are valid and in full force and effect. Each of the Company and its Subsidiaries is and has been in compliance in all material respects with all such Permits. No suspension, cancellation, modification, revocation or nonrenewal of any Permit is pending or, to Sellers' Knowledge, threatened. The transactions contemplated hereby will not cause the Company and its Subsidiaries to cease have the use and benefit of all Permits immediately following Closing. No Permit is held in the name of any employee, officer,

director, stockholder, agent or otherwise on behalf of the Company or any of its Subsidiaries.

iii. Environmental Matters

The Company and its Subsidiaries are in compliance in all material respects with all applicable Environmental Laws. There are no Actions pending or, to Sellers' Knowledge, threatened against the Company or any of its Subsidiaries relating to any Environmental Law. None of the Company nor any of its Subsidiaries is a party to or bound by any order, consent order, or other agreement or commitment between the Company or any of its Subsidiaries and any Governmental Authority which imposes any material liability under any Environmental Law.

i. Employee Benefit Matters

i. Section 3.18(a) of the Disclosure Schedules contains a list of each "employee benefit plan" (as defined in Section 3(3) of ERISA (whether or not subject to ERISA)) and each other benefit, retirement, employment, consulting, compensation, incentive, bonus, stock option, restricted stock, restricted stock unit, stock appreciation right, phantom equity, equity-based compensation, change in control, severance, transaction bonus, retention, vacation, paid time off, retiree health and welfare, welfare and fringe-benefit agreement, arrangement, plan, policy or program, whether or not reduced to writing, in effect and covering one or more current or former employees of the Company or any of its Subsidiaries, current or former directors of the Company or any of its Subsidiaries, current or former individual service providers of the Company or any of its Subsidiaries or the beneficiaries or dependents of any such Persons, (i) that is maintained, administered, sponsored, contributed to, or required to be contributed to by the Company or any of its Subsidiaries, or (ii) under which the Company or any of its Subsidiaries has any liability (each, a "**Benefit Plan**"). Section 3.18(a) of the Disclosure Schedules identifies separately each Benefit Plan that is either maintained outside of the United States or that is subject to the Laws of a jurisdiction other than the United States or a political subdivision thereof (each, an "**International Plan**"). Sellers have made available to Buyer each of the following to the extent applicable: (A) a copy of each such Benefit Plan (or, if such plan is not reduced to writing, a summary of the terms of such Benefit Plan); (B) each summary plan description and summary of material modifications; (C) the two most recently filed Internal Revenue Service ("**IRS**") Forms 5500; (D) the most recently received IRS determination letter for each such Benefit Plan; (E) the most recently prepared actuarial report and financial statement in connection with each such Benefit Plan; and (F) if such Benefit Plan is an International Plan, documents that are substantially

comparable to the documents required to be provided in clauses (A) through (E).

ii. Each Benefit Plan and related trust complies in all material respects with its terms and with all applicable Laws. Each Benefit Plan that is intended to be qualified under Section 401(a) of the Code (a "**Qualified Benefit Plan**") has received a favorable determination letter from the Internal Revenue Service, or with respect to a prototype plan, can rely on an opinion letter from the Internal Revenue Service to the prototype plan sponsor, to the effect that such Qualified Benefit Plan is so qualified and that the plan and the trust related thereto are exempt from federal income Taxes under Sections 401(a) and 501(a), respectively, of the Code, and nothing has occurred that could reasonably be expected to cause the revocation of such determination letter from the Internal Revenue Service or the unavailability of reliance on such opinion letter from the Internal Revenue Service. With respect to any Benefit Plan, to Sellers' Knowledge, no event has occurred or is reasonably expected to occur that has resulted in or would subject the Company to a Tax under Section 4971 of the Code or the assets of the Company or any of its Subsidiaries to a lien under Section 430(k) of the Code.

iii. Neither the Company nor any of its ERISA Affiliates has, nor has had in the past six (6) years, any actual or potential liability with respect to (i) a "defined benefit plan," as defined in Section 3(35) of ERISA, (ii) a pension plan subject to the minimum funding standards of Section 302 of ERISA or Section 412 of the Code, (iii) a "multiemployer plan," as defined in Section 3(37) or Section 4001(a)(3) of ERISA, or (iv) any "multiple employer plan" (within the meaning of Section 413 of the Code). Neither Sellers nor the Company: (A) has withdrawn from any pension plan with respect to which there remains any liability to the Company; or (B) has engaged in any transaction which would give rise to a liability of the Company or Buyer under Section 4069 or Section 4212(c) of ERISA.

iv. Other than as required under Section 4980B of the Code or other applicable Law, no Benefit Plan provides benefits or coverage in the nature of health, life or disability insurance or welfare benefits following retirement or other termination of employment (other than death benefits when termination occurs upon death).

v. No Benefit Plan has within the three (3) years prior to the date hereof been the subject of an examination or audit by a Governmental Authority. There are no actions, suits, claims, investigations or other legal proceedings (other than

routine claims for benefits) pending or, to Sellers' Knowledge, threatened, anticipated or expected to be asserted with respect to any Benefit Plan or any related trust or other funding medium thereunder or with respect to the Company or any ERISA Affiliate as the sponsor or fiduciary thereof or with respect to any other fiduciary thereof.

vi. Except for the Stock Option Plan or as otherwise set out in Section 3.18 of the Disclosure Schedules, no Benefit Plan exists that could: (i) result in the payment to any employee, director, consultant or other individual service provider of the Company or its Subsidiaries of any money or other property; (ii) accelerate the vesting of or provide any additional rights or benefits (including funding of compensation or benefits through a trust or otherwise) to any employee, director, consultant or other individual service provider of the Company or its Subsidiaries; or (iii) limit or restrict the ability of Buyer or its Affiliates to merge, amend or terminate any Benefit Plan, in each case, as a result of the execution of this Agreement (either alone or in conjunction with any other event).

vii. Except as otherwise set forth in Section 3.18(g) of the Disclosure Schedules, neither the execution of this Agreement nor the consummation of the transactions contemplated (either alone or in conjunction with any other event) hereby will result in "parachute payments" within the meaning of Section 280G(b) of the Code.

ii. Employment Matters

i. Section 3.19(a) of the Disclosure Schedules sets forth for each employee of the Company and its Subsidiaries on the date of this Agreement, such employee's (i) name; (ii) annual base salary or hourly wage rate, as applicable; (iii) annual target bonus percentage; (iv) title; (v) employer; (vi) primary work location; (vii) whether exempt from the Fair Labor Standards Act; and (viii) whether active or on leave (and, if on leave, the nature of the leave and the expected return date). Section 3.19(a) of the Disclosure Schedules separately sets forth, for each individual independent contractor that has received compensation from the Company or its Subsidiaries of more than $150,000 in the last twelve (12) months, such individual's name, entity that engages such individual's services, start date, duties and rate of compensation.

ii. Except as set forth in 3.19(b) of the Disclosure Schedules, neither the Company nor any of its Subsidiaries is a party to, or bound by, any collective bargaining or other agreement with a labor organization representing any of its employees. Since January 1, 2019, there has not been, nor,

to Sellers' Knowledge, has there been any threat of, any strike, slowdown, work stoppage, lockout, concerted refusal to work overtime or other similar labor activity or dispute affecting the Company or any of its Subsidiaries. The consent or consultation of, or the rendering of formal advice by, any labor or trade union, works council or other employee representative body is not required for the Company to consummate any of the transactions contemplated hereby.

iii. Neither the Company nor any of its Subsidiaries is engaged in any unfair labor practice, as defined in the National Labor Relations Act or other applicable Laws. No unfair labor practice or labor charge or complaint is pending or, to Seller's Knowledge, threatened with respect to the Company or any of its Subsidiaries before the National Labor Relations Board, the Equal Employment Opportunity Commission or any other Governmental Authority.

i. The Company and each of its Subsidiaries is in compliance in all material respects with all applicable Laws pertaining to employment and employment practices including discrimination or harassment in employment, terms and conditions of employment, termination of employment, wages, overtime classification, hours, occupational safety and health, employee whistle-blowing, immigration, employee privacy, employment practices and classification of employees, consultants and independent contractors. There are no material Actions against the Company or any of its Subsidiaries pending, or to the Seller's Knowledge, threatened to be brought or filed, by or with any Governmental Authority or arbitral tribunal in connection with the employment or termination of employment of any current or former employee of the Company or any of its Subsidiaries, including, without limitation, any claim relating to unfair labor practices, employment discrimination, harassment, retaliation, equal pay or any other employment related matter arising under applicable Laws.

ii. Except as disclosed in Section 3.19(e) of the Disclosure Schedules, no current employee or officer of the Company or any of its Subsidiaries earning annual compensation in excess of one hundred and fifty thousand dollars ($150,000) has given notice of his or her intention to terminate his or her employment relationship with such entity following the consummation of the transactions contemplated hereby.

iii. Since January 1, 2017, neither the Company nor any of its Subsidiaries has effectuated a "plant closing" or "mass

layoff" (each as defined under WARN) or similar reduction in force in other jurisdictions affecting any employee or any facility or employment site of the Company or its Subsidiaries. Neither the Company nor any of its Subsidiaries has taken any action that would reasonably be expected to cause Buyer or any of its Affiliates to have any material liability or other obligation following the Closing Date under WARN.

iv. Except as set forth in Section 3.19(g) of the Disclosure Schedules, since January 1, 2020, neither the Company nor any of its Subsidiaries has, as a result of COVID-19 (i) implemented any workforce reductions, terminations, furloughs or material changes to compensation or benefits, or (ii) applied for or received loans or payments under the CARES Act or any other COVID-19 Measures, or claimed any tax credits or deferred any Taxes thereunder, or (iii) experienced any material employment-related liability.

v. Neither the Company nor any of its Subsidiaries has received any written complaints (i) from employees regarding leaves of absence, paid sick time, or similar matters related to COVID-19, (ii) regarding the Company's or any of its Subsidiaries' reporting, or failure to report, to employees, contractors, customers, vendors or the public, the presence of employees or contractors who have tested positive for, or exhibited symptoms of, COVID-19, or other potential means of exposure to COVID-19 or (iii) alleging the Company or any of its Subsidiaries failed to provide a safe working environment, appropriate equipment or accommodation in relation to COVID-19.

vi. Except as set forth in Section 3.19(i) of the Disclosure Schedules, since January 1, 2018, (i) no allegations of workplace sexual harassment, discrimination or other misconduct have been made, initiated, filed or, to the Sellers' Knowledge, threatened against the Company or any of its Subsidiaries or any of their respective current or former directors, officers or employees or other individual service providers, (ii) to the Sellers' Knowledge, no incidents of any such workplace sexual harassment, discrimination or other misconduct have occurred, and (iii) neither the Company nor any of its Subsidiaries has entered into any settlement agreement related to allegations of sexual harassment, discrimination or other misconduct by any of their directors, officers or employees or other individual service providers described in clause (i) hereof.

iii. Taxes

i. Except as set forth in Section 3.20 of the Disclosure Schedules:

1. the Company and each of its Subsidiaries have timely filed (taking into account any valid extensions) all income and other Tax Returns required to be filed by them and such Tax returns are true, complete and correct in all material respects;
2. neither the Company nor any of its Subsidiaries is currently the beneficiary of any extension of time within which to file any income or other material Tax Return;
3. all income and other Taxes due and owing by the Company or any of its Subsidiaries (whether or not shown on any Tax Return) have been timely paid in full;
4. there are no Encumbrances (other than Permitted Encumbrances) with respect to Taxes upon any assets of, or equity interests in, the Company or any of its Subsidiaries;
5. neither the Company nor any of its Subsidiaries has waived any statute of limitations in respect of Taxes beyond the date hereof or agreed to any extension of time beyond the date hereof with respect to a Tax assessment or deficiency and no request for any such extension or waiver is currently pending;
6. all deficiencies asserted or assessments made or proposed against the Company or any of its Subsidiaries with respect to Taxes have been timely paid in full;
7. the Shares and Series B Preferred Stock are not, and have not been at any time during the applicable period specified in Section 897(c)(1)(A)(II)) of the Code, a "United States real property interest" within the meaning of Section 897(c) of the Code;
8. there are no ongoing audits, Actions by any Governmental Authority in respect of any Tax or Tax Return against, or to Sellers' Knowledge threatened against, the Company or any of its Subsidiaries;
9. no written claim has been made by an authority in a jurisdiction where the Company or its Subsidiaries do not file Tax returns that the Company or any of its Subsidiaries is or may be subject to taxation by such jurisdiction, and to the Sellers' Knowledge there is no basis for any such claim to be sustained;
10. neither the Company nor any of its Subsidiaries is, or has ever been, a party to or bound by (nor has any obligation under) any Tax sharing, Tax indemnity, Tax receivable, Tax allocation or similar

contractual obligation (except, in each case, any customary agreement with customers, vendors, lenders, lessors or the like entered into in the ordinary course of business the principal purpose of which is not the sharing of Taxes);

11. the Company and its Subsidiaries have deducted, withheld and paid all material Taxes required to have been deducted, withheld and paid in connection with any amounts paid or owing to any employee, independent contractor, creditor, shareholder or other third party, and the Company and its Subsidiaries have complied in all material respects with (x) any applicable information reporting and recordkeeping requirements under applicable Law (including to the extent necessary to claim any exemption from sales Tax collection and maintaining adequate and current resale certificates to support any such claimed exemptions) and (y) all applicable Laws relating to transfer pricing rules and regulations, including all documentation requirements;
12. the Company is not and has never been a party to a reportable transaction as defined in Treasury Regulations Section 1.6011-4(b) or any "tax shelter" within the meaning of Section 6662 of the Code;
13. no unpaid Taxes of the Company and its Subsidiaries have been incurred since the Balance Sheet Date other than in the ordinary course of business consistent with amounts previously paid with respect to such Taxes for similar periods in prior years, adjusted for changes in ordinary course operating results;
14. the Company and its Subsidiaries have not obtained a binding advance ruling from, or accomplished a mutual understanding with, the Tax authorities which may affect the Tax position of the Company and its Subsidiaries following the Closing Date;
15. neither the Company nor any of its Subsidiaries has been a member of an affiliated, consolidated, combined, unitary or aggregate group (including pursuant to Sections 1502 or 1504 of the Code or any analogous state, local or foreign Law) or filed any Tax Return as a member of such group (other than of which the common parent was the Company);
16. in the past five years, neither the Company nor any of its Subsidiaries has distributed stock of another

Person, or has had its stock distributed by another Person, in a transaction (or series of transactions) that was purported or intended to be governed in whole or in part by Section 355 of the Code;

17. no closing agreements, private letter rulings, technical advice memoranda or similar agreements or rulings related to Taxes have been entered into, issued by or requested from any Governmental Authority with or in respect of the Company or any of its Subsidiaries;
18. neither the Company nor any of its Subsidiaries will be required to include any item of income in, or exclude any item of deduction from, taxable income for any taxable period (or portion thereof) ending after the Closing Date as a result of any: (i) change in, or use of an improper, method of accounting for a taxable period ending on or prior to the Closing Date; (ii) "closing agreement" as described in Section 7121 of the Code (or any corresponding or similar provision of state, local or foreign Law) executed on or prior to the Closing Date; (iii) installment sale or open transaction disposition made on or prior to the Closing Date; (iv) prepaid amount, advance payments or deferred revenue received or accrued on or prior to the Closing Date; (v) intercompany transaction or excess loss amount described in Treasury Regulations under Section 1502 of the Code (or any corresponding or similar provision of state, local or foreign Law); (vi) investment in "United States property" within the meaning of Section 956 of the Code made on or prior to the Closing; (vii) gain recognition agreement under Section 367 of the Code (or any corresponding or similar provision of state, local or non-U.S. Law); (viii) "subpart F income" or "global intangible low-taxed income" within the meaning of Sections 951 or 951A of the Code (or any corresponding or similar provision of law) of the Company attributable to a Pre-Closing Tax Period; or (ix) any election made pursuant to Section 965(h) of the Code;
19. Section 3.20(xix) of the Disclosure Schedule lists the federal and state income tax classification of the Company and each of its Subsidiaries and such classification has not changed since the formation of each such entity;
20. neither the Company nor any of its Subsidiaries (i) is a party to any "closing agreement" described in

Section 7121 of the Code (or any comparable provision of state, local or foreign Law), gain recognition agreement, offer in compromise or any other agreement with any Governmental Authority in respect of Taxes, (ii) has requested or received any Tax ruling or (iii) has any liability for the Taxes of any Person (including any predecessors) (other than the Company or its Subsidiaries) under Treasury Regulations Section 1.1502-6 (or any similar provision of state, local, or foreign law), as a transferee or successor or by Contract; and

21. the Company and its Subsidiaries have complied with all requirements for, and retained all information, forms and filings required to substantiate, any benefits or other relief claimed under any COVID-19 Measures. Neither the Company nor any of its Subsidiaries has (i) made any claim for tax credits in respect of the same wages pursuant to different COVID-19 Measures or (ii) applied for or received any loan or other funds pursuant to any COVID-19 Measures other than any such loan that has been forgiven in full.

iv. Suppliers and Customers

Except as provided on Schedule 3.21, since the Balance Sheet Date there has been no written termination or written cancellation of, or material adverse modification or change in, the business relationship of the Company or its Subsidiaries with respect to any of the Material Customers or any Material Suppliers. None of the Company nor any of its Subsidiaries has received written notice that its commercial relationship with any of the Material Customers or Material Suppliers will not continue after the Closing in substantially the same manner as before the date of this Agreement, and no Material Customers or any Material Suppliers has expressed in writing any desire to modify or change in a manner that would be materially adverse to the Company or its Subsidiaries any existing agreement with the Company or its Subsidiaries.

i. Affiliate Agreements

Section 3.22 of the Disclosure Schedules sets forth all Contracts as of the date hereof between (A) the Company or any of its Subsidiaries, on the one hand, and (B) any Seller or any Related Party of any Seller (other than the Company or any of its Subsidiaries), on the other hand (except for agreements regarding ordinary course compensation and benefits and employment agreements entered into in the ordinary course of business). Any Contracts required to be identified in Section 3.22 of the Disclosure Schedules and any Contract in effect on the Closing Date that would have been required to be so identified if in effect on the date hereof, are referred to for purposes of this Agreement as "**Affiliate Agreements**". No Related Party of a Seller or the Company or any of its Subsidiaries owns, directly or indirectly, any equity or other financial or voting interest in any competitor, supplier, licensor, lessor, distributor, independent contractor or customer of the Business, except for the passive ownership of not more than five percent (5%) of any class of securities of an entity that are listed on a recognized securities exchange in the United States or Canada.

i. Anti-Bribery Matters

Since January 1, 2017, none of the Company nor any of its Subsidiaries or any of their respective current or former officers, directors, agents, or employees has, directly or indirectly taken any action which would cause it to be in violation of any anti-corruption or anti-bribery Law applicable to the Company or its Subsidiaries (in each case, as in effect at the time of such action) (collectively, the "**Anti-Bribery Laws**") or, in violation of such Anti-Bribery Laws (a) used any corporate funds for unlawful contributions, gifts, entertainment or other unlawful expenses relating to political activity, (b) made, offered or authorized any unlawful payment to foreign or domestic government officials or employees, whether directly or indirectly, (c) made, offered, solicited, accepted or authorized any unlawful bribe, rebate, payoff, influence payment, kickback or other similar unlawful payment, whether directly or indirectly, or (d) engaged in any business with any Person with whom, or in any country in which, a U.S. Person is prohibited from so engaging under U.S. sanctions administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury. Since January 1, 2017, none of the Company nor any of its Subsidiaries been under formal or informal investigation by a Governmental Authority, or received any communication from any Governmental Authority or from any third Person that alleges that the Company or any of its officers, directors, agents, or employees is in violation of any Anti-Bribery Laws, and no such potential or actual violation or liability has been discovered or alleged.

i. Brokers

Except for William Blair & Company, L.L.C., no broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of any Seller or the Company or any of its Subsidiaries. The fees of William Blair & Company, L.L.C. incurred by or on behalf of the Company in connection with the transactions contemplated by this Agreement shall be Transaction Expenses to the extent unpaid at Closing.

i. No Other Representations and Warranties

Except for the representations and warranties contained in this Article 3 (including the related portions of the Disclosure Schedules), none of Seller, the Company or any of its Subsidiaries or has made or makes any other express or implied representation or warranty, either written or oral, on behalf of any Seller or the Company or any of its Subsidiaries, with respect to the Business in connection with the transactions contemplated hereby.

a. Representations and warranties of buyer

Except as set forth in the Buyer Disclosure Schedules, Buyer represents and warrants to Sellers as follows:

i. Organization and Authority of Buyer

Buyer is a corporation duly organized, validly existing and in good standing under the Laws of Delaware. Buyer has all necessary corporate power and authority to enter into this Agreement, to carry out its obligations hereunder and to consummate the transactions contemplated hereby. The execution and delivery by Buyer of this Agreement, the performance by Buyer of its obligations hereunder and the consummation by Buyer of the transactions contemplated hereby have been duly authorized by all requisite corporate action on the part of Buyer. This Agreement has been duly executed and delivered by Buyer, and (assuming due authorization, execution and delivery by Sellers' and Sellers' Representatives) this Agreement constitutes a legal, valid and binding obligation of Buyer, enforceable against Buyer in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar Laws affecting creditors' rights generally and by general principles of equity (regardless of whether enforcement is sought in a proceeding at law or in equity).

i. No Conflicts; Consents

Except as set forth in Section 4.2 of the Buyer Disclosure Schedules, the execution, delivery and performance by Buyer of this Agreement, and the consummation of the transactions contemplated hereby, do not and will not: (a) result in a violation or breach of any provision of the organizational documents of Buyer; (b) result in a violation or breach of any provision of any Law or Governmental Order applicable to Buyer (assuming the expiration or termination of the applicable waiting period under the HSR Act); or (c) require the consent, notice or other action by any Person under, conflict with, result in a violation or breach of, constitute a default under or result in the acceleration of any agreement to which Buyer is a party, except in the cases of clauses (b) and (c), where the violation, breach, conflict, default, acceleration or failure to give notice would not have a material adverse effect on Buyer's ability to consummate the transactions contemplated hereby. No consent, approval, Permit, Governmental Order, declaration or filing with, or notice to, any Governmental Authority is required by or with respect to Buyer in connection with the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby, except for (i) any filings required to be made under the HSR Act and (ii) such filings as may be required by any applicable federal or state securities or "blue sky" Laws.

i. Buyer Capitalization

As of the date of this Agreement, the authorized share capital of the Buyer is set forth in Section 4.3 of the Buyer Disclosure Schedules ("**Buyer Securities**"). The Buyer Securities set forth in Section 4.3 of the Buyer Disclosure Schedules represent all of the issued and outstanding capital stock of the Buyer as of the date of this Agreement. All issued and outstanding Buyer Securities (i) have been duly authorized and validly issued and are fully paid and non-assessable; (ii) have been offered, sold and issued in compliance with applicable Law, including federal and state securities Laws, and all requirements set forth in the organizational documents of the Buyer; and (iii) are not subject to, nor have they been issued in violation of, any purchase option, call option, right of first refusal, preemptive right, subscription right or any similar right under any provision of any applicable Law.

i. Buyer Stock

Assuming the accuracy of the Accredited Investor Questionnaires, the shares of Buyer Common Stock to be issued in accordance with the terms of this Agreement for the consideration expressed herein, will be duly authorized and validly issued, fully paid and nonassessable, and will be free of restrictions on transfer other than restrictions set forth herein, under the organizational documents of the Buyer, or under the Securities Act and any other applicable Law.

i. Investment Purpose

Buyer is acquiring the Shares solely for its own account for investment purposes and not with a view to, or for offer or sale in connection with, any distribution thereof. Buyer acknowledges that the Shares are not registered under the *Securities Act of 1933*, as amended, or any state securities laws, and that the Shares may not be transferred or sold except pursuant to the registration provisions of the *Securities Act of 1933*, as amended or pursuant to an applicable exemption therefrom and subject to state securities laws and regulations, as applicable. Buyer is able to bear the economic risk of holding the Shares for an indefinite period (including total loss of its investment), and has sufficient knowledge and experience in financial and business matters so as to be capable of evaluating the merits and risk of its investment.

i. SEC Filings; NYSE Requirements

Buyer has timely filed with or furnished to, as applicable, the SEC all registration statements, prospectuses, reports, schedules, forms, statements, and other documents (including exhibits and all other information incorporated by reference) required to be filed or furnished by it with the

SEC since April 28, 2021 (the "**SEC Documents**"). True, correct, and complete copies of all the SEC Documents are publicly available on EDGAR. As of their respective filing dates or, if amended or superseded by a subsequent filing prior to the date hereof, as of the date of the last such amendment or superseding filing (and, in the case of registration statements and proxy statements, on the dates of effectiveness and the dates of the relevant meetings, respectively), each of the SEC Documents complied as to form in all material respects with the applicable requirements of the *Securities Act of 1933*, the *Securities Exchange Act of 1934*, and the *Sarbanes-Oxley Act of 2002*, and the rules and regulations of the SEC thereunder applicable to such SEC Documents. Buyer is in compliance in all material respects with all of the applicable listing and corporate governance rules of the New York Stock Exchange.

i. Brokers

Except as set forth in Section 4.7 of the Buyer Disclosure Schedules, no broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of Buyer.

i. Sufficiency of Funds

As of the Closing Date, Buyer will have access to sufficient funds necessary to consummate the transactions contemplated hereby.

i. No Impediment

There are no Actions pending or, to Buyer's knowledge, threatened against or by Buyer or any Affiliate of Buyer that challenge or seek to prevent, enjoin or otherwise delay the transactions contemplated by this Agreement, and there is no transaction pending or under consideration by Buyer or any Affiliate of Buyer that, individually or in the aggregate, would be reasonably expected to have the effect of preventing, materially delaying or making illegal any of the transactions contemplated by this Agreement.

i. Independent Investigation

Buyer has conducted its own independent investigation, review and analysis of the business, results of operations, prospects, condition (financial or otherwise) or assets of the Company and its Subsidiaries, and acknowledges that it has been provided adequate access to the personnel, properties, assets, premises, books and records, and other documents and data of Seller, the Company and its Subsidiaries for such purpose. Buyer acknowledges and agrees that none of Sellers, the Company or any of its Subsidiaries or any other Person has made any representation or warranty as to Sellers, the Company or any of its Subsidiaries or this Agreement, except as expressly set forth in Article 3 of this Agreement (including the related portions of the Disclosure Schedules). Notwithstanding the foregoing, nothing in this Agreement shall limit Buyer's rights or remedies in respect of fraud.

i. No Other Representations and Warranties

Except for the representations and warranties contained in this Article 4 (including the related portions of the Buyer Disclosure Schedules), neither Buyer nor any other Person has made or makes any other express or implied representation or warranty, either written or oral, on behalf of Buyer.

a. Covenants

i. Conduct of Business Prior to the Closing

i. From the date hereof until the Closing, except as (a) otherwise contemplated by this Agreement, (b) required by Law, or (c) consented to in writing by Buyer (which consent shall not be unreasonably withheld, conditioned or

delayed), Sellers shall, and shall cause the Company and its Subsidiaries to: (i) conduct the business of the Company and its Subsidiaries in the ordinary course of business; and (ii) use commercially reasonable efforts to maintain and preserve intact the current organization, business and franchise of the Company and its Subsidiaries and to preserve the rights, franchises, goodwill and relationships of its employees, customers, lenders, suppliers, regulators and others having business relationships with the Company and its Subsidiaries.

ii. Without limiting the generality of the foregoing, from the date hereof until the Closing Date, except (a) as otherwise contemplated by this Agreement, (b) required by Law, (c) consented to in writing by Buyer (which consent shall not be unreasonably withheld, conditioned or delayed) except as consented to in writing by Buyer (which consent shall not be unreasonably withheld, conditioned or delayed), or (d) as set forth in Section 5.1 of the Disclosure Schedules, Sellers shall not cause or permit the Company or any of its Subsidiaries to do any of the following:

1. take any action or fail to take any action that would reasonably be expected to have a Material Adverse Effect;
2. except for the issuance of Common Stock to existing Sellers in connection with the Pre-Closing Reorganization and in accordance with the conversion provisions of the organizational documents of the Company, issue, transfer, pledge, sell or dispose of or otherwise subject to any Encumbrance any Equity Securities of the Company or its Subsidiaries, or grant of any options, warrants or other rights to purchase or obtain (including upon conversion, exchange or exercise) any securities in the Company or its Subsidiaries;
3. except in connection with the conversion of Series A Preferred Stock into Common Stock and reclassification of the Series A Common Stock and Series B Common Stock into a single class of Common Stock in the Pre-Closing Reorganization, reclassify, combine, split, subdivide or redeem, or purchase or otherwise acquire, directly or indirectly, any of its capital stock or other equity or ownership interest, or make any other change with respect to its capital structure;
4. declare or pay any dividends or distributions on or in respect of any securities in the Company;
5. make any material change in any method of accounting or accounting practice of the Company

and its Subsidiaries, except as required by GAAP or applicable Law;

6. create, incur, assume or guarantee any Debt, except for unsecured current obligations and liabilities incurred in the ordinary course of business consistent with past practice;
7. sell or dispose of any of the assets of the Company or its Subsidiaries (except for disposition of any inventory in the ordinary course of business consistent with past practice);
8. materially increase the compensation payable to the employees of the Company or its Subsidiaries, other than as required under a Benefit Plan in effect as of the date hereof;
9. grant any equity-based awards or severance or termination or retention payment to, or pay, loan or advance any amount to, any director, officer or employee of the Company or its Subsidiaries other than compensation paid in the ordinary course of business consistent with past practice or as required under a Benefit Plan in effect as of the date hereof;
10. adopt, amend or modify any Benefit Plan other than routine year-end modifications in the ordinary course and consistent with past practice the effect of which in the aggregate would not materially increase the obligations of the Company or its Subsidiaries under such plans;
11. hire any employees, other than to fill vacancies arising due to terminations of employment of employees with an annual base compensation of less than $175,000, or terminate the employment of any employee with an annual base compensation of $175,000 or more (other than for cause);
12. acquire (by merger, amalgamation, consolidation or purchase of a substantial portion of the assets or shares of or by any other manner), any business or any Person or any division thereof for consideration of more than one million dollars ($1,000,000);
13. except in connection with the conversion of Series A Preferred Stock into Common Stock, or the reclassification of the Series A Common Stock and Series B Common Stock into a single class of Common Stock in the Pre-Closing Reorganization, reorganize, amalgamate, merge or combine with any other Person;
14. adopt a plan of liquidation or resolutions providing for the liquidation or dissolution of the Company or any of its Subsidiaries or commence any

proceedings seeking to adjudicate the Company or any of its Subsidiaries a bankrupt or insolvent, or make a proposal with respect to the Company or any of its Subsidiaries under any Law relating to bankruptcy, insolvency, reorganization or compromise of debts or similar Laws;

15. amend, waive, modify or consent to the termination of any Material Contract, or amend, waive, modify or consent to the termination of the Company's or any of its Subsidiaries' rights thereunder, or enter into any Contract other than in the ordinary course of business consistent with past practice;
16. authorize, or make any commitment with respect to, any unbudgeted capital expenditure exceeding $100,000, or fail to make any capital expenditure in accordance with the Company's or its Subsidiaries' most recently approved budget or business plan;
17. enter into any Contract with any Related Party or Governmental Authority (other than customer Contracts with Governmental Authorities requiring payments to the Company or its Subsidiaries of less than one hundred thousand dollars ($100,000) per annum);
18. make any material change in the Company's or Subsidiaries' tax policies and procedures, or make or revoke any tax election or settle or compromise any tax liability(ies) or amend any tax return(s) or file any income tax or other material tax returns by or on behalf of the Company or any Subsidiary;
19. permit the lapse of any right relating to Intellectual Property that is material to the business of the Company or any of its Subsidiaries, or any other material intangible asset used in the business of the Company or any of its Subsidiaries;
20. accelerate the collection of or discount any accounts receivable, delay the payment of accounts payable or defer expenses, reduce inventories or otherwise increase cash on hand, except in the ordinary course of business consistent with past practice;
21. pay, discharge or satisfy any claim, liability or obligation (absolute, accrued, asserted or unasserted, contingent or otherwise), other than the payment, discharge or satisfaction, in the ordinary course of business consistent with past practice, of liabilities reflected or reserved against on the Balance Sheet or subsequently incurred in the ordinary course of business consistent with past practice;

22. commence or settle any Action or other dispute involving monetary payments in excess of $250,000 or any criminal or non-monetary liability or damages;
23. amend, modify, terminate, cancel or let lapse any material insurance (or re-insurance) policy of the Company or any of its Subsidiaries in effect on the date of this Agreement, other than scheduled renewals of any insurance policy in effect on the date hereof in the ordinary course; or
24. enter into any agreement or commit to do any of the foregoing or any action or omission that would result in any of the foregoing.

ii. Access to Information

From the date hereof until the Closing, Sellers shall, and shall cause the Company to: (a) afford Buyer and its Representatives reasonable access to and the right to inspect all of the Real Property, properties, assets, premises, books and records, contracts, agreements and other documents and data related to the Company and its Subsidiaries; (b) furnish Buyer and its Representatives with such financial, operating and other data and information related to the Company and its Subsidiaries as Buyer or any of its Representatives may reasonably request; and (c) instruct the Representatives of Sellers and the Company to cooperate with Buyer in its investigation of the Company and its Subsidiaries; *provided, however,* that any such investigation shall be conducted during normal business hours upon reasonable advance notice to Seller, under the supervision of Sellers' personnel and in such a manner as not to interfere with the normal operations of the Company and its Subsidiaries. All requests by Buyer for access pursuant to this Section 5.2 shall be submitted or directed exclusively to Sellers' Representatives or such other individuals as Sellers' Representatives may designate in writing from time to time. Notwithstanding anything to the contrary in this Agreement, neither Sellers nor the Company shall be required to disclose any information to Buyer if such disclosure would, in Sellers' reasonable judgement and upon advice of legal counsel: (w) cause significant competitive harm to Sellers, the Company or any of its Subsidiaries and their respective businesses if the transactions contemplated by this Agreement are not consummated (x) jeopardize any attorney-client or other privilege; or (y) contravene any applicable Law, fiduciary duty or binding agreement entered into prior to the date of this Agreement provided, that, in each case, Sellers shall and Sellers shall cause the Company to, reasonably cooperate with Buyer to seek an appropriate remedy to permit the access contemplated hereby. Prior to the Closing, without the prior written consent of Sellers' Representatives, which may be withheld for any reason, Buyer shall not contact any suppliers to, or customers of, the Company or any of its Subsidiaries in connection with the transactions contemplated hereby, unless compliance with 5.7(e) would require it to do so and then in cooperation with Sellers' Representatives to the extent permitted by applicable Law, and Buyer shall have no right to perform invasive or subsurface investigations of the Real Property; provided, that nothing in this Section 5.2 shall prohibit Buyer or its Affiliates from making ordinary course contacts not related to the transactions contemplated hereby. Buyer shall, and shall cause its Representatives to, abide by the terms of the Confidentiality Agreement with respect to any access or information provided pursuant to this Section 5.2 prior to the Closing. Notwithstanding anything to the contrary in this Agreement, Sellers may satisfy their obligations set forth above with respect to the provision of access to information or personnel by electronic means if, and to the extent, physical access is not

reasonably feasible as a result of COVID-19 or any COVID-19 Measures or would not be permitted by applicable Laws.

i. Resignations

Sellers shall deliver to Buyer written resignations, effective as of the Closing Date, of the officers and directors of the Company designated by Buyer at least three (3) Business Days prior to the Closing, in form and substance reasonably satisfactory to Buyer.

i. Employees; Benefit Plans

i. During the period commencing at the Closing and ending on the date which is twelve (12) months from the Closing (or if earlier, the date of the employee's termination of employment with the Company or any of its Subsidiaries), Buyer shall and shall cause the Company to provide each employee of the Company and its Subsidiaries who remains employed immediately after the Closing ("**Company Continuing Employee**") with: (i) base salary or hourly wages which are substantially comparable in the aggregate to the base salary or hourly wages provided by the Company or its applicable Subsidiary to the Company Continuing Employees immediately prior to the Closing; (ii) target bonus opportunities (excluding equity-based compensation) which are substantially comparable to the target bonus opportunities (excluding equity based compensation) provided by the Company or its applicable Subsidiary to the Company Continuing Employees immediately prior to the Closing; (iii) retirement and welfare benefits (excluding severance, change in control or transaction bonuses, defined benefit pension benefits and retiree health and welfare benefits) that are substantially comparable in the aggregate to those provided by the Company or its applicable Subsidiary to the Company Continuing Employees immediately prior to the Closing; and (iv) severance benefits that are no less favorable than the practice, plan or policy in effect for similarly situated employees of Buyer.

ii. With respect to any employee benefit plan maintained by Buyer or its Subsidiaries (collectively, "**Buyer Benefit Plans**") in which any Company Continuing Employees will participate, Buyer shall, or shall cause the Company to, recognize all service of the Company Continuing Employees with the Company or any of its Subsidiaries, as the case may be as if such service were with Buyer, for vesting and eligibility purposes (but not for benefit accrual purposes, except for vacation and severance, as applicable); *provided, however*, such service shall not be recognized to the extent that such recognition would result in a duplication of benefits under the corresponding Benefit Plan.

iii. The parties hereto acknowledge and agree that the terms set forth in this Section 5.4 shall not (i) create any right in any employee, director or other individual service provider of the Company or any of its Subsidiaries or any other Person to any continued employment with the Company or any of its Subsidiaries, Buyer or any of their respective Affiliates; (ii) alter or limit the ability of Buyer or any of its Subsidiaries (or, following the Closing, the Company or any of its Subsidiaries) to amend, modify or terminate any benefit plan, program, agreement or arrangement at any time assumed, established, sponsored or maintained by any of them or (iii) create any obligation on the part of Buyer or its Subsidiaries (or, following the Closing, the Company or any of its Subsidiaries) to employ any Company Continuing Employee for any period following the Closing.

iv. If applicable, and prior to the Closing Date, the Company shall (i) use commercially reasonable efforts to obtain from each "disqualified individual" (within the meaning of Section 280G(c) of the Code and the regulations thereunder) who has the right to receive any payments or benefits that could be deemed to constitute "parachute payments" (within the meaning of Section 280G(b)(2)(A) of the Code and the regulations thereunder) (the "**Section 280G Payments**") a waiver of such disqualified individual's rights to some or all of such payments or benefits so that any remaining payments and/or benefits shall not be deemed to be "excess parachute payments" (within the meaning of Section 280G of the Code and the regulations thereunder) (the "**Section 280G Waiver**"), and (ii) contingent on receipt by the Company of the Section 280G Waiver with respect to a disqualified individual, submit to the holders of the Shares for approval, in a manner consistent with the requirements of Section 280G(b)(5)(B) of the Code, of the receipt by such disqualified individuals of some or all of such Section 280G Payments so that any remaining payments and/or benefits shall not be deemed to be "excess parachute payments" (within the meaning of Section 280G of the Code and the regulations thereunder) (subsection (i) and (ii) collectively, the "**Section 280G Vote**"). At least five (5) Business Days before taking such actions, the Company shall deliver to Buyer for review and comment (which the Company will consider in good faith) copies of any documents or agreements necessary to effect the Section 280G Vote, including, but not limited to, customary parachute payment calculations prepared by the Company's legal counsel, accountants or tax advisors, any shareholder consent form, disclosure statement, or waiver, and the

Company shall consider in good faith all comments received from Buyer on such documents or agreements. Prior to the Closing Date, the Company shall provide proof satisfactory to Buyer that (a) shareholder approval was obtained, and the Section 280G Payments may be paid or provided, as applicable, to each disqualified individual from whom a Section 280G Waiver was obtained or (b) the Section 280G Payments will not be paid or provided, as applicable, due to the failure to obtain shareholder approval with respect to each disqualified individual from whom a Section 280G waiver was obtained. In connection with the foregoing, the Buyer shall provide the Company with all information and documents necessary to allow the Company to determine whether any payments made or to be made or benefits granted or to be granted pursuant to any employment agreement or other agreement, arrangement or contract entered into or negotiated by the Buyer or any of its affiliates could reasonably be considered to be "parachute payments" within the meaning of Section 280G(b)(2) of the Code at least ten Business Days prior to the Closing Date (and shall further provide any such updated information as is necessary prior to the Closing Date). The Company shall provide to Buyer an updated schedule of the information set forth in Section 3.19(a) of the Disclosure Schedule no later than five (5) Business Days prior to the Closing Date.

v. The parties hereto acknowledge and agree that the terms set forth in this Section 5.4 shall not create any right in any employee of the Company or any of its Subsidiaries or any other Person to any continued employment with the Company or any of its Subsidiaries, Buyer or any of their respective Affiliates.

ii. Director and Officer Indemnification and Insurance

i. Buyer agrees that all rights to indemnification, advancement of expenses and exculpation by the Company and its Subsidiaries now existing in favor of each Person who is now, or has been at any time prior to the date hereof or who becomes prior to the Closing Date, an officer or director of the Company or any of its Subsidiaries, as provided in the certificate of incorporation or by-laws (or similar constating documents) of the Company or any of its Subsidiaries, in each case as in effect on the date of this Agreement, or pursuant to any other agreements in effect on the date hereof and disclosed in Section 5.5(a) of the Disclosure Schedules, shall survive the Closing Date and shall continue in full force and effect in accordance with their respective terms.

ii. At or prior to the Closing, the Sellers shall cause the Company to obtain as of the Closing Date "tail" insurance policies (the "**D&O Tail Policy**") with a claims period of six (6) years from the Closing Date with at least the same coverage and amounts, and containing terms and conditions that are not less advantageous to the directors and officers of the Company and its Subsidiaries, in each case with respect to claims arising out of or relating to events which occurred on or prior to the Closing Date (including in connection with the transactions contemplated by this Agreement). The costs and expenses of the D&O Tail Policy shall be Transaction Expenses.

iii. The obligations of Buyer and the Company under this Section 5.5 shall not be terminated or modified in such a manner as to materially and adversely affect any director or officer to whom this Section 5.5 applies without the consent of such affected director or officer (it being expressly agreed that the directors and officers to whom this Section 5.5 applies shall be third-party beneficiaries of this Section 5.5, each of whom may enforce the provisions of this Section 5.5).

iii. Confidentiality

The parties hereto acknowledge and agree that until the Closing, the Confidentiality Agreement shall remain in full force and effect in accordance with its terms. Buyer and Sellers agree to keep the details of the negotiation of this Agreement and the existence and terms of this Agreement confidential in accordance with the terms of the Confidentiality Agreement and as if such information were "Evaluation Material" thereunder. Following the Closing, each Seller shall, and shall cause its Affiliates to, keep confidential, all information relating to the Company or the business of the Company and Buyer, except as required by applicable Law or administrative process and except for information that is known to the public at the time of disclosure, or thereafter becomes known to the public other than as a result of a breach of this Section 5.6 or any other duty or obligation of confidentiality owed to the Company or Buyer.

i. Governmental Approvals and Other Third-Party Consents

i. Each party hereto shall, as promptly as possible, use its reasonable best efforts to obtain, or cause to be obtained, all consents, authorizations, orders and approvals from all Governmental Authorities that may be or become necessary for its execution and delivery of this Agreement and the performance of its obligations pursuant to this Agreement. Each party hereto shall (i) cooperate fully with the other parties hereto and their Affiliates in promptly seeking to obtain all such consents, authorizations, orders and approvals, (ii) if required by the HSR Act and if the appropriate filing pursuant to the HSR Act has not been filed prior to the date hereof, make or cause to be made an appropriate filing pursuant to the HSR Act with respect to the transactions contemplated by this Agreement as promptly as practicable after the date hereof (which filing

shall be made in any event within ten (10) Business Days after the date hereof), (iii) request early termination for any applicable waiting period under the HSR Act, and (iv) comply as promptly as practicable with any inquiry or request for additional information, documents or other materials received by such party or any of its Affiliates from any Governmental Authority in connection with the transactions contemplated under this Agreement, including with regard to any filings in connection with such transactions. Buyer shall not, and Buyer shall cause each of its Affiliates not to, without Sellers' Representatives' advance written consent (such consent not to be unreasonably delayed or withheld), extend any applicable waiting period under any Regulatory Law, or enter into any agreement with any Governmental Authority to delay or not to consummate the transactions contemplated by this Agreement. Buyer shall not, and Buyer shall cause each of its Subsidiaries not to, undertake any transaction that, individually or in the aggregate, would be reasonably expected to have the effect of materially impeding, materially delaying or preventing the consummation of the transactions contemplated by this Agreement or receipt of any required consents, authorizations, orders or approvals. Nothing in this Section 5.7 imposes any obligation on any Seller, the Company or any Affiliate of any Seller or the Company to incur any liability or offer or grant any accommodation (financial or otherwise) to any Person, and nothing in this Section 5.7 imposes any obligation on any Seller or any Affiliate of any Seller as to any interests or holdings of such Seller or any Affiliate of such Seller other than the Company.

ii. Buyer, Buyer's Affiliates, Sellers and the Company shall use reasonable best efforts (A) to avoid or eliminate as promptly as possible each and every impediment to the Closing that may exist, arise or be asserted under any Regulatory Laws or in connection with any investigation, inquiry, proceeding, action, litigation, lawsuit or hearing, (B) to avoid or resolve as promptly as possible each and every objection, if any, that may exist, arise or be asserted with respect to the transactions contemplated by this Agreement, (C) to obtain all required approvals, authorizations, consents, or clearances of any Governmental Authority with respect to the transactions contemplated by this Agreement as promptly as possible, and (D) to cause all applicable waiting periods or review periods under all applicable Regulatory Laws to terminate or expire at the earliest possible date, including in the case of each of (A), (B), (C), and (D) through (i) proposing,

negotiating, consenting to, offering to undertake, committing to and effecting, by consent decree, hold separate order, trust or otherwise, the sale, divestiture, disposition (including by licensing any intellectual property), hold separate, impairment, encumbrance or limitation on freedom of action of any assets, businesses, interests or Equity Securities of or owned by the Company or any of its Subsidiaries, (ii) terminating or modifying any existing relationships, contractual rights or obligations, (iii) otherwise offering to take, committing to take or taking any action that each of the Buyer, the Buyer's Affiliates, the Sellers and the Company are capable of taking that limits their freedom of action with respect to, or their ability to retain, any of the assets, businesses, interests or Equity Securities of or owned by the Company or any of its Subsidiaries and (iv) taking as promptly as possible any and all steps necessary, proper or advisable to avoid, vacate, terminate, modify or suspend any investigation, or any injunction or other Governmental Order that is entered, is threatened or becomes reasonably foreseeable to be entered, that could prevent, delay, impair or make unlawful consummation of the transactions contemplated by this Agreement, all to the end of effecting such consummation of the transactions contemplated by this Agreement as soon as possible and, in any event, prior to the Outside Date; provided, that notwithstanding the foregoing, Buyer and its Affiliates shall not be required to take or be required to cause to be taken (and the Seller and the Company shall not offer or propose to any Governmental Authority, without the prior written consent of Buyer), any of the foregoing actions with respect to the assets, businesses or product lines of Buyer or any of its Affiliates, or the Company or any of its Subsidiaries, or any combination thereof, if such actions would, either individually or in the aggregate, (A) result in a material reduction or elimination of the expected benefits to the Buyer of the transactions contemplated under this Agreement, (B) require the sale, divestiture, or disposal of, or otherwise limit Buyer's ownership or rights to, any assets or businesses of the Buyer or its affiliates, or (C) require Buyer or its Affiliates to obtain prior approval or other approval from a Governmental Authority, or submit a notification or otherwise notify the Governmental Authority, prior to consummating any future transaction (other than the transactions contemplated by this Agreement).

iii. Any proposing, negotiating, consenting to, offering to undertake, committing to or effecting any sale, divestiture, disposition, hold separate, impairment, encumbrance or

limitation on freedom of action with regard to any aspect of the Company or any of its Subsidiaries shall be subject to and conditioned on the consummation of the transactions contemplated under this Agreement. Notwithstanding anything to the contrary in this Agreement, no steps or actions taken by Buyer or its Affiliates pursuant to this Section 5.7 shall entitle Buyer to any reduction of the Purchase Price.

iv. Each party hereto shall, and shall cause its Affiliates to, (i) cooperate in all respects with the other parties and their Affiliates in connection with any filing, submission, investigation, action, proceeding, request for additional information or documentary material or inquiry in connection with the transactions contemplated by this Agreement, (ii) promptly inform the other parties of any communication received by such party or its Affiliate from, or given by such party or its Affiliate to, any Governmental Authority and of any material communication received or given in connection with any proceeding by a private party, in each case, regarding the transactions contemplated by this Agreement, (iii) afford the other parties the right to review in advance to the extent practicable, and, to the extent practicable, consult on and consider in good faith the views of the other parties in connection with any filing to be made by such party or its Affiliates with, or any written materials to be submitted by such party or its Affiliates to, any Governmental Authority or, in connection with any proceeding by a private party, any other Person, in each case, in connection with the transactions contemplated by this Agreement, (iv) make available to the other parties copies of all material notices and written communications received from any Governmental Authority in connection with the transactions contemplated by this Agreement, and (v) consult with the other parties to the extent practicable in advance of any meeting, discussion, telephone call or conference with any Governmental Authority or, in connection with any proceeding by a private party, with any other Person and, to the extent not expressly prohibited by the Governmental Authority or Person, give the other parties the opportunity to attend and participate, in each case, regarding the transactions contemplated by this Agreement. With regard to any sharing of information contemplated under this Section 5.7, (A) any disclosure of information shall been done in a manner consistent with applicable Law, (B) information may be withheld as necessary to address reasonable attorney-client privilege or similar concerns, (C) a party may, as it deems advisable or necessary, reasonably designate any confidential or

competitively sensitive information as for "outside counsel only," (D) materials may be redacted to remove references concerning the valuation for the transactions contemplated by this Agreement, and (E) no party or its Affiliates shall be obligated to provide to any other party or its Affiliates any portion of its or its Affiliate's notification filing under any Regulatory Law that is not customarily furnished to other parties in connection with filings under the applicable Regulatory Law.

v. Sellers shall cause the Company or its applicable Subsidiaries to give all notices to, and use commercially reasonable efforts to obtain all consents from, all third parties that are described in Section 3.6 of the Disclosure Schedules as the Buyer may request in connection with the transactions contemplated hereby; *provided*, *however*, that the Buyer shall have no obligation to give any guarantee, and neither Buyer nor any Seller or the Company shall be required to pay any other consideration of any nature in connection with any such notice, consent or estoppel certificate or consent to any change in the terms of any agreement or arrangement that the Buyer in its sole discretion may deem adverse to the interests of the Buyer or the Company or any of its Subsidiaries.

ii. Books and Records

i. In order to facilitate the resolution of any claims made against or incurred by Sellers prior to the Closing, or for any other reasonable purpose, for a period of six (6) years after the Closing, Buyer shall:

1. retain the books and records (including personnel files) of the Company and its Subsidiaries relating to periods prior to the Closing in a manner reasonably consistent with the prior practices of the Company and its Subsidiaries; and
2. upon reasonable notice, afford the Representatives of Sellers reasonable access (including the right to make, at Sellers' expense, photocopies), during normal business hours, to such books and records.

ii. Buyer shall not be obligated to provide Sellers with access to any books or records (including personnel files) pursuant to this Section 5.8 where such access would violate any Law.

iii. Closing Conditions

From the date hereof until the Closing, each party hereto shall, and Sellers shall cause the Company and its Subsidiaries to, use commercially reasonable efforts to take such actions as are necessary to expeditiously satisfy the closing conditions set forth in Article 6 hereof, provided that this Section 5.9 in no way limits the obligations of Buyer and its Affiliates under Section 5.7.

i. Public Announcements

Unless otherwise required by applicable Law or stock exchange requirements (based upon the advice of counsel), neither Buyer nor any Seller nor any of their respective Affiliates shall make any public announcements in respect of this Agreement or the transactions contemplated hereby or otherwise communicate with any news media without the prior written consent of Buyer and Sellers' Representatives (which consent shall not be unreasonably withheld, conditioned or delayed), and the parties shall cooperate as to the timing and contents of any such announcement; *provided*, that the foregoing restriction shall cease to apply to Buyer from and after the Closing. Nothing in this Section 5.10 shall prohibit Buyer or its Affiliates or Clairvest Group Inc. from making any disclosure, press release or other communication (a) to the extent required by law (including the rules and regulations of any stock exchange), which press release may include realized proceeds, multiple of invested capital and internal rate of return, or (b) to the extent that such disclosure, release or communication contains only information previously publicly disclosed by Buyer or its Affiliates or Clairvest Group Inc., as applicable.

i. Transfer Taxes

All transfer, documentary, sales, use, stamp, registration, value added and other such Taxes and fees (including any penalties and interest) incurred in connection with this Agreement (including any real property transfer Tax and any other similar Tax) (collectively, "**Transfer Taxes**") shall be borne equally by the Buyer and the Sellers as and when due.

i. Notice of Certain Developments

During the period commencing on the date of this Agreement and terminating upon the earlier to occur of the Closing or the termination of this Agreement, Sellers' Representatives and Buyer will provide the other party with prompt written notice of any material development or fact that would make the satisfaction of any of the conditions set forth in Sections 6.1 or 6.2, on the one hand, or Sections 6.1 or 6.3, on the other hand, respectively, on the Closing Date reasonably unlikely or impossible. No such notification shall be given any effect for purposes of determining the accuracy of the representations and warranties made by Sellers or Buyer pursuant to this Agreement or determining whether the conditions set forth in Sections 6.1 or 6.2, on the one hand, or Sections 6.1 or 6.3, on the other hand, respectively, have been satisfied.

i. Tax Matters

i. Buyer shall provide Sellers' Representatives with reasonable access to information and documentation in the possession of the Company or any of its Affiliates that is reasonably requested by Sellers' Representatives in order for any Seller to (i) determine its liabilities for Taxes, or (ii) prepare for and respond to a Tax examination or proceeding, in either case, with respect Sellers liabilities for Taxes in respect of a Tax period (or portion thereof) ending on or before the Closing Date. Any cost incurred by the Company or its Affiliates in providing such information or documentation shall be reimbursed by the Seller requesting such information or documentation.

ii. Buyer and Sellers agree that, for all U.S. federal, state, local and foreign Tax purposes, each shall report Buyer's acquisition of Shares from Sellers as an acquisition of stock described in Section 1001 of the Code (and any corresponding provision of state Law). None of Buyer, the Company or any of their respective Affiliates or Subsidiaries shall, except to the extent required by Law, (i)

amend any Tax Returns filed before the Closing Date, (ii) file Tax Returns for the Company or any Subsidiary for any period ending before the Closing Date in a jurisdiction where such Company has not historically filed Tax Returns, (iii) initiate discussions or examinations with any Tax authority regarding Taxes with respect to any period beginning before the Closing Date, (iv) make any voluntary disclosures with respect to Taxes for a period beginning before the Closing, (v) change any accounting method or adopt any convention that shifts taxable income from a period beginning (or deemed to begin) after the Closing Date to a taxable period (or portion thereof) ending on or before the Closing Date or shifts deductions or losses from a period beginning before the Closing Date to a period beginning (or deemed to begin) after the Closing Date, (vi) make any election under Section 336 or Section 338 of the Code (or similar provision under state or local Law) with respect to the acquisition of the Company, or (vii) otherwise take any action with respect to any Tax matter applicable to a period prior to the Closing Date, in each case, to the extent doing so could reasonably be expected to result in a material increase in Sellers' Tax liabilities or the Pre-Closing Tax Liability Amount, unless Buyer obtains the prior written consent of the Seller Representative (not to be unreasonably withheld, conditioned or delayed).

ii. Termination of Affiliate Agreements

Sellers agree to procure that before the Closing Date, all Affiliate Agreements will be terminated or settled without any further rights, entitlements, liabilities or obligations of the Company or its Subsidiaries or any other party thereto on terms and pursuant to documentation reasonably acceptable to Buyer.

i. Solicitation

Sellers agree that following the date of this Agreement, neither Sellers, nor the Company, nor any of their respective Affiliates or Representatives, will directly or indirectly solicit, initiate, consider, facilitate, encourage, accept or furnish to any other Person any information with respect to, any other proposals or offers from any Person relating to any (a) merger or consolidation, (b) acquisition or purchase of all or any of the capital stock of the Company or all or any substantial portion of the assets of the Company (other than the sale of inventory in the ordinary course of business consistent with past practice), or (c) similar transaction or business combination (a "**Competing Transaction**"). Sellers shall, and shall cause the Company to, immediately cease and cause to be terminated all existing discussions, conversations, negotiations and other communications with any Person conducted heretofore with respect to any Competing Transaction. Sellers shall promptly after the Closing, instruct any Person that has heretofore executed a confidentiality agreement (other than the Confidentiality Agreement) relating to a Competing Transaction or potential Competing Transaction, to promptly return or destroy all information, documents and materials relating to any such Competing Transaction or to the Company or the Company's business, operations or affairs heretofore furnished by Sellers or any of their respective Representatives to such Person or any of its Representatives in accordance with the terms of such confidentiality agreement. Sellers shall notify the Buyer promptly, but in

any event within 24 hours, orally and in writing if any such proposal or offer, or any inquiry or other contact with any Person with respect thereto, is made. Any such notice to Buyer shall indicate in reasonable detail the identity of the Person making such proposal, offer, inquiry or other contact and the terms and conditions of such proposal, offer, inquiry or other contact. Sellers shall not, and shall cause the Company and each of its Subsidiaries not to, release any Person from, or waive any provision of, any confidentiality or standstill agreement to which the Seller or the Company or any of its Subsidiaries is a party, without the prior written consent of Buyer.

i. Non-Competition and Non-Solicitation

i. Non-Competition. For a period of thirty (30) months from the Closing Date, neither of Robert Schaefer, Holden Caine, Ali Seymen Ertas, Kevin Smart nor Jennifer Park (the "**Restricted Persons**") shall, directly or indirectly, in any manner whatsoever including, without limitation, either individually, or in partnership, jointly or in conjunction with any other Person, or as employee, employer, principal, agent, trustee, consultant, contractor, manager, officer, shareholder or lender:

1. carry on or be engaged in any business;
2. have a financial or other interest (including an interest by way of royalty or other compensation arrangements) in or in respect of the business of any Person which carries on a business;
3. advise, manage, lend money to or guarantee the debts or obligations of any Person which carries on a business;
4. permit their name to be used or employed by any Person carrying on, engaged in a business;
5. canvass or solicit the business of (or procure or assist the canvassing or soliciting of the business of) any Customer or Prospective Customer of the Company or its Subsidiaries as of the Closing Date;
6. accept (or procure or assist the acceptance of) any business from any Customer or Prospective Customer of the Company or its Subsidiaries as of the Closing Date;
7. supply (or procure or assist the supply of) any goods or services to any Customer or Prospective Customer of the Company or its Subsidiaries as of the Closing Date;
8. unless otherwise approved in writing by Buyer, employ, offer employment to or solicit the employment or engagement of or otherwise entice away from the employment of the Company or its Subsidiaries (i) any Seller, or (ii) any individual who is, or was in the twelve (12) preceding months, employed by the Company or its Subsidiaries whether or not such individual would commit any

breach of his or her contract or terms of employment by leaving the employ of the Company or its Subsidiaries (provided that, in the case of clause (ii) above, such restriction shall be limited to the twenty-four (24)-month period following the Closing Date); or

9. procure or assist any Person to employ, offer employment or solicit the employment or engagement of any such individual;

in each case in or with respect to (as applicable) a competing business (i.e., that is the same or a substantially similar business) to the Business (or a material part of the Business) in the United States. For purposes of this Section 5.16, (i) "Customers" means a Person that is a customer of the Company or any of its Subsidiaries at such date or in the two (2) years preceding the Closing Date, and (ii) "Prospective Customer" means any Person canvassed or solicited by the Company or any of its Subsidiaries at any time during the two (2)-year period prior to the Closing Date in connection with the Business. Unless otherwise approved in writing by Buyer, Clairvest Group Inc. also agrees not to, and to cause its Affiliates not to, directly or indirectly, in any manner whatsoever including, without limitation, either individually, or in partnership, jointly or in conjunction with any other Person, employ, offer employment to or solicit the employment or engagement of or otherwise entice away from the employment of the Company or its Subsidiaries (i) any Seller, provided that such restriction shall be limited to the thirty (30)-month period following the Closing Date, or (ii) any individual who is, or was in the twelve (12) preceding months, employed by the Company or its Subsidiaries whether or not such individual would commit any breach of his or her contract or terms of employment by leaving the employ of the Company or its Subsidiaries, provided that such restriction shall be limited to the twenty-four (24)-month period following the Closing Date).

i. Exception. Nothing in this Agreement shall prevent a Management Seller from owning not more than two percent (2%) of any class of securities of an entity that are listed on a recognized securities exchange in the United States or Canada which carries on a business which is the same as or which competes with the Business of the Company or any of its subsidiaries. Further, nothing in this Agreement shall prevent a Management Seller or Clairvest Group Inc. from directly or indirectly soliciting or hiring any such employee of the Company or its Subsidiaries who (i) has ceased to be employed by Buyer or its Affiliates (including, after the Closing, the Company and its Subsidiaries) at least ninety (90) days prior to the solicitation not otherwise permitted hereunder or (ii) responds to a general or public solicitation (including by a bona fide search firm) not targeted at employees of Buyer or any of its Affiliates (including, after the Closing, the Company and its Subsidiaries).

ii. Pre-Closing Reorganization

The Sellers agree to take all such actions and do all such things necessary, and to cause the Company to take all such actions and do all such things necessary to convert or reclassify each class of outstanding capital stock of the Company as of the date hereof, other than the Series B Preferred Stock, into a single class of common stock of the Company, which conversion shall be

undertaken only in accordance with the terms and conditions of the Company's organizational documents as in effect as of the date hereof (giving effect to all preferences, privileges, rights and conversion mechanics set forth therein) and only pursuant to documentation that is reviewed by, and consented to, the Buyer in advance (the "**Pre-Closing Reorganization**"). The Sellers acknowledge and agree that the capitalization of the Company after the completion of the Pre-Closing Reorganization and as set forth on the Final Allocation Schedule will not entitle any Seller or Optionholder to more or less of the Purchase Price than such Person would have been entitled to receive hereunder if the Estimated Purchase Price were allocated in accordance with the capitalization of the Company as of the date hereof and as set forth on the Preliminary Allocation Schedule. The Sellers shall indemnify, defend and hold harmless the Buyer from any liabilities, claims or obligations arising from or relating to the Pre-Closing Reorganization.

i. Further Assurances

Following the Closing, each of the parties hereto shall, and shall cause their respective Affiliates to, execute and deliver such additional documents, instruments, conveyances and assurances, and take such further actions as may be reasonably required to carry out the provisions hereof and give effect to the transactions contemplated by this Agreement.

i. Agreements relating to Buyer Common Stock

i. The Buyer intends to issue the shares of Buyer Common Stock as provided in this Agreement pursuant to a "private placement" exemption or exemptions from registration under Section 4(a)(2) of the Securities Act or Regulation D promulgated thereunder and an exemption from qualification under applicable state securities laws. The Company agrees to fully cooperate with the Buyer in its efforts to ensure that such shares of Buyer Common Stock may be issued pursuant to such exemptions.

ii. The Buyer Common Stock issued pursuant to this Agreement will constitute "restricted securities" under the Securities Act upon issuance, and may not be transferred absent registration under the Securities Act or an exemption therefrom, and any such transfer shall also be conditioned on compliance with applicable state and foreign securities Laws. Each Seller who receives shares of Buyer Common Stock pursuant to this Agreement and every transferee or assignee of any shares of Buyer Common Stock from any Seller shall be bound by and subject to the terms and conditions of this Section 5.19, and Buyer may require, as a condition precedent to the assignment or transfer of any shares of Buyer Common Stock, that any transferee or assignee must enter into an agreement with Buyer, whereby such transferee or assignee agrees in writing to be bound by, and subject to, all the terms and conditions of this Section 5.19. To ensure compliance with the restrictions imposed by this Agreement, Buyer may issue appropriate "stop-transfer" instructions to its transfer agent. Buyer shall not be required (x) to transfer on its books any shares of Buyer Common Stock that have been transferred in violation of any of the provisions of this Agreement or (y)

to treat as owner of such shares of Buyer Common Stock, or to accord the right to vote or pay dividends, to any transferee or assignee to whom such shares have been purportedly so transferred.

iii. At the Closing, the Sellers and the Buyer shall enter into a Registration Rights and Lock-Up Agreement, substantially in the form of Exhibit "E" (the "**Registration Rights and Lock-Up Agreement**").

iv. Each book-entry notation representing any shares of Buyer Common Stock issued hereunder shall bear the following legends (in addition to any other legends required by Law or the Buyer's organizational documents):

THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR UNDER THE SECURITIES LAWS OF ANY STATE. THESE SECURITIES ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED UNDER THE ACT AND APPLICABLE STATE SECURITIES LAWS, PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM. THE ISSUER OF THESE SECURITIES MAY REQUIRE AN OPINION OF COUNSEL IN FORM AND SUBSTANCE SATISFACTORY TO THE ISSUER TO THE EFFECT THAT ANY PROPOSED TRANSFER OR RESALE IS IN COMPLIANCE WITH THE ACT AND ANY APPLICABLE STATE SECURITIES LAWS.

i. Release

Effective as of the Closing, each Seller, on its own behalf and on behalf of such Seller's past, present and future equity holders, Affiliates, employees and their respective successors and assigns claiming by or through such Seller, hereby absolutely, unconditionally and irrevocably releases and forever discharges the Company, Buyer and their respective past, present and future directors, managers, members, equityholders, officers, employees, agents, Subsidiaries, Affiliates, attorneys, Representatives, successors and assigns, from any and all claims (including any derivative claim on behalf of any Person), Actions, causes of action, suits, arbitrations, proceedings, debts, liabilities, obligations, sums of money, accounts, covenants, contracts, controversies, agreements, promises, damages, fees, expenses, judgments, executions, indemnification rights, claims and demands arising out of, relating to, against or in any way connected with the Company or any of its Subsidiaries, (i) in respect of any and all agreements, liabilities or obligations entered into or incurred on or prior to the Closing Date in respect of its ownership of the Shares, whether or not relating to claims pending on, or asserted after, the Closing Date, (ii) in connection with the preparation of, or any inaccuracies in, the Preliminary Allocation Schedule or the Final Allocation Schedule, or any inconsistency in the actual allocation of the Purchase Price hereunder and the way the Purchase Price should have been allocated under the organizational documents of the Company and (iii) any claims relating to the Pre-Closing Reorganization; *provided*, that the foregoing release does not extend to, include or restrict or limit in any way, and such Seller hereby reserves such Seller's and its applicable Affiliate's rights, if any, to pursue any and all claims, actions or rights that such Seller or such Affiliate may now or in the future have solely on account of rights under (a) this Agreement, the Confidentiality Agreement or any other documents entered into in connection herewith or (b) any applicable liability insurance policy covering the directors, officers and/or similar functionaries of the Seller or any Subsidiary of the Seller or in respect of any right to indemnification or

advancement of expenses pursuant to any of the organizational documents of such Seller or any Subsidiary of such Seller.

a. Conditions to closing

i. Conditions to Obligations of All Parties

The obligations of each party to this Agreement to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment (or waiver by Buyer and Sellers' Representatives, to the extent permissible under applicable Law), at or prior to the Closing, of each of the following conditions:

i. All waiting periods applicable to the transactions contemplated by this Agreement under Regulatory Laws in the United States as well as any agreement not to close embodied in a timing agreement between the parties hereto and a Governmental Authority, shall have expired or been terminated, and all approvals by, and filings with, Governmental Authorities, with respect to the transactions contemplated by this Agreement under applicable Regulatory Laws in the United States shall have been obtained and made.

ii. No Governmental Authority shall have enacted, issued, promulgated, enforced or entered any Law or Governmental Order which is in effect and has the effect of making the transactions contemplated by this Agreement illegal or otherwise prohibiting consummation of such transactions.

ii. Conditions to Obligations of Buyer

The obligations of Buyer to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment or Buyer's waiver (to the extent permissible under applicable Law), at or prior to the Closing, of each of the following conditions:

i. The Fundamental Representations shall be true and correct in all respects as of the date hereof and as of the Closing Date with the same effect as though made at and as of such date (except those representations and warranties that address matters only as of a specified date, which shall be true and correct in all respects as of that specified date). The representations and warranties of Sellers contained in Article 3 (other than the Fundamental Representations) shall be true and correct in all respects as of the date hereof and as of the Closing Date with the same effect as though made at and as of such date (except those representations and warranties that address matters only as of a specified date, which shall be true and correct in all respects as of that specified date), except where the failure of such representations and warranties to be true and correct would not have a Material Adverse Effect.

ii. Each Seller and Sellers' Representative shall have duly performed and complied in all material respects with all agreements, covenants and conditions required by this Agreement to be performed or complied with by such

Seller or Sellers' Representative prior to or on the Closing Date.

iii. Buyer shall have received a certificate, dated the Closing Date and signed by each Seller or a duly authorized officer of such Seller, that each of the conditions set forth in Section 6.2(a), Section 6.2(b) and Section 6.2(d) have been satisfied.

iv. Since the date of this Agreement, there shall not have occurred a Material Adverse Effect.

v. Each of the Sellers, Optionholders and the Company, as applicable, shall have executed and delivered each document and Contract required to be executed and delivered by it in accordance with Section 2.5(b).

iii. Conditions to Obligations of Sellers

The obligations of Sellers to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment or Sellers' Representatives waiver (to the extent permissible under applicable Law), at or prior to the Closing, of each of the following conditions:

i. The representations and warranties of Buyer contained in Article 4 shall be true and correct in all respects as of the date hereof and as of the Closing Date with the same effect as though made at and as of such date (except those representations and warranties that address matters only as of a specified date, which shall be true and correct in all respects as of that specified date), except where the failure of such representations and warranties to be true and correct would not prohibit or materially impede Buyer's ability to consummate the transactions contemplated hereby.

ii. Buyer shall have duly performed and complied in all material respects with all agreements, covenants and conditions required by this Agreement to be performed or complied with by it prior to or on the Closing Date.

iii. Sellers' Representative shall have received a certificate, dated the Closing Date and signed by a duly authorized officer of Buyer, that each of the conditions set forth in Section 6.3(a) and Section 6.3(b) have been satisfied.

iv. The Buyer shall have executed and delivered each document and Contract required to be executed and delivered by them in accordance with Section 2.5(a).

b. SURVIVAL

i. Survival.

All representations, warranties, covenants and agreements contained herein, or in any other certificate executed or delivered by any party hereto to another party hereto in connection with this Agreement shall not survive the Closing, except that (a) all Fundamental Representations shall survive indefinitely and, (b) other than covenants and agreements to be performed on or before Closing which expire and terminate on Closing (but only to the extent they have been fully performed on or before Closing), the covenants and agreements of the parties hereto

contained in this Agreement shall survive until fully performed in accordance with their respective terms.

a. Termination

i. Termination

This Agreement may be terminated at any time prior to the Closing:

i. by the mutual written consent of Sellers' Representatives and Buyer;

ii. by Buyer on written notice to Sellers' Representatives if:

1. Buyer is not then in material breach of any provision of this Agreement and there has been a material breach, inaccuracy in or failure to perform any representation, warranty, covenant or agreement made by Sellers pursuant to this Agreement that would give rise to the failure of any of the conditions specified in Article 6 and such breach, inaccuracy or failure cannot be cured or has not been cured by Sellers within thirty (30) calendar days following written notice thereof delivered by Buyer to Sellers' Representatives; or
2. any of the conditions set forth in Section 6.1 or Section 6.2 shall not have been fulfilled by the Outside Date, unless such failure shall be due to the failure of Buyer to perform or comply with any of the covenants, agreements or conditions hereof to be performed or complied with by it prior to the Closing;

iii. by Sellers' Representatives on written notice to Buyer if:

1. no Seller nor Sellers' Representative is then in material breach of any provision of this Agreement and there has been a material breach, inaccuracy in or failure to perform any representation, warranty, covenant or agreement made by Buyer pursuant to this Agreement that would give rise to the failure of any of the conditions specified in Article 6 and such breach, inaccuracy or failure cannot be cured or has not been cured by Buyer thirty (30) calendar days following written notice thereof delivered by Sellers' Representatives to Buyer; or
2. any of the conditions set forth in Section 6.1 or Section 6.3 shall not have been fulfilled by the Outside Date, unless such failure shall be due to the failure of Sellers to perform or comply with any of the covenants, agreements or conditions hereof to be performed or complied with by it prior to the Closing;

iv. by Buyer upon the occurrence of a Material Adverse Effect; or

v. by Buyer or Sellers' Representatives in the event any Governmental Authority shall have enacted, issued, promulgated, enforced or entered any Law or Governmental Order (which Law or Governmental Order is final and non-appealable) which is in effect and has the effect of permanently prohibiting consummation of the transactions contemplated by this Agreement; *provided*, *however*, that the right to terminate this Agreement pursuant to this Section 8.1(d) shall not be available to a party if such Law or Governmental Order was primarily due to the failure of such party or any of such party's affiliates to perform any of its obligations under this Agreement.

ii. Effect of Termination

In the event of the termination of this Agreement in accordance with this Article, this Agreement shall forthwith become void and there shall be no liability on the part of any party hereto except:

i. as set forth in this Article 8 and Article 9 hereof; and
ii. with respect to the obligations of the parties in Section 5.6 and Section 5.10;
iii. that nothing herein shall relieve any party hereto from liability for fraud or any willful and material breach by any party hereto of the terms and provisions of this Agreement. For purposes of this Agreement, "willful and material breach" means an actual material breach of, or failure to perform any of the covenants or other agreements contained in, this Agreement, that is a consequence of an act or failure to act by the breaching or non-performing Person with actual knowledge, or knowledge that a Person acting reasonably under the circumstances should have, that such Person's act or failure to act would, or would be reasonably expected to, result in or constitute a breach of or failure of performance under this Agreement.

b. Miscellaneous

i. Expenses

Except as otherwise expressly provided herein, all costs and expenses, including, without limitation, fees and disbursements of counsel, financial advisors and accountants, incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such costs and expenses, whether or not the Closing shall have occurred; *provided, however*, that Buyer shall be solely responsible for the filings fees associated with any filings required to be made under applicable Regulatory Laws in connection with the transactions contemplated hereby.

i. Notices

All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given: (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by e-mail if sent during normal business hours of the recipient, and on the next Business Day if sent after normal business hours of the recipient (provided, in each case, no notice of "bounce back" or notice of

non-delivery is received); or (d) on the third (3rd) day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties hereto at the following addresses (or at such other address for a party as shall be specified in a notice given in accordance with this Section 9.2):
If to Sellers' Representative (on behalf of itself or any Seller):
Robert Schaefer c/o Also Energy Holdings, Inc. 5400 Airport Blvd. Ste. 100 Boulder, CO 80301 E-mail: rjs@alsoenergy.com
c/o Clairvest Group Inc. 22 St. Clair Avenue East Suite 1700 Toronto, Ontario M4T 2S3 Attention: Angus Cole and James H. Miller
Email: angusc@clairvest.com and jmiller@clairvest.com
with a copy to (which shall not constitute notice):

Goodmans LLP
333 Bay Street, Suite 3400
Toronto, ON M5H 2S7 Attention: Neill May and Matt Prager E-mail: nmay@goodmans.ca and mprager@goodmans.ca

If to Buyer:
Stem, Inc. 100 California Street, 14th Fl. San Francisco, California 94111 Attention: Chief Legal Officer and Secretary Email: saul.laureles@stem.com
with a copy to (which shall not constitute notice):
Gibson, Dunn & Crutcher LLP
200 Park Avenue
New York, NY 10166-0193 Attention: John Gaffney E-mail: JGaffney@gibsondunn.com

i. Interpretation

For purposes of this Agreement: (a) the words "include," "includes" and "including" shall be deemed to be followed by the words "without limitation"; (b) the word "or" is not exclusive; and (c) the words "herein," "hereof," "hereby," "hereto" and "hereunder" refer to this Agreement as a whole. Unless the context otherwise requires, references herein: (i) to Articles, Sections, Disclosure Schedules, Buyer Disclosure Schedules and Exhibits mean the Articles and Sections of, and Disclosure Schedules, Buyer Disclosure Schedules and Exhibits attached to, this Agreement; (ii) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof; and (iii) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The Disclosure Schedules, Buyer Disclosure Schedules and Exhibits referred to herein shall be construed with, and as an integral part of, this Agreement to the same extent as if they were set forth verbatim herein. Any document, list or other item shall be deemed to have been "made available" to Buyer (or its agents) for all purposes of this Agreement only if such document, list or other item was posted in the Data Room, or a physical or electronic copy thereof was delivered to Buyer, on or before the date that is two (2) Business Days prior to the date of this Agreement.

i. Disclosure Schedules

All section headings in the Disclosure Schedules and Buyer Disclosure Schedules correspond to the sections of this Agreement, but information provided in any section of the Disclosure

Schedules or Buyer Disclosure Schedules shall constitute disclosure for purposes of each section of this Agreement where the relevance of such information is readily apparent on its face. Unless the context otherwise requires, all capitalized terms used in the Disclosure Schedules and Buyer Disclosure Schedules shall have the respective meanings assigned to such terms in this Agreement. Certain information set forth in the Disclosure Schedules and Buyer Disclosure Schedules is included solely for informational purposes, and may not be required to be disclosed pursuant to this Agreement. No reference to or disclosure of any item or other matter in the Disclosure Schedules or Buyer Disclosure Schedules shall be construed as an admission or indication that such item or other matter is required to be referred to or disclosed in the Disclosure Schedules or Buyer Disclosure Schedules. No disclosure in the Disclosure Schedules or Buyer Disclosure Schedules relating to any possible breach or violation of any agreement or Law shall be construed as an admission or indication to a third party that any such breach or violation exists or has actually occurred. No disclosure in the Disclosure Schedules or Buyer Disclosure Schedules shall be deemed to create any rights in any third party.

i. Headings

The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

i. Currency

Except where otherwise expressly provided, all dollar amounts in this Agreement are stated and shall be paid in United States currency.

i. Severability

If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

i. Entire Agreement

This Agreement, the Confidentiality Agreement, the Escrow Agreement, the Registration Rights and Lock-Up Agreement, the Employment Agreement, the Disclosure Schedules and Buyer Disclosure Schedules constitute the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein, and supersede all prior and contemporaneous representations, warranties, understandings and agreements, both written and oral, with respect to such subject matter.

i. Successors and Assigns

This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. No party hereto may assign its rights or obligations hereunder without the prior written consent of the other parties hereto, which consent shall not be unreasonably withheld, conditioned or delayed. No assignment shall relieve the assigning party of any of its obligations hereunder.

i. No Third-Party Beneficiaries

Except as provided in Section 5.5, this Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

i. Amendment and Modification; Waiver

This Agreement may only be amended, modified or supplemented by an agreement in writing signed by Buyer and Sellers' Representatives. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. No waiver by any party shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

i. Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of New York applicable therein, excluding choice of law principles thereof.

i. Arbitration

i. Except as otherwise expressly provided for herein, any controversy or claim arising out of or relating to this Agreement or the transactions contemplated hereby shall be determined by final and binding arbitration administered by the American Arbitration Association ("**AAA**") under its Commercial Arbitration Rules and Mediation Procedures ("**Commercial Rules**").
ii. The award rendered by the arbitrator shall be final and binding on the parties hereto and may be entered and enforced in any court having jurisdiction. Judgment on the award shall be final and non-appealable.
iii. There shall be one arbitrator agreed to by Buyer and Sellers' Representatives within twenty (20) days of receipt by the respondent of the request for arbitration or, if Buyer and Sellers' Representatives cannot agree on an arbitrator, the arbitrator will be appointed by the AAA in accordance with its Commercial Rules.
iv. The seat or place of arbitration shall be New York, New York.
v. Except as may be required by Law, none of the parties hereto nor the arbitrator may disclose the existence, content or results of any arbitration without the prior written consent of the parties hereto, unless such disclosure is to protect or pursue a legal right.
vi. The arbitrator shall render his or her decision in writing within thirty (30) days following the conclusion of the arbitration proceeding. All costs and expenses relating to the arbitration, including attorney's fees and other third party out-of-pocket costs, shall be borne by the unsuccessful party(ies) therein.

ii. Specific Performance

The parties hereto agree that irreparable damage would occur if any provision of this Agreement were not performed in accordance with the terms hereof. Accordingly, each of the parties shall be entitled to specific performance of the terms hereof, including an injunction or injunctions to

prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement in a court of competent jurisdiction, this being in addition to any other remedy to which such party is entitled at law or in equity. Each of the parties hereby further waives (a) any defense in any action for specific performance that a remedy at law would be adequate and (b) any requirement under any law to post security as a prerequisite to obtaining equitable relief.

i. Counterparts

This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

i. Non-Recourse

This Agreement may only be enforced against, and any claim, action, suit or other legal proceeding based upon, arising out of, or related to this Agreement, or the negotiation, execution or performance of this Agreement, may only be brought against the entities that are expressly named as parties hereto and then only with respect to the specific obligations set forth herein with respect to such party. No past, present or future director, officer, employee, incorporator, manager, member, partner, stockholder, Affiliate, agent, attorney or other Representative of any party hereto or of any Affiliate of any party hereto, or any of their successors or permitted assigns, shall have any liability for any obligations or liabilities of any party hereto under this Agreement or for any claim or action based on, in respect of or by reason of the transactions contemplated hereby. Notwithstanding the foregoing, nothing herein shall limit any party's rights or remedies in respect of fraud.

i. Independent Legal Advice

Each of the parties hereto hereby confirms that it has had the opportunity to obtain independent legal advice regarding its respective rights and obligations hereunder. Each of the parties hereto confirms that it has sought, or has willingly waived the right to seek, legal advice regarding its respective rights and obligations hereunder.

i. Sellers' Representatives

i. Each Seller hereby irrevocably appoints Sellers' Representatives as the agents, proxies and attorneys-in-fact for Sellers for all purposes under this Agreement (including full power and authority to act on Sellers' behalf). In so acting, where any consent, agreement or approval of the Sellers' Representatives is required (including, without limitation, execution and delivery of this Agreement), both Sellers' Representatives must consent, agree or approve for such consent, agreement or approval to be valid. Without limiting the generality of the foregoing, Sellers' Representatives will be authorized to: (i) in connection with the Closing, execute and receive all documents, instruments, certificates, statements and agreements on behalf of and in the name of Sellers necessary to effectuate the Closing and consummate the transactions contemplated by this Agreement; (ii) take all actions on behalf of Sellers with respect to the matters set forth in Section; (iii) execute and deliver, should they both elect to do so in their discretion, on behalf of Sellers, any amendment to this Agreement or waiver hereunder; (iv) act as paying agents

for purposes of all payments to Sellers contemplated by this Agreement, including the power to finally determine the appropriate allocation of the Estimated Purchase Price and the Final Purchase Price to each Seller (which each Seller acknowledges shall be made in accordance with the Final Allocation Schedule) and (v) take all other actions to be taken by or on behalf of Sellers and exercise any and all rights which Sellers are permitted or required to do or exercise under this Agreement. Provided that Sellers' Representatives act in accordance with this Section 9.18(a), all decisions and actions by Sellers' Representatives shall be binding upon all Sellers, and no Seller shall have the right to object, dissent, protest or otherwise contest any such decision or action.

ii. Sellers' Representatives will not be liable to Sellers for any action taken by them in good faith pursuant to this Agreement, and Sellers will indemnify Sellers' Representatives from any Losses arising out of its serving as Sellers' Representatives hereunder. Sellers' Representatives are serving in that capacity solely for purposes of administrative convenience, and are not personally liable in such capacity for any of the obligations of Sellers hereunder, and Buyer agrees that it will not look to the personal assets of Sellers' Representatives, acting in such capacity, for the satisfaction of any obligations to be performed by Sellers hereunder.

iii. Buyer shall be entitled to rely conclusively on the instructions and decisions given or made by Sellers' Representatives and no party hereto shall have any cause of action against Buyer for any action taken by Buyer in reliance upon any such instructions or decisions.

[signature page follows]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

BUYER

STEM, INC.

Per: _____

Name:
Title:

Per: _____

Name:
Title:

SELLERS

CLAIRVEST EQUITY PARTNERS V LIMITED PARTNERSHIP, by its general partner, CLAIRVEST GP MANAGECO INC.

Per: _____
Name:
Title:

Per: _____
Name:
Title:

CLAIRVEST EQUITY PARTNERS V-A LIMITED PARTNERSHIP, by its general partner, CLAIRVEST GENERAL PARTNER V L.P., by its general partner, CLAIRVEST GP (GPLP) INC.

Per: _____
Name:
Title:

Per: _____
Name:
Title:

CEP V CO-INVESTMENT HOLDINGS LIMITED PARTNERSHIP, by its general partner, CLAIRVEST GENERAL PARTNER V L.P., by its general partner, CLAIRVEST GP (GPLP) INC.

Per: _____
Name:
Title:

Per: _____
Name:
Title:

2431134 ONTARIO INC.

Per: _____
Name:
Title:

SCHAEFER DESCENDANTS TRUST

Per: _____
Name:
Title:

2021 KEVIN BRADLEY SCHAEFER LEGACY TRUST

Per: _____
Name:
Title:

2021 NICOLE ROBIN SCHAEFER LEGACY TRUST

Per: _____
Name:
Title:

_____
Robert Schaefer

_____
Holden Caine

_____
Ali Seymen Ertaş

_____
Jennifer Park

_____
Kevin Smart

Exhibit 10.3
Execution Version

SELLERS' REPRESENTATIVES

CLAIRVEST GP MANAGECO INC.

Per: _____
Name:
Title:

Per: _____
Name:
Title:

_____
Robert Schaefer

For the purposes of Section 5.16 only:

CLAIRVEST GROUP INC.

Per: _____
Name:
Title:

Per: _____
Name:
Title:

A. PRELIMINARY ALLOCATION SCHEDULE

A	B	C	D	E	F	G	H
Seller / Specified Optionholder	Series A Common Stock	Series B Common Stock	Series A Preferred Stock	Series B Preferred Stock	Options	Stock Percentage	Cash Percentage
Robert Schaefer	66,897.50	526,764.00	-	481,605.24	-	30%	70%
Holden Caine	66,897.50	1,500,000.00		481,605.24	-	30%	70%
Clairvest Equity Partners V Limited Partnership	1,132,708.35	-	1,986,643.70	21,643.58	-	20%	80%
Clairvest Equity Partners V-A Limited Partnership	215,047.22	-	377,168.80	4,109.08	-	20%	80%
CEP V Co-Investment Holdings Limited Partnership	577,609.54	-	1,013,062.50	11,036.86	-	20%	80%
2431134 Ontario Inc.	1,882.53	-	42,210.94	-	-	20%	80%
Schaefer Descendants Family Trust	-	486,618.00	-	-	-	30%	70%
2021 Kevin Bradley Schaefer Legacy Trust	-	243,309.00	-	-	-	30%	70%

2021 Nicole Robin Schaefer Legacy Trust	-	243,309.00	-	-	-	30%	70%
Ali Seymen Ertas	-	168,850.00	-	-	81,400	30%	70%
Jennifer Park	-	168,850.00	-	-	40,600	30%	70%
Kevin Smart	-	39,175.00	-	-	168,800	30%	70%
Brian Musfeldt	-	-	-	-	110,800	30%	70%
Daniel Sweeney	-	-	-	-	85,000	30%	70%
Mesa Scharf	-	-	-	-	79,200	30%	70%
Matthew Brocklehurst	-	-	-	-	50,000	30%	70%
Olaf Donner	-	-	-	-	25,000	30%	70%
Sushain Sharma	-	-	-	-	10,000	30%	70%

A. REFERENCE SCHEDULE

A. FORM OF ESCROW AGREEMENT

A. FORM OF OPTION TERMINATION AGREEMENT

A. FORM OF REGISTRATION RIGHTS AGREEMENT AND LOCK-UP AGREEMENT

A. EMPLOYMENT AGREEMENT TERMS

Exhibit 10.4

STEM, INC. 2009 EQUITY INCENTIVE PLAN

(as amended February 17, 2015 for Stock Split)

1. Purposes of the Plan. The purposes of this Plan are:

a. to attract and retain the best available personnel for positions of substantial responsibility,

a. to provide additional incentive to Employees, Directors and Consultants, and

a. to promote the success of the Company's business.

The Plan permits the grant of Incentive Stock Options, Nonstatutory Stock Options, Stock Appreciation Rights, Restricted Stock and Restricted Stock Units.

1. Definitions. As used herein, the following definitions will apply:

   a. "Administrator" means the Board or any of its Committees as will be administering the Plan, in accordance with Section 4 of the Plan.

   b. "Applicable Laws" means the requirements relating to the administration of equity-based awards under U.S. state corporate laws, U.S. federal and state securities laws, the Code, any stock exchange or quotation system on which the Common Stock is listed or quoted and the applicable laws of any foreign country or jurisdiction where Awards are, or will be, granted under the Plan.

   c. "Award" means, individually or collectively, a grant under the Plan of Options, Stock Appreciation Rights, Restricted Stock, or Restricted Stock Units.

   d. "Award Agreement" means the written or electronic agreement setting forth the terms and provisions applicable to each Award granted under the Plan. The Award Agreement is subject to the terms and conditions of the Plan.

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

   f. "Change in Control" means the occurrence of any of the following events:

      i. Change in Ownership of the Company. A change in the ownership of the Company which occurs on the date that any one person, or more than one person acting as a group ("Person"), acquires ownership of the stock of the Company that, together with the stock held by such Person, constitutes more than 50% of the total voting power of the stock of the Company, except that any change in the ownership of the stock of the Company as a result of a private financing of the Company that is approved by the Board will not be considered a Change in Control; or

      ii. Change in Effective Control of the Company. If the Company has a class of securities registered pursuant to Section 12 of the Exchange Act, a

change in the effective control of the Company which occurs on the date that a majority of members of the Board is replaced during any twelve (12) month period by Directors whose appointment or election is not endorsed by a majority of the members of the Board prior to the date of the appointment or election. For purposes of this clause (ii), if any Person is considered to be in effective control of the Company, the acquisition of additional control of the Company by the same Person will not be considered a Change in Control; or

iii. Change in Ownership of a Substantial Portion of the Company's Assets. A change in the ownership of a substantial portion of the Company's assets which occurs on the date that any Person acquires (or has acquired during the twelve (12) month period ending on the date of the most recent acquisition by such person or persons) assets from the Company that have a total gross fair market value equal to or more than 50% of the total gross fair market value of all of the assets of the Company immediately prior to such acquisition or acquisitions. For purposes of this subsection (iii), gross fair market value means the value of the assets of the Company, or the value of the assets being disposed of, determined without regard to any liabilities associated with such assets.

For purposes of this Section 2(f), persons will be considered to be acting as a group if they are owners of a corporation that enters into a merger, consolidation, purchase or acquisition of stock, or similar business transaction with the Company.

Notwithstanding the foregoing, a transaction will not be deemed a Change in Control unless the transaction qualifies as a change in control event within the meaning of Code Section 409A, as it has been and may be amended from time to time, and any proposed or final Treasury Regulations and Internal Revenue Service guidance that has been promulgated or may be promulgated thereunder from time to time.

Further and for the avoidance of doubt, a transaction will not constitute a Change in Control if: (i) its sole purpose is to change the state of the Company's incorporation, or (ii) its sole purpose is to create a holding company that will be owned in substantially the same proportions by the persons who held the Company's securities immediately before such transaction.

a. "Code" means the Internal Revenue Code of 1986, as amended. Any reference to a section of the Code herein will be a reference to any successor or amended section of the Code.

b. "Committee" means a committee of Directors or of other individuals satisfying Applicable Laws appointed by the Board, or by the compensation committee of the Board, in accordance with Section 4 hereof.

c. "Common Stock" means the common stock of the Company.

d. "Company" means Stem, Inc., a Delaware corporation, or any successor thereto.

e. "Consultant" means any individual, including an advisor, engaged by the Company or a Parent or Subsidiary to render services to such entity. For the avoidance of doubt, the term "Consultant" shall not include any entity or any non-natural person.

f. "Director" means a member of the Board.

g. "Disability" means total and permanent disability as defined in Code Section 22(e)(3), provided that in the case of Awards other than Incentive Stock Options, the Administrator in its discretion may determine whether a permanent and total disability exists in accordance with uniform and non-discriminatory standards adopted by the Administrator from time to time.

h. "Employee" means any person, including officers and Directors, employed by the Company or any Parent or Subsidiary of the Company. Neither service as a Director nor payment of a director's fee by the Company will be sufficient to constitute "employment" by the Company.

i. "Exchange Act" means the Securities Exchange Act of 1934, as amended.

j. "Exchange Program" means a program under which (i) outstanding Awards are surrendered or cancelled in exchange for Awards of the same type (which may have higher or lower exercise prices and different terms), Awards of a different type, and/or cash, (ii) Participants would have the opportunity to transfer any outstanding Awards to a financial institution or other person or entity selected by the Administrator, and/or (iii) the exercise price of an outstanding Award is reduced or increased. The Administrator will determine the terms and conditions of any Exchange Program in its sole discretion.

k. "Fair Market Value" means, as of any date, the value of Common Stock determined as follows:

    i. If the Common Stock is listed on any established stock exchange or a national market system, including without limitation the Nasdaq Global Select Market, the Nasdaq Global Market or the Nasdaq Capital Market of The Nasdaq Stock Market, its Fair Market Value will be the closing sales price for such stock (or the closing bid, if no sales were reported) as quoted on such exchange or system on the day of determination, as reported in *The Wall Street Journal* or such other source as the Administrator deems reliable;

    ii. If the Common Stock is regularly quoted by a recognized securities dealer but selling prices are not reported, the Fair Market Value of a Share will be the mean between the high bid and low asked prices for the Common Stock on the day of determination (or, if no bids and asks were reported on

that date, as applicable, on the last trading date such bids and asks were reported), as reported in *The Wall Street Journal* or such other source as the Administrator deems reliable; or

iii. In the absence of an established market for the Common Stock, the Fair Market Value will be determined in good faith by the Administrator.

l. "Incentive Stock Option" means an Option that by its terms qualifies and is otherwise intended to qualify as an incentive stock option within the meaning of Code Section 422 and the regulations promulgated thereunder.

m. "Nonstatutory Stock Option" means an Option that by its terms does not qualify or is not intended to qualify as an Incentive Stock Option.

n. "Option" means a stock option granted pursuant to the Plan.

o. "Parent" means a "parent corporation," whether now or hereafter existing, as defined in Code Section 424(e).

p. "Participant" means the holder of an outstanding Award.

q. "Period of Restriction" means the period during which the transfer of Shares of Restricted Stock are subject to restrictions and therefore, the Shares are subject to a substantial risk of forfeiture. Such restrictions may be based on the passage of time, the achievement of target levels of performance, or the occurrence of other events as determined by the Administrator.

r. "Plan" means this 2009 Equity Incentive Plan.

s. "Restricted Stock" means Shares issued pursuant to an Award of Restricted Stock under Section 8 of the Plan, or issued pursuant to the early exercise of an Option.

t. "Restricted Stock Unit" means a bookkeeping entry representing an amount equal to the Fair Market Value of one Share, granted pursuant to Section 9. Each Restricted Stock Unit represents an unfunded and unsecured obligation of the Company.

u. "Service Provider" means an Employee, Director or Consultant.

v. "Share" means a share of the Common Stock, as adjusted in accordance with Section 13 of the Plan.

w. "Stock Appreciation Right" means an Award, granted alone or in connection with an Option, that pursuant to Section 7 is designated as a Stock Appreciation Right.

x. "Subsidiary" means a "subsidiary corporation," whether now or hereafter existing, as defined in Code Section 424(f).

2. Stock Subject to the Plan.

a. Stock Subject to the Plan. Subject to the provisions of Section 13 of the Plan, the maximum aggregate number of Shares that may be subject to Awards and sold under the Plan is 18,150,491 Shares. The Shares may be authorized but unissued, or reacquired Common Stock.

b. Lapsed Awards. If an Award expires or becomes unexercisable without having been exercised in full, is surrendered pursuant to an Exchange Program, or, with respect to Restricted Stock or Restricted Stock Units, is forfeited to or repurchased by the Company due to the failure to vest, the unpurchased Shares (or for Awards other than Options or Stock Appreciation Rights the forfeited or repurchased Shares) which were subject thereto will become available for future grant or sale under the Plan (unless the Plan has terminated). With respect to Stock Appreciation Rights, only Shares actually issued pursuant to a Stock Appreciation Right will cease to be available under the Plan; all remaining Shares under Stock Appreciation Rights will remain available for future grant or sale under the Plan (unless the Plan has terminated). Shares that have actually been issued under the Plan under any Award will not be returned to the Plan and will not become available for future distribution under the Plan; provided, however, that if Shares issued pursuant to Awards of Restricted Stock or Restricted Stock Units are repurchased by the Company or are forfeited to the Company due to the failure to vest, such Shares will become available for future grant under the Plan. Shares used to pay the exercise price of an Award or to satisfy the tax withholding obligations related to an Award will become available for future grant or sale under the Plan. To the extent an Award under the Plan is paid out in cash rather than Shares, such cash payment will not result in reducing the number of Shares available for issuance under the Plan. Notwithstanding the foregoing and, subject to adjustment as provided in Section 13, the maximum number of Shares that may be issued upon the exercise of Incentive Stock Options will equal the aggregate Share number stated in Section 3(a), plus, to the extent allowable under Code Section 422 and the Treasury Regulations promulgated thereunder, any Shares that become available for issuance under the Plan pursuant to Section 3(b).

c. Share Reserve. The Company, during the term of this Plan, will at all times reserve and keep available such number of Shares as will be sufficient to satisfy the requirements of the Plan.

1. Administration of the Plan.

a. Procedure.

i. Multiple Administrative Bodies. Different Committees with respect to different groups of Service Providers may administer the Plan.

ii. Other Administration. Other than as provided above, the Plan will be administered by (A) the Board or (B) a Committee, which Committee will be constituted to satisfy Applicable Laws.

b. Powers of the Administrator. Subject to the provisions of the Plan, and in the case of a Committee, subject to the specific duties delegated by the Board to such Committee, the Administrator will have the authority, in its discretion:

i. to determine the Fair Market Value;

ii. to select the Service Providers to whom Awards may be granted hereunder;

iii. to determine the number of Shares to be covered by each Award granted hereunder;

iv. to approve forms of Award Agreements for use under the Plan;

v. to determine the terms and conditions, not inconsistent with the terms of the Plan, of any Award granted hereunder. Such terms and conditions include, but are not limited to, the exercise price, the time or times when Awards may be exercised (which may be based on performance criteria), any vesting acceleration or waiver of forfeiture restrictions, and any restriction or limitation regarding any Award or the Shares relating thereto, based in each case on such factors as the Administrator will determine;

vi. to institute and determine the terms and conditions of an Exchange Program;

vii. to construe and interpret the terms of the Plan and Awards granted pursuant to the Plan;

viii. to prescribe, amend and rescind rules and regulations relating to the Plan, including rules and regulations relating to sub-plans established for the purpose of satisfying applicable foreign laws or for qualifying for favorable tax treatment under applicable foreign laws;

ix. to modify or amend each Award (subject to Section 18(c) of the Plan), including but not limited to the discretionary authority to extend the post-termination exercisability period of Awards and to extend the maximum term of an Option (subject to Section 6(d));

x. to allow Participants to satisfy withholding tax obligations in a manner prescribed in Section 14;

xi. to authorize any person to execute on behalf of the Company any instrument required to effect the grant of an Award previously granted by the Administrator;

xii. to allow a Participant to defer the receipt of the payment of cash or the delivery of Shares that otherwise would be due to such Participant under an Award; and

xiii. to make all other determinations deemed necessary or advisable for administering the Plan.

c. Effect of Administrator's Decision. The Administrator's decisions, determinations and interpretations will be final and binding on all Participants and any other holders of Awards.

2. Eligibility. Nonstatutory Stock Options, Stock Appreciation Rights, Restricted Stock, and Restricted Stock Units may be granted to Service Providers. Incentive Stock Options may be granted only to Employees.

3. Stock Options.

a. Grant of Options. Subject to the terms and provisions of the Plan, the Administrator, at any time and from time to time, may grant Options in such amounts as the Administrator, in its sole discretion, will determine.

b. Option Agreement. Each Award of an Option will be evidenced by an Award Agreement that will specify the exercise price, the term of the Option, the number of Shares subject to the Option, the exercise restrictions, if any, applicable to the Option, and such other terms and conditions as the Administrator, in its sole discretion, will determine.

c. Limitations. Each Option will be designated in the Award Agreement as either an Incentive Stock Option or a Nonstatutory Stock Option. Notwithstanding such designation, however, to the extent that the aggregate Fair Market Value of the Shares with respect to which Incentive Stock Options are exercisable for the first time by the Participant during any calendar year (under all plans of the Company and any Parent or Subsidiary) exceeds one hundred thousand dollars ($100,000), such Options will be treated as Nonstatutory Stock Options. For purposes of this Section 6(c), Incentive Stock Options will be taken into account in the order in which they were granted, the Fair Market Value of the Shares will be determined as of the time the Option with respect to such Shares is granted, and calculation will be performed in accordance with Code Section 422 and Treasury Regulations promulgated thereunder.

d. Term of Option. The term of each Option will be stated in the Award Agreement; provided, however, that the term will be no more than ten (10) years from the date of grant thereof. In the case of an Incentive Stock Option granted to a Participant

who, at the time the Incentive Stock Option is granted, owns stock representing more than ten percent (10%) of the total combined voting power of all classes of stock of the Company or any Parent or Subsidiary, the term of the Incentive Stock Option will be five (5) years from the date of grant or such shorter term as may be provided in the Award Agreement.

e. Option Exercise Price and Consideration.

i. Exercise Price. The per Share exercise price for the Shares to be issued pursuant to the exercise of an Option will be determined by the Administrator, but will be no less than one hundred percent (100%) of the Fair Market Value per Share on the date of grant. In addition, in the case of an Incentive Stock Option granted to an Employee who owns stock representing more than ten percent (10%) of the voting power of all classes of stock of the Company or any Parent or Subsidiary, the per Share exercise price will be no less than one hundred ten percent (110%) of the Fair Market Value per Share on the date of grant. Notwithstanding the foregoing provisions of this Section 6(e)(i), Options may be granted with a per Share exercise price of less than one hundred percent (100%) of the Fair Market Value per Share on the date of grant pursuant to a transaction described in, and in a manner consistent with, Code Section 424(a).

ii. Waiting Period and Exercise Dates. At the time an Option is granted, the Administrator will fix the period within which the Option may be exercised and will determine any conditions that must be satisfied before the Option may be exercised.

iii. Form of Consideration. The Administrator will determine the acceptable form of consideration for exercising an Option, including the method of payment. In the case of an Incentive Stock Option, the Administrator will determine the acceptable form of consideration at the time of grant. Such consideration may consist entirely of: (1) cash; (2) check; (3) promissory note, to the extent permitted by Applicable Laws, (4) other Shares, provided that such Shares have a Fair Market Value on the date of surrender equal to the aggregate exercise price of the Shares as to which such Option will be exercised and provided further that accepting such Shares will not result in any adverse accounting consequences to the Company, as the Administrator determines in its sole discretion; (5) consideration received by the Company under cashless exercise program (whether through a broker or otherwise) implemented by the Company in connection with the Plan; (6) by net exercise, (7) such other consideration and method of payment for the issuance of Shares to the extent permitted by Applicable Laws, or (8) any combination of the foregoing methods of payment. In making its determination as to the type of consideration to accept, the Administrator will consider if acceptance of such consideration may be reasonably expected to benefit the Company.

f. Exercise of Option.

i. Procedure for Exercise; Rights as a Stockholder. Any Option granted hereunder will be exercisable according to the terms of the Plan and at such times and under such conditions as determined by the Administrator and set forth in the Award Agreement. An Option may not be exercised for a fraction of a Share.

An Option will be deemed exercised when the Company receives: (i) notice of exercise (in such form as the Administrator may specify from time to time) from the person entitled to exercise the Option, and (ii) full payment for the Shares with respect to which the Option is exercised (together with applicable tax withholding). Full payment may consist of any consideration and method of payment authorized by the Administrator and permitted by the Award Agreement and the Plan. Shares issued upon exercise of an Option will be issued in the name of the Participant or, if requested by the Participant, in the name of the Participant and his or her spouse. Until the Shares are issued (as evidenced by the appropriate entry on the books of the Company or of a duly authorized transfer agent of the Company), no right to vote or receive dividends or any other rights as a stockholder will exist with respect to the Shares subject to an Option, notwithstanding the exercise of the Option. The Company will issue (or cause to be issued) such Shares promptly after the Option is exercised. No adjustment will be made for a dividend or other right for which the record date is prior to the date the Shares are issued, except as provided in Section 13 of the Plan.

Exercising an Option in any manner will decrease the number of Shares thereafter available, both for purposes of the Plan and for sale under the Option, by the number of Shares as to which the Option is exercised.

i. Termination of Relationship as a Service Provider. If a Participant ceases to be a Service Provider, other than upon the Participant's termination as the result of the Participant's death or Disability, the Participant may exercise his or her Option within thirty (30) days of termination, or such longer period of time as is specified in the Award Agreement (but in no event later than the expiration of the term of such Option as set forth in the Award Agreement) to the extent that the Option is vested on the date of termination. Unless otherwise provided by the Administrator, if on the date of termination the Participant is not vested as to his or her entire Option, the Shares covered by the unvested portion of the Option will revert to the Plan. If after termination the Participant does not exercise his or her Option within the time specified by the Administrator, the Option will terminate, and the Shares covered by such Option will revert to the Plan.

ii. Disability of Participant. If a Participant ceases to be a Service Provider as a result of the Participant's Disability, the Participant may exercise his or her Option within six (6) months of termination, or such longer period of time as is specified in the Award Agreement (but in no event later than

the expiration of the term of such Option as set forth in the Award Agreement) to the extent the Option is vested on the date of termination. Unless otherwise provided by the Administrator, if on the date of termination the Participant is not vested as to his or her entire Option, the Shares covered by the unvested portion of the Option will revert to the Plan. If after termination the Participant does not exercise his or her Option within the time specified herein, the Option will terminate, and the Shares covered by such Option will revert to the Plan.

iii. Death of Participant. If a Participant dies while a Service Provider, the Option may be exercised within six (6) months following the Participant's death, or within such longer period of time as is specified in the Award Agreement (but in no event later than the expiration of the term of such Option as set forth in the Award Agreement) to the extent that the Option is vested on the date of death, by the Participant's designated beneficiary, provided such beneficiary has been designated prior to the Participant's death in a form acceptable to the Administrator. If no such beneficiary has been designated by the Participant, then such Option may be exercised by the personal representative of the Participant's estate or by the person(s) to whom the Option is transferred pursuant to the Participant's will or in accordance with the laws of descent and distribution. Unless otherwise provided by the Administrator, if at the time of death Participant is not vested as to his or her entire Option, the Shares covered by the unvested portion of the Option will immediately revert to the Plan. If the Option is not so exercised within the time specified herein, the Option will terminate, and the Shares covered by such Option will revert to the Plan.

4. Stock Appreciation Rights.

a. Grant of Stock Appreciation Rights. Subject to the terms and conditions of the Plan, a Stock Appreciation Right may be granted to Service Providers at any time and from time to time as will be determined by the Administrator, in its sole discretion.

b. Number of Shares. The Administrator will have complete discretion to determine the number of Shares subject to any Award of Stock Appreciation Rights.

c. Exercise Price and Other Terms. The per Share exercise price for the Shares that will determine the amount of the payment to be received upon exercise of a Stock Appreciation Right as set forth in Section 7(f) will be determined by the Administrator and will be no less than one hundred percent (100%) of the Fair Market Value per Share on the date of grant. Otherwise, the Administrator, subject to the provisions of the Plan, will have complete discretion to determine the terms and conditions of Stock Appreciation Rights granted under the Plan.

d. Stock Appreciation Right Agreement. Each Stock Appreciation Right grant will be evidenced by an Award Agreement that will specify the exercise price, the

term of the Stock Appreciation Right, the conditions of exercise, and such other terms and conditions as the Administrator, in its sole discretion, will determine.

e. Expiration of Stock Appreciation Rights. A Stock Appreciation Right granted under the Plan will expire upon the date determined by the Administrator, in its sole discretion, and set forth in the Award Agreement. Notwithstanding the foregoing, the rules of Section 6(d) relating to the maximum term and Section 6(f) relating to exercise also will apply to Stock Appreciation Rights.

f. Payment of Stock Appreciation Right Amount. Upon exercise of a Stock Appreciation Right, a Participant will be entitled to receive payment from the Company in an amount determined by multiplying:

   i. The difference between the Fair Market Value of a Share on the date of exercise over the exercise price; times

   ii. The number of Shares with respect to which the Stock Appreciation Right is exercised.

At the discretion of the Administrator, the payment upon Stock Appreciation Right exercise may be in cash, in Shares of equivalent value, or in some combination thereof.

1. Restricted Stock.

   a. Grant of Restricted Stock. Subject to the terms and provisions of the Plan, the Administrator, at any time and from time to time, may grant Shares of Restricted Stock to Service Providers in such amounts as the Administrator, in its sole discretion, will determine.

   b. Restricted Stock Agreement. Each Award of Restricted Stock will be evidenced by an Award Agreement that will specify the Period of Restriction, the number of Shares granted, and such other terms and conditions as the Administrator, in its sole discretion, will determine. Unless the Administrator determines otherwise, the Company as escrow agent will hold Shares of Restricted Stock until the restrictions on such Shares have lapsed.

   c. Transferability. Except as provided in this Section 8 or as the Administrator determines, Shares of Restricted Stock may not be sold, transferred, pledged, assigned, or otherwise alienated or hypothecated until the end of the applicable Period of Restriction.

   d. Other Restrictions. The Administrator, in its sole discretion, may impose such other restrictions on Shares of Restricted Stock as it may deem advisable or appropriate.

   e. Removal of Restrictions. Except as otherwise provided in this Section 8, Shares of Restricted Stock covered by each Restricted Stock grant made under the Plan will be released from escrow as soon as practicable after the last day of the Period

of Restriction or at such other time as the Administrator may determine. The Administrator, in its discretion, may accelerate the time at which any restrictions will lapse or be removed.

f. Voting Rights. During the Period of Restriction, Service Providers holding Shares of Restricted Stock granted hereunder may exercise full voting rights with respect to those Shares, unless the Administrator determines otherwise.

g. Dividends and Other Distributions. During the Period of Restriction, Service Providers holding Shares of Restricted Stock will be entitled to receive all dividends and other distributions paid with respect to such Shares, unless the Administrator provides otherwise. If any such dividends or distributions are paid in Shares, the Shares will be subject to the same restrictions on transferability and forfeitability as the Shares of Restricted Stock with respect to which they were paid.

h. Return of Restricted Stock to Company. On the date set forth in the Award Agreement, the Restricted Stock for which restrictions have not lapsed will revert to the Company and again will become available for grant under the Plan.

2. Restricted Stock Units.

a. Grant. Restricted Stock Units may be granted at any time and from time to time as determined by the Administrator. After the Administrator determines that it will grant Restricted Stock Units, it will advise the Participant in an Award Agreement of the terms, conditions, and restrictions related to the grant, including the number of Restricted Stock Units.

b. Vesting Criteria and Other Terms. The Administrator will set vesting criteria in its discretion, which, depending on the extent to which the criteria are met, will determine the number of Restricted Stock Units that will be paid out to the Participant. The Administrator may set vesting criteria based upon the achievement of Company-wide, business unit, or individual goals (including, but not limited to, continued employment or service), or any other basis determined by the Administrator in its discretion.

c. Earning Restricted Stock Units. Upon meeting the applicable vesting criteria, the Participant will be entitled to receive a payout as determined by the Administrator. Notwithstanding the foregoing, at any time after the grant of Restricted Stock Units, the Administrator, in its sole discretion, may reduce or waive any vesting criteria that must be met to receive a payout.

d. Form and Timing of Payment. Payment of earned Restricted Stock Units will be made as soon as practicable after the date(s) determined by the Administrator and set forth in the Award Agreement. The Administrator, in its sole discretion, may settle earned Restricted Stock Units in cash, Shares, or a combination of both.

e. Cancellation. On the date set forth in the Award Agreement, all unearned Restricted Stock Units will be forfeited to the Company.

3. Compliance With Code Section 409A. Awards will be designed and operated in such a manner that they are either exempt from the application of, or comply with, the requirements of Code Section 409A, except as otherwise determined in the sole discretion of the Administrator. The Plan and each Award Agreement under the Plan is intended to meet the requirements of Code Section 409A and will be construed and interpreted in accordance with such intent, except as otherwise determined in the sole discretion of the Administrator. To the extent that an Award or payment, or the settlement or deferral thereof, is subject to Code Section 409A the Award will be granted, paid, settled or deferred in a manner that will meet the requirements of Code Section 409A, such that the grant, payment, settlement or deferral will not be subject to the additional tax or interest applicable under Code Section 409A.

4. Leaves of Absence/Transfer Between Locations. Unless the Administrator provides otherwise, vesting of Awards granted hereunder will be suspended during any unpaid leave of absence. A Participant will not cease to be an Employee in the case of (i) any leave of absence approved by the Company or (ii) transfers between locations of the Company or between the Company, its Parent, or any Subsidiary. For purposes of Incentive Stock Options, no such leave may exceed three (3) months, unless reemployment upon expiration of such leave is guaranteed by statute or contract. If reemployment upon expiration of a leave of absence approved by the Company is not so guaranteed, then six (6) months following the first (1st) day of such leave, any Incentive Stock Option held by the Participant will cease to be treated as an Incentive Stock Option and will be treated for tax purposes as a Nonstatutory Stock Option.

5. Limited Transferability of Awards.

a. Unless determined otherwise by the Administrator, Awards may not be sold, pledged, assigned, hypothecated, or otherwise transferred in any manner other than by will or by the laws of descent and distribution, and may be exercised, during the lifetime of the Participant, only by the Participant. If the Administrator makes an Award transferable, such Award may only be transferred (i) by will, (ii) by the laws of descent and distribution, or (iii) as permitted by Rule 701 of the Securities Act of 1933, as amended (the "Securities Act").

b. Further, until the Company becomes subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act, or after the Administrator determines that it is, will, or may no longer be relying upon the exemption from registration under the Exchange Act as set forth in Rule 12h-1(f) promulgated under the Exchange Act, an Option, or prior to exercise, the Shares subject to the Option, may not be pledged, hypothecated or otherwise transferred or disposed of, in any manner, including by entering into any short position, any "put equivalent position" or any "call equivalent position" (as defined in Rule 16a-1(h) and Rule 16a-1(b) of the Exchange Act, respectively), other than to (i) persons who are

"family members" (as defined in Rule 701(c)(3) of the Securities Act) through gifts or domestic relations orders, or (ii) to an executor or guardian of the Participant upon the death or disability of the Participant. Notwithstanding the foregoing sentence, the Administrator, in its sole discretion, may determine to permit transfers to the Company or in connection with a Change in Control or other acquisition transactions involving the Company to the extent permitted by Rule 12h-1(f).

6. Adjustments; Dissolution or Liquidation; Merger or Change in Control.

   a. Adjustments. In the event that any dividend or other distribution (whether in the form of cash, Shares, other securities, or other property), recapitalization, stock split, reverse stock split, reorganization, merger, consolidation, split-up, spin-off, combination, repurchase, or exchange of Shares or other securities of the Company, or other change in the corporate structure of the Company affecting the Shares occurs, the Administrator, in order to prevent diminution or enlargement of the benefits or potential benefits intended to be made available under the Plan, will adjust the number and class of Shares that may be delivered under the Plan and/or the number, class, and price of Shares covered by each outstanding Award; provided, however, that the Administrator will make such adjustments to an Award required by Section 25102(o) of the California Corporations Code to the extent the Company is relying upon the exemption afforded thereby with respect to the Award.

   b. Dissolution or Liquidation. In the event of the proposed dissolution or liquidation of the Company, the Administrator will notify each Participant as soon as practicable prior to the effective date of such proposed transaction. To the extent it has not been previously exercised, an Award will terminate immediately prior to the consummation of such proposed action.

   c. Merger or Change in Control. In the event of a merger or Change in Control, each outstanding Award will be treated as the Administrator determines without a Participant's consent, including, without limitation, that (i) Awards will be assumed, or substantially equivalent Awards will be substituted, by the acquiring or succeeding corporation (or an affiliate thereof) with appropriate adjustments as to the number and kind of shares and prices; (ii) upon written notice to a Participant, that the Participant's Awards will terminate upon or immediately prior to the consummation of such merger or Change in Control (subject to the provisions of the proceeding paragraph); (iii) outstanding Awards will vest and become exercisable, realizable, or payable, or restrictions applicable to an Award will lapse, in whole or in part prior to or upon consummation of such merger or Change in Control, and, to the extent the Administrator determines, terminate upon or immediately prior to the effectiveness of such merger of Change in Control; (iv) (A) the termination of an Award in exchange for an amount of cash and/or property, if any, equal to the amount that would have been attained upon the exercise of such Award or realization of the Participant's rights as of the date

of the occurrence of the transaction (and, for the avoidance of doubt, if as of the date of the occurrence of the transaction the Administrator determines in good faith that no amount would have been attained upon the exercise of such Award or realization of the Participant's rights, then such Award may be terminated by the Company without payment), or (B) the replacement of such Award with other rights or property selected by the Administrator in its sole discretion; or (v) any combination of the foregoing. In taking any of the actions permitted under this subsection 13(c), the Administrator will not be obligated to treat all Awards, all Awards held by a Participant, or all Awards of the same type, similarly.

In the event that the successor corporation does not assume or substitute for the Award (or portion thereof), the Participant will fully vest in and have the right to exercise all of his or her outstanding Options and Stock Appreciation Rights, including Shares as to which such Awards would not otherwise be vested or exercisable, all restrictions on Restricted Stock and Restricted Stock Units will lapse, and, with respect to Awards with performance-based vesting, all performance goals or other vesting criteria will be deemed achieved at one hundred percent (100%) of target levels and all other terms and conditions met. In addition, if an Option or Stock Appreciation Right is not assumed or substituted in the event of a merger or Change in Control, the Administrator will notify the Participant in writing or electronically that the Option or Stock Appreciation Right will be exercisable for a period of time determined by the Administrator in its sole discretion, and the Option or Stock Appreciation Right will terminate upon the expiration of such period.

For the purposes of this subsection 13(c), an Award will be considered assumed if, following the merger or Change in Control, the Award confers the right to purchase or receive, for each Share subject to the Award immediately prior to the merger or Change in Control, the consideration (whether stock, cash, or other securities or property) received in the merger or Change in Control by holders of Common Stock for each Share held on the effective date of the transaction (and if holders were offered a choice of consideration, the type of consideration chosen by the holders of a majority of the outstanding Shares); provided, however, that if such consideration received in the merger or Change in Control is not solely common stock of the successor corporation or its Parent, the Administrator may, with the consent of the successor corporation, provide for the consideration to be received upon the exercise of an Option or Stock Appreciation Right or upon the payout of a Restricted Stock Unit, for each Share subject to such Award, to be solely common stock of the successor corporation or its Parent equal in fair market value to the per share consideration received by holders of Common Stock in the merger or Change in Control.

Notwithstanding anything in this Section 13(c) to the contrary, an Award that vests, is earned or paid-out upon the satisfaction of one or more performance goals will not be considered assumed if the Company or its successor modifies any of such performance goals without the Participant's consent; provided, however, a modification to such performance goals only to reflect the successor corporation's post-Change in Control corporate structure will not be deemed to invalidate an otherwise valid Award assumption.

Notwithstanding anything in this Section 13(c) to the contrary, if a payment under an Award Agreement is subject to Code Section 409A and if the change in control definition contained in the Award Agreement does not comply with the definition of "change of control" for purposes of a distribution under Code Section 409A, then any payment of an amount that is otherwise accelerated under this Section will be delayed until the earliest time that such payment would be permissible under Code Section 409A without triggering any penalties applicable under Code Section 409A.

1. Tax Withholding.

    a. Withholding Requirements. Prior to the delivery of any Shares or cash pursuant to an Award (or exercise thereof), the Company will have the power and the right to deduct or withhold, or require a Participant to remit to the Company, an amount sufficient to satisfy federal, state, local, foreign or other taxes (including the Participant's FICA obligation) required to be withheld with respect to such Award (or exercise thereof).

    b. Withholding Arrangements. The Administrator, in its sole discretion and pursuant to such procedures as it may specify from time to time, may permit a Participant to satisfy such tax withholding obligation, in whole or in part by (without limitation) (i) paying cash, (ii) electing to have the Company withhold otherwise deliverable Shares having a Fair Market Value equal to the minimum statutory amount required to be withheld, (iii) delivering to the Company already-owned Shares having a Fair Market Value equal to the statutory amount required to be withheld, provided the delivery of such Shares will not result in any adverse accounting consequences, as the Administrator determines in its sole discretion, or (iv) selling a sufficient number of Shares otherwise deliverable to the Participant through such means as the Administrator may determine in its sole discretion (whether through a broker or otherwise) equal to the amount required to be withheld. The amount of the withholding requirement will be deemed to include any amount which the Administrator agrees may be withheld at the time the election is made, not to exceed the amount determined by using the maximum federal, state or local marginal income tax rates applicable to the Participant with respect to the Award on the date that the amount of tax to be withheld is to be determined. The Fair Market Value of the Shares to be withheld or delivered will be determined as of the date that the taxes are required to be withheld.

2. No Effect on Employment or Service. Neither the Plan nor any Award will confer upon a Participant any right with respect to continuing the Participant's relationship as a Service Provider with the Company, nor will they interfere in any way with the Participant's right or the Company's right to terminate such relationship at any time, with or without cause, to the extent permitted by Applicable Laws.

3. Date of Grant. The date of grant of an Award will be, for all purposes, the date on which the Administrator makes the determination granting such Award, or such other later date

as is determined by the Administrator. Notice of the determination will be provided to each Participant within a reasonable time after the date of such grant.

4. Term of Plan. Subject to Section 21 of the Plan, the Plan will become effective upon its adoption by the Board. Unless sooner terminated under Section 18, it will continue in effect for a term of ten (10) years from the later of (a) the effective date of the Plan, or (b) the earlier of the most recent Board or stockholder approval of an increase in the number of Shares reserved for issuance under the Plan.

5. Amendment and Termination of the Plan.

    a. Amendment and Termination. The Board may at any time amend, alter, suspend or terminate the Plan.

    b. Stockholder Approval. The Company will obtain stockholder approval of any Plan amendment to the extent necessary and desirable to comply with Applicable Laws.

    c. Effect of Amendment or Termination. No amendment, alteration, suspension or termination of the Plan will impair the rights of any Participant, unless mutually agreed otherwise between the Participant and the Administrator, which agreement must be in writing and signed by the Participant and the Company. Termination of the Plan will not affect the Administrator's ability to exercise the powers granted to it hereunder with respect to Awards granted under the Plan prior to the date of such termination.

6. Conditions Upon Issuance of Shares.

    a. Legal Compliance. Shares will not be issued pursuant to the exercise of an Award unless the exercise of such Award and the issuance and delivery of such Shares will comply with Applicable Laws and will be further subject to the approval of counsel for the Company with respect to such compliance.

    b. Investment Representations. As a condition to the exercise of an Award, the Company may require the person exercising such Award to represent and warrant at the time of any such exercise that the Shares are being purchased only for investment and without any present intention to sell or distribute such Shares if, in the opinion of counsel for the Company, such a representation is required.

7. Inability to Obtain Authority. The inability of the Company to obtain authority from any regulatory body having jurisdiction, which authority is deemed by the Company's counsel to be necessary to the lawful issuance and sale of any Shares hereunder, will relieve the Company of any liability in respect of the failure to issue or sell such Shares as to which such requisite authority will not have been obtained.

8. Stockholder Approval. The Plan will be subject to approval by the stockholders of the Company within twelve (12) months after the date the Plan is adopted by the Board.

Such stockholder approval will be obtained in the manner and to the degree required under Applicable Laws.

9. Information to Participants. Beginning on the earlier of (i) the date that the aggregate number of Participants under this Plan is five hundred (500) or more and the Company is relying on the exemption provided by Rule 12h-1(f)(1) under the Exchange Act and (ii) the date that the Company is required to deliver information to Participants pursuant to Rule 701 under the Securities Act, and until such time as the Company becomes subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act, is no longer relying on the exemption provided by Rule 12h-1(f)(1) under the Exchange Act or is no longer required to deliver information to Participants pursuant to Rule 701 under the Securities Act, the Company shall provide to each Participant the information described in paragraphs (e)(3), (4), and (5) of Rule 701 under the Securities Act not less frequently than every six (6) months with the financial statements being not more than 180 days old and with such information provided either by physical or electronic delivery to the Participants or by written notice to the Participants of the availability of the information on an Internet site that may be password-protected and of any password needed to access the information. The Company may request that Participants agree to keep the information to be provided pursuant to this section confidential. If a Participant does not agree to keep the information to be provided pursuant to this section confidential, then the Company will not be required to provide the information unless otherwise required pursuant to Rule 12h-1(f)(1) under the Exchange Act or Rule 701 of the Securities Act.

Exhibit 10.5

STEM, INC. 2009 EQUITY INCENTIVE PLAN

STOCK OPTION AGREEMENT

Unless otherwise defined herein, the terms defined in the 2009 Equity Incentive Plan (the "Plan") shall have the same defined meanings in this Stock Option Agreement (the "Option Agreement").

A. **NOTICE OF STOCK OPTION GRANT**

Name:

Address: _____

The undersigned Participant has been granted an Option to purchase Common Stock of the Company, subject to the terms and conditions of the Plan and this Option Agreement, as follows:

Date of Grant:
Vesting Commencement Date:
Exercise Price per Share:
Total Number of Shares Granted:
Total Exercise Price:
Type of Option: _____ Incentive Stock Option (ISO)
_____ Nonstatutory Stock Option (NSO)
Term/Expiration Date:

Vesting Schedule:

This Option shall be exercisable, in whole or in part, according to the following vesting schedule:

The Option shall vest over four years with twenty-five percent (25%) of the shares subject to the Option vesting on the first anniversary of the Vesting Commencement Date and one forty-eighth (1/48th) of the shares subject to the Option vesting each month thereafter on the same day of the month as the Vesting Commencement Date (and if there is no corresponding day, on the last day of the month) until the fourth anniversary of the Vesting Commencement Date, subject to such service provider's continued service on each applicable vesting date.

Termination Period:

This Option shall be exercisable for three (3) months after Participant ceases to be a Service Provider, unless such termination is due to Participant's death or Disability, in which case this Option shall be exercisable for twelve (12) months after Participant ceases to be a

Service Provider. Notwithstanding the foregoing sentence, in no event may this Option be exercised after the Term/Expiration Date as provided above and this Option may be subject to earlier termination as provided in Section 13 of the Plan.

A. **AGREEMENT**

a. Grant of Option. The Administrator of the Company hereby grants to the Participant named in the Notice of Stock Option Grant in Part I of this Agreement ("Participant"), an option (the "Option") to purchase the number of Shares set forth in the Notice of Stock Option Grant, at the exercise price per Share set forth in the Notice of Stock Option Grant (the "Exercise Price"), and subject to the terms and conditions of the Plan, which is incorporated herein by reference. Subject to Section 18 of the Plan, in the event of a conflict between the terms and conditions of the Plan and this Option Agreement, the terms and conditions of the Plan shall prevail.

If designated in the Notice of Stock Option Grant as an Incentive Stock Option ("ISO"), this Option is intended to qualify as an Incentive Stock Option as defined in Section 422 of the Code. Nevertheless, to the extent that it exceeds the $100,000 rule of Code Section 422(d), this Option shall be treated as a Nonstatutory Stock Option ("NSO"). Further, if for any reason this Option (or portion thereof) shall not qualify as an ISO, then, to the extent of such nonqualification, such Option (or portion thereof) shall be regarded as a NSO granted under the Plan. In no event shall the Administrator, the Company or any Parent or Subsidiary or any of their respective employees or directors have any liability to Participant (or any other person) due to the failure of the Option to qualify for any reason as an ISO.

a. Exercise of Option.

i. Right to Exercise. This Option shall be exercisable during its term in accordance with the Vesting Schedule set out in the Notice of Stock Option Grant and with the applicable provisions of the Plan and this Option Agreement.

ii. Method of Exercise. This Option shall be exercisable by delivery of an exercise notice in the form attached as Exhibit A (the "Exercise Notice") or in a manner and pursuant to such procedures as the Administrator may determine, which shall state the election to exercise the Option, the number of Shares with respect to which the Option is being exercised (the "Exercised Shares"), and such other representations and agreements as may be required by the Company. The Exercise Notice shall be accompanied by payment of the aggregate Exercise Price as to all Exercised Shares, together with any applicable tax withholding. This Option shall be deemed to be exercised upon receipt by the Company of such fully executed Exercise Notice accompanied by the aggregate Exercise Price, together with any applicable tax withholding.

No Shares shall be issued pursuant to the exercise of an Option unless such issuance and such exercise comply with Applicable Laws. Assuming such compliance, for income tax purposes the Shares shall be considered transferred to Participant on the date on which the Option is exercised with respect to such Shares.

a. Participant's Representations. In the event the Shares have not been registered under the Securities Act of 1933, as amended (the "Securities Act"), at the time this Option is exercised, Participant shall, if required by the Company, concurrently with the exercise of all or any portion of this Option, deliver to the Company his or her Investment Representation Statement in the form attached hereto as Exhibit B.

b. Lock-Up Period. Participant hereby agrees that Participant shall not offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, lend, or otherwise transfer or dispose of, directly or indirectly, any Common Stock (or other securities) of the Company or enter into any swap, hedging or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of any Common Stock (or other securities) of the Company held by Participant (other than those included in the registration) for a period specified by the representative of the underwriters of Common Stock (or other securities) of the Company not to exceed one hundred and eighty (180) days following the effective date of any registration statement of the Company filed under the Securities Act (or such other period as may be requested by the Company or the underwriters to accommodate regulatory restrictions on (i) the publication or other distribution of research reports and (ii) analyst recommendations and opinions, including, but not limited to, the restrictions contained in NASD Rule 2711(f)(4) or NYSE Rule 472(f)(4), or any successor provisions or amendments thereto).

Participant agrees to execute and deliver such other agreements as may be reasonably requested by the Company or the underwriter which are consistent with the foregoing or which are necessary to give further effect thereto. In addition, if requested by the Company or the representative of the underwriters of Common Stock (or other securities) of the Company, Participant shall provide, within ten (10) days of such request, such information as may be required by the Company or such representative in connection with the completion of any public offering of the Company's securities pursuant to a registration statement filed under the Securities Act. The obligations described in this Section 4 shall not apply to a registration relating solely to employee benefit plans on Form S-1 or Form S-8 or similar forms that may be promulgated in the future, or a registration relating solely to a Commission Rule 145 transaction on Form S-4 or similar forms that may be promulgated in the future. The Company may impose stop-transfer instructions with respect to the shares of Common Stock (or other securities) subject to the foregoing restriction until the end of said one hundred and eighty (180) day (or other) period. Participant agrees that any transferee of the Option or shares acquired pursuant to the Option shall be bound by this Section 4.

a. Method of Payment. Payment of the aggregate Exercise Price shall be by any of the following, or a combination thereof, at the election of the Participant:

   i. cash;

   ii. check;

   iii. consideration received by the Company under a formal cashless exercise program adopted by the Company in connection with the Plan; or

   iv. surrender of other Shares which (i) shall be valued at its Fair Market Value on the date of exercise, and (ii) must be owned free and clear of any liens, claims, encumbrances or security interests, if accepting such Shares, in the sole discretion of the Administrator, shall not result in any adverse accounting consequences to the Company.

b. Restrictions on Exercise. This Option may not be exercised until such time as the Plan has been approved by the stockholders of the Company, or if the issuance of such Shares upon such exercise or the method of payment of consideration for such shares would constitute a violation of any Applicable Law.

c. Non-Transferability of Option.

   i. This Option may not be transferred in any manner otherwise than by will or by the laws of descent or distribution and may be exercised during the lifetime of Participant only by Participant. The terms of the Plan and this Option Agreement shall be binding upon the executors, administrators, heirs, successors and assigns of Participant.

   ii. Further, until the Company becomes subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act, or after the Administrator determines that it is, will, or may no longer be relying upon the exemption from registration of Options under the Exchange Act as set forth in Rule 12h-1(f) promulgated under the Exchange Act (the "Reliance End Date"), Participant shall not transfer this Option or, prior to exercise, the Shares subject to this Option, in any manner other than (i) to persons who are "family members" (as defined in Rule 701(c)(3) of the Securities Act) through gifts or domestic relations orders, or (ii) to an executor or guardian of Participant upon the death or disability of Participant. Until the Reliance End Date, the Options and, prior to exercise, the Shares subject to this Option, may not be pledged, hypothecated or otherwise transferred or disposed of, including by entering into any short position, any "put equivalent position" or any "call equivalent position" (as defined in Rule 16a-1(h) and Rule 16a-1(b) of the Exchange Act, respectively), other than as permitted in clauses (i) and (ii) of this paragraph.

d. Term of Option. This Option may be exercised only within the term set out in the Notice of Stock Option Grant, and may be exercised during such term only in accordance with the Plan and the terms of this Option Agreement.

e. Tax Obligations.

i. Tax Withholding. Participant agrees to make appropriate arrangements with the Company (or the Parent or Subsidiary employing or retaining Participant) for the satisfaction of all Federal, state, local and foreign income and employment tax withholding requirements applicable to the Option exercise. Participant acknowledges and agrees that the Company may refuse to honor the exercise and refuse to deliver the Shares if such withholding amounts are not delivered at the time of exercise.

ii. Notice of Disqualifying Disposition of ISO Shares. If the Option granted to Participant herein is an ISO, and if Participant sells or otherwise disposes of any of the Shares acquired pursuant to the ISO on or before the later of (i) the date two (2) years after the Date of Grant, or (ii) the date one (1) year after the date of exercise, Participant shall immediately notify the Company in writing of such disposition. Participant agrees that Participant may be subject to income tax withholding by the Company on the compensation income recognized by Participant.

iii. Code Section 409A. Under Code Section 409A, an Option that vests after December 31, 2004 (or that vested on or prior to such date but which was materially modified after October 3, 2004) that was granted with a per Share exercise price that is determined by the Internal Revenue Service (the "IRS") to be less than the Fair Market Value of a Share on the date of grant (a "discount option") may be considered "deferred compensation." An Option that is a "discount option" may result in (i) income recognition by Participant prior to the exercise of the Option, (ii) an additional twenty percent (20%) federal income tax, and (iii) potential penalty and interest charges. The "discount option" may also result in additional state income, penalty and interest tax to the Participant. Participant acknowledges that the Company cannot and has not guaranteed that the IRS will agree that the per Share exercise price of this Option equals or exceeds the Fair Market Value of a Share on the date of grant in a later examination. Participant agrees that if the IRS determines that the Option was granted with a per Share exercise price that was less than the Fair Market Value of a Share on the date of grant, Participant shall be solely responsible for Participant's costs related to such a determination.

f. Entire Agreement; Governing Law. The Plan is incorporated herein by reference. The Plan and this Option Agreement constitute the entire agreement of the parties with respect to the subject matter hereof and supersede in their entirety all prior undertakings and agreements of the Company and Participant with respect to the

subject matter hereof, and may not be modified adversely to the Participant's interest except by means of a writing signed by the Company and Participant. This Option Agreement is governed by the internal substantive laws but not the choice of law rules of California.

g. No Guarantee of Continued Service. PARTICIPANT ACKNOWLEDGES AND AGREES THAT THE VESTING OF SHARES PURSUANT TO THE VESTING SCHEDULE HEREOF IS EARNED ONLY BY CONTINUING AS A SERVICE PROVIDER AT THE WILL OF THE COMPANY (OR THE PARENT OR SUBSIDIARY EMPLOYING OR RETAINING PARTICIPANT) AND NOT THROUGH THE ACT OF BEING HIRED, BEING GRANTED THIS OPTION OR ACQUIRING SHARES HEREUNDER. PARTICIPANT FURTHER ACKNOWLEDGES AND AGREES THAT THIS AGREEMENT, THE TRANSACTIONS CONTEMPLATED HEREUNDER AND THE VESTING SCHEDULE SET FORTH HEREIN DO NOT CONSTITUTE AN EXPRESS OR IMPLIED PROMISE OF CONTINUED ENGAGEMENT AS A SERVICE PROVIDER FOR THE VESTING PERIOD, FOR ANY PERIOD, OR AT ALL, AND SHALL NOT INTERFERE IN ANY WAY WITH PARTICIPANT'S RIGHT OR THE RIGHT OF THE COMPANY (OR THE PARENT OR SUBSIDIARY EMPLOYING OR RETAINING PARTICIPANT) TO TERMINATE PARTICIPANT'S RELATIONSHIP AS A SERVICE PROVIDER AT ANY TIME, WITH OR WITHOUT CAUSE.

Participant acknowledges receipt of a copy of the Plan and represents that he or she is familiar with the terms and provisions thereof, and hereby accepts this Option subject to all of the terms and provisions thereof. Participant has reviewed the Plan and this Option in their entirety, has had an opportunity to obtain the advice of counsel prior to executing this Option and fully understands all provisions of the Option. Participant hereby agrees to accept as binding, conclusive and final all decisions or interpretations of the Administrator upon any questions arising under the Plan or this Option. Participant further agrees to notify the Company upon any change in the residence address indicated below.

PARTICIPANT **STEM, INC.**

Signature By

Print Name Print Name

Title

Residence Address

EXHIBIT A

2009 EQUITY INCENTIVE PLAN

EXERCISE NOTICE

Stem, Inc.

100 Rollins Rd.

Millbrae, CA 94030

Attention: Corporate Secretary

1. Exercise of Option. Effective as of today, _____, ____, the undersigned ("Participant") hereby elects to exercise Participant's option (the "Option") to purchase _____ shares of the Common Stock (the "Shares") of Stem, Inc. (the "Company") under and pursuant to the 2009 Equity Incentive Plan (the "Plan") and the Stock Option Agreement dated _____, _____ (the "Option Agreement").

2. Delivery of Payment. Participant herewith delivers to the Company the full purchase price of the Shares, as set forth in the Option Agreement, and any and all withholding taxes due in connection with the exercise of the Option.

3. Representations of Participant. Participant acknowledges that Participant has received, read and understood the Plan and the Option Agreement and agrees to abide by and be bound by their terms and conditions.

4. Rights as Stockholder. Until the issuance of the Shares (as evidenced by the appropriate entry on the books of the Company or of a duly authorized transfer agent of the Company), no right to vote or receive dividends or any other rights as a stockholder shall exist with respect to the Common Stock subject to an Award, notwithstanding the exercise of the Option. The Shares shall be issued to Participant as soon as practicable after the Option is exercised in accordance with the Option Agreement. No adjustment shall be made for a dividend or other right for which the record date is prior to the date of issuance except as provided in Section 13 of the Plan.

5. Company's Right of First Refusal. Before any Shares held by Participant or any transferee (either being sometimes referred to herein as the "Holder") may be sold or otherwise transferred (including transfer by gift or operation of law), the Company or its assignee(s) shall have a right of first refusal to purchase the Shares on the terms and conditions set forth in this Section 5 (the "Right of First Refusal").

    a. Notice of Proposed Transfer. The Holder of the Shares shall deliver to the Company a written notice (the "Notice") stating: (i) the Holder's bona fide intention to sell or otherwise transfer such Shares; (ii) the name of each proposed purchaser or other transferee ("Proposed Transferee"); (iii) the number of Shares

to be transferred to each Proposed Transferee; and (iv) the bona fide cash price or other consideration for which the Holder proposes to transfer the Shares (the "Offered Price"), and the Holder shall offer the Shares at the Offered Price to the Company or its assignee(s).

b. Exercise of Right of First Refusal. At any time within thirty (30) days after receipt of the Notice, the Company and/or its assignee(s) may, by giving written notice to the Holder, elect to purchase all, but not less than all, of the Shares proposed to be transferred to any one or more of the Proposed Transferees, at the purchase price determined in accordance with subsection (c) below.

c. Purchase Price. The purchase price ("Purchase Price") for the Shares purchased by the Company or its assignee(s) under this Section 5 shall be the Offered Price. If the Offered Price includes consideration other than cash, the cash equivalent value of the non-cash consideration shall be determined by the Board of Directors of the Company in good faith.

d. Payment. Payment of the Purchase Price shall be made, at the option of the Company or its assignee(s), in cash (by check), by cancellation of all or a portion of any outstanding indebtedness of the Holder to the Company (or, in the case of repurchase by an assignee, to the assignee), or by any combination thereof within thirty (30) days after receipt of the Notice or in the manner and at the times set forth in the Notice.

e. Holder's Right to Transfer. If all of the Shares proposed in the Notice to be transferred to a given Proposed Transferee are not purchased by the Company and/or its assignee(s) as provided in this Section 5, then the Holder may sell or otherwise transfer such Shares to that Proposed Transferee at the Offered Price or at a higher price, *provided* that such sale or other transfer is consummated within one hundred and twenty (120) days after the date of the Notice, that any such sale or other transfer is effected in accordance with any applicable securities laws and that the Proposed Transferee agrees in writing that the provisions of this Section 5 shall continue to apply to the Shares in the hands of such Proposed Transferee. If the Shares described in the Notice are not transferred to the Proposed Transferee within such period, a new Notice shall be given to the Company, and the Company and/or its assignees shall again be offered the Right of First Refusal before any Shares held by the Holder may be sold or otherwise transferred.

f. Exception for Certain Family Transfers. Anything to the contrary contained in this Section 5 notwithstanding, the transfer of any or all of the Shares during the Participant's lifetime or on the Participant's death by will or intestacy to the Participant's immediate family or a trust for the benefit of the Participant's immediate family shall be exempt from the provisions of this Section 5. "Immediate Family" as used herein shall mean spouse, lineal descendant or antecedent, father, mother, brother or sister. In such case, the transferee or other recipient shall receive and hold the Shares so transferred subject to the provisions

of this Section 5, and there shall be no further transfer of such Shares except in accordance with the terms of this Section 5.

g. Termination of Right of First Refusal. The Right of First Refusal shall terminate as to any Shares upon the earlier of (i) the first sale of Common Stock of the Company to the general public, or (ii) a Change in Control in which the successor corporation has equity securities that are publicly traded.

6. Tax Consultation. Participant understands that Participant may suffer adverse tax consequences as a result of Participant's purchase or disposition of the Shares. Participant represents that Participant has consulted with any tax consultants Participant deems advisable in connection with the purchase or disposition of the Shares and that Participant is not relying on the Company for any tax advice.

7. Restrictive Legends and Stop-Transfer Orders.

a. Legends. Participant understands and agrees that the Company shall cause the legends set forth below or legends substantially equivalent thereto, to be placed upon any certificate(s) evidencing ownership of the Shares together with any other legends that may be required by the Company or by state or federal securities laws:

THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 (THE "ACT") AND MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED, PLEDGED OR HYPOTHECATED UNLESS AND UNTIL REGISTERED UNDER THE ACT OR, IN THE OPINION OF COUNSEL SATISFACTORY TO THE ISSUER OF THESE SECURITIES, SUCH OFFER, SALE OR TRANSFER, PLEDGE OR HYPOTHECATION IS IN COMPLIANCE THEREWITH.

THE SHARES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO CERTAIN RESTRICTIONS ON TRANSFER AND A RIGHT OF FIRST REFUSAL HELD BY THE ISSUER OR ITS ASSIGNEE(S) AS SET FORTH IN THE EXERCISE NOTICE BETWEEN THE ISSUER AND THE ORIGINAL HOLDER OF THESE SHARES, A COPY OF WHICH MAY BE OBTAINED AT THE PRINCIPAL OFFICE OF THE ISSUER. SUCH TRANSFER RESTRICTIONS AND RIGHT OF FIRST REFUSAL ARE BINDING ON TRANSFEREES OF THESE SHARES.

THE SHARES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO RESTRICTIONS ON TRANSFER FOR A PERIOD OF TIME FOLLOWING THE EFFECTIVE DATE OF THE UNDERWRITTEN PUBLIC OFFERING OF THE COMPANY'S SECURITIES SET FORTH IN AN AGREEMENT BETWEEN THE ISSUER AND THE ORIGINAL HOLDER OF THESE SHARES AND MAY NOT BE SOLD OR OTHERWISE DISPOSED OF BY THE HOLDER PRIOR TO THE EXPIRATION OF SUCH PERIOD WITHOUT THE CONSENT OF THE COMPANY OR THE MANAGING UNDERWRITER.

a. Stop-Transfer Notices. Participant agrees that, in order to ensure compliance with the restrictions referred to herein, the Company may issue appropriate "stop transfer" instructions to its transfer agent, if any, and that, if the Company transfers its own securities, it may make appropriate notations to the same effect in its own records.

b. Refusal to Transfer. The Company shall not be required (i) to transfer on its books any Shares that have been sold or otherwise transferred in violation of any of the provisions of this Exercise Notice or (ii) to treat as owner of such Shares or to accord the right to vote or pay dividends to any purchaser or other transferee to whom such Shares shall have been so transferred.

8. Successors and Assigns. The Company may assign any of its rights under this Exercise Notice to single or multiple assignees, and this Exercise Notice shall inure to the benefit of the successors and assigns of the Company. Subject to the restrictions on transfer herein set forth, this Exercise Notice shall be binding upon Participant and his or her heirs, executors, administrators, successors and assigns.

9. Interpretation. Any dispute regarding the interpretation of this Exercise Notice shall be submitted by Participant or by the Company forthwith to the Administrator, which shall review such dispute at its next regular meeting. The resolution of such a dispute by the Administrator shall be final and binding on all parties.

10. Governing Law; Severability. This Exercise Notice is governed by the internal substantive laws, but not the choice of law rules, of California. In the event that any provision hereof becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable or void, this Exercise Notice shall continue in full force and effect.

11. Entire Agreement. The Plan and Option Agreement are incorporated herein by reference. This Exercise Notice, the Plan, the Option Agreement and the Investment Representation Statement constitute the entire agreement of the parties with respect to the subject matter hereof and supersede in their entirety all prior undertakings and agreements of the Company and Participant with respect to the subject matter hereof, and may not be modified adversely to the Participant's interest except by means of a writing signed by the Company and Participant.

Submitted by: Accepted by:

PARTICIPANT STEM, INC.

Signature By

Print Name Print Name

Title

Address: Address:

Date Received

EXHIBIT B

INVESTMENT REPRESENTATION STATEMENT

PARTICIPANT :

COMPANY : STEM, INC.

SECURITY : COMMON STOCK

AMOUNT :

DATE :

In connection with the purchase of the above-listed Securities, the undersigned Participant represents to the Company the following:

a. Participant is aware of the Company's business affairs and financial condition and has acquired sufficient information about the Company to reach an informed and knowledgeable decision to acquire the Securities. Participant is acquiring these Securities for investment for Participant's own account only and not with a view to, or for resale in connection with, any "distribution" thereof within the meaning of the Securities Act of 1933, as amended (the "Securities Act").

b. Participant acknowledges and understands that the Securities constitute "restricted securities" under the Securities Act and have not been registered under the Securities Act in reliance upon a specific exemption therefrom, which exemption depends upon, among other things, the bona fide nature of Participant's investment intent as expressed herein. In this connection, Participant understands that, in the view of the Securities and Exchange Commission, the statutory basis for such exemption may be unavailable if

Participant's representation was predicated solely upon a present intention to hold these Securities for the minimum capital gains period specified under tax statutes, for a deferred sale, for or until an increase or decrease in the market price of the Securities, or for a period of one (1) year or any other fixed period in the future. Participant further understands that the Securities must be held indefinitely unless they are subsequently registered under the Securities Act or an exemption from such registration is available. Participant further acknowledges and understands that the Company is under no obligation to register the Securities. Participant understands that the certificate evidencing the Securities shall be imprinted with any legend required under applicable state securities laws.

c. Participant is familiar with the provisions of Rule 701 and Rule 144, each promulgated under the Securities Act, which, in substance, permit limited public resale of "restricted securities" acquired, directly or indirectly from the issuer thereof, in a non-public offering subject to the satisfaction of certain conditions. Rule 701 provides that if the issuer qualifies under Rule 701 at the time of the grant of the Option to Participant, the exercise shall be exempt from registration under the Securities Act. In the event the Company becomes subject to the reporting requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, ninety (90) days thereafter (or such longer period as any market stand-off agreement may require) the Securities exempt under Rule 701 may be resold, subject to the satisfaction of the applicable conditions specified by Rule 144, including in the case of affiliates (1) the availability of certain public information about the Company, (2) the amount of Securities being sold during any three (3) month period not exceeding specified limitations, (3) the resale being made in an unsolicited "broker's transaction", transactions directly with a "market maker" or "riskless principal transactions" (as those terms are defined under the Securities Exchange Act of 1934) and (4) the timely filing of a Form 144, if applicable.

In the event that the Company does not qualify under Rule 701 at the time of grant of the Option, then the Securities may be resold in certain limited circumstances subject to the provisions of Rule 144, which may require (i) the availability of current public information about the Company; (ii) the resale to occur more than a specified period after the purchase and full payment (within the meaning of Rule 144) for the Securities; and (iii) in the case of the sale of Securities by an affiliate, the satisfaction of the conditions set forth in sections (2), (3) and (4) of the paragraph immediately above.

a. Participant further understands that in the event all of the applicable requirements of Rule 701 or 144 are not satisfied, registration under the Securities Act, compliance with Regulation A, or some other registration exemption shall be required; and that, notwithstanding the fact that Rules 144 and 701 are not exclusive, the Staff of the Securities and Exchange Commission has expressed its opinion that persons proposing to sell private placement securities other than in a registered offering and otherwise than pursuant to Rules 144 or 701 shall have a substantial burden of proof in establishing that an exemption from registration is available for such offers or sales, and that such persons and their respective brokers who participate in such transactions do so at their own risk.

Participant understands that no assurances can be given that any such other registration exemption shall be available in such event.

PARTICIPANT

Signature

Print Name

Date

Exhibit 10.10

INDEMNIFICATION AGREEMENT

THIS AGREEMENT (the "Agreement") is entered into as of [●], 2021, by and between Stem, Inc., a Delaware corporation (the "Company"), and [●] ("Indemnitee").

WHEREAS, it is essential to the Company to retain and attract as directors and officers the most capable persons available;

WHEREAS, Indemnitee is a director and/or officer of the Company;

WHEREAS, both the Company and Indemnitee recognize the increased risk of litigation and other claims currently being asserted against directors and officers of corporations;

WHEREAS, the certificate of incorporation and bylaws of the Company permit the Company to indemnify and advance expenses to its directors and officers to the fullest extent permitted under Delaware law, and the Indemnitee agrees to serve as a director and/or officer of the Company in part in reliance on the Company's certificate of incorporation and bylaws; and

WHEREAS, in recognition of Indemnitee's need for (i) substantial protection against personal liability based on Indemnitee's reliance on the aforesaid certificate of incorporation and bylaws, (ii) specific contractual assurance that the protection promised by the certificate of incorporation and bylaws will be available to Indemnitee (regardless of, among other things, any amendment to or revocation of the certificate of incorporation and bylaws or any change in the composition of the Company's Board of Directors or acquisition transaction relating to the Company), and (iii) an inducement to provide effective services to the Company as a director and/or officer, the Company wishes to provide in this Agreement for the indemnification of and the advancing of expenses to Indemnitee to the fullest extent (whether partial or complete) permitted under Delaware law and as set forth in this Agreement, and, to the extent insurance is maintained, to provide for the continued coverage of Indemnitee under the Company's directors' and officers' liability insurance policies.

NOW, THEREFORE, in consideration of the above premises and of Indemnitee agreeing to serve the Company directly or, at its request, with another enterprise, and intending to be legally bound hereby, the parties agree as follows:

1. Certain Definitions:

    a. Board: the Board of Directors of the Company.

    b. Affiliate: any corporation or other person or entity that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the person specified.

c. Change in Control: means:

(i) The acquisition (whether by purchase, merger, consolidation, combination or other similar transaction) by any Person of beneficial ownership (within the meaning of Rule 13d-3 promulgated under the Securities Exchange Act of 1934, as amended (the "Exchange Act")) of more than 50% (on a fully diluted basis) of the combined voting power of the then outstanding voting securities of the Company; provided, however, that for purposes of this Agreement, the following acquisitions shall not constitute a Change in Control: (A) any acquisition by the Company, (B) any acquisition by any employee benefit plan sponsored or maintained by the Company or any subsidiary, or (C) the acquisition of securities pursuant to an offer made to the general public through a registration statement filed with the Securities and Exchange Commission; or

(ii) The sale, transfer or other disposition of all or substantially all of the assets of the Company to any Person other than an Affiliate; or

(iii) One Person (or more than one Person acting as a group) acquires ownership of stock of the Company that, together with the stock held by such Person or group, constitutes more than fifty percent (50%) of the total fair market value or total voting power of the stock of the Company; provided, that, a Change in Control shall not occur if any Person (or more than one Person acting as a group) owns more than fifty percent (50%) of the total fair market value or total voting power of the Company's stock and acquires additional stock; or

(iv) A majority of the members of the Board is replaced during any twelve-month period by directors whose appointment or election is not endorsed by a majority of the Board before the date of appointment or election.

a. Expenses: any expense, liability, or loss, including attorneys' fees, judgments, fines, ERISA excise taxes, penalties and amounts paid or to be paid in settlement by or behalf of the Indemnitee actually and reasonably incurred in connection with investigating, defending, participating in (including on appeal), or preparing for any of the foregoing in, any Proceeding relating to any Indemnifiable Event.

b. Indemnifiable Event: any event or occurrence that takes place either prior to or after the execution of this Agreement, related to the fact that Indemnitee is or was a director or officer of the Company, or while a director or officer is or was serving at the request of the Company as a director, officer, employee, trustee, or agent of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to an employee benefit plan, or related to anything done or not done by Indemnitee in any such capacity.

c. Independent Counsel: the person or body appointed in connection with Section 3.

d. Proceeding: any threatened, pending, or completed action, suit, arbitration, alternative dispute resolution mechanism, investigation, inquiry, judicial, administrative or legislative hearing, or any other threatened, pending or completed proceeding, whether brought by or in the right of the Corporation or otherwise, including any and all appeals, whether of a civil, criminal, administrative, legislative, investigative or other nature.

e. Person: means any individual, entity or group (within the meaning of Section 13(d)(3) or 14(d)(2) of the Exchange Act).

f. Voting Securities: any securities of the Company that vote generally in the election of directors.

2. Agreement to Indemnify.

a. General Agreement. In the event Indemnitee was, is, or becomes a party to or witness or other participant in, or is threatened to be made a party to or witness or other participant in, a Proceeding by reason of (or arising in part out of) an Indemnifiable Event, the Company shall indemnify Indemnitee from and against any and all Expenses to the fullest extent permitted by law, as the same exists or may hereafter be amended or interpreted (but in the case of any such amendment or interpretation, only to the extent that such amendment or interpretation permits the Company to provide broader indemnification rights than were permitted prior thereto). The parties hereto intend that this Agreement shall provide for indemnification in excess of that expressly permitted by statute, including, without limitation, any indemnification provided by the Company's certificate of incorporation, its bylaws, vote of its stockholders or disinterested directors, or applicable law.

b. Initiation of Proceeding. Notwithstanding anything in this Agreement to the contrary, Indemnitee shall not be entitled to indemnification pursuant to this Agreement in connection with any Proceeding initiated by Indemnitee against the Company or any director or officer of the Company unless (i) the Company has joined in or the Board has consented to the initiation of such Proceeding; (ii) the Proceeding is one to enforce indemnification rights under Section 5; or (iii) the Proceeding is instituted after a Change in Control (other than a Change in Control approved by a majority of the directors on the Board who were directors immediately prior to such Change in Control) and Independent Counsel has approved its initiation.

c. Expense Advances. If so requested by Indemnitee, the Company shall advance (within twenty business days of such request) any and all Expenses to Indemnitee (an "Expense Advance"); provided that (i) such an Expense Advance shall be made only upon delivery to the Company of a suitable undertaking by or on behalf of the Indemnitee to repay the amount thereof if it is ultimately determined

that Indemnitee is not entitled to be indemnified by the Company, and (ii) the Company shall not make or continue to man an Expense Advance if a determination is reasonably made that the facts known at the time such determination is made demonstrate clearly and convincingly that the indemnitee acted in bad faith or in a manner that the indemnitee did not reasonably believe to be in or not opposed to the best interests of the Corporation, or, with respect to any criminal proceeding, that the indemnitee had reasonable cause to believe his or her conduct was unlawful, such determination being made by (1) the Board by a majority vote of directors who are not parties to such proceeding, whether or not such majority constitutes a quorum, (2) by a committee of such directors designated by a majority vote of such directors, whether or not such majority constitutes a quorum, or (3) the Independent Counsel (appointed in accordance with Section 3) in a written opinion to the Company and Indemnitee that Indemnitee would not be permitted to be so indemnified under applicable law, the Company shall be entitled to be reimbursed by Indemnitee (who hereby agrees to reimburse the Company) for all such amounts theretofore paid. If Indemnitee has commenced or commences legal proceedings in a court of competent jurisdiction to secure a determination that Indemnitee should be indemnified under applicable law, as provided in Section 4, any determination made by the Board, committee of directors, or Independent Counsel that Indemnitee would not be permitted to be indemnified under applicable law shall not be binding, and Indemnitee shall not be required to reimburse the Company for any Expense Advance until a final judicial determination is made with respect thereto (as to which all rights of appeal therefrom have been exhausted or have lapsed). Indemnitee's obligation to reimburse the Company for Expense Advances shall be unsecured and no interest shall be charged thereon.

d. Mandatory Indemnification. Notwithstanding any other provision of this Agreement, to the extent that Indemnitee has been successful on the merits or otherwise in defense of any Proceeding relating in whole or in part to an Indemnifiable Event or in defense of any issue or matter therein, Indemnitee shall be indemnified against all Expenses incurred in connection therewith.

e. Partial Indemnification. If Indemnitee is entitled under any provision of this Agreement to indemnification by the Company for some or a portion of Expenses, but not, however, for the total amount thereof, the Company shall nevertheless indemnify Indemnitee for the portion thereof to which Indemnitee is entitled.

f. Prohibited Indemnification. No indemnification pursuant to this Agreement shall be paid by the Company on account of any Proceeding in which judgment is rendered against Indemnitee for an accounting of profits made from the purchase or sale by Indemnitee of securities of the Company pursuant to the provisions of Section 16(b) of the Exchange Act, or similar provisions of any federal, state, or local laws.

3. Independent Counsel. With respect to all matters to be approved or determined by the Independent Counsel under this Agreement, the Company shall seek legal advice only from Independent Counsel jointly selected by Indemnitee and the Company (which approval shall not be unreasonably withheld), and who has not otherwise performed services for the Company or the Indemnitee (other than in connection with indemnification matters), or any of their Affiliates within the last five years. The Independent Counsel shall not include any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Company or Indemnitee in an action to determine Indemnitee's rights under this Agreement. Such counsel, among other things, shall render its written opinion to the Company and Indemnitee as to whether and to what extent the Indemnitee should be permitted to be indemnified under applicable law. The Company agrees to pay the reasonable fees of the Independent Counsel and to indemnify fully such counsel against any and all expenses (including attorneys' fees), claims, liabilities, loss, and damages arising out of or relating to this Agreement or the engagement of Independent Counsel pursuant hereto.

4. Indemnification Process and Appeal.

    a. Indemnification Payment. Indemnitee shall be entitled to indemnification of Expenses, and shall receive payment thereof, from the Company in accordance with this Agreement as soon as practicable after Indemnitee has made written demand on the Company for indemnification, unless the Company, through the Board, committee of directors, or the Independent Counsel, has made a determination that that Indemnitee is not entitled to indemnification under applicable law. Any such written demand shall provide a reasonable basis for such indemnification and detail of Expenses.

    b. Suit to Enforce Rights. Regardless of any action by the Independent Counsel, if Indemnitee has not received full indemnification within sixty days after making a demand in accordance with Section 4(a), Indemnitee shall have the right to enforce its indemnification rights under this Agreement by commencing litigation in any court in the State of Delaware having subject matter jurisdiction thereof seeking an initial determination by the court or challenging any determination by the Independent Counsel or any aspect thereof. The Company hereby consents to service of process and to appear in any such proceeding. The remedy provided for in this Section 4 shall be in addition to any other remedies available to Indemnitee at law or in equity.

    c. Defense to Indemnification, Burden of Proof, and Presumptions. It shall be a defense to any action brought by Indemnitee against the Company to enforce this Agreement (other than an action brought to enforce a right to an Expense Advance) that it is not permissible under applicable law for the Company to indemnify Indemnitee for the amount claimed. In connection with any such action or any determination by the Board, committee of directors, Independent Counsel or otherwise as to whether Indemnitee is entitled to be indemnified

hereunder, the burden of proving such a defense or determination shall be on the Company. Neither the failure of the Independent Counsel or the Company (including its Board, independent legal counsel, or its stockholders) to have made a determination prior to the commencement of such action by Indemnitee that indemnification of the claimant is proper under the circumstances because Indemnitee has met the standard of conduct set forth in applicable law, nor an actual determination by the Independent Counsel or Company (including its Board, independent legal counsel, or its stockholders) that the Indemnitee had not met such applicable standard of conduct, shall be a defense to the action or create a presumption that the Indemnitee has not met the applicable standard of conduct. For purposes of this Agreement, the termination of any claim, action, suit, or proceeding, by judgment, order, settlement (whether with or without court approval), conviction, or upon a plea of nolo contendere, or its equivalent, shall not create a presumption that Indemnitee did not meet any particular standard of conduct or have any particular belief or that a court has determined that indemnification is not permitted by applicable law.

5. Indemnification for Expenses Incurred in Enforcing Rights. The Company shall indemnify Indemnitee against any and all Expenses that are incurred by Indemnitee in connection with any action brought by Indemnitee for

    i. indemnification or advance payment of Expenses by the Company under this Agreement or any other agreement or under applicable law or the Company's certificate of incorporation or bylaws now or hereafter in effect relating to indemnification for Indemnifiable Events, and/or

    ii. recovery under directors' and officers' liability insurance policies maintained by the Company, but only in the event that Indemnitee ultimately is determined to be entitled to such indemnification or insurance recovery described in (i) and (ii) above, as the case may be. In addition, the Company shall, if so requested by Indemnitee, advance the foregoing Expenses to Indemnitee, subject to and in accordance with Section 2(c).

6. Notification and Defense of Proceeding.

    a. Notice. Promptly after receipt by Indemnitee of notice of the commencement of any Proceeding, Indemnitee shall, if a claim in respect thereof is to be made against the Company under this Agreement, notify the Company of the commencement thereof; but the omission so to notify the Company will not relieve the Company from any liability that it may have to Indemnitee, except as provided in Section 6(c).

    b. Defense. With respect to any Proceeding as to which Indemnitee notifies the Company of the commencement thereof, the Company will be entitled to participate in the Proceeding at its own expense and except as otherwise provided below, to the extent the Company so wishes, it may assume the defense thereof

with counsel reasonably satisfactory to Indemnitee. After notice from the Company to Indemnitee of its election to assume the defense of any Proceeding, the Company shall not be liable to Indemnitee under this Agreement or otherwise for any Expenses subsequently incurred by Indemnitee in connection with the defense of such Proceeding other than reasonable costs of investigation or as otherwise provided below. Indemnitee shall have the right to employ legal counsel in such Proceeding, but all Expenses related thereto incurred after notice from the Company of its assumption of the defense shall be at Indemnitee's expense unless: (i) the employment of legal counsel by Indemnitee has been authorized by the Company, (ii) Indemnitee has reasonably determined that there may be a conflict of interest between Indemnitee and the Company in the defense of the Proceeding, (iii) after a Change in Control (other than a Change in Control approved by a majority of the directors on the Board who were directors immediately prior to such Change in Control), the employment of counsel by Indemnitee has been approved by the Independent Counsel, or (iv) the Company shall not in fact have employed counsel to assume the defense of such Proceeding, in each of which cases all Expenses of the Proceeding shall be borne by the Company. The Company shall not be entitled to assume the defense of any Proceeding brought by or on behalf of the Company or as to which Indemnitee shall have made the determination provided for in (ii), (iii) and (iv) above.

c. Settlement of Claims. The Company shall not be liable to indemnify Indemnitee under this Agreement or otherwise for any amounts paid in settlement of any Proceeding effected without the Company's written consent, such consent not to be unreasonably withheld; provided, however, that if a Change in Control has occurred (other than a Change in Control approved by a majority of the directors on the Board who were directors immediately prior to such Change in Control), the Company shall be liable for indemnification of Indemnitee for amounts paid in settlement if the Independent Counsel has approved the settlement. The Company shall not settle any Proceeding in any manner that would impose any penalty or limitation on Indemnitee without Indemnitee's written consent. The Company shall not be liable to indemnify the Indemnitee under this Agreement with regard to any judicial award if the Company was not given a reasonable and timely opportunity, at its expense, to participate in the defense of such action; the Company's liability hereunder shall not be excused if participation in the Proceeding by the Company was barred by this Agreement.

7. Establishment of Trust. In the event of a Change in Control (other than a Change in Control approved by a majority of the directors on the Board who were directors immediately prior to such Change in Control) the Company shall, upon written request by Indemnitee, create a Trust for the benefit of the Indemnitee and from time to time upon written request of Indemnitee shall fund the Trust in an amount sufficient to satisfy any and all Expenses reasonably anticipated at the time of each such request to be incurred in connection with investigating, preparing for, participating in, and/or defending any Proceeding relating to an Indemnifiable Event. The amount or amounts to be deposited

in the Trust pursuant to the foregoing funding obligation shall be determined by the Independent Counsel. The terms of the Trust shall provide that (i) the Trust shall not be revoked or the principal thereof invaded without the written consent of the Indemnitee, (ii) the Trustee shall advance, within ten business days of a request by the Indemnitee, any and all Expenses to the Indemnitee (and the Indemnitee hereby agrees to reimburse the Trust under the same circumstances for which the Indemnitee would be required to reimburse the Company under Section 2(c) of this Agreement), (iii) the Trust shall continue to be funded by the Company in accordance with the funding obligation set forth above, (iv) the Trustee shall promptly pay to the Indemnitee all amounts for which the Indemnitee shall be entitled to indemnification pursuant to this Agreement or otherwise, and (v) all unexpended funds in the Trust shall revert to the Company upon a final determination by the Independent Counsel or a court of competent jurisdiction, as the case may be, that the Indemnitee has been fully indemnified under the terms of this Agreement. The Trustee shall be chosen by the Indemnitee. Nothing in this Section 7 shall relieve the Company of any of its obligations under this Agreement. All income earned on the assets held in the Trust shall be reported as income by the Company for federal, state, local, and foreign tax purposes. The Company shall pay all costs of establishing and maintaining the Trust and shall indemnify the Trustee against any and all expenses (including attorneys' fees), claims, liabilities, loss, and damages arising out of or relating to this Agreement or the establishment and maintenance of the Trust.

8. Non-Exclusivity. The rights of Indemnitee hereunder shall be in addition to any other rights Indemnitee may have under the Company's certificate of incorporation, bylaws, applicable law, or otherwise; provided, however, that this Agreement shall supersede any prior indemnification agreement between the Company and the Indemnitee. To the extent that a change in applicable law (whether by statute or judicial decision) permits greater indemnification than would be afforded currently under the Company's certificate of incorporation, bylaws, applicable law, or this Agreement, it is the intent of the parties that Indemnitee enjoy by this Agreement the greater benefits so afforded by such change.

9. Liability Insurance. To the extent the Company maintains an insurance policy or policies providing general and/or directors' and officers' liability insurance, Indemnitee shall be covered by such policy or policies, in accordance with its or their terms, to the maximum extent of the coverage available for any Company director or officer.

10. Period of Limitations. No legal action shall be brought and no cause of action shall be asserted by or on behalf of the Company or any Affiliate of the Company against Indemnitee, Indemnitee's spouse, heirs, executors, or personal or legal representatives after the expiration of two years from the date of accrual of such cause of action, or such longer period as may be required by state law under the circumstances. Any claim or cause of action of the Company or its Affiliate shall be extinguished and deemed released unless asserted by the timely filing and notice of a legal action within such period; provided, however, that if any shorter period of limitations is otherwise applicable to any such cause of action, the shorter period shall govern.

11. Amendment of this Agreement. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing by both of the parties hereto. No waiver of any of the provisions of this Agreement shall be binding unless in the form of a writing signed by the party against whom enforcement of the waiver is sought, and no such waiver shall operate as a waiver of any other provisions hereof (whether or not similar), nor shall such waiver constitute a continuing waiver. Except as specifically provided herein, no failure to exercise or any delay in exercising any right or remedy hereunder shall constitute a waiver thereof.

12. Subrogation. In the event of payment under this Agreement, the Company shall be subrogated to the extent of such payment to all of the rights of recovery of Indemnitee. Indemnitee shall execute all papers required and shall do everything that may be necessary to secure such rights, including the execution of such documents necessary to enable the Company effectively to bring suit to enforce such rights.

13. No Duplication of Payments. The Company shall not be liable under this Agreement to make any payment in connection with any claim made against Indemnitee to the extent Indemnitee has otherwise received payment (under any insurance policy, bylaw, or otherwise) of the amounts otherwise indemnifiable hereunder.

14. Binding Effect. This Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and their respective successors (including any direct or indirect successor by purchase, merger, consolidation, or otherwise to all or substantially all of the business and/or assets of the Company), assigns, spouses, heirs, and personal and legal representatives. The Company shall require and cause any successor (whether direct or indirect by purchase, merger, consolidation, or otherwise) to all, substantially all, or a substantial part, of the business and/or assets of the Company, by written agreement in form and substance satisfactory to Indemnitee, expressly to assume and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform if no such succession had taken place. The indemnification provided under this Agreement shall continue as to Indemnitee for any action taken or not taken while serving in an indemnified capacity pertaining to an Indemnifiable Event even though he may have ceased to serve in such capacity at the time of any Proceeding.

15. Severability. If any provision (or portion thereof) of this Agreement shall be held by a court of competent jurisdiction to be invalid, void, or otherwise unenforceable, the remaining provisions shall remain enforceable to the fullest extent permitted by law. Furthermore, to the fullest extent possible, the provisions of this Agreement (including, without limitation, each portion of this Agreement containing any provision held to be invalid, void, or otherwise unenforceable, that is not itself invalid, void, or unenforceable) shall be construed so as to give effect to the intent manifested by the provision held invalid, void, or unenforceable.

16. Governing Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Delaware applicable to contracts made and to be performed in such State without giving effect to its principles of conflicts of laws.

17. Notices. All notices, demands, and other communications required or permitted hereunder shall be made in writing and shall be deemed to have been duly given if delivered by hand, against receipt, or mailed, postage prepaid, certified or registered mail, return receipt requested or nationally recognized overnight courier, and addressed to the Company at:

Stem, Inc.

Attention: [●]

100 Rollins Road

Millbrae, CA 94030

with a copy to:

Gibson, Dunn & Crutcher LLP

200 Park Avenue

New York, NY 10166-0193

Attention: John Gaffney

and to Indemnitee at:

_____

_____

_____

Notice of change of address shall be effective only when given in accordance with this Section. All notices complying with this Section shall be deemed to have been received on the date of hand delivery or on the third business day after mailing.

1. Counterparts; Facsimile. This Agreement may be executed in one or more counterparts and delivered by facsimile or similar electronic means, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

[signature page follows]

IN WITNESS WHEREOF, the parties hereto have duly executed and delivered this Agreement as the date first listed above.

STEM, INC.

By: _____

Name:

Title:

INDEMNITEE

_____

Name:

Exhibit 10.11

EXECUTIVE EMPLOYMENT AGREEMENT

This Executive Employment Agreement (the "**Agreement**") is entered into as of [Date], by and between [Name] ("**Executive**") and Star Peak Energy Transition Corp., a Delaware corporation (the "**Company**").

WHEREAS, Executive has been serving as the [Title] of Stem, Inc. ("**Stem**") pursuant to that certain employment offer letter agreement, dated [Date], by and between Stem and Executive (the "**Prior Agreement**");

WHEREAS, Stem has entered into that certain Agreement and Plan of Merger, dated December 3, 2020, by and among the Company, STPK Merger Sub Corp., a Delaware corporation, a wholly-owned Subsidiary of the Company ("**Merger Sub**"), and the Company (such agreement, the "**Merger Agreement**");

WHEREAS, pursuant to the terms of the Merger Agreement, Merger Sub will merge with and into Stem with Stem continuing as the surviving company and a wholly-owned subsidiary of the Company (the "**Merger**"), and following the consummation of the Merger, the Company will be named Stem, Inc.;

WHEREAS, the Company wishes to employ, and Executive wishes to accept employment with the Company, as the [Title] of the Company, pursuant to the terms and conditions set forth in this Agreement, effective as of the date of the consummation of the Merger (the "**Effective Date**").

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, it is hereby agreed by and between the parties hereto as follows:

A. DEFINITIONS

For purposes of the Agreement, the following terms are defined as follows:

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

b. "**Cause**" means a good faith determination by the Board that Executive's employment be terminated for only one of the following: (i) willful failure to comply with, breach of or continued refusal to comply with, in each case, in any material respect, the material terms of this Agreement, of any written agreement or covenant with the Company or any affiliate (including, without limitation, any employment, consulting, confidentiality, non-competition, non-solicitation, non-disparagement or similar agreement or covenant); (ii) violation of any lawful policies, standards or regulations of the Company which have been furnished to Executive, including policies related to discrimination, harassment, performance of illegal or unethical activities, and ethical misconduct; (iii) indictment for,

conviction of or plea of no contest to a felony under the laws of the United States or any state; (iv) fraud, embezzlement, dishonesty or breach of fiduciary duty against the Company or its affiliates or material misappropriation of property belonging to the Company or its affiliates; (v) Executive's willful failure to perform Executive's duties as specifically directed in any reasonable and lawful written directive of the Board; or (vi) willful misconduct or gross negligence in connection with the performance of Executive's duties, in each case of (i), (v), (vi), after the receipt of written notice from the Board and Executive's failure to cure (if curable) within thirty (30) days of Executive's receipt of the written notice, providing that the Company must provide Executive with at least thirty (30) days to cure and if Executive cures, Cause shall not exist under (i), (v), (vi), as applicable.

c. "**Change in Control**" shall have the meaning ascribed to that term in the Stem, Inc. 2020 Equity Incentive Plan (the "**Plan**") or any successor equity compensation plan of the Company.

d. "**COBRA**" means the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended.

e. "**Code**" means the Internal Revenue Code of 1986, as amended.

f. "**Covered Termination**" means (i) an Involuntary Termination Without Cause or (ii) a voluntary termination for Good Reason. For the avoidance of doubt, neither (x) the termination of Executive's employment as a result of Executive's death or Disability nor (y) the expiration of this Agreement due to non-renewal pursuant to the terms of Section 2.2 of this Agreement will be deemed to be a Covered Termination.

g. "**Disability**" shall mean a termination of Executive's employment due to Executive's absence from Executive's duties with the Company on a full-time basis for at least 180 consecutive days as a result of Executive's incapacity due to physical or mental illness which is determined to be total and permanent by a physician selected by the Company or its insurers.

h. "**Good Reason**" means any of the following taken without Executive's written consent: (i) failure or refusal by the Company to comply in any material respect with the material terms of this Agreement, (ii) a material diminution in Executive's duties, title, authority or responsibilities, (iii) a material reduction in Executive's Base Salary (unless the annual base salary of all other executive officers is similarly reduced), or (iv) the Company requiring Executive to be located at any office or location more than 35 miles from the Company's current headquarters in Millbrae, California, provided that any request or directive from the Company to not work in such office pursuant to any stay-at-home or work from home or similar law, order, directive, request or recommendation from a governmental entity shall not give rise to Good Reason under this Agreement. Notwithstanding the foregoing, Executive's resignation shall not constitute a

resignation for "Good Reason" as a result of any event described in the preceding sentence unless (x) Executive provides written notice thereof to the Company within thirty (30) days after the first occurrence of such event, (y) to the extent correctable, the Company fails to remedy such circumstance or event within thirty (30) days following the Company's receipt of such written notice and (z) the effective date of Executive's resignation for "Good Reason" is not later than ninety (90) days after the initial existence of the circumstances constituting Good Reason.

i. "**Involuntary Termination Without Cause**" means Executive's dismissal or discharge by the Company other than for Cause or by reason of Executive's death or Disability.

j. "**Section 409A**" means Section 409A of the Code and the Department of Treasury regulations and other interpretive guidance issued thereunder, including without limitation any such regulations or other guidance that may be issued after the Effective Date.

k. "**Separation from Service**" means Executive's termination of employment constitutes a "separation from service" within the meaning of Treasury Regulation Section 1.409A-1(h).

B. EMPLOYMENT BY THE COMPANY

a. **Position and Duties.** Subject to terms set forth herein, Executive shall serve in an executive capacity and shall perform such duties as are customarily associated with the position of [Title] and such other duties as are assigned to Executive by the Board. During the term of Executive's employment with the Company, Executive will devote Executive's best efforts and substantially all of Executive's business time and attention (except for vacation periods and absences due to reasonable periods of illness or other incapacities permitted by the Company's general employment policies or as otherwise set forth in this Agreement) to the business of the Company.

b. **Term.** The initial term of this Agreement shall commence on the Effective Date and shall terminate on the earlier of (i) the third (3rd) anniversary of the Effective Date and (ii) the termination of Executive's employment under this Agreement; provided, that if the Merger is not consummated, this Agreement shall be null and void *ab initio* and neither the Company, Stem nor any other person shall have any liability to Executive under this Agreement. On the third (3rd) anniversary of the Effective Date and each annual anniversary of such date thereafter (in either case, provided Executive's employment has not been terminated under this Agreement prior thereto), this Agreement shall automatically be extended for one additional year unless either Executive or the Company gives written notice of non-renewal to the other at least sixty (60) days prior to the automatic extension date. The period from the Effective Date until the earlier of (i) termination of Executive's employment under this Agreement and (ii) the expiration of the term of this

Agreement due to non-renewal pursuant to this Section 2.2 is referred to as the "**Term**."

c. **Employment at Will.** The Company shall have the right to terminate Executive's employment with the Company at any time, with or without cause, and, in the case of a termination by the Company, with or without prior notice. In addition to Executive's right to resign for Good Reason, Executive shall have the right to resign at any time and for any reason or no reason at all, upon ninety (90) days' advance written notice to the Company; provided, however, that if Executive has provided a resignation notice to the Company, the Company may determine, in its sole discretion, that such termination shall be effective on any date prior to the effective date of termination provided in such notice (and, if such earlier date is so required, then it shall not change the basis for Executive's termination of employment nor be construed or interpreted as a termination of Executive's employment by the Company) and any requirement to continue salary or benefits shall cease as of such earlier date. Upon certain terminations of Executive's employment with the Company, Executive may become eligible to receive the severance benefits provided in Article IV of this Agreement.

d. **Deemed Resignations**. Except as otherwise determined by the Board or as otherwise agreed to in writing by Executive and the Company or any of its affiliates prior to the termination of Executive's employment with the Company or any of its affiliates, any termination of Executive's employment shall constitute, as applicable, an automatic resignation of Executive: (a) as an officer of the Company and each of its affiliates; (b) from the Board; and (c) from the board of directors or board of managers (or similar governing body) of any affiliate of the Company and from the board of directors or board of managers (or similar governing body) of any corporation, limited liability entity, unlimited liability entity or other entity in which the Company or any of its affiliates holds an equity interest and with respect to which board of directors or board of managers (or similar governing body) Executive serves as such designee or other representative of the Company or any of its affiliates. Executive agrees to take any further actions that the Company or any of its affiliates reasonably requests to effectuate or document the foregoing.

e. **Employment Policies.** The employment relationship between the parties shall also be governed by the general employment policies and practices of the Company, including those relating to protection of confidential information and assignment of inventions, except that when the terms of this Agreement differ from or are in conflict with the Company's general employment policies or practices, this Agreement shall control.

C. COMPENSATION

a. **Base Salary.** As of the Effective Date, Executive shall receive for services to be rendered hereunder an annualized base salary of $[●] ("**Base Salary**"), payable on

the regular payroll dates of the Company (but no less often than monthly), subject to increase in the sole discretion of the Board or a committee of the Board.

b. **Annual Bonus.** For each calendar year ending during the Term, Executive shall be eligible to receive an annual performance bonus (the "**Annual Bonus**") targeted at [●] percent ([●]%) of Base Salary or such other amount as determined in the sole discretion of the Board or a committee of the Board (the "**Target Bonus**"), on such terms and conditions determined by the Board or a committee of the Board. The actual amount of any Annual Bonus (if any) will be determined in the discretion of the Board or a committee of the Board and will be (i) subject to achievement of any applicable bonus objectives and/or conditions determined by the Board or a committee of the Board and (ii) subject to Executive's continued employment with the Company through the date the Annual Bonus is paid (except as otherwise provided in Section 4.1). The Annual Bonus for any calendar year will be paid at the same time as bonuses for other Company executives are paid related annual bonuses generally.

c. **Standard Company Benefits**. During the Term, Executive shall be entitled to all rights and benefits for which Executive is eligible under the terms and conditions of the standard Company benefits and compensation practices that may be in effect from time to time and are provided by the Company to its executive employees generally, as well as any additional benefits provided to Executive consistent with past practice. Notwithstanding the foregoing, this Section 3.3 shall not create or be deemed to create any obligation on the part of the Company to adopt or maintain any benefits or compensation practices at any time.

d. **Paid Time Off**. During the Term, Executive shall be entitled to such periods of paid time off ("**PTO**") each year as provided from time to time under the Company's PTO policies and as otherwise provided for executive officers, as it may be amended from time to time.

e. **Equity Awards**. Executive will be eligible to receive equity incentive grants as determined by the Board or a committee of the Board in its sole discretion. All equity awards granted to Executive will be subject to the terms and conditions of the Company's 2021 Equity Incentive Plan (the "**LTIP**") and the applicable award agreement approved by the Board or a committee thereof (the "**Award Agreements**"), which shall be consistent with this Section 3.5. Nothing herein shall be construed to give any Executive any rights to any amount or type of grant or award except as provided in an award agreement and authorized by the Board or a committee thereof.

    i. [Reserved].

    ii. **Annual Grant.** Executive will be eligible to receive an annual equity award under the LTIP for the Company's [●] fiscal year in the form of RSUs having a grant date fair value equal to approximately $[●], vesting 25% on each of the first four anniversaries of the grant date, subject to

Executive's continued employment with the Company through the applicable vesting date.

D. SEVERANCE AND CHANGE IN CONTROL BENEFITS

a. **Severance Benefits.** Upon Executive's termination of employment, Executive shall receive any accrued but unpaid Base Salary and other accrued and unpaid compensation, including any accrued but unpaid vacation. If the termination is due to a Covered Termination, provided that Executive (A) delivers an effective general release of all claims against the Company and its affiliates in a form provided by the Company (a "**Release of Claims**") that becomes effective and irrevocable within sixty (60) days following the Covered Termination and (B) continues to comply with Articles V through VII of this Agreement, Executive shall be entitled to receive the severance benefits described in Section 4.1(a) or (b), as applicable.

i. **Covered Termination Not Related to a Change in Control.** If Executive's employment terminates due to a Covered Termination which occurs at any time other than during the period beginning three (3) months prior to a Change in Control and ending twelve (12) months after a Change in Control (the "**CIC Protection Period**"), Executive shall receive the following:

1. An amount equal to 12 months of Executive's Base Salary at the rate in effect (or required to be in effect before any diminution that is the basis of Executive's termination for Good Reason) at the time of Executive's termination of employment, payable in a lump sum payment, less applicable withholdings, as soon as administratively practicable following the date on which the Release of Claims becomes effective and, in any event, no later than the sixtieth (60^{th}) day following the date of the Covered Termination; provided, however, if such sixty (60) day period falls in two different calendar years, payment will be made in the later calendar year.

2. Notwithstanding anything set forth in an award agreement or incentive plan to the contrary, (A) a pro-rata portion of Executive's Annual Bonus for the fiscal year in which Executive's termination occurs based on actual achievement of the applicable bonus objectives and/or conditions determined by the Board or a committee of the Board for such year (determined by multiplying the amount of the Annual Bonus that would be payable for the full fiscal year by a fraction, the numerator of which shall be equal to the number of days during the fiscal year of termination that Executive is employed by, and performing services for, the Company and the denominator of which is 365 days) and (B) the

amount of any Annual Bonus earned, but not yet paid, for the fiscal year prior to Executive's termination, in each case, payable, less applicable withholdings, at the same time bonuses for such year are paid to other senior executives of the Company, but in no event later than March 15 of the year following the year of Executive's termination of employment.

3. Subject to Executive's timely election of continuation coverage under COBRA, the Company shall directly pay, or reimburse Executive for the premium for Executive and Executive's covered dependents to maintain continued health coverage pursuant to the provisions of COBRA through the earlier of (A) the 12 month anniversary of the date of Executive's termination of employment and (B) the date Executive and Executive's covered dependents, if any, become eligible for healthcare coverage under another employer's plan(s). Notwithstanding the foregoing, if the Company is otherwise unable to continue to cover Executive under its group health plans without penalty under applicable law (including without limitation, Section 2716 of the Public Health Service Act), then, in either case, an amount equal to each remaining Company subsidy shall thereafter be paid to Executive in substantially equal monthly installments.

4. Accelerated vesting of the unvested portion of the Closing Grant that would have vested assuming that (i) the vesting schedule for the Closing Grant provided for annual vesting at a rate of 15% per year on each anniversary of the Effective Date, and (ii) Executive remained employed by the Company through the date that is 12 months following the date of Executive's termination of employment.

ii. **Covered Termination Related to a Change in Control.** If Executive's employment terminates due to a Covered Termination that occurs during the CIC Protection Period, Executive shall receive the following:

1. An amount equal to two times the sum of (i) Executive's Base Salary at the rate in effect (or required to be in effect before any diminution that is the basis of Executive's termination for Good Reason) at the time of Executive's termination of employment and (ii) Executive's Target Bonus in effect for the year in which Executive's termination of employment occurs, payable in a lump sum payment, less applicable withholdings, as soon as administratively practicable following the date on which the Release of Claims becomes effective and, in any event, no later than the sixtieth (60^{th}) day following the date of the Covered Termination; provided, however, if such sixty (60) day period falls

in two different calendar years, payment will be made in the later calendar year.

2. Notwithstanding anything set forth in an award agreement or incentive plan to the contrary, (A) a pro-rata portion of Executive's Annual Bonus for the fiscal year in which Executive's termination occurs based on actual achievement of the applicable bonus objectives and/or conditions determined by the Board or a committee of the Board for such year (determined by multiplying the amount of the Annual Bonus that would be payable for the full fiscal year by a fraction, the numerator of which shall be equal to the number of days during the fiscal year of termination that Executive is employed by, and performing services for, the Company and the denominator of which is 365 days) and (B) the amount of any Annual Bonus earned, but not yet paid, for the fiscal year prior to Executive's termination, in each case, payable, less applicable withholdings, at the same time bonuses for such year are paid to other senior executives of the Company, but in no event later than March 15 of the year following the year of Executive's termination of employment.

3. Subject to Executive's timely election of continuation coverage under COBRA, the Company shall directly pay, or reimburse Executive for the premium for Executive and Executive's covered dependents to maintain continued health coverage pursuant to the provisions of COBRA through the earlier of (A) the 18-month anniversary of the date of Executive's termination of employment and (B) the date Executive and Executive's covered dependents, if any, become eligible for healthcare coverage under another employer's plan(s). Notwithstanding the foregoing, if the Company is otherwise unable to continue to cover Executive under its group health plans without penalty under applicable law (including without limitation, Section 2716 of the Public Health Service Act), then, in either case, an amount equal to each remaining Company subsidy shall thereafter be paid to Executive in substantially equal monthly installments.

4. Full vesting of any unvested portion of the Closing Grant.

b. **280G Provisions.** Notwithstanding anything in this Agreement to the contrary, if any payment or distribution Executive would receive pursuant to this Agreement or otherwise ("**Payment**") would (a) constitute a "parachute payment" within the meaning of Section 280G of the Code, and (b) but for this sentence, be subject to the excise tax imposed by Section 4999 of the Code (the "**Excise Tax**"), then such Payment shall either be (i) delivered in full, or (ii) delivered as to such lesser extent which would result in no portion of such Payment being subject to the

Excise Tax, whichever of the foregoing amounts, taking into account the applicable federal, state and local income taxes and the Excise Tax, results in the receipt by Executive on an after-tax basis, of the largest payment, notwithstanding that all or some portion of the Payment may be taxable under Section 4999 of the Code. The accounting firm engaged by the Company for general audit purposes as of the day prior to the effective date of the Change in Control shall perform the foregoing calculations. The Company shall bear all expenses with respect to the determinations by such accounting firm required to be made hereunder. The accounting firm shall provide its calculations to the Company and Executive within fifteen (15) calendar days after the date on which Executive's right to a Payment is triggered (if requested at that time by the Company or Executive) or such other time as requested by the Company or Executive. Any good faith determinations of the accounting firm made hereunder shall be final, binding and conclusive upon the Company and Executive. Any reduction in payments and/or benefits pursuant to this Section 4.2 will occur in the following order: (1) reduction of cash payments; (2) cancellation of accelerated vesting of equity awards other than stock options; (3) cancellation of accelerated vesting of stock options; and (4) reduction of other benefits payable to Executive. Nothing in this Section 4.2 shall require the Company or any of its affiliates to be responsible for, or have any liability or obligation with respect to, Executive's excise tax liabilities under Section 4999 of the Code.

c. **Section 409A**. Notwithstanding any provision to the contrary in this Agreement:

   i. All provisions of this Agreement are intended to comply with Section 409A of the Code, and the applicable Treasury regulations and administrative guidance issued thereunder (collectively, "**Section 409A**") or an exemption therefrom and shall be construed and administered in accordance with such intent. Any payments under this Agreement that may be excluded from Section 409A either as separation pay due to an involuntary separation from service or as a short-term deferral shall be excluded from Section 409A to the maximum extent possible. Notwithstanding the foregoing, the Company makes no representations that the payments and benefits provided under this Agreement are exempt from, or compliant with, Section 409A and in no event shall the Company or any of its affiliates be liable for all or any portion of any taxes, penalties, interest or other expenses that may be incurred by Executive on account of non-compliance with Section 409A.

   ii. If Executive is deemed at the time of Executive's Separation from Service to be a "specified employee" for purposes of Section 409A(a)(2)(B)(i) of the Code, to the extent delayed commencement of any portion of the benefits to which Executive is entitled under this Agreement is required in order to avoid a prohibited distribution under Section 409A(a)(2)(B)(i) of the Code which would subject Executive to a tax obligation under Section 409A, such portion of Executive's benefits shall not be provided to

Executive prior to the earlier of (i) the expiration of the six- month period measured from the date of Executive's Separation from Service or (ii) the date of Executive's death. Upon the expiration of the applicable Code Section 409A(a)(2)(B)(i) period, all payments deferred pursuant to this Section 4.3(b) shall be paid in a lump sum to Executive, and any remaining payments due under the Agreement shall be paid as otherwise provided herein.

iii. Any reimbursements payable to Executive pursuant to the Agreement shall be paid to Executive no later than 30 days after Executive provides the Company with a written request for reimbursement, and to the extent that any such reimbursements are deemed to constitute "nonqualified deferred compensation" within the meaning of Section 409A (i) such amounts shall be paid or reimbursed to Executive promptly, but in no event later than December 31 of the year following the year in which the expense is incurred, (ii) the amount of any such payments eligible for reimbursement in one year shall not affect the payments or expenses that are eligible for payment or reimbursement in any other taxable year, and (iii) Executive's right to such payments or reimbursement shall not be subject to liquidation or exchange for any other benefit; provided, that the foregoing clause shall not be violated with regard to expenses reimbursed under any arrangement covered by Section 105(b) of the Code solely because such expenses are subject to a limit related to the period in which the arrangement is in effect..

iv. For purposes of Section 409A (including, without limitation, for purposes of Treasury Regulation Section 1.409A-2(b)(2)(iii)), Executive's right to receive installment payments under the Agreement shall be treated as a right to receive a series of separate payments and, accordingly, each installment payment hereunder shall at all times be considered a separate and distinct payment.

d. **Mitigation.** Executive shall not be required to mitigate damages or the amount of any payment provided under this Agreement by seeking other employment or otherwise, nor shall the amount of any payment provided for under this Agreement be reduced by any compensation earned by Executive as a result of employment by another employer or by any retirement benefits received by Executive after the date of the Covered Termination, or otherwise.

e. **Equity Coordination**. For the avoidance of doubt, all equity awards, including stock options, restricted stock units and other equity-based compensation granted by the Company to Executive under the Company's equity-based compensation plans shall be subject to the terms of such plans and Executive's equity award agreements with respect thereto.

E. PROPRIETARY INFORMATION AND CONFIDENTIALITY OBLIGATIONS

a. **Proprietary Information.** All Company Innovations shall be the sole and exclusive property of the Company without further compensation and are "works made for hire" as that term is defined under the United States copyright laws. Executive shall promptly notify the Company of any Company Innovations that Executive solely or jointly Creates. "**Company Innovations**" means all Innovations, and any associated intellectual property rights, which Executive may solely or jointly Create, during Executive's employment with the Company, which (i) relate, at the time Created, to the Company's business or actual or demonstrably anticipated research or development, or (ii) were developed on any amount of the Company's time or with the use of any of the Company's equipment, supplies, facilities or trade secret information, or (iii) resulted from any work Executive performed for the Company. Executive is notified that Company Innovations does not include any Innovation which qualifies fully under the provisions of California Labor Code Section 2870. "**Create**" means to create, conceive, reduce to practice, derive, develop or make. "**Innovations**" means processes, machines, manufactures, compositions of matter, improvements, inventions (whether or not protectable under patent laws), works of authorship, information fixed in any tangible medium of expression (whether or not protectable under copyright laws), mask works, trademarks, trade names, trade dress, trade secrets, know-how, ideas (whether or not protectable under trade secret laws), and other subject matter protectable under patent, copyright, moral rights, mask work, trademark, trade secret or other laws regarding proprietary rights, including new or useful art, combinations, discoveries, formulae, manufacturing techniques, technical developments, discoveries, artwork, software and designs. Executive hereby assigns (and will assign) to the Company all Company Innovations. Executive shall perform (at the Company's expense), during and after Executive's employment, all acts reasonably deemed necessary or desirable by the Company to assist the Company in obtaining and enforcing the full benefits, enjoyment, rights and title throughout the world in the Company Innovations. Such acts may include execution of documents and assistance or cooperation (i) in the filing, prosecution, registration, and memorialization of assignment of patent, copyright, mask work or other applications, (ii) in the enforcement of any applicable Proprietary Rights, and (iii) in other legal proceedings related to the Company's Innovations. "**Proprietary Rights**" means patents, copyrights, mask work, moral rights, trade secrets and other proprietary rights. No provision in this Agreement is intended to require Executive to assign or offer to assign any of Executive's rights in any invention for which Executive can establish that no trade secret information of the Company were used, and which was developed on Executive's own time, unless the invention relates to the Company's actual or demonstrably anticipated research or development, or the invention results from any work performed by Executive for the Company.

b. **Confidentiality**. In the course of Executive's employment with the Company and the performance of Executive's duties on behalf of the Company and its affiliates hereunder, Executive will be provided with, and will have access to, Confidential

Information (as defined below). In consideration of Executive's receipt and access to such Confidential Information, and as a condition of Executive's employment, Executive shall comply with this Section 5.2

i. Both during the Term and thereafter, except as expressly permitted by this Agreement, Executive shall not disclose any Confidential Information to any person or entity and shall not use any Confidential Information except for the benefit of the Company or its affiliates. Executive shall follow all Company policies and protocols regarding the security of all documents and other materials containing Confidential Information (regardless of the medium on which Confidential Information is stored). Except to the extent required for the performance of Executive's duties on behalf of the Company or any of its affiliates, Executive shall not remove from facilities of the Company or any of its affiliates any information, property, equipment, drawings, notes, reports, manuals, invention records, computer software, customer information, or other data or materials that relate in any way to the Confidential Information, whether paper or electronic and whether produced by Executive or obtained by the Company or any of its affiliates. The covenants of this Section 5.2(a) shall apply to all Confidential Information, whether now known or later to become known to Executive during the period that Executive is employed by or affiliated with the Company or any of its affiliates.

ii. Notwithstanding any provision of Section 5.2(a) to the contrary, Executive may make the following disclosures and uses of Confidential Information:

1. disclosures to other employees, officers or directors of the Company or any of its affiliates who have a need to know the information in connection with the businesses of the Company or any of its affiliates;

2. disclosures to customers and suppliers when, in the reasonable and good faith belief of Executive, such disclosure is in connection with Executive's performance of Executive's duties ;

3. disclosures and uses that are approved in writing by the Board; or

4. disclosures to a person or entity that has (x) been retained by the Company or any of its affiliates to provide services to the Company and/or its affiliates and (y) agreed in writing to abide by the terms of a confidentiality agreement.

iii. Upon the expiration of the Term, and at any other time upon request of the Company, Executive shall promptly and permanently surrender and deliver to the Company all documents (including electronically stored information) and all copies thereof and all other materials of any nature containing or pertaining to all Confidential Information and any other

Company property (including any Company-issued computer, mobile device or other equipment) in Executive's possession, custody or control and Executive shall not retain any such documents or other materials or property of the Company or any of its affiliates. Within ten (10) days of any such request, Executive shall certify to the Company in writing that all such documents, materials and property have been returned to the Company or otherwise destroyed.

iv. "**Confidential Information**" means all confidential, competitively valuable, non-public or proprietary information that is conceived, made, developed or acquired by or disclosed to Executive (whether conveyed orally or in writing), individually or in conjunction with others, during the period that Executive is employed or engaged by the Company or any of its affiliates (whether during business hours or otherwise and whether on the Company's premises or otherwise) including: (i) technical information of the Company, its affiliates, its investors, customers, vendors, suppliers or other third parties, including computer programs, software, databases, data, ideas, know-how, formulae, compositions, processes, discoveries, machines, inventions (whether patentable or not), designs, developmental or experimental work, techniques, improvements, work in process, research or test results, original works of authorship, training programs and procedures, diagrams, charts, business and product development plans, and similar items; (ii) information relating to the Company or any of its affiliates' businesses or properties, products or services (including all such information relating to corporate opportunities, operations, future plans, methods of doing business, business plans, strategies for developing business and market share, research, financial and sales data, pricing terms, evaluations, opinions, interpretations, acquisition prospects, the identity of customers or acquisition targets or their requirements, the identity of key contacts within customers' organizations or within the organization of acquisition prospects, or marketing and merchandising techniques, prospective names and marks) or pursuant to which the Company or any of its affiliates owes a confidentiality obligation; and (iii) other valuable, confidential information and trade secrets of the Company, its affiliates, its customers or other third parties. Moreover, all documents, videotapes, written presentations, brochures, drawings, memoranda, notes, records, files, correspondence, manuals, models, specifications, computer programs, e-mail, voice mail, electronic databases, maps, drawings, architectural renditions, models and all other writings or materials of any type including or embodying any of such information, ideas, concepts, improvements, discoveries, inventions and other similar forms of expression are and shall be the sole and exclusive property of the Company or its other applicable affiliates and be subject to the same restrictions on disclosure applicable to all Confidential Information pursuant to this Agreement. For purposes of this Agreement, Confidential

Information shall not include any information that (A) is or becomes generally available to the public other than as a result of a disclosure or wrongful act of Executive or any of Executive's agents; (B) was available to Executive on a non-confidential basis before its disclosure by the Company or any of its affiliates; (C) becomes available to Executive on a non-confidential basis from a source other than the Company or any of its affiliates; provided, however, that such source is not bound by a confidentiality agreement with, or other obligation with respect to confidentiality to, the Company or any of its affiliates; or (D) is required to be disclosed by applicable law.

v. Notwithstanding the foregoing, nothing in this Agreement shall prohibit or restrict Executive from lawfully: (i) initiating communications directly with, cooperating with, providing information to, causing information to be provided to, or otherwise assisting in an investigation by, any governmental authority regarding a possible violation of any law; (ii) responding to any inquiry or legal process directed to Executive from any such governmental authority; (iii) testifying, participating or otherwise assisting in any action or proceeding by any such governmental authority relating to a possible violation of law; or (iv) making any other disclosures that are protected under the whistleblower provisions of any applicable law. Additionally, pursuant to the federal Defend Trade Secrets Act of 2016, an individual shall not be held criminally or civilly liable under any federal or state trade secret law for the disclosure of a trade secret that: (A) is made (1) in confidence to a federal, state or local government official, either directly or indirectly, or to an attorney and (2) solely for the purpose of reporting or investigating a suspected violation of law; (B) is made to the individual's attorney in relation to a lawsuit for retaliation against the individual for reporting a suspected violation of law; or (C) is made in a complaint or other document filed in a lawsuit or proceeding, if such filing is made under seal. Nothing in this Agreement requires Executive to obtain prior authorization before engaging in any conduct described in this paragraph, or to notify the Company that Executive has engaged in any such conduct.

c. **Nondisparagement**. Subject to Section 5.2(e) above, Executive agrees that from and after the Effective Date, Executive will not, directly or indirectly, make, publish, or communicate any disparaging or defamatory comments regarding the Company, Magnetar Capital LLC, or any of their respective current or former directors, officers, members, managers, partners, or executives. The Company agrees that it will counsel its senior officers and directors to not make, publish, or communicate any disparaging or defamatory comments regarding Executive. The foregoing shall not be violated by truthful statements in response to legal process, required governmental testimony or filings or administrative or arbitral proceedings (including, without limitation, depositions in connection with such

proceedings), and the foregoing limitation on the Company's senior executives and directors shall not be violated by statements that they in good faith believe are necessary or appropriate to make in connection with performing their duties and obligations to the Company or any of its affiliates.

d. **Remedies.** Executive's and the Company's duties under this Article V shall survive termination of Executive's employment with the Company and the termination of this Agreement. Because of the difficulty of measuring economic losses to the Company and its affiliates as a result of a breach or threatened breach of the covenants set forth in this Article V, Section 6.2 and Article VII, and because of the immediate and irreparable damage that would be caused to the Company and its affiliates for which they would have no other adequate remedy, Executive acknowledges that a remedy at law for any breach or threatened breach by Executive of Article V, as well as Executive's obligations pursuant to Section 6.2 and Article VII below, would be inadequate, and Executive therefore agrees that the Company shall be entitled to seek injunctive relief in case of any such breach or threatened breach from any court of competent jurisdiction, without the necessity of showing any actual damages or that money damages would not afford an adequate remedy, and without the necessity of posting any bond or other security. The aforementioned equitable relief shall not be the Company's or any of its affiliates' exclusive remedy for a breach but instead shall be in addition to all other rights and remedies available to the Company and each of its affiliates at law and equity.

e. **Modification**. The covenants in this Article V, Section 6.2 and Article VII, and each provision and portion hereof, are severable and separate, and the unenforceability of any specific covenant (or portion thereof) shall not affect the provisions of any other covenant (or portion thereof). If it is determined by an arbitrator or a court of competent jurisdiction in any state that any restriction in this Article V, Section 6.2 and Article VII is excessive in duration or scope or is unreasonable or unenforceable under the laws of that state, it is the intention of the parties that such restriction may be modified or amended by the arbitrator or the court to render it enforceable to the maximum extent permitted by the law of that state.

F. OUTSIDE ACTIVITIES

a. **Other Activities**.

i. Except as otherwise provided in Section 6.1(b), Executive shall not, during the term of this Agreement undertake or engage in any other employment, occupation or business enterprise, other than ones in which Executive is a passive investor, unless Executive obtains the prior written consent of the Board.

ii. Executive may engage in civic and not-for-profit activities so long as such activities do not materially interfere with the performance of Executive's

duties hereunder. In addition, subject to advance approval by the Board, Executive shall be allowed to serve as a member of the board of directors of one (1) for-profit entity at any time during the term of this Agreement, so long as such service does not materially interfere with the performance of Executive's duties hereunder; provided, however, that the Board, in its discretion, may require that Executive resign from such director position if it determines that such resignation would be in the best interests of the Company.

b. **Competition/Investments.** During the term of Executive's employment by the Company, Executive shall not (except on behalf of the Company) directly or indirectly, whether as an officer, director, stockholder, partner, proprietor, associate, representative, consultant, or in any capacity whatsoever engage in, become financially interested in, be employed by or have any business connection with any other person, corporation, firm, partnership or other entity whatsoever which are known by Executive to compete directly with the Company or any of its affiliates, throughout the world, in any line of business engaged in (or planned to be engaged in) by the Company; provided, however, that anything above to the contrary notwithstanding, Executive may own, as a passive investor, securities of any competitor corporation, so long as Executive's direct holdings in any one such corporation do not, in the aggregate, constitute more than 1% of the voting stock of such corporation.

c. **Defense of Claims; Cooperation**. During the Term and thereafter, upon reasonable request from the Company, Executive shall use commercially reasonable efforts to cooperate with the Company and its affiliates in the defense of any claims or actions that may be made by or against the Company or any of its affiliates that relate to Executive's actual or prior areas of responsibility or knowledge. Executive shall further use commercially reasonable efforts to provide reasonable and timely cooperation in connection with any actual or threatened claim, action, inquiry, review, investigation, process, or other matter (whether conducted by or before any court, arbitrator, regulatory, or governmental entity, or by or on behalf of the Company or any of its affiliates), that relates to Executive's actual or prior areas of responsibility or knowledge.

G. NONINTERFERENCE

Executive shall not, during the term of Executive's employment by the Company and, solely with respect to clause (ii) below, for twelve (12) months thereafter, either on Executive's own account or jointly with or as a manager, agent, officer, employee, consultant, partner, joint venturer, owner or stockholder or otherwise on behalf of any other person, firm or corporation, directly or indirectly solicit, induce attempt to solicit any of (i) its customers or clients to terminate their relationship with the Company or to cease purchasing services or products from the Company or (ii) its officers or employees or offer employment to any person who is an officer or employee of the Company; *provided, however*, that a general advertisement to which an employee of the Company responds shall in no event be deemed to result in a breach of this

Article VII. If it is determined by a court of competent jurisdiction in any state that any restriction in this Article VII is excessive in duration or scope or is unreasonable or unenforceable under the laws of that state, it is the intention of the parties that such restriction may be modified or amended by the court to render it enforceable to the maximum extent permitted by the law of that state.

A. GENERAL PROVISIONS

a. **Notices.** Any notices provided hereunder must be in writing and shall be deemed effective upon the earlier of personal delivery (including personal delivery by facsimile or electronic mail) or the third day after mailing by first class mail, to the Company at its primary office location and to Executive at Executive's address as listed on the Company's books and records.

b. **Tax Withholding.** Executive acknowledges that all amounts and benefits payable under this Agreement are subject to deduction and withholding to the extent required by applicable law.

c. **Severability.** Whenever possible, each provision of this Agreement will be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect under any applicable law or rule in any jurisdiction, such invalidity, illegality or unenforceability will not affect any other provision or any other jurisdiction, but this Agreement will be reformed, construed and enforced in such jurisdiction as if such invalid, illegal or unenforceable provisions had never been contained herein.

d. **Clawback**. Amounts paid or payable under this Agreement shall be subject to the provisions of any applicable clawback policies or procedures adopted by the Company or any of its affiliates applicable to Executive, which clawback policies or procedures may provide for forfeiture and/or recoupment of amounts paid or payable under this Agreement. Notwithstanding any provision of this Agreement to the contrary, the Company and each of its affiliates reserves the right, without the consent of Executive, to adopt any such clawback policies and procedures, including such policies and procedures applicable to this Agreement with retroactive effect.

e. **Waiver.** Any waiver of this Agreement must be executed by the party to be bound by such waiver. If either party should waive any breach of any provisions of this Agreement, they shall not thereby be deemed to have waived any preceding or succeeding breach of the same or any other provision of this Agreement or any similar or dissimilar provision or condition at the same or any subsequent time. The failure of either party hereto to take any action by reason of any breach will not deprive such party of the right to take action at any time.

f. **Complete Agreement.** This Agreement constitutes the entire agreement between Executive and the Company and is the complete, final, and exclusive embodiment

of their agreement with regard to this subject matter, and will supersede all prior agreements, understandings, discussions, negotiations and undertakings, whether written or oral, between the parties with respect to the subject matter hereof (including, for the avoidance of doubt, the Prior Agreement), including that certain Employment Agreement Term Sheet, dated December 3, 2020, by and between Executive and the Company. This Agreement is entered into without reliance on any promise or representation other than those expressly contained herein or therein, and cannot be modified or amended except in a writing signed by a duly-authorized officer of the Company and Executive.

g. **Counterparts.** This Agreement may be executed in separate counterparts, any one of which need not contain signatures of more than one party, but all of which taken together will constitute one and the same Agreement.

h. **Headings.** The headings of the sections hereof are inserted for convenience only and shall not be deemed to constitute a part hereof nor to affect the meaning thereof.

i. **Successors and Assigns.** This Agreement is intended to bind and inure to the benefit of and be enforceable by Executive and the Company, and their respective successors, assigns, heirs, executors and administrators, except that Executive may not assign Executive's rights or delegate Executive's duties or obligations hereunder without the prior written consent of the Company.

j. **Effect of Termination**. The provisions of Section 2.4 and Articles IV, V, VII and VIII and those provisions necessary to interpret and enforce them, shall survive any termination of this Agreement and any termination of the employment relationship between Executive and the Company.

k. **Third-Party Beneficiaries**. Each affiliate of the Company that is not a signatory to this Agreement shall be a third-party beneficiary of Executive's obligations under Sections 2.4 and 8.14 and Articles V, VI and VII and shall be entitled to enforce such obligations as if a party hereto.

l. **Executive Acknowledgement.** Executive acknowledges and agrees that (a) Executive was represented by counsel in connection with the negotiation of this Agreement, and (b) that Executive has read and understands the Agreement, is fully aware of its legal effect, and has entered into it freely based on Executive's own judgment.

m. **Choice of Law.** All questions concerning the construction, validity and interpretation of this Agreement will be governed by the law of the State of California without regard to the conflicts of law provisions thereof. With respect to any claim or dispute related to or arising under this Agreement, the parties hereby consent to the arbitration provisions of Section 8.14 and recognize and agree that should any resort to a court be necessary and permitted under this

Agreement, then they consent to the exclusive jurisdiction, forum and venue of the state and federal courts (as applicable) located in California.

n. **Arbitration.**

i. Subject to Section 8.14(b), any dispute, controversy or claim between Executive and the Company or any of its affiliates arising out of or relating to this Agreement or Executive's employment or engagement with the Company or any of its affiliates ("**Disputes**") will be finally settled by confidential arbitration in the State of California in accordance with the then-existing American Arbitration Association ("**AAA**") Employment Arbitration Rules. The arbitration award shall be final and binding on both parties. Any arbitration conducted under this Section 8.14 shall be private, shall be heard by a single arbitrator (the "**Arbitrator**") selected in accordance with the then-applicable rules of the AAA and shall be conducted in accordance with the Federal Arbitration Act. The Arbitrator shall expeditiously hear and decide all matters concerning the Dispute. Except as expressly provided to the contrary in this Agreement, the Arbitrator shall have the power to (i) gather such materials, information, testimony and evidence as the Arbitrator deems relevant to the Dispute before him or her (and each party will provide such materials, information, testimony and evidence requested by the Arbitrator), and (ii) grant injunctive relief and enforce specific performance. All Disputes shall be arbitrated on an individual basis, and each party hereto hereby foregoes and waives any right to arbitrate any Dispute as a class action or collective action or on a consolidated basis or in a representative capacity on behalf of other persons or entities who are claimed to be similarly situated, or to participate as a class member in such a proceeding. The decision of the Arbitrator shall be reasoned, rendered in writing, be final and binding upon the disputing parties and the parties agree that judgment upon the award may be entered by any court of competent jurisdiction. The parties acknowledge and agree that in connection with any such arbitration and regardless of outcome, except as provided under this Section 8.14, each party will pay all of its own costs and expenses, including its own legal fees and expenses, and the arbitration costs will be shared equally by the Company and Executive.

ii. Notwithstanding Section 8.14(a), either party may make a timely application for, and obtain, judicial emergency or temporary injunctive relief to enforce any of the provisions of Articles V through VII; provided, however, that the remainder of any such Dispute (beyond the application for emergency or temporary injunctive relief) shall be subject to arbitration under this Section 8.14.

iii. By entering into this Agreement and entering into the arbitration provisions of this Section 8.14, THE PARTIES EXPRESSLY

ACKNOWLEDGE AND AGREE THAT THEY ARE KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVING THEIR RIGHTS TO A JURY TRIAL.

iv. Nothing in this Section 8.14 shall prohibit a party to this Agreement from (i) instituting litigation to enforce any arbitration award, or (ii) joining the other party to this Agreement in a litigation initiated by a person or entity that is not a party to this Agreement. Further, nothing in this Section 8.14 precludes Executive from filing a charge or complaint with a federal, state or other governmental administrative agency.

[Signature page follows]

In Witness Whereof, the parties have executed this Agreement as of the date first written above.

STAR PEAK ENERGY TRANSITION CORP.

By: [ ]

Title: [ ]

Accepted and Agreed:

[Executive]

Exhibit 21

STEM, INC.

SUBSIDIARIES OF REGISTRANT

The Registrant, Stem, Inc., a Delaware corporation, has no parent

The following are subsidiaries of the Registrant

(as of December 31, 2021)

Subsidiary Name	Country or state of incorporation
Generate-Stem LCR, LLC	Delaware
Logan Energy Storage ULC	Canada
Rollins Road Acquisition Company	Delaware
Saturn Energy Storage 1 LLC	Delaware
Saturn Energy Storage 2 LLC	Delaware
Saturn Energy Storage 3 LLC	Delaware
Saturn Energy Storage 4 LLC	Delaware
SCF 1, LLC	Delaware
Stem Canada US Holdings, Inc.	Delaware
Stem Development, LLC	Delaware
Stem Energy Canada ULC	Canada
Stem Energy Southern California, LLC	Delaware
Stem Equipment Finance, LLC	Delaware
Stem Finance SPV II, LLC	Delaware
Stem Finance SPV III, LLC	Delaware
Storage Finance, L.L.C.	Delaware
Stem Finance SPV IV, LLC	Delaware
Stem Finance SPV V ULC	Canada
Stem Finance SPV VI ULC	Canada
Stem Operations Canada ULC	Canada
Stem Operations, LLC	Delaware
Syncarpha Devstor I, LLC	Delaware
Trillium Storage Limited Partnership	Canada

Exhibit 23

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in Registration Statement No. 333-251397 on Form S-4, and Registration Statement No. 333-257665 on Form S-8 of our report dated February 28, 2022, relating to the consolidated financial statements of Stem, Inc. appearing in this Annual Report on Form 10-K for the year ended December 31, 2021.

/s/DELOITTE & TOUCHE LLP

San Francisco, California
February 28, 2022

Exhibit 24

Powers of Attorney

Each of the undersigned, in the capacity or capacities set forth below his or her signature as a member of the Board of Directors and/or an officer of Stem, Inc., a Delaware company, hereby appoints William Bush and Saul R. Laureles, or either of them, the attorney or attorneys of the undersigned, with full power of substitution and revocation, for and in the name, place and stead of the undersigned, to execute and file with the Securities and Exchange Commission the Annual Report on Form 10-K under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), for the fiscal year ending December 31, 2021, and any amendment or amendments to any such Annual Report on Form 10-K, and any agreements, consents or waivers related thereto, and to take any and all such other action for and in the name and place and stead of the undersigned as may be necessary or desirable in order to comply with the Exchange Act or the rules and regulations thereunder.

David Buzby
Chairman of the Board

John Carrington
Chief Executive Officer and Director

David Buzby
Chairman of the Board

Adam E. Daley
Director

Anil Tammineedi
Director

Michael E. Morgan
Director

Laura D'Andrea Tyson
Director

Lisa L. Troe
Director

Jane Woodward
Director

Date: January 26, 2022

EXHIBIT 31.1

CERTIFICATION OF CHIEF EXECUTIVE OFFICER

I, John Carrington, certify that:

1. I have reviewed this Annual Report on Form 10-K for the year ended December 31, 2021 of Stem, 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) [Paragraph intentionally omitted in accordance with SEC Release Nos. 34-47986 and 34-54942];

(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 my most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls over financial reporting.

STEM, INC.

Date: February 28, 2022

By: /s/ John Carrington

Name: John Carrington

Title: Chief Executive Officer

Exhibit 31.2

CERTIFICATION OF CHIEF FINANCIAL OFFICER

I, William Bush, certify that:

1. I have reviewed this Annual Report on Form 10-K for the year ended December 31, 2021 of Stem, 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) [Paragraph intentionally omitted in accordance with SEC Release Nos. 34-47986 and 34-54942];

(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 my most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls over financial reporting.

STEM, INC.

Date: February 28, 2022

By: /s/ William Bush

Name: William Bush

Title: Chief Financial Officer

(Principal Financial Officer)

Exhibit 32.1

CERTIFICATION OF CHIEF EXECUTIVE OFFICER
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 Annual Report on Form 10-K of Stem, Inc. (the "Company") for the year ended December 31, 2021 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, John Carrington, Chief Executive Officer of the registrant, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 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) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"); and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operation of the Company.

STEM, INC.

Date: February 28, 2022

By: /s/ John Carrington
Name: John Carrington
Title: Chief Executive Officer

Exhibit 32.2

CERTIFICATION OF CHIEF FINANCIAL OFFICER
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 Annual Report on Form 10-K of Stem, Inc. (the "Company") for the year ended December 31, 2021 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, William Bush, Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 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) of the Securities Exchange Act of 1934; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operation of the registrant.

STEM, INC.

Date: February 28, 2022

By: /s/ William Bush
Name: William Bush
Title: Chief Financial Officer
(Principal Financial Officer)