

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

FORM 10-Q

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

**For the quarterly period ended June 30, 2022
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

(State or Other Jurisdiction
of Incorporation)

333-251397

(Commission File Number)

85-1972187

(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

Not Applicable

(Former name, former address and former fiscal year, if changed since last report)

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 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 is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes No

Class

Outstanding as of July 25, 2022

Common Stock, \$0.0001 par value per share

154,227,627

STEM, INC.
Quarterly Report on Form 10-Q
For the Quarterly Period Ended June 30, 2022

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Part I. Financial Information

Item 1. Financial Statements (Unaudited)

**STEM, INC.
CONDENSED CONSOLIDATED BALANCE SHEETS
(UNAUDITED)**

(in thousands, except share and per share amounts)

	<u>June 30, 2022</u>	<u>December 31, 2021</u>
ASSETS		
Current assets:		
Cash and cash equivalents	\$ 151,003	\$ 747,780
Short-term investments	183,890	173,008
Accounts receivable, net of allowances of \$1,639 and \$91 as of June 30, 2022 and December 31, 2021, respectively	95,855	61,701
Inventory, net	63,055	22,720
Other current assets (includes \$58 and \$213 due from related parties as of June 30, 2022 and December 31, 2021, respectively)	47,927	18,641
Total current assets	<u>541,730</u>	<u>1,023,850</u>
Energy storage systems, net	98,427	106,114
Contract origination costs, net	9,321	8,630
Goodwill	546,732	1,741
Intangible assets, net	164,796	13,966
Operating lease right-of-use assets	13,200	12,998
Other noncurrent assets	52,496	24,531
Total assets	<u>\$ 1,426,702</u>	<u>\$ 1,191,830</u>
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	\$ 113,180	\$ 28,273
Accrued liabilities	33,057	25,993
Accrued payroll	10,132	7,453
Financing obligation, current portion	14,784	15,277
Deferred revenue, current portion	49,692	9,158
Other current liabilities (includes \$354 and \$306 due to related parties as of June 30, 2022 and December 31, 2021, respectively)	4,415	1,813
Total current liabilities	<u>225,260</u>	<u>87,967</u>
Deferred revenue, noncurrent	65,849	28,285
Asset retirement obligation	4,217	4,135
Notes payable, noncurrent	1,673	1,687
Convertible notes, noncurrent	446,914	316,542
Financing obligation, noncurrent	67,102	73,204
Lease liabilities, noncurrent	11,921	12,183
Other liabilities	339	—
Total liabilities	<u>823,275</u>	<u>524,003</u>
Commitments and contingencies (Note 15)		
Stockholders' equity:		
Preferred stock, \$0.0001 par value; 1,000,000 shares authorized as of June 30, 2022 and December 31, 2021; 0 shares issued and outstanding as of June 30, 2022 and December 31, 2021	—	—
Common stock, \$0.0001 par value; 500,000,000 shares authorized as of June 30, 2022 and December 31, 2021; 154,226,275 and 144,671,624 issued and outstanding as of June 30, 2022 and December 31, 2021, respectively	15	14
Additional paid-in capital	1,166,865	1,176,845
Accumulated other comprehensive (loss) income	(1,136)	20
Accumulated deficit	(562,529)	(509,052)
Total Stem's stockholders' equity	<u>603,215</u>	<u>667,827</u>
Non-controlling interests	212	—
Total stockholders' equity	<u>603,427</u>	<u>667,827</u>
Total liabilities and stockholders' equity	<u>\$ 1,426,702</u>	<u>\$ 1,191,830</u>

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

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

	Three Months Ended June 30,		Six Months Ended June 30,	
	2022	2021	2022	2021
Revenue				
Services revenue	\$ 12,521	\$ 5,153	\$ 22,486	\$ 10,035
Hardware revenue	54,426	14,184	85,549	24,723
Total revenue	66,947	19,337	108,035	34,758
Cost of revenue				
Cost of service revenue	10,141	5,809	18,774	12,715
Cost of hardware revenue	49,018	13,655	77,829	22,286
Total cost of revenue	59,159	19,464	96,603	35,001
Gross margin	7,788	(127)	11,432	(243)
Operating expenses:				
Sales and marketing	12,955	3,913	22,097	6,580
Research and development	8,963	4,827	17,906	9,234
General and administrative	15,693	15,014	36,205	17,706
Total operating expenses	37,611	23,754	76,208	33,520
Loss from operations	(29,823)	(23,881)	(64,776)	(33,763)
Other expense, net:				
Interest expense	(2,691)	(3,929)	(5,909)	(10,162)
Loss on extinguishment of debt	—	(5,064)	—	(5,064)
Change in fair value of warrants and embedded derivative	—	(67,179)	—	(133,577)
Other income (expenses), net	484	(163)	959	(203)
Total other expense, net	(2,207)	(76,335)	(4,950)	(149,006)
Loss before income taxes	(32,030)	(100,216)	(69,726)	(182,769)
Income tax benefit	7	—	15,220	—
Net loss	(32,023)	(100,216)	(54,506)	(182,769)
Net loss attributed to non-controlling interests	(4)	—	(4)	—
Net loss attributable to Stem	\$ (32,019)	\$ (100,216)	\$ (54,502)	\$ (182,769)
Net loss per share attributable to Stem common stockholders, basic and diluted	\$ (0.21)	\$ (1.00)	\$ (0.36)	\$ (2.59)
Weighted-average shares used in computing net loss per share to Stem common stockholders, basic and diluted	154,125,061	100,611,965	152,318,090	70,684,750

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

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

	Three Months Ended June 30,		Six Months Ended June 30,	
	2022	2021	2022	2021
Net loss	\$ (32,023)	\$ (100,216)	\$ (54,506)	\$ (182,769)
Other comprehensive loss:				
Unrealized loss on available-for-sale securities	(399)	—	(1,010)	—
Foreign currency translation adjustment	(118)	(602)	(146)	(351)
Other comprehensive loss	(32,540)	(100,818)	(55,662)	(183,120)
Less: Comprehensive loss attributable to non-controlling interests	(4)	—	(4)	—
Total comprehensive loss attributable to Stem	<u>\$ (32,536)</u>	<u>\$ (100,818)</u>	<u>\$ (55,658)</u>	<u>\$ (183,120)</u>

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

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

	Common Stock		Additional Paid-In Capital	Accumulated Other Comprehensive Income (Loss)	Accumulated Deficit	Non-controlling Interests	Total Stockholders' Equity
	Shares	Amount					
Balance as of January 1, 2022	144,671,624	\$ 14	\$ 1,176,845	\$ 20	\$ (509,052)	\$ —	\$ 667,827
Cumulative-effect adjustment upon adoption of ASU 2020-06 (Note 10)	—	—	(130,979)	—	1,598	—	(129,381)
Cumulative-effect adjustment upon adoption of ASU 2016-13	—	—	—	—	(573)	—	(573)
Common stock issued upon business combination (Note 6)	8,621,006	1	108,882	—	—	—	108,883
Stock option exercises, net of statutory tax withholdings	425,167	—	(426)	—	—	—	(426)
Stock-based compensation	—	—	6,787	—	—	—	6,787
Unrealized loss on available-for-sale securities	—	—	—	(611)	—	—	(611)
Foreign currency translation adjustments	—	—	—	(28)	—	—	(28)
Acquisition of non-controlling interests	—	—	—	—	—	141	141
Net loss	—	—	—	—	(22,483)	—	(22,483)
Balance as of March 31, 2022	153,717,797	15	1,161,109	(619)	(530,510)	141	630,136
Stock option exercises, net of statutory tax withholdings	355,712	—	(1,415)	—	—	—	(1,415)
Issuance of common stock upon release of restricted stock units	131,665	—	—	—	—	—	—
Shares issued for exercise of warrants	21,101	—	150	—	—	—	150
Stock-based compensation	—	—	7,021	—	—	—	7,021
Unrealized loss on available-for-sale securities	—	—	—	(399)	—	—	(399)
Foreign currency translation adjustments	—	—	—	(118)	—	—	(118)
Acquisition of non-controlling interests	—	—	—	—	—	75	75
Net loss	—	—	—	—	(32,019)	(4)	(32,023)
Balance as of June 30, 2022	154,226,275	\$ 15	\$ 1,166,865	\$ (1,136)	\$ (562,529)	\$ 212	\$ 603,427

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

	Common Stock		Additional Paid-In Capital	Accumulated Other Comprehensive Income (Loss)	Accumulated Deficit	Non-controlling Interests	Total Stockholders' Equity (Deficit)
	Shares	Amount					
Balance as of January 1, 2021	40,202,785	\$ 4	\$ 230,620	\$ (192)	\$ (407,841)	\$ —	\$ (177,409)
Recognition of beneficial conversion feature related to convertible notes	—	—	1,126	—	—	—	1,126
Stock option exercises	1,392,494	—	2,750	—	—	—	2,750
Legacy warrant exercises	19,531	—	397	—	—	—	397
Stock-based compensation	—	—	784	—	—	—	784
Foreign currency translation adjustments	—	—	—	251	—	—	251
Net loss	—	—	—	—	(82,553)	—	(82,553)
Balance as of March 31, 2021	41,614,810	4	235,677	59	(490,394)	—	(254,654)
Merger and PIPE financing (Note 1)	70,428,326	7	247,011	—	—	—	247,018
Conversion of warrants into common stock upon Merger (Note 11)	2,759,970	—	60,568	—	—	—	60,568
Conversion of convertible notes into common stock upon Merger (Note 10)	10,921,548	1	77,747	—	—	—	77,748
Exchange of warrants into common stock (Note 11)	4,683,349	1	168,646	—	—	—	168,647
Issuance of common stock warrants for services (Note 11)	—	—	9,183	—	—	—	9,183
Stock option and stock warrant exercises	360,052	—	39	—	—	—	39
Stock-based compensation	—	—	1,047	—	—	—	1,047
Foreign currency translation adjustments	—	—	—	(602)	—	—	(602)
Net loss	—	—	—	—	(100,216)	—	(100,216)
Balance as of June 30, 2021	130,768,055	\$ 13	\$ 799,918	\$ (543)	\$ (590,610)	\$ —	\$ 208,778

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

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

	Six Months Ended June 30,	
	2022	2021
OPERATING ACTIVITIES		
Net loss	\$ (54,506)	\$ (182,769)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization expense	20,887	10,315
Non-cash interest expense, including interest expenses associated with debt issuance costs	902	7,119
Stock-based compensation	12,732	1,784
Change in fair value of warrant liability and embedded derivative	—	133,577
Noncash lease expense	1,131	334
Impairment of energy storage systems	919	1,275
Issuance of warrants for services	—	9,183
Net (accretion of discount) amortization of premium on investments	410	—
Income tax benefit from release of valuation allowance	(15,100)	—
Provision for accounts receivable allowance	1,010	—
Other	88	112
Changes in operating assets and liabilities:		
Accounts receivable	(26,123)	(4,219)
Inventory	(36,634)	(6,323)
Other assets	(52,134)	(16,924)
Contract origination costs	(3,625)	(1,650)
Accounts payable, accrued expenses and other current liabilities	89,598	3,292
Deferred revenue	28,471	3,294
Lease liabilities	(469)	(289)
Other liabilities	(187)	56
Net cash used in operating activities	<u>(32,630)</u>	<u>(41,833)</u>
INVESTING ACTIVITIES		
Acquisition of AlsoEnergy, net of cash acquired	(533,009)	—
Purchase of available-for-sale investments	(98,922)	—
Sales and maturities of available-for-sale investments	86,623	—
Purchase of energy storage systems	(232)	(5,603)
Capital expenditures on internally-developed software	(8,085)	(2,693)
Purchase of property and equipment	(2,405)	(300)
Net cash used in investing activities	<u>(556,030)</u>	<u>(8,596)</u>
FINANCING ACTIVITIES		
Proceeds from exercise of stock options and warrants	611	2,933
Payments for taxes related to net share settlement of stock options	(2,302)	—
Net contributions from Merger and PIPE financing, net of transaction costs of \$58,061	—	550,322
Proceeds from financing obligations	311	4,929
Repayment of financing obligations	(6,817)	(4,609)
Proceeds from issuance of convertible notes, net of issuance costs of \$0 and \$8 for the six months ended June 30, 2022 and 2021, respectively	—	1,118
Proceeds from issuance of notes payable, net of issuance costs of \$0 and \$101 for the six months ended June 30, 2022 and 2021, respectively	—	3,940
Investment from non-controlling interests	216	—
Repayment of notes payable	—	(41,446)
Net cash (used in) provided by financing activities	<u>(7,981)</u>	<u>517,187</u>
Effect of exchange rate changes on cash and cash equivalents	(136)	438
Net (decrease) increase in cash and cash equivalents	<u>(596,777)</u>	<u>467,196</u>
Cash and cash equivalents, beginning of year	747,780	6,942
Cash and cash equivalents, end of period	<u>\$ 151,003</u>	<u>\$ 474,138</u>

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

SUPPLEMENTAL DISCLOSURE OF CASH FLOW INFORMATION

Cash paid for interest	\$	3,407	\$	7,131
NON-CASH INVESTING AND FINANCING ACTIVITIES				
Change in asset retirement costs and asset retirement obligation	\$	40	\$	71
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
Right-of-use asset obtained in exchange for lease liability	\$	—	\$	1,230
Settlement of warrant liability into preferred stock due to exercise	\$	—	\$	253
Stock-based compensation capitalized to internal-use software	\$	522	\$	47

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

STEM, INC.
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(UNAUDITED)

1. BUSINESS

Description of the Business

Stem, Inc., together with its consolidated subsidiaries (“Stem,” the “Company,” “we,” “us,” or “our”), maintains one of the largest digitally connected, intelligent renewable energy 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, (ii) ongoing software-enabled services to operate the energy storage systems for up to 20 years, through its Athena® artificial intelligence (“AI”) platform (“Athena”), and (iii) solar asset performance monitoring and control, through its PowerTrack software. In addition, in all the markets where the Company operates its customers’ energy storage systems, the Company has agreements to use 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’s PowerTrack platform provides a vertically-integrated solution that incorporates on-site power monitoring equipment that aggregates and communicates data to enable remote control of solar generation assets. PowerTrack provides direct access to individual site performance to measure and benchmark expected energy production, maximizing asset value for our customers.

From time to time, the Company, through an indirect wholly-owned development subsidiary (“DevCo”) formed in January 2022, will enter into strategic joint ventures (each a “DevCo JV”) with qualified third parties for the development of select renewable energy projects (“DevCo Projects”). In this structure, DevCo forms a new DevCo JV entity as the majority owner, with the developer as the minority owner. The purpose of the DevCo JV is to develop and sell DevCo Projects and secure Company hardware and software services for those projects. In DevCo Projects, the Company makes development capital contributions to fund project development. The Company will in some cases also elect to make cash advances to hardware suppliers to accelerate project construction timelines given long lead times to secure hardware. This business model is intended to allow the Company to opportunistically deploy its balance sheet by providing development capital to key partners in strategic markets and securing hardware upfront, in order to generate higher-margin software and services revenue via exclusive long-term services contracts under the DevCo Projects.

On February 1, 2022, the Company acquired all of the issued and outstanding capital stock of Also Energy Holdings, Inc. (“AlsoEnergy”), which has been consolidated since the date of acquisition. Through AlsoEnergy, the Company provides end-to-end turnkey solutions that monitor and manage renewable energy systems through AlsoEnergy’s PowerTrack software. PowerTrack includes data acquisitions and monitoring, performance modeling, agency reporting, internal reports, work order tickets, and supervisory control and data acquisition (“SCADA”) controls. AlsoEnergy has deployed systems at various international locations, but its primary customer base is in the United States, Germany and Canada. See Note 6 — *Business Combinations*.

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”).

STEM, INC.
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(UNAUDITED)

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 was 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 11 — *Warrants*, are stated at historical cost, with no goodwill or other intangible assets recorded.

STEM, INC.
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(UNAUDITED)

Liquidity

The accompanying unaudited condensed consolidated financial statements have been prepared in accordance with U.S. generally accepted accounting principles (“GAAP”) and with the instructions to Form 10-Q and Article 10 of the Regulation S-X, assuming the Company will continue as a going concern. As of June 30, 2022, the Company had cash and cash equivalents of \$151.0 million, short-term investments of \$183.9 million, an accumulated deficit of \$562.5 million and net working capital of \$316.5 million, with \$14.8 million of financing obligations coming due within the next 12 months. During the six months ended June 30, 2022, the Company incurred a net loss of \$54.5 million and had negative cash flows from operating activities of \$32.6 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 11 — *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 10 — *Convertible Promissory Notes*) provided the Company with a significant amount of cash proceeds. As discussed in Note 6 — *Business Combinations*, the Company acquired 100% of the issued and outstanding capital stock of AlsoEnergy for an aggregate purchase price of \$652.0 million, including \$543.1 million in cash net of a working capital adjustment for an escrow recovery and \$108.9 million in common stock. 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 securing new customers and maintaining current ones, securing and maintaining adequate supplier relationships, building its customer base, successfully executing its business and marketing strategy, obtaining adequate financing to complete the Company’s development activities, 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

There has been a trend in many parts of the world of increasing availability and administration of vaccines against COVID-19, as well as an easing of restrictions on social, business, travel and government activities and functions. On the other hand, infection rates and regulations continue to fluctuate in various regions of the world, and there are ongoing global effects resulting from the pandemic, including challenges and increases in costs for logistics and supply chains, such as increased port congestion, intermittent supplier delays and labor shortages. 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 effect on economic and market conditions and trigger a period of continued global and U.S. economic slowdown.

The Company’s industry continues to face 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 pandemic and resulting government action, as well as broader macroeconomic conditions that may persist once the immediate effects of the pandemic have subsided, and have been exacerbated by the ongoing conflict between Russia and Ukraine. While management believes that a majority of the Company’s 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) the Company can begin to generate revenue from those systems. The Company cannot predict the full effects the pandemic will have on our 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 suppliers, its customers and its business operations generally, and will take actions the Company determines are necessary in order to mitigate these.

2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Basis of Presentation

The accompanying unaudited condensed consolidated financial statements of the Company have been prepared in accordance with GAAP for interim reporting and with the instructions to Form 10-Q and Article 10 of Regulation S-X. Accordingly, the condensed balance sheet at December 31, 2021 has been derived from the audited financial statements at that date, but certain notes or other information that are normally required by GAAP have been omitted if they substantially

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duplicate the disclosures contained in the Company’s annual audited consolidated financial statements. In the opinion of Stem management, all normal and recurring adjustments considered necessary for a fair statement of the results for the interim period presented have been included in the accompanying unaudited financial statements. The unaudited condensed consolidated financial statements include the accounts of the Company, its wholly-owned subsidiaries, and consolidated variable interest entities (“VIEs”). The Company presents non-controlling interests within the equity section of its condensed consolidated balance sheets, and the amount of consolidated net loss that is attributable to Stem and the non-controlling interest in its condensed consolidated statements of operations. All intercompany balances and transactions have been eliminated in consolidation. These unaudited condensed financial statements should be read in conjunction with the Company’s audited financial statements for the year ended December 31, 2021. Operating results for the three and six months ended June 30, 2022 are not necessarily indicative of the results that may be expected for the full year ending December 31, 2022 or for any other future interim period or year.

Variable Interest Entities

Beginning in January 2022, the Company formed DevCo JVs with the purpose of originating potential battery storage facility projects in the specific locations and conducting early-stage planning and development activities. The Company determined that the DevCo JVs are variable interest entities (“VIEs”) as they lack sufficient equity to finance their activities without additional financial support. The Company determined that it has both (1) the power to direct the activities of the VIE that most significantly impact the VIE’s economic performance, and (2) the obligation to absorb losses or receive benefits from the VIE that could potentially be significant. Accordingly, the Company has determined that it is the primary beneficiary of the DevCo JVs, and as a result, the DevCo JVs’ operating results, assets and liabilities are consolidated by the Company.

The following table summarizes the carrying values of the assets and liabilities of the DevCo JVs that are consolidated by the Company (in thousands):

	June 30, 2022
Assets	
Cash and cash equivalents	\$ 4,597
Fixed assets, net	1,353
Total assets	5,950
Liabilities	
Accounts payable	143
Total liabilities	\$ 143

For the six months ended June 30, 2022, the Company contributed approximately \$5.6 million in capital investments for hardware purchases. The net loss from the DevCo JVs during the six months ended June 30, 2022 was not material.

Use of Estimates

The preparation of unaudited condensed 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 unaudited condensed 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 unaudited condensed consolidated financial statements include, but are not limited to, depreciable life of energy systems; the amortization of acquired intangibles; 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 equity instruments, equity-based instruments, warrant liabilities, embedded derivatives and net assets acquired in a business combination.

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

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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. The operations acquired as part of the acquisition of AlsoEnergy have been included in the Company's operating segment. Net assets outside of the U.S. were less than 10% of total net assets as of June 30, 2022 and December 31, 2021.

Concentration of Credit Risk and Other Uncertainties

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 six months ended June 30, 2022 and 2021. The Company does not require collateral. Due to these factors, no additional credit risk beyond amounts provided for credit 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		Revenue		Revenue	
	June 30,	December 31,	Three Months Ended June 30,		Six Months Ended June 30,	
	2022	2021	2022	2021	2022	2021
Customers:						
Customer A	*	23 %	*	*	*	*
Customer B	12 %	15 %	*	*	*	*
Customer C	*	13 %	*	*	*	*
Customer D	47 %	*	50 %	*	46 %	*
Customer E	*	*	15 %	*	*	*
Customer F	*	*	*	27 %	*	15 %
Customer G	*	*	*	10 %	*	*
Customer H	*	*	*	*	*	15 %
Customer I	*	*	*	25 %	*	14 %

*Total less than 10% for the respective period.

There are inherent risks whenever a large percentage of total revenue is concentrated in a limited number of customers. Should a significant customer: terminate or fail to renew its contracts with us, in whole or in part, for any reason, or experience significant financial or operating difficulties, it could have a material adverse effect on our financial condition and results of operations. In general, a customer that makes up a significant portion of revenues in one period, may not make up a significant portion in subsequent periods. See "We depend on significant customers for a substantial portion of our revenue. If we fail to retain or expand our customer relationships or significant customers reduce their purchases, our revenue could decline significantly" in Part II, Item 1A. "Risk Factors" of this report for additional information about certain risks related to the concentration of our customers.

Fair Value of Financial Instruments

Assets and liabilities recorded at fair value in the unaudited condensed 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:

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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 June 30, 2022 and December 31, 2021 include cash and cash equivalents, short-term investments, and convertible promissory notes.

Recently Adopted Accounting Standards

The Company has adopted ASU 2020-06, *Debt with Conversion and Other Options (Subtopic 470-20) and Derivatives and Hedging—Contracts in Entity's Own Equity (Subtopic 815-40)*, effective January 1, 2022 using the modified retrospective approach. ASU 2020-06 simplifies the accounting for convertible instruments. The guidance removes certain accounting models which separate conversion features from the host contract for convertible instruments. As a result of the adoption of ASU 2020-06, the 2028 Convertible Notes are no longer bifurcated into separate liability and equity components in the June 30, 2022 condensed consolidated balance sheet. Rather, the \$460.0 million principal amount of the Company's 2028 Convertible Notes was classified as a liability in the June 30, 2022 condensed consolidated balance sheet. Upon adoption of ASU 2020-06, an adjustment was recorded to the 2028 Convertible Notes liability component, equity component (additional paid-in-capital) and accumulated deficit. The cumulative effect of the change was recognized as an adjustment to the opening balance of accumulated deficit at the date of adoption. The comparative information has not been restated and continues to be presented according to accounting standards in effect for those periods. This adjustment was calculated based on the carrying amount of the 2028 Convertible Notes as if it had always been treated only as a liability. Further, an adjustment was recorded to the debt discount and issuance costs as if these had always been treated as a contra liability only. Interest expense related to the accretion of the 2028 Convertible Notes is no longer recognized. Interest expense for the 2028 Convertible Notes for the three and six months ended June 30, 2022 would have been \$3.8 million and \$7.5 million higher without the adoption of ASU 2020-06, respectively. As such, net loss attributable to the Company per common share for the three and six months ended June 30, 2022 is \$0.02 and \$0.05 lower due to the effect of adoption of ASU 2020-06, respectively.

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 adopted ASU 2016-13 effective on such date, utilizing the modified retrospective transition method. Upon adoption, the Company updated its impairment model to utilize a forward-looking current expected credit losses ("CECL") model in place of the incurred loss methodology for financial instruments measured at amortized cost, primarily including its accounts receivable. The adoption did not have a material effect on the Company's unaudited condensed 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 Company early adopted ASU 2021-08 on a prospective basis effective January 1, 2022. As indicated in Note 6 — *Business Combinations*, the Company completed the acquisition of AlsoEnergy on February 1, 2022. The adoption of ASU 2021-08 resulted in the recognition of deferred revenue at amounts consistent with those recorded by the acquiree immediately before the acquisition date rather than at fair value.

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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 unaudited condensed 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):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2022	2021	2022	2021
Hardware revenue	\$ 54,426	\$ 14,184	\$ 85,549	\$ 24,723
Services revenue	12,521	5,153	22,486	10,035
Total revenue	<u>\$ 66,947</u>	<u>\$ 19,337</u>	<u>\$ 108,035</u>	<u>\$ 34,758</u>

The table above includes AlsoEnergy’s hardware and services revenue of \$6.9 million and \$7.2 million, respectively, for the three months ended June 30, 2022 and \$11.7 million and \$12.0 million, respectively, for the six months ended June 30, 2022.

The following table summarizes reportable revenue by geographic regions determined based on the location of the customers (in thousands):

	Three Months Ended June 30,	Six Months Ended June 30,
	2022	2022
United States	\$ 64,202	\$ 103,660
Rest of the world	2,745	4,375
Total revenue	<u>\$ 66,947</u>	<u>\$ 108,035</u>

Remaining Performance Obligations

Remaining performance obligations represent contracted revenue that has not been recognized, which include contract liabilities (deferred revenue) and amounts that will be billed and recognized as revenue in future periods. As of June 30, 2022, the Company had \$363.8 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	\$ 258,080	18 %	51 %	31 %
Hardware revenue	105,680	100 %	— %	— %
Total revenue	<u>\$ 363,760</u>			

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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 during the six months ended June 30, 2022 (in thousands):

Beginning balance as of January 1, 2022	\$ 37,443
Deferred revenue acquired upon business combination	49,626
Upfront payments received from customers	85,598
Upfront or annual incentive payments received	3,868
Revenue recognized related to amounts that were included in beginning balance of deferred revenue	(4,488)
Revenue recognized related to amounts that were included in acquired balance of deferred revenue	(7,983)
Revenue recognized related to deferred revenue generated during the period	(48,523)
Ending balance as of June 30, 2022	<u>\$ 115,541</u>

4. SHORT-TERM INVESTMENTS

The following tables summarize the estimated fair value of the Company's short-term investments and the gross unrealized holding gains and losses as of June 30, 2022 and December 31, 2021 (in thousands):

	As of June 30, 2022			
	Amortized Cost	Unrealized Gain	Unrealized Loss	Estimated Fair Value
Corporate debt securities	\$ 35,366	\$ —	\$ (284)	\$ 35,082
Commercial paper	19,985	—	(1)	19,984
U.S. government bonds	105,881	—	(861)	105,020
Certificate of deposits	10,849	—	—	10,849
Treasury bills	10,494	—	(11)	10,483
Agency bonds	2,500	—	(28)	2,472
Total short-term investments	<u>\$ 185,075</u>	<u>\$ —</u>	<u>\$ (1,185)</u>	<u>\$ 183,890</u>

	As of December 31, 2021			
	Amortized Cost	Unrealized Gain	Unrealized Loss	Estimated Fair Value
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
Agency bonds	2,500	—	(5)	2,495
Total short-term investments	<u>\$ 173,183</u>	<u>\$ 17</u>	<u>\$ (192)</u>	<u>\$ 173,008</u>

The following table presents the contractual maturities of the Company's short-term investments as of June 30, 2022 (in thousands):

	As of June 30, 2022	
	Amortized cost	Estimated Fair Value
Due within one year	\$ 154,073	\$ 153,152
Due between one to two years	31,002	30,738
Total	<u>\$ 185,075</u>	<u>\$ 183,890</u>

The Company periodically reviews the individual securities that have unrealized losses on a regular basis to evaluate whether or not any security has experienced, or is expected to experience, credit losses resulting in the decline in fair value. The Company evaluates, among other factors, whether the Company intends to sell any of these marketable securities and whether it is more likely than not that the Company will be required to sell any of them before recovery of the amortized cost basis.

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During the six months ended June 30, 2022, the Company did not record an allowance for credit losses, as management believes any such losses would be immaterial based on the high-grade credit rating for each of the short-term investments as of the end of each period.

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 June 30, 2022 and December 31, 2021, 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.

Assets and Liabilities Measured at Fair Value on a Recurring Basis

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

	June 30, 2022			
	Level 1	Level 2	Level 3	Fair Value
Assets				
Cash equivalents:				
Money market fund	\$ 1,847	\$ —	\$ —	\$ 1,847
Commercial paper	—	9,229	—	9,229
Treasury bills	—	4,744	—	4,744
Total cash equivalents	1,847	13,973	—	15,820
Debt securities:				
Corporate debt securities	—	35,082	—	35,082
Commercial paper	—	19,984	—	19,984
U.S. government bonds	—	105,020	—	105,020
Certificate of deposits	—	10,849	—	10,849
Treasury bills	—	10,483	—	10,483
Agency bonds	—	2,472	—	2,472
Total financial assets	<u>\$ 1,847</u>	<u>\$ 197,863</u>	<u>\$ —</u>	<u>\$ 199,710</u>

	December 31, 2021			
	Level 1	Level 2	Level 3	Fair Value
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	<u>\$ 127,261</u>	<u>\$ 173,008</u>	<u>\$ —</u>	<u>\$ 300,269</u>

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.

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Fair Value of Convertible Promissory Notes

The convertible notes are recorded at face value less unamortized debt issuance costs (see Note 10 — *Convertible Promissory Notes* for additional details) on the condensed consolidated balance sheet as of June 30, 2022. As of June 30, 2022, the estimated fair value of the convertible notes was \$282.7 million based on Level 2 quoted bid prices of the convertible notes in an over-the-counter market on the last trading date of the reporting period.

6. BUSINESS COMBINATIONS

On February 1, 2022, Stem, Inc. acquired 100% of the outstanding shares of AlsoEnergy. AlsoEnergy provides end-to-end turnkey solutions that monitor and manage renewable energy systems. AlsoEnergy has deployed systems at various international locations, but its largest customer bases are in the United States, Germany and Canada. The combined company delivers a one-stop-shop solution for front-of-meter and commercial and industrial (“C&I”) customers with solar and storage needs.

The total consideration to acquire AlsoEnergy was \$652.0 million, comprised of \$543.1 million in cash, net of a working capital adjustment for an escrow recovery, and \$108.9 million in the form of 8,621,006 shares of the Company’s common stock. The Company incurred \$6.1 million of transaction costs related to the acquisition of AlsoEnergy, which were recorded in general and administrative expense during the six months ended June 30, 2022.

The following table summarizes the purchase price as a part of the acquisition of AlsoEnergy (in thousands):

	Purchase Price
Cash consideration	\$ 544,059
Equity consideration	108,883
Working capital adjustment	(915)
Total consideration	\$ 652,027

The following table summarizes the fair values of assets acquired and liabilities assumed in the acquisition of AlsoEnergy at the date of acquisition (in thousands):

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Assets Acquired

Cash	\$ 10,135
Accounts receivable	9,614
Other current assets	1,795
Inventory	3,701
Operating lease right-of-use assets	1,333
Separately identifiable intangible assets acquired other than goodwill	152,100
Other non-current assets	1,032
Total identifiable assets acquired	<u>179,710</u>

Liabilities Assumed

Accounts payable	1,985
Other current liabilities	1,596
Accrued payroll	2,533
Deferred revenue, current portion	17,486
Lease liabilities, current portion	431
Deferred revenue, noncurrent	32,140
Lease liabilities, noncurrent	902
Deferred tax liability	15,476
Other noncurrent liabilities	150
Total liabilities assumed	<u>72,699</u>
Total net identifiable assets acquired	107,011
Goodwill	<u>545,016</u>
Total consideration	<u>\$ 652,027</u>

Based on the accounting guidance provided in ASC 805, the Company accounted for the acquisition of AlsoEnergy as a business combination in which the Company determined that AlsoEnergy was a business.

The Company's purchase price allocation for the acquisition of AlsoEnergy is preliminary and subject to revision as additional information about the fair value of the assets and liabilities becomes available. In the second quarter of 2022, a working capital adjustment was made that resulted in the decrease of goodwill of \$0.9 million. The fair values assigned to tangible and intangible assets acquired, and liabilities assumed, are based on management's estimates and assumptions and may be subject to change as additional information is received. Additional information that existed as of the closing date but not known at the time of this filing may become known to the Company during the remainder of the 12-month measurement period. The Company will continue to collect information and reevaluate these estimates and assumptions quarterly.

The following table and accompanying paragraphs below summarize the intangible assets acquired, their fair value as of the acquisition date, and their estimated useful lives for amortizable intangible (in thousands, except estimated useful life, which is in years):

	<u>Fair Value</u>	<u>Useful Life</u>
Trade name	\$ 11,300	7
Customer relationships	106,800	12
Backlog	3,900	1.1
Developed technology	30,100	7
Separately identifiable intangible assets acquired other than goodwill	<u>\$ 152,100</u>	

Trade names include the AlsoEnergy and PowerTrack trade names, which were measured at fair value using the relief-from-royalty method. Customer relationships represent the estimated fair values of the underlying relationship with AlsoEnergy customers measured using the multiple-period excess earnings method under the income approach. Backlog relates to subscriptions contracts that were measured at fair value using the multiple-period excess earnings method under the income approach. Developed technology represents the preliminary fair value of AlsoEnergy's renewable energy platform that was

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measured using the relief-from-royalty method of the income approach. The amortization expense for all acquired intangible assets will be recognized on a straight-line basis over their respective estimated useful lives.

Goodwill represents the excess of the purchase price over the fair value of the net identifiable assets acquired. The acquisition of AlsoEnergy resulted in the recognition of \$545.0 million of goodwill. The Company believes that goodwill acquired primarily consists of expanded market and product opportunities, including acceleration of growth of renewable energy onto the power grid, expanded value for the Company's customers to manage and optimize combined solar and energy storage systems through the vertical integration of software solutions, as well as access of the Company's product offerings to international markets.

Goodwill created as a result of the acquisition of AlsoEnergy is not expected to be deductible for tax purposes. A net deferred tax liability of \$15.5 million was established for the intangible assets acquired net of deferred tax assets, which primarily consists of net operating loss carryforwards and deferred revenue. Goodwill has been allocated to the Company's single reporting unit.

The Company included the financial results of AlsoEnergy in its unaudited condensed consolidated financial statements from the acquisition date, which contributed revenue of \$14.1 million and \$23.7 million of revenue during the three and six months ended June 30, 2022, respectively, and net loss of \$5.8 million and \$9.3 million during the three and six months ended June 30, 2022, respectively.

Unaudited Pro Forma Financial Information

The following unaudited pro forma financial information summarizes the combined results of operations for the Company and AlsoEnergy, as if the acquisition had occurred on January 1, 2021. The pro forma financial information is as follows (in thousands):

	(Unaudited)		(Unaudited)	
	Three Months Ended		Six Months Ended	
	June 30,		June 30,	
	2022	2021	2022	2021
Total revenue	\$ 66,947	\$ 32,428	\$ 111,871	\$ 60,001
Net loss	\$ (32,023)	\$ (105,316)	\$ (62,411)	\$ (199,473)

The pro forma financial information for the periods presented above has been calculated after adjusting the results of AlsoEnergy to reflect the business combination accounting effects resulting from this acquisition, including the elimination of transaction costs incurred by the Company, amortization expense from acquired intangible assets, and settlement of stock option awards. The historical consolidated financial statements have been adjusted in the pro forma combined financial statements to give effect to pro forma events that are directly attributable to the business combination. The pro forma financial information is for informational purposes only, and is not indicative of either future results of operations, or results that may have been achieved had the acquisition been consummated as of the beginning of 2022 or 2021.

7. GOODWILL AND INTANGIBLE ASSETS, NET

Goodwill

Goodwill consists of the following (in thousands):

	June 30,	December 31,
	2022	2021
Goodwill	\$ 547,556	\$ 1,625
Recovery of escrow from AlsoEnergy acquisition	(915)	—
Effect of foreign currency translation	91	116
Total goodwill	\$ 546,732	\$ 1,741

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Intangible Assets, Net

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

	June 30,	December 31,
	2022	2021
Developed technology	\$ 30,600	\$ 500
Trade name	11,300	—
Customer relationships	106,800	—
Backlog	3,900	—
Internally developed software	38,881	29,706
Intangible assets	191,481	30,206
Less: Accumulated amortization	(26,713)	(16,276)
Add: Currency translation adjustment	28	36
Total intangible assets, net	\$ 164,796	\$ 13,966

Amortization expense for intangible assets was \$6.2 million and \$1.3 million for the three months ended June 30, 2022 and 2021, respectively, and \$10.4 million and \$2.5 million for the six months ended June 30, 2022 and 2021, respectively.

8. ENERGY STORAGE SYSTEMS, NET

Energy Storage Systems, Net

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

	June 30,	December 31,
	2022	2021
Energy storage systems placed into service	\$ 144,215	\$ 143,592
Less: accumulated depreciation	(52,125)	(45,250)
Energy storage systems not yet placed into service	6,337	7,772
Total energy storage systems, net	\$ 98,427	\$ 106,114

Depreciation expense for energy storage systems was approximately \$3.7 million and \$3.6 million for the three months ended June 30, 2022 and 2021, respectively, and approximately \$7.4 million and \$7.3 million for the six months ended June 30, 2022 and 2021, respectively. Depreciation expense is recognized in cost of service revenue.

9. 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 unaudited condensed consolidated financial statements. 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.

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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. 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 convertible promissory notes discussed below. 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. 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, a wholly owned Canadian subsidiary of the Company 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 June 30, 2022, and 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 June 30, 2022.

The Company's outstanding debt consisted of the following as of June 30, 2022 (in thousands):

	June 30, 2022
Outstanding principal	\$ 1,875
Unamortized discount	(202)
Carrying value of debt	\$ 1,673

10. 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 and the Q1 2021 Convertible 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.

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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 and the Q1 2021 Convertible 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 and the Q1 2021 Convertible 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.

Upon adoption of ASU 2020-06, the Company allocated all of the debt discount to long-term debt. The debt discount is amortized to interest expense using the effective interest method, computed to be 0.9%, over the life of the 2028 Convertible Notes or approximately its seven-year term. The outstanding 2028 Convertible Notes balances as of June 30, 2022 are summarized in the following table (in thousands):

	June 30, 2022
Long Term Debt	
Outstanding principal	\$ 460,000
Unamortized initial purchaser's debt discount and debt issuance cost	(13,086)
Net carrying amount	\$ 446,914

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The following table presents total interest expense recognized related to the 2028 Convertible Notes during the three and six months ended June 30, 2022 (in thousands):

	Three Months Ended June 30, 2022	Six Months Ended June 30, 2022
Cash interest expense		
Contractual interest expense	\$ 575	\$ 1,150
Non-cash interest expense		
Amortization of debt discount and debt issuance cost	496	991
Total interest expense	\$ 1,071	\$ 2,141

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 and are not subsequently remeasured as long as the conditions for equity classification continue to be met.

11. WARRANTS

Legacy Stem Warrants

Prior to the Merger, the Company had issued warrants to purchase shares of Legacy Stem's preferred stock in conjunction with various debt financings. 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. At June 30, 2022, there were 2,533 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 a 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. 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

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common stock on June 30, 2021, in exchange for the cancellation of all 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 are no Private Warrants outstanding.

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 condensed consolidated statements of operation for the year ended December 31, 2021. The Public Warrants have been delisted from the NYSE, and there are no Public Warrants 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.

12. STOCK-BASED COMPENSATION

Equity Incentive Plans

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. All shares that remain available for future grants are under the 2021 Plan.

Stock Options

The following table summarizes the stock option activity for the period ended June 30, 2022:

	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, 2021	8,766,466	\$ 6.01	7.1	\$ 123,562
Options granted	1,117,857	9.33		
Options exercised	(1,274,046)	2.24		
Options forfeited	(213,592)	14.44		
Balances as of June 30, 2022	<u>8,396,685</u>	\$ 6.81	7.0	\$ 25,557
Options vested and exercisable — June 30, 2022	<u>5,458,391</u>	\$ 3.36	6.0	\$ 23,845

As of June 30, 2022, the Company had approximately \$21.9 million of remaining unrecognized stock-based compensation expense for stock options, which is expected to be recognized over a weighted average period of 2.0 years.

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Restricted Stock Units

The following table summarizes the RSU activity for the period ended June 30, 2022:

	Number of RSUs Outstanding	Weighted-Average Grant Date Fair Value Per Share
Balances as of December 31, 2021	1,799,677	\$ 36.01
RSUs granted	4,672,680	9.06
RSUs vested	(131,665)	35.81
RSUs forfeited	(318,840)	18.46
Balances as of June 30, 2022	<u>6,021,852</u>	<u>\$ 16.03</u>

As of June 30, 2022, the Company had approximately \$82.7 million of remaining unrecognized stock-based compensation expense for RSUs, which is expected to be recognized over a weighted average period of 2.7 years.

Stock-Based Compensation

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):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2022	2021	2022	2021
Sales and marketing	\$ 1,106	\$ 168	\$ 1,930	\$ 252
Research and development	562	264	1,869	419
General and administrative	4,799	592	8,933	1,113
Total stock-based compensation expense	<u>\$ 6,467</u>	<u>\$ 1,024</u>	<u>\$ 12,732</u>	<u>\$ 1,784</u>

Research and development expenses of \$0.6 million and \$1.1 million corresponding to internal-use software, were capitalized during the three and six months ended June 30, 2022, respectively.

13. 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):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2022	2021	2022	2021
Numerator - Basic:				
Net loss attributable to Stem common stockholders, basic and diluted	<u>\$ (32,019)</u>	<u>\$ (100,216)</u>	<u>\$ (54,502)</u>	<u>\$ (182,769)</u>
Denominator:				
Weighted-average number of shares outstanding used to compute net loss per share attributable to Stem common stockholders, basic and diluted	<u>154,125,061</u>	<u>100,611,965</u>	<u>152,318,090</u>	<u>70,684,750</u>
Net loss per share attributable to common stockholders, basic and diluted	\$ (0.21)	\$ (1.00)	\$ (0.36)	\$ (2.59)

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The following table shows total outstanding potentially dilutive shares excluded from the computation of diluted loss per share as their effect would have been anti-dilutive, as of June 30, 2022 and 2021:

	June 30, 2022	June 30, 2021
Outstanding convertible promissory notes	—	—
Outstanding 2028 Convertible Notes	15,730,390	—
Outstanding stock options	8,396,685	10,357,133
Outstanding warrants	2,533	12,809,802
Outstanding RSUs	6,021,852	—
Total	30,151,460	23,166,935

14. INCOME TAXES

The following table reflects the Company's benefit for income taxes and the effective tax rates for the periods presented below (in thousands, except effective tax rate):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2022	2021	2022	2021
Loss before benefit from income taxes	\$ (32,030)	\$ (100,216)	\$ (69,726)	\$ (182,769)
Benefit from income taxes	\$ 7	\$ —	\$ 15,220	\$ —
Effective tax rate	— %	— %	21.8 %	— %

For the six months ended June 30, 2022, the Company recognized a benefit from income taxes of \$15.2 million, representing an effective tax rate of 21.8%, which was higher than the statutory federal tax rate. The benefit from income taxes was mainly due to the partial release of the Company's valuation allowance on U.S. deferred tax assets, in connection with deferred tax liabilities resulting from intangible assets recognized in the acquisition of AlsoEnergy.

15. COMMITMENTS AND CONTINGENCIES

Contingencies

The Company is party to various legal proceedings from time to time. 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 impact on the Company's unaudited condensed consolidated financial statements.

Commitments

On February 1, 2022, as part of the acquisition of AlsoEnergy, the Company recognized a \$1.3 million operating lease liability and corresponding operating lease right-of-use ("ROU") asset, which are included in the condensed consolidated balance sheet as of June 30, 2022. The operating lease liability and operating lease ROU asset correspond to 15,847 and 13,947 square feet of leased office, manufacturing, laboratory and warehouse space in Boulder, Colorado and Longmont, Colorado, respectively. As of the acquisition date, the remaining lease terms for Boulder and Longmont are for 34 and 35 months, respectively. These lease agreements contemplate options to extend the non-cancelable lease term, which have been determined not reasonably certain to be exercised. Combined base rent for these two locations is \$39,725 per month with escalating payments.

Legal Proceedings

On April 29, 2020, the Company filed a lawsuit against one of its insurers alleging breach of contract. On May 2, 2022, the Company received settlement proceeds of \$1.1 million net of legal costs and fees, which was recorded within general and administrative expense in the condensed consolidated statements of operations for the three and six months ended June 30, 2022.

ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

Special Note Regarding Forward-Looking Statements

This second quarter 2022 Form 10-Q, as well as other statements we make, contains "forward-looking statements" within the meaning of the federal securities laws, which include any statements that are not historical facts. Such statements often contain words such as "expect," "may," "can," "believe," "predict," "plan," "potential," "projected," "projections," "forecast," "estimate," "intend," "anticipate," "ambition," "goal," "target," "think," "should," "could," "would," "will," "hope," "see," "likely," and other similar words.

Forward-looking statements address matters that are, to varying degrees, uncertain, such as statements about our financial and performance targets and other forecasts or expectations regarding, or dependent on, our business outlook; the expected synergies of the combined Stem/AlsoEnergy company; our ability to successfully integrate the combined companies; our joint ventures, partnerships and other alliances; reduction of greenhouse gas ("GHG") emissions; the integration and optimization of energy resources; our business strategies and those of our customers; the global commitment to decarbonization; our ability to retain or upgrade current customers, further penetrate existing markets or expand into new markets; our ability to manage our supply chains and distribution channels and the effects of natural disasters and other events beyond our control, such as the COVID-19 pandemic and variants thereof, and government and business responses thereto; the impact of the ongoing conflict in Ukraine; our ability to meet contracted customer demand; and future results of operations, including revenue and Adjusted EBITDA. Such forward-looking statements are subject to risks, uncertainties, and other factors that could cause actual results to differ materially from those expressed or implied by such forward-looking statements, including but not limited to our ability to achieve our financial and performance targets and other forecasts and expectations; our ability to help reduce GHG emissions; our ability to integrate and optimize energy resources; our ability to recognize the anticipated benefits of our recent acquisition of AlsoEnergy; challenges, disruptions and costs of integrating the combined company and achieving anticipated synergies, or such synergies taking longer to realize than expected; risks that the integration disrupts current plans and operations that may harm our business; uncertainty as to the effects of the transaction on our financial performance; our ability to grow and manage growth profitably; our ability to retain or upgrade current customers, further penetrate existing markets or expand into new markets; our ability to attract and retain qualified employees and key personnel; our ability to comply with, and the effect on their businesses of, evolving legal standards and regulations, particularly concerning data protection and consumer privacy and evolving labor standards; risks relating to the development and performance of our energy storage systems and software-enabled services; the risk that the global commitment to decarbonization may not materialize as we predict, or even if it does, that we might not be able to benefit therefrom; our ability to secure sufficient inventory from our suppliers to meet customer demand, and provide us with contracted quantities of equipment; general economic, geopolitical and business conditions in key regions of the world, including inflationary pressures, general economic slowdown or a recession, increasing interest rates, and changes in monetary policy; the ongoing conflict in Ukraine; supply chain interruptions and manufacturing or delivery delays; disruptions in sales, production, service or other business activities; the risk that our business, financial condition and results of operations may be adversely affected by other political, economic, business and competitive factors; and other risks and uncertainties set forth in this Form 10-Q and our most recent Form 10-K, Form 10-Q and Forms 8-K filed with or furnished to the SEC. If one or more of these or other risks or uncertainties materializes (or the consequences of any such development changes), or should our underlying assumptions prove incorrect, actual outcomes may vary materially from those reflected in our forward-looking statements. Forward-looking and other statements in this Form 10-Q regarding our environmental, social and other sustainability plans and goals are not an indication that these statements are necessarily material to investors or required to be disclosed in our filings with the SEC. In addition, historical, current, and forward-looking environmental, social and sustainability-related statements may be based on standards for measuring progress that are still developing, internal controls and processes that continue to evolve, and assumptions that are subject to change in the future. Statements in this Form 10-Q are made as of August 4, 2022, and Stem disclaims any intention or obligation to update publicly or revise such statements, whether as a result of new information, future events or otherwise.

You should read the following management's discussion and analysis of our financial condition and results of operations together with our unaudited condensed consolidated financial statements and related notes included under Part I, Item 1 of this Quarterly Report on Form 10-Q. This discussion and analysis should also be read together with our audited consolidated financial statements and related notes, as well as the section entitled "Stem's Management's Discussion and Analysis of Financial Condition and Results of Operations" contained in our Annual Report on Form 10-K for the fiscal year ended December 31, 2021. You should carefully read the sections entitled "Special Note Regarding Forward-Looking Statements" contained herein and the section entitled "Risk Factors" contained in our Annual Report on Form 10-K for the fiscal year ended December 31, 2021 and our Quarterly Report for the quarter ended March 31, 2022, to gain an understanding of the important factors that could cause actual results to differ materially from our forward-looking statements. Throughout this section, unless otherwise noted "we," "us," "our" and the "Company" refer to Stem and its consolidated subsidiaries.

Overview

Our mission is to build and operate the largest, digitally connected, intelligent renewable energy network for our customers. In order to fulfill our mission, 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 (i) 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) solar and energy storage monitoring, control, optimization, and reporting through our Athena and PowerTrack platforms.

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 software reduces C&I customer energy bills, increases their energy yield, and helps 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. Through Athena, our FTM storage 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. Through PowerTrack, our software maximizes FTM energy output and minimizes asset downtime.

Since our inception in 2009, we have engaged in developing and marketing 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 proceeds received from the Merger, the issuance of convertible preferred stock, convertible senior notes, debt financing, and cash flows from customers. Our total revenue grew from \$19.3 million for the three months ended June 30, 2021 to \$66.9 million for the three months ended June 30, 2022. For the three months ended June 30, 2022 and 2021, we incurred net losses of \$32.0 million and \$100.2 million, respectively. Our total revenue grew from \$34.8 million for the six months ended June 30, 2021 to \$108.0 million for the six months ended June 30, 2022. For the six months ended June 30, 2022 and 2021, we incurred net losses of \$54.5 million and \$182.8 million, respectively. As of June 30, 2022, we had an accumulated deficit of \$562.5 million.

We expect that our sales and marketing, research and development, regulatory and other expenses will continue to increase as we expand our marketing 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 being a public company, including legal, accounting, insurance, exchange listing and SEC compliance, investor relations and other costs and expenses.

Acquisition of AlsoEnergy

On February 1, 2022, we acquired 100% of the issued and outstanding capital stock of AlsoEnergy. The transaction combines our storage optimization capabilities with AlsoEnergy’s solar asset performance monitoring and control software. Through AlsoEnergy, we provide end-to-end turnkey solutions that monitor and manage renewable energy systems through AlsoEnergy’s PowerTrack software. PowerTrack includes data acquisitions and monitoring, performance modelling, agency reporting, internal reports, work order tickets, and supervisory control and data acquisition (“SCADA”) controls. AlsoEnergy has deployed systems at various international locations, but its primary customer base is in the United States, Germany and Canada. The total consideration for the AlsoEnergy acquisition was \$652.1 million, comprised of \$543.1 million paid in cash net of a working capital adjustment for an escrow recovery, and \$108.9 million in the form of 8,621,006 shares of our common stock. We incurred \$6.1 million of transaction costs related to the acquisition of AlsoEnergy, which were recorded in general and administrative expense during the six months ended June 30, 2022. See Note 6 — *Business Combinations*, of the Notes to the unaudited condensed consolidated financial statements in this report, for additional details regarding this transaction.

Key Factors, Trends and Risks 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.

Supply Chain Constraints and Risk; COVID-19

We rely on a very small number of suppliers of energy storage systems and other equipment. If any of our suppliers was unable or unwilling to provide us with contracted quantities in a timely manner at prices, quality levels and volumes acceptable to us, we would have very limited alternatives for supply, and we may not be able find suitable replacements for our customers, or at all. Such an event could materially adversely affect our business, prospects, financial condition and results of operations.

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.

In addition, the global supply chain and our industry have experienced significant disruptions in recent periods. We have seen supply chain challenges and logistics constraints increase, including shortages of inverters, enclosures, battery modules and associated component parts for inverters and battery energy storage systems available for purchase. In certain cases, this has caused delays in critical equipment and inventory, longer lead times, and have resulted in cost volatility. 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, and have been exacerbated by the ongoing conflict between Russia and Ukraine. While we believe that 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. In addition, we have experienced and are experiencing varying levels of volatility in costs of equipment and labor resulting in part from disruptions caused by general global economic conditions and the COVID-19 pandemic.

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. Given the dynamic nature of these circumstances on our ongoing business, results of operations and overall financial performance, the full impact of COVID-19 and other macroeconomic factors, including the conflict in Ukraine, cannot be reasonably estimated at this time. In the event we are unable to mitigate the impact of delays or price volatility in energy storage systems, raw materials, and freight, it could materially adversely affect our business, prospects, financial condition and results of operations.

DevCo Cash Advances

From time to time, the Company, through an indirect wholly-owned development subsidiary, has entered into strategic joint ventures with qualified third parties to develop select energy storage power generation projects (“DevCo Projects”), as more fully described above under Note 1 — *Business*, of the Notes to the unaudited condensed consolidated financial statements in this report. These projects require significant upfront investment by us and involve a high degree of risk. If a DevCo Project fails to reach completion or is significantly delayed, we could lose all or a portion of our development capital investment and our cash advances to purchase hardware. See “*We Face Risks Related to our DevCo Business Model*” in Part II, Item 1A. “Risk Factors” of this report for additional information about certain risks related to these DevCo Projects.

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 their 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 and impairments related to decommissioning of end-of-life systems.

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

	Three Months Ended June 30,		Six Months Ended June 30,	
	2022	2021	2022	2021
Revenue	\$ 66.9	\$ 19.3	\$ 108.0	\$ 34.8
Cost of revenue	(59.2)	(19.4)	(96.6)	(35.0)
GAAP gross margin	7.7	(0.1)	11.4	(0.2)
GAAP gross margin (%)	12 %	(1)%	11 %	(1)%
Adjustments to Gross Margin (1):				
Amortization of capitalized software & developed technology	2.6	1.3	4.7	2.5
Impairments	1.0	0.3	1.8	1.2
Non-GAAP gross margin	\$ 11.3	\$ 1.5	\$ 17.9	\$ 3.5
Non-GAAP gross margin (%)	17 %	8 %	17 %	10 %

(1) Historically, management included a separate “Other Adjustments” caption in the table above as part of the adjustments to gross margin. Other Adjustments consisted of certain operating expenses including communication and cloud service expenditures reclassified to cost of revenue. Other Adjustments are no longer in the calculation of Non-GAAP Gross Margin and Non-GAAP Gross Margin %. The Company believes that this change reflects a more accurate representation of our business for stakeholders to assess its performance.

Adjusted EBITDA

We calculate Adjusted EBITDA as net loss attributable to Stem before depreciation and amortization, including amortization of internally developed software, net interest expense, further adjusted to exclude stock-based compensation and other income and expense items, including transaction and acquisition related charges, the change in fair value of warrants and

embedded derivatives, vesting of warrants, loss on extinguishment of debt, litigation settlement and income tax provision or benefit. 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.

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

	Three Months Ended June 30,		Six Months Ended June 30,	
	2022	2021	2022	2021
	(in thousands)		(in thousands)	
Net loss attributable to Stem	\$ (32,019)	\$ (100,216)	\$ (54,502)	\$ (182,769)
Adjusted to exclude the following:				
Depreciation and amortization (1)	12,910	5,543	21,806	11,555
Interest expense	2,691	3,929	5,909	10,162
Loss on extinguishment of debt	—	5,064	—	5,064
Stock-based compensation	6,467	1,024	12,732	1,784
Vesting of warrants	—	9,184	—	9,184
Change in fair value of warrants and embedded derivative	—	67,179	—	133,577
Transaction costs in connection with business combination	—	—	6,068	—
Litigation settlement	(1,127)	—	(727)	—
Income tax benefit	(7)	—	(15,220)	—
Adjusted EBITDA	\$ (11,085)	\$ (8,293)	\$ (23,934)	\$ (11,443)

(1) Adjusted EBITDA for the three and six months ended June 30, 2021 reflects adjustments to depreciation and amortization of approximately \$0.3 million and \$1.2 million, respectively, for expenses related to impairments, decommissioning and forfeited incentives that were not previously reflected in reported Adjusted EBITDA amounts.

Financial Results and Key Metrics

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

	Three Months Ended June 30,		Six Months Ended June 30,	
	2022	2021	2022	2021
	(in millions)		(in millions)	
Key Financial Metrics				
Revenue	\$ 66.9	\$ 19.3	\$ 108.0	\$ 34.8
GAAP gross margin	\$ 7.7	\$ (0.1)	\$ 11.4	\$ (0.2)
GAAP gross margin (%)	12 %	(1)%	11 %	(1)%
Non-GAAP gross margin	\$ 11.3	\$ 1.5	\$ 17.9	\$ 3.5
Non-GAAP gross margin (%)	17 %	8 %	17 %	10 %
Net loss attributable to Stem	\$ (32.0)	\$ (100.2)	\$ (54.5)	\$ (182.8)
Adjusted EBITDA	\$ (11.1)	\$ (8.3)	\$ (23.9)	\$ (11.4)
Key Operating Metrics				
12-Month pipeline (in billions)* (1)	\$ 5.6	\$ 1.7	\$ 5.6	\$ 1.7
Bookings (2)	\$ 225.7	\$ 45.1	\$ 376.5	\$ 95.9
Contracted backlog* (3)	\$ 726.6	\$ 249.7	\$ 726.6	\$ 249.7
Contracted storage AUM (in GWh)* (4)	2.1	1.2	2.1	1.2
Solar monitoring AUM (in GW)* (5)	32.1	**	32.1	**
CARR* (6)	\$ 57.6	**	\$ 57.6	**
* 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.

(5) Total GW of systems in operation or under contract.

(6) Contracted Annual Recurring Revenue (CARR): Annual run rate for all executed software services contracts including contracts signed in the period for systems that are not yet commissioned or operating.

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 2 — *Summary of Significant Accounting Policies*, in our Annual Report on Form 10-K for the fiscal year ended December 31, 2021.

The following discussion and analysis of our results of operations and our liquidity and capital resources includes the results of operations for AlsoEnergy for the period from February 1, 2022 through June 30, 2022. For additional information, including pro forma results of operations for the three and six months ended June 30, 2022 and 2021 calculated as if AlsoEnergy had been acquired as of January 1, 2021, see Note 6 — *Business Combinations*, of the Notes to the unaudited condensed consolidated financial statements in this report.

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 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.

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.

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 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 Expense, Net

Interest Expense

Interest expense consists primarily of interest on our outstanding borrowings under our outstanding notes payable, convertible promissory 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 Income (Expenses), Net

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

Results of Operations for the Three Months Ended June 30, 2022 and 2021

	Three Months Ended June 30,		\$ Change	% Change
	2022	2021		
(In thousands, except percentages)				
Revenue				
Services revenue	\$ 12,521	\$ 5,153	\$ 7,368	143%
Hardware revenue	54,426	14,184	40,242	284%
Total revenue	66,947	19,337	47,610	246%
Cost of revenue				
Cost of service revenue	10,141	5,809	4,332	75%
Cost of hardware revenue	49,018	13,655	35,363	259%
Total cost of revenue	59,159	19,464	39,695	204%
Gross margin	7,788	(127)	7,915	6,232%
Operating expenses:				
Sales and marketing	12,955	3,913	9,042	231%
Research and development	8,963	4,827	4,136	86%
General and administrative	15,693	15,014	679	5%
Total operating expenses	37,611	23,754	13,857	58%
Loss from operations	(29,823)	(23,881)	(5,942)	25%
Other expense, net:				
Interest expense	(2,691)	(3,929)	1,238	(32)%
Loss on extinguishment of debt	—	(5,064)	5,064	(100)%
Change in fair value of warrants and embedded derivative	—	(67,179)	67,179	(100)%
Other income (expenses), net	484	(163)	647	(397)%
Total other expense, net	(2,207)	(76,335)	74,128	(97)%
Loss before income taxes	(32,030)	(100,216)	68,186	(68)%
Income tax benefit	7	—	7	100%
Net loss	\$ (32,023)	\$ (100,216)	\$ 68,193	(68)%
Net loss attributed to non-controlling interests	(4)	—	(4)	100%
Net loss attributable to Stem	\$ (32,019)	\$ (100,216)	\$ 68,197	(68)%

Revenue

Revenue increased by \$47.6 million, or 246%, for the three months ended June 30, 2022, as compared to the three months ended June 30, 2021. The increase was primarily driven by a \$40.2 million increase in hardware revenue primarily due to increase in demand for systems related to both FTM and BTM partnership agreements. Services revenue increased by \$7.4 million primarily due to the inclusion of AlsoEnergy's revenue in the current period.

Cost of Revenue

Cost of revenue increased by \$39.7 million, or 204%, for the three months ended June 30, 2022, as compared to the three months ended June 30, 2021. The increase was primarily driven by an increase in cost of hardware revenue of \$35.4 million, which is in line with the increase in demand for systems, as well as an increase of \$4.3 million in cost of service revenue, primarily related to AlsoEnergy.

Operating Expenses

Sales and Marketing

Sales and marketing expense increased by \$9.0 million, or 231%, for the three months ended June 30, 2022, as compared to the three months ended June 30, 2021. The increase was primarily due to an increase of \$3.5 million in amortization expense related to intangible assets from the acquisition of AlsoEnergy, \$1.9 million of amortization of contract origination costs, an increase of \$3.6 million in personnel related expenses primarily as a result of higher headcount, inclusive of \$0.9 million increase in stock-based compensation expense as a result of new stock options and RSUs grants to employees.

Research and Development

Research and development expense increased by \$4.1 million, or 86%, for the three months ended June 30, 2022, as compared to the three months ended June 30, 2021. The increase was primarily due to an increase of \$3.4 million in personnel related expenses as a result of higher headcount, including new AlsoEnergy employees, and an increase of \$0.7 million in professional services.

General and Administrative

General and administrative expense increased by \$0.7 million, or 5%, for the three months ended June 30, 2022, as compared to the three months ended June 30, 2021. The increase was primarily driven by an increase of \$6.6 million in personnel costs, inclusive of a \$4.2 million increase in stock-based compensation expense due to grants of stock options and RSUs to employees, and an increase of \$2.9 million in insurance and other expenses. The increase was partially offset by a decrease of \$7.8 million in professional and legal fees and a \$1.1 million litigation settlement payment discussed in Note 15 — *Commitments and Contingencies*.

Other Expense, Net

Interest Expense

Interest expense decreased by \$1.2 million, or 32%, for the three months ended June 30, 2022, as compared to the three months ended June 30, 2021. The decrease was primarily driven by the repayment of loans and the conversion of convertible notes in connection with the Merger for \$2.9 million, partially offset by the recognition of \$1.1 million of interest expense corresponding to the 0.50% Green Convertible Senior Notes due 2028 (the “2028 Convertible Notes”) issued in November 2021.

Loss on Extinguishment of Debt

Loss on extinguishment of debt decreased by \$5.1 million, or 100% for the three months ended June 30, 2022, as compared to the three months ended June 30, 2021. The increase was driven by a prior year payment of a \$4.0 million penalty on debt extinguishment and the write-off of \$1.1 million of unamortized debt issuance costs upon the conversion of our Series D convertible notes in connection with the Merger.

Change in Fair Value of Warrants and Embedded Derivative

The change in fair value of warrants and embedded derivative reflected no activity in the three months ended June 30, 2022 (as no warrants and embedded derivatives were outstanding), as compared to a \$67.2 million loss in the three months ended June 30, 2021. The \$67.2 million expense in the three months ended June 30, 2021 resulted from a revaluation loss of the Series A, D and D¹ warrants and embedded derivative.

Other Income (Expenses), Net

Other income (expenses), net increased by \$0.6 million, or 397%, for the three months ended June 30, 2022 compared to the three months ended June 30, 2021, and was primarily driven by a \$0.5 million increase in interest income from short-term investments.

Income Tax Benefit

During the three months ended June 30, 2022, we recorded a tax benefit of \$7 thousand. The Company did not record a provision or benefit for income taxes during the three months ended June 30, 2021. The increase in the tax benefit is immaterial.

Results of Operations for the Six Months Ended June 30, 2022 and 2021

	Six Months Ended June 30,		\$ Change	% Change
	2022	2021		
(In thousands, except percentages)				
Revenue				
Services revenue	\$ 22,486	\$ 10,035	\$ 12,451	124%
Hardware revenue	85,549	24,723	60,826	246%
Total revenue	108,035	34,758	73,277	211%
Cost of revenue				
Cost of service revenue	18,774	12,715	6,059	48%
Cost of hardware revenue	77,829	22,286	55,543	249%
Total cost of revenue	96,603	35,001	61,602	176%
Gross margin	11,432	(243)	11,675	4,805%
Operating expenses:				
Sales and marketing	22,097	6,580	15,517	236%
Research and development	17,906	9,234	8,672	94%
General and administrative	36,205	17,706	18,499	104%
Total operating expenses	76,208	33,520	42,688	127%
Loss from operations	(64,776)	(33,763)	(31,013)	92%
Other expense, net:				
Interest expense	(5,909)	(10,162)	4,253	(42)%
Loss on extinguishment of debt	—	(5,064)	5,064	(100)%
Change in fair value of warrants and embedded derivative	—	(133,577)	133,577	(100)%
Other income (expenses), net	959	(203)	1,162	(572)%
Total other expense, net	(4,950)	(149,006)	144,056	(97)%
Loss before income taxes	(69,726)	(182,769)	113,043	(62)%
Income tax benefit	15,220	—	15,220	100%
Net loss	\$ (54,506)	\$ (182,769)	\$ 128,263	(70)%
Net loss attributed to non-controlling interests	(4)	—	(4)	100%
Net loss attributable to Stem	\$ (54,502)	\$ (182,769)	\$ 128,267	(70)%

Revenue

Revenue increased by \$73.3 million, or 211%, for the six months ended June 30, 2022, as compared to the six months ended June 30, 2021. The increase was primarily driven by a \$60.8 million increase in hardware revenue primarily due to increase in demand for systems related to both FTM and BTM partnership agreements. Services revenue increased by \$12.5 million primarily due to the inclusion of AlsoEnergy's revenue in the current period.

Cost of Revenue

Cost of revenue increased by \$61.6 million, or 176%, for the six months ended June 30, 2022, as compared to the six months ended June 30, 2021. The increase was primarily driven by an increase of cost of hardware revenue of \$55.5 million, inclusive of AlsoEnergy, which is in line with the increase in demand for systems, as well as an increase of \$6.1 million in cost of service revenue, primarily related to AlsoEnergy.

Operating Expenses

Sales and Marketing

Sales and marketing expense increased by \$15.5 million, or 236%, for the six months ended June 30, 2022, as compared to the six months ended June 30, 2021. The increase was primarily due to an increase of \$5.8 million in amortization expense

related to the intangible assets from the acquisition of AlsoEnergy, \$2.4 million amortization of contract origination costs, an increase of \$5.7 million in personnel related expenses as a result of higher headcount, inclusive of \$1.7 million in stock-based compensation expense primarily due to grants of stock options and RSUs to employees, and \$1.6 million of additional professional services and office expenses.

Research and Development

Research and development expense increased by \$8.7 million, or 94%, for the six months ended June 30, 2022, as compared to the six months ended June 30, 2021. The increase was primarily due to an increase of \$7.4 million in personnel related expenses as a result of higher headcount, including new AlsoEnergy employees, and an increase of \$1.2 million in professional services and other expenses.

General and Administrative

General and administrative expense increased by \$18.5 million, or 104%, for the six months ended June 30, 2022 compared to the six months ended June 30, 2021. The increase was primarily driven by an increase of \$12,946,197 in personnel related expenses as a result of higher headcount, inclusive of a \$7.8 million increase in stock-based compensation expense due to grants of stock options and RSUs to employees, and an increase of \$6.4 million in insurance and other expenses, partially offset by a \$1.1 million settlement payment discussed in Note 15 — *Commitments and Contingencies*.

Other Expense, Net

Interest Expense

Interest expense decreased by \$4.3 million, or 42%, for the six months ended June 30, 2022 compared to the six months ended June 30, 2021. The decrease was primarily driven by the repayment of loans and the conversion of convertible notes in relation to the Merger for \$7.3 million, partially offset by the recognition of \$2.1 million of interest expense corresponding to the 0.50% Green Convertible Notes issued in November 2021.

Loss on Extinguishment of Debt

Loss on extinguishment of debt decreased by \$5.1 million, or 100% for the six months ended June 30, 2022, as compared to the six months ended June 30, 2021. The decrease was driven by a prior year payment of a \$4.0 million penalty on debt extinguishment 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.

Change in Fair Value of Warrants and Embedded Derivative

The change in fair value of warrants and embedded derivative reflected no activity in the six months ended June 30, 2022 (as no warrants and embedded derivatives were outstanding), as compared to a \$133.6 million loss in the six months ended June 30, 2021, which resulted from a revaluation loss of the Series A, D and D' warrants and embedded derivative.

Other Income (Expenses), Net

Other income (expenses), net increased by \$1.2 million, or 572%, for the six months ended June 30, 2022, as compared to the six months ended June 30, 2021 primarily as a result of a \$1.0 million increase interest income from short-term investments.

Income Tax Benefit

During the six months ended June 30, 2022, we recorded \$15.2 million of tax benefit, as a result of the partial release of our deferred tax asset valuation allowance, in connection with deferred tax liabilities resulting from intangible assets recognized in the acquisition of AlsoEnergy. The Company did not record a provision or benefit for income taxes during the six months ended June 30, 2021.

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 June 30, 2022, our principal source of liquidity is cash generated from financing activities. Cash generated from financing activities through June 30, 2022 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 provided \$145.3 million of cash. 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 100% of the issued and outstanding capital stock of AlsoEnergy for an aggregate purchase price of \$652.1 million, including \$543.1 million in cash net of a working capital adjustment for an escrow recovery, and \$108.9 million in common stock. 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-Q.

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.

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 and PowerTrack platforms 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 are not required initiatives 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 June 30, 2022 was \$81.9 million, of which \$14.8 million was classified as a current liability.

Notes Payable

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. As of June 30, 2022, there were \$1.9 million of outstanding borrowings under this credit facility.

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 us, \$460 million aggregate principal amount of our 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 our option at any time given certain conditions. Refer to Note 10 — *Convertible Promissory Notes*, of the Notes to the unaudited condensed consolidated financial statements in this report, for additional details regarding this transaction.

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 our 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 us. 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):

	Six Months Ended June 30,	
	2022	2021
Net cash used in operating activities	\$ (32,630)	\$ (41,833)
Net cash used in investing activities	(556,030)	(8,596)
Net cash provided by (used in) financing activities	(7,981)	517,187
Effect of exchange rate changes on cash and cash equivalents	(136)	438
Net increase (decrease) in cash and cash equivalents	<u>\$ (596,777)</u>	<u>\$ 467,196</u>

Operating Activities

During the six months ended June 30, 2022, net cash used in operating activities was \$32.6 million, primarily resulting from our net loss of \$54.5 million, adjusted for non-cash charges of \$23.0 million and net cash outflow of \$1.1 million from changes in operating assets and liabilities. Non-cash charges primarily consisted of income tax benefit of \$15.1 million, depreciation and amortization of \$20.9 million, non-cash interest expense of \$0.9 million, related to debt issuance costs, stock-based compensation expense of \$12.7 million, impairment of energy storage systems of \$0.9 million, noncash lease expense of \$1.1 million, provision for accounts receivable allowance of \$1.0 million, and net amortization of premium on investments of \$0.4 million. The net cash outflow from changes in operating assets and liabilities was primarily driven by an increase in accounts receivable of \$26.1 million, an increase in other assets of \$52.1 million, an increase in inventory of \$36.6 million, and an increase in contract origination costs of \$3.6 million, offset by an increase in accounts payable and accrued expenses of \$89.6 million and an increase in deferred revenue of \$28.5 million.

During the six months ended June 30, 2021, net cash used in operating activities was \$41.8 million, primarily resulting from our net loss of \$182.8 million, adjusted by non-cash charges of \$163.7 million and net cash outflow of \$22.8 million from changes in operating assets and liabilities. Non-cash charges primarily consisted of depreciation and amortization of \$10.3 million, non-cash interest expense of \$7.1 million, which includes interest expenses associated with debt issuance costs, stock-based compensation expense of \$1.8 million, and change in the fair value of warrant liability and embedded derivative of \$133.6 million, impairment of energy storage systems of \$1.3 million, and issuance of warrants for services of \$9.2 million. The net cash outflow from changes in operating assets and liabilities was primarily driven by an increase in deferred revenue of \$3.3 million, an increase in accounts payable and accrued expenses of \$3.3 million, partially offset by an increase in other assets of \$16.9 million, an increase in inventory of \$6.3 million, an increase in accounts receivable of \$4.2 million, an increase in contract origination costs of \$1.7 million, and a decrease in lease liabilities of \$0.3 million.

Investing Activities

During the six months ended June 30, 2022, net cash used for investing activities was \$556.0 million, primarily consisting of \$533.0 million used for our acquisition of AlsoEnergy, net of cash acquired, \$12.3 million in net purchases of available-for-sale investments, \$0.2 million in purchases of energy systems, \$2.4 million in purchases of property plant and equipment, and \$8.1 million in capital expenditures on internally-developed software.

During the six months ended June 30, 2021, net cash used for investing activities was \$8.6 million, consisting of \$5.6 million in purchase of energy systems and \$2.7 million in capital expenditures on internally-developed software, and \$0.3 million of purchases of property and equipment.

Financing Activities

During the six months ended June 30, 2022, net cash used in financing activities was \$8.0 million, primarily from the repayment of financing obligations of \$6.8 million and payments for taxes related to net share settlement of stock options of \$2.3 million, partially offset by proceeds from exercise of stock options of \$0.6 million and proceeds from other financing transactions of \$0.5 million.

During the six months ended June 30, 2021, net cash provided by financing activities was \$517.2 million, primarily consisting of net proceeds from the Merger and PIPE financing of \$550.3 million, net proceeds from issuance of notes payable of \$3.9 million, proceeds from financing obligations of \$4.9 million, proceeds from the exercise of stock options of \$2.9 million, and net proceeds from issuance of convertible notes of \$1.1 million, partially offset by repayment of notes payable of \$41.4 million and repayment of financing obligations of \$4.6 million.

Contractual Obligations and Commitments

As of June 30, 2022, there have been no material changes to our contractual obligations described in our Annual Report on Form 10-K for the fiscal year ended December 31, 2021.

Off-Balance Sheet Arrangements

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 are reasonably likely to have, a current or future material adverse effect on our unaudited condensed consolidated financial statements.

Critical Accounting Policies and Estimates

A summary of our critical accounting policies and estimates is presented in our Annual Report on Form 10-K for the fiscal year ended December 31, 2021.

Recent Accounting Pronouncements

Information with respect to recent accounting pronouncements may be found in Note 2 — *Summary of Significant Accounting Policies*, of the Notes to the unaudited condensed consolidated financial statements in this report, which information is incorporated herein by reference.

ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

For quantitative and qualitative disclosures about market risk affecting Stem, see Item 7A, “Quantitative and Qualitative Disclosures about Market Risk,” contained in our Annual Report on Form 10-K for the fiscal year ended December 31, 2021. Our exposure to market risk has not changed materially since December 31, 2021.

ITEM 4. CONTROLS AND PROCEDURES

Evaluation of Disclosure Controls and Procedures

We maintain disclosure controls and procedures (“Disclosure Controls”) within the meaning of Rules 13a-15I 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 Quarterly Report on Form 10-Q, 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 June 30, 2022, 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 June 30, 2022 due to material weaknesses identified in our internal control over financial reporting as disclosed below.

Material Weakness in Internal Control over Financial Reporting

During the course of preparing our financial statements as of and for the year ended December 31, 2021, management identified certain deficiencies in our internal controls over financial reporting that management believes to be material weaknesses. A material weakness is a deficiency, or a combination of deficiencies, in internal control over financial reporting, such that a reasonable possibility exists that a material misstatement of our annual or interim financial statements would not be prevented or detected on a timely basis.

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 unaudited condensed 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 calculations. We had multiple control deficiencies aggregating to a material weakness over ineffective control activities.

Remediation 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 financial 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 June 30, 2022, the Company had taken, or initiated, as the case may be, the following steps intended to remediate the material weaknesses described above and strengthen its internal control over financial reporting that, as of June 30, 2022, 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/legal 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 remediation actions to address the existing material weaknesses as described above, there were no changes in our internal controls over financial reporting during the second quarter of 2022, 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.

Part II - Other Information

ITEM 1. LEGAL PROCEEDINGS

The information with respect to this Item 1 is set forth under Note 15 — *Commitments and Contingencies*, of the Notes to the unaudited condensed consolidated financial statements in this report.

ITEM 1A. RISK FACTORS

There have been no material changes to the risk factors disclosed in Part 1, Item 1A, of our Annual Report on Form 10-K for the fiscal year ended December 31, 2021 and in Part II, Item 1A, “Risk Factors” of our Quarterly Report on Form 10-Q for the quarter ended March 31, 2022, except as set forth below. The risk factors set forth below update, and should be read together with, the risk factors set forth in our Form 10-K for the fiscal year ended December 31, 2021 and our Form 10-Q for the quarter ended March 31, 2022.

Our suppliers may fail to deliver components according to schedules, prices, quality and volumes that are acceptable to us, which could 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. Unexpected changes in business conditions, materials pricing, including inflation of raw material costs, labor issues, wars, natural disasters, health epidemics such as the COVID-19 pandemic, trade and shipping disruptions, port congestions and other factors beyond our or our suppliers’ control could also affect these suppliers’ ability to deliver components to us or to remain solvent and operational. In addition, international supply is also exposed to risks related to tariffs and sanctions, as well as political, social, and 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 adversely affect our hardware component prices and negatively affect any plans to sell products in China and other impacted international markets. Disruptions in the availability of key equipment, components or materials may adversely affect our business, prospects and operations, and volatility in prices and availability of such items may negatively affect our customer relationships and ability to plan for future growth.

We also face risks resulting from supplier concentration and limited supplier capacity. We rely on a very small number of suppliers of energy storage systems and other equipment. If any of our suppliers was unable or unwilling to provide us with contracted quantities in a timely manner at prices, quality levels and volumes acceptable to us, we would have very limited alternatives for supply, and we may not be able to contract for and receive suitable alternative supply in a timely manner for our customers, or at all. Such an event may impair our ability to meet scheduled deliveries of our products to customers, which may cause our customers to cancel orders and subject us to liability, and may materially adversely affect our customer relationships, business, prospects, financial condition and results of operations. We may also be unsuccessful in our continuous efforts to negotiate with existing suppliers to obtain cost reductions and avoid unfavorable changes to terms. Additionally, some of our suppliers supply systems and components to other businesses, including businesses engaged in the production of consumer electronics and other industries unrelated to energy storage systems. There are also larger purchasers of certain parts and materials that we supply to our customers. As a result, 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. Any of these occurrences could materially adversely affect our business, prospects, financial condition and results of operations.

We have 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, we will have limited alternatives for supply and 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, some 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.

We Face Risks Related to our DevCo Business Model

From time to time, we have entered into strategic joint ventures with qualified third parties to develop energy storage power generation projects (“DevCo Projects”), as more fully described above under Note 1 — Business, of the Notes to the unaudited condensed consolidated financial statements in this report. These projects require significant upfront investment by us and involve a high degree of risk. The success of this business model depends in large part on the successful development, financing and construction of projects. However, such projects ultimately may not be commercially viable or may not result in an adequate return of capital and, in pursuing these projects, we may incur unanticipated liabilities. Successful completion of a project may be adversely affected, delayed or rendered infeasible by numerous factors, including:

- interconnection costs and capacity constraints;
- transmission grid congestion issues;
- delays in obtaining required governmental permits and approvals;
- regulatory changes that adversely affect energy storage participation in wholesale markets;
- changes in wholesale market energy and ancillary services prices and costs;
- construction delays and contractor or developer partner performance shortfalls;
- cost overruns, including costs related to renting or owning land necessary to develop DevCo Projects;
- labor, equipment, and material supply shortages, failures or disruptions; and
- force majeure and other events out of our control.

In addition, our joint venture partners may at any time have economic, business or legal interests or goals that are inconsistent with the goals of the DevCo Project. Disagreements with our business partners may impede our ability to recognize the benefits of our DevCo Projects. Our joint venture partners may be unable or unwilling to meet their performance or other obligations under the operative documents, and we may be required to fulfill those obligations or to dissolve and liquidate the DevCo Project.

If a DevCo Project experiences any of the factors listed above or otherwise fails to reach completion or is significantly delayed, we could lose all or a portion of our development capital investment and our cash advances to purchase hardware. If a DevCo Project fails then we will need to find a replacement customer or DevCo Project in order to recover the cash advances. Losing or delaying return of all or a portion of our hardware advances in our DevCo Projects could have a material adverse effect on our business, financial condition and results of operations.

We depend on significant customers for a substantial portion of our revenue. If we fail to retain or expand our customer relationships or significant customers reduce their purchases, our revenue could decline significantly.

We depend on a small number of significant customers for our sales, and a small number of customers have historically accounted for a material portion of our revenue. The loss of any one of our significant customers, their inability to perform under their contracts, their termination or failure to renew their contracts with us, or their default in payment could cause our revenue to decline materially. For the near future, we may continue to derive a significant portion of our revenue from a small number of customers. For the three months ended June 30, 2022, one customer accounted for approximately 50% of our revenue. Loss of a significant customer or a significant reduction in pricing or order volume from a significant customer could materially reduce our revenue and operating results in any reporting period.

In addition, we are subject to credit risk of our customers, and our operating results depend on receipt of timely payments from our customers. Any delay in payment by our customers may have an adverse effect on revenue and operating results. There is no assurance that we will be able to collect all or any of the amounts owed to us in a timely matter. If any of our customers face unexpected situations such as financial difficulties, we may not be able to receive full or any payment of the uncollected sums or enforce any judgment debts against such clients, and our business, results of operations and financial condition could be materially and adversely affected.

ITEM 2. UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS

None.

ITEM 3. DEFAULTS UPON SENIOR SECURITIES

None.

ITEM 4. MINE SAFETY DISCLOSURES

Not applicable.

ITEM 5. OTHER INFORMATION

None.

ITEM 6. EXHIBIT INDEX

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).
10.1	Framework BESS Sale and Purchase Agreement, dated as of August 17, 2021, by and between Tesla, Inc. and Stem, Inc.††
10.2	Master Supply Agreement for Purchase and Sale of Energy Storage Equipment, dated as of September 14, 2020, by and between Powin Energy Corporation and Stem, Inc.††
10.3	First Amended and Restated Master Supply Agreement for Purchase and Sale of Energy Storage Equipment, dated as of February 28, 2020, by and between Sungrow USA Corporation, Sungrow Samsung SDI Energy Storage Power Supply Co., Ltd. and Stem, Inc.††
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)

†† Information in this exhibit (indicated by brackets) has been redacted pursuant to Item 601(b)(10)(iv) of Regulation S-K.

SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized on August 4, 2022.

STEM, INC.

By: /s/ William Bush
 William Bush
 Chief Financial Officer
 (Principal Financial Officer)

Information in this document (indicated by brackets) has been redacted pursuant to Item 601(b)(10)(iv) of Regulation S-K because such information is not material and is private or confidential.

FRAMEWORK BESS SALE & PURCHASE AGREEMENT (US)

This **Framework BESS Sale & Purchase Agreement** (this "Agreement") is entered into as of August 17, 2021 (the "Effective Date") between Tesla and Buyer (each as defined below, together the "Parties"). This Agreement comprises (i) the Key Terms set out below (the "Key Terms"), and (ii) all exhibits and schedules referenced in the "Attachments" section of the Key Terms.

<u>Key Terms</u>	
These Key Terms set out the scope of this Agreement and certain key terms.	
Parties:	
Tesla:	Tesla, Inc., a Delaware corporation, whose principal place of business is at 3500 Deer Creek Road, Palo Alto, CA 94304.
Buyer:	Stem, Inc., a Delaware corporation whose registered office is at 100 California Street, Floor 14, San Francisco, CA 94111
Systems:	
System:	Battery energy storage system (" <u>BESS</u> ") with the power and energy capacities indicated in the relevant Accepted Purchase Order (as defined in <u>Schedule 1</u>) and the components thereof described in such Accepted Purchase Order (" <u>BESS Components</u> ").
Specifications:	The specifications for each System shall be the applicable specifications that are published in the Tesla Partner Portal on the date the Purchase Order for that System is submitted by Buyer.
Notices:	
Tesla Notice Address:	Tesla, Inc. 3500 Deer Creek Road, Palo Alto, CA 94304, USA Attn: Energy Products []
Tesla Address for submission of Capacity Reservation Orders and Purchase Orders:	[]
Buyer Notice Address:	Stem, Inc. 100 California Street, Floor 14, San Francisco, CA 94111. Attn: Bill Bush & Morgen Burkhart []
Buyer Address for Invoices and Capacity Reservation Orders and Purchase Order responses:	[]

NDA:	
NDA:	The mutual non-disclosure agreement dated May 16, 2021 between Tesla (or its Affiliate) and Buyer (or its Affiliate).
Credit:	
Buyer Credit Limit:	<p>§[], to be defined as the amount due by Buyer at any given time to Tesla for any Accepted Purchase Orders or Capacity Reservation Order</p> <p>Tesla may update the Buyer Credit Limit by five (5) Business Days written notice to Buyer from time to time, provided that Tesla shall not retroactively update the Buyer Credit Limit for Accepted Purchase Orders except that the foregoing does not limit Tesla's remedies under <u>Schedule 1, Section 24</u>.</p>
Buyer Credit Support:	N/A.
Tesla Partner Portal / Tesla Manuals:	
Tesla Partner Portal	https://partners.teslamotors.com . Buyer acknowledges that it has been provided with temporary login details to the Tesla Partner Portal and has reviewed its contents. Tesla shall provide permanent login details for the Tesla Partner Portal to Buyer following the Effective Date
Tesla Manuals:	The applicable Tesla manuals that are published in the Tesla Partner Portal from time to time, and in effect as of the effective date of a Purchase Order, including without limitation the following: (a) BESS Site Design Manual; (b) BESS Specifications; (c) BESS Transportation and Storage Guidelines; (d) BESS Installation Manual; (e) BESS Operation and Maintenance Manual; (f) BESS Internal Commissioning Checklist; (g) BESS Commissioning Protocol; (h) Communications Manual; and (i) Marketing Guidelines for Tesla BESS Certified Companies.
Attachments:	
The attachments below are incorporated by reference into this Agreement. In the event of any conflict between any Accepted Purchase Order, these Key Terms and any Schedule, the order of precedence shall be (i) the Accepted Purchase Order, (ii) these Key Terms and then (iii) the Schedules in order of appearance.	
Schedule 1:	Framework BESS Sale & Purchase Agreement – Standard Terms & Conditions
Schedule 2A:	Form of Capacity Reservation Order
Schedule 2B:	Form of Purchase Order
Schedule 3:	Manufacturer's Limited Warranty (as at Effective Date)
Schedule 4:	Service Level Agreement

[Signatures on following page]

EXECUTED by the Parties on the Effective Date.

STEM, INC.	TESLA, INC.
/s/ Bill Bush	/s/ Colby Hastings
(SIGNATURE)	(SIGNATURE)
Bill Bush	Colby Hastings
(PRINT NAME)	(PRINT NAME)
CFO	Sr. Manager, Commercial Operations
(PRINT TITLE)	(PRINT TITLE)

Schedule 1

Framework BESS Sale & Purchase Agreement - Standard Terms & Conditions

1. Certain Defined Terms. When used in this Agreement, the terms “Buyer Invoice Address”, “Buyer Logistics Contact”, “Contract Price”, “Delivery Point”, “Guaranteed Delivery Date”, “Incoterm”, “Invoice Schedule”, “Payment Terms”, “System Price” and “System Specifications” have the meaning given to them in the Accepted Purchase Order for the relevant System.
2. Term. The initial term of this Agreement is two (2) calendar years from the Effective Date (collectively, the “Term”, and each one-year period from the Effective Date, a “Contract Year”). Either party can terminate this Agreement effective at the end of the then-current Contract Year by providing three (3) months’ prior written notice. Unless otherwise expressly set forth herein, termination or expiration of the Agreement does not terminate or modify either Party’s obligations with respect to Accepted Purchase Orders.
3. Non-exclusivity. This Agreement is not exclusive, meaning that Buyer may purchase similar products from manufacturers or suppliers other than Tesla or its Affiliates and Tesla is free to sell its products or services to any other customers or buyers.
4. Purchase Orders.
 - (a) Capacity Reservation Orders. At any time during the Term, Buyer may request to reserve Systems with an aggregate, specified nameplate power (minimum) and energy capacity from Tesla by populating and signing a capacity order in the form attached as Schedule 2A (each, a “Capacity Reservation Order”), and submitting it in .pdf form to the relevant address set out in the Key Terms Notice section of this Agreement. A Capacity Reservation Order that is populated, signed and submitted by Buyer in accordance with this Section 4(a) shall constitute an offer by Buyer to reserve such Systems with the nameplate power and energy capacity identified in the Capacity Reservation Order, subject to the terms set out in the Capacity Reservation Order and this Agreement. Upon receipt of a Capacity Reservation Order, Tesla shall accept or reject such Capacity Reservation Order within ten (10) Business Days of receipt. Failure by Tesla to accept a Capacity Reservation Order within the foregoing period shall be deemed a rejection of such Capacity Reservation Order. Once such Capacity Reservation Order is submitted by Buyer and countersigned by Tesla, the obligations of either party under such document shall be binding as set forth herein, and the Capacity Reservation Order shall be considered accepted (an “Accepted Capacity Reservation Order”).
 - (b) Purchase Order Commitment – Submittal by Buyer. Buyer shall submit Purchase Orders in the form attached as Schedule 2B for Systems that include, in aggregate, the Reserved Components identified in any Accepted Capacity Reservation Order for delivery by Tesla during the Capacity Reservation Period identified in that Accepted Capacity Reservation Order. In each Purchase Order:
 - (i) the price of the Systems and any BESS Components shall match the prices for same in the related Accepted Capacity Reservation Order;
 - (i) the time-period between the date of submittal by Buyer of the Purchase Order and the Guaranteed Delivery Date identified in the Purchase Order shall be no less than the Minimum Lead Time identified in the related Accepted Capacity Reservation Order; and
 - (ii) the Invoice Schedule and Payment Terms shall match the invoice schedule and payment terms identified in the related Accepted Capacity Reservation Order.

For clarity, Purchase Orders submitted by Buyer that do not comply with the requirements of this Section 4(b), shall not count towards Buyer’s Purchase Order commitment in an Accepted Capacity Reservation Order.

- (c) Failure by Buyer to Submit Purchase Orders against an Accepted Capacity Reservation Order. If Buyer fails to submit Purchase Orders against an Accepted Capacity Reservation Order, as required by Section 4(b), by the Purchase Order Deadline specified in the applicable Accepted Capacity Reservation Order, Buyer shall
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nonetheless still be obligated to purchase and take delivery of the BESS in the Reserved Energy Capacity. Tesla shall invoice Buyer for the remaining capacity and upon payment shall be permitted to deliver the BESS by the end of the delivery window specified in the Capacity Reservation Order.

- (d) Purchase Orders toward Capacity Reservation – Acceptance by Tesla. Tesla shall accept any Purchase Order that is submitted by Buyer in accordance with Section 4(b) and such Accepted Capacity Reservation Order; provided that Tesla shall not be required to accept any Purchase Order if:
- (i) Buyer does not comply with the requirements for each Purchase Order as set out in Sections 4(b)(i) and 4(b)(ii);
 - (ii) Buyer is in breach of this Agreement;
 - (iii) The remaining BESS Components from the Capacity Reservation Order are not a configuration produced by Tesla, as listed in Tesla's System Specifications;
 - (iv) The Guaranteed Delivery Date on the Purchase Order is prior to the last day in the Delivery Window specified in the Capacity Reservation Order;
 - (v) Tesla has already accepted Purchase Orders up to the Reserved Components of an Accepted Capacity Reservation; or
 - (vi) the amount owed and unpaid by Buyer under that Purchase Order, any other unfulfilled Accepted Purchase Orders and any other existing purchase agreements (or equivalent) between Buyer (or its Affiliate) and Tesla (or its Affiliate) exceeds the Buyer Credit Limit.

A Purchase Order that is accepted by Tesla under this Section 4(d) shall be an "Accepted Purchase Order".

- (e) Failure by Tesla to Accept Purchase Orders for an Accepted Capacity Reservation Order. If Tesla fails to accept Purchase Orders as required by Section 4(d) under an Accepted Capacity Reservation Order that is compliant with Section 4(b) within [] after receipt from Buyer, Tesla shall pay to Buyer liquidated damages in the amount of [] percent ([]%) of the Purchase Order Contract Price ("Reserved Capacity Sale Shortfall Liquidated Damages"), within thirty (30) days, in addition to refunding any amounts already paid by Buyer with respect to such Accepted Capacity Reservation Order tied to the rejected Purchase Order. Such Purchase Order shall be deemed rejected and the Capacity Reservation Reserved Components shall be decreased equally for such rejected Purchase Order. Upon Tesla's payment of the Reserved Capacity Sale Shortfall Liquidated Damages and refund of any amounts paid by Buyer, neither Party shall have any further liability with respect to such Accepted Capacity Reservation Order.
- (f) Purchase Orders Exceeding the Capacity Reservation Order; Review of Other Purchase Orders. Buyer is not required to submit a Capacity Reservation Order under this Agreement. Buyer may at any time submit Purchase Orders in the form attached as Schedule 2B for Systems in excess of any existing Capacity Reservation Orders or separate from any Capacity Reservation Orders, provided that Tesla is under no obligation to accept such Purchase Orders. For Purchase Orders submitted in excess of or separate from a Capacity Reservation Order, within ten (10) Business Days after receipt of a Purchase Order from Buyer, Tesla shall, in its sole discretion, either:
- (i) accept the Purchase Order by providing a purchase order confirmation to Buyer at the address set out in the Key Terms,
 - (ii) reject the Purchase Order in writing, or
 - (iii) request modification of the Purchase Order.

If Tesla rejects or requests modification of any Purchase Order, the Parties shall discuss any adjustments to

the Purchase Order that may lead to its acceptance by Tesla. A Purchase Order that is accepted by Tesla under this [Section 4\(f\)](#) shall also be an "Accepted Purchase Order" under this Agreement. Buyer may withdraw a pending Purchase Order at any time prior to its acceptance in writing by Tesla. Failure by Tesla to accept or reject a pending Purchase Order within ten (10) Business Days shall be deemed a rejection by Tesla of such Purchase Order.

5. Purchase and Sale.

- (a) Buyer shall purchase from Tesla, and Tesla shall sell to Buyer, the System and any Included Technical Support identified in an Accepted Purchase Order, in accordance with the Accepted Purchase Order and this Agreement.
- (b) The System shall comply with the System Specifications identified in the Accepted Purchase Order on the date the System is delivered.
- (c) Tesla is only responsible for supplying and providing the Included Technical Support for, the equipment specifically identified in the description of the "System" in the Accepted Purchase Order. If the System will form part of a microgrid, Tesla is not responsible for delivering any other microgrid equipment or providing any other services required for the microgrid's operation.

6. Delivery Timing; Delays.

- (a) Tesla shall deliver the System identified in any Accepted Purchase Order in accordance with the Incoterm identified in that Accepted Purchase Order (modified as set out in [Section 6\(e\)](#), if applicable), in one or more shipments. If no Incoterm is specified on the Accepted Purchase Order, the default Incoterm shall be ExWorks (Tesla factory in Sparks, Nevada) (Incoterms 2020). Responsibility for the arrangement of and payment for the shipment (including carrier selection and scheduling), insurance and customs clearance of the System (including payment of applicable customs fees, duties and taxes) shall be determined in accordance with the applicable Incoterm.
 - (b) Tesla shall deliver the System identified in an Accepted Purchase Order on or prior to the Guaranteed Delivery Date identified in the Accepted Purchase Order. Tesla will notify Buyer when the System is ready for the first shipment from the applicable Gigafactory (the "[Ready for Shipment Notice](#)"). Tesla shall give Buyer at least ten (10) days' prior written notice of the scheduled delivery date of the System and each part thereof.
 - (c) If Buyer fails or refuses to accept delivery of a shipment once such shipment has left the Gigafactory (for DDP (Incoterms 2020) Purchase Orders), or made available for pickup at the Gigafactory (for EXW (Incoterms 2020) Purchase Orders), such failure or refusal shall constitute a breach under this Agreement, and Tesla shall be entitled to recover its costs incurred pursuant to [Section 6\(g\)](#), and if such breach continues for at least [] then it shall constitute a default in accordance with [Section 22](#) in addition to any other remedies Tesla may have at law or under this Agreement.
 - (d) Tesla shall deliver the System to the Delivery Point in accordance with [Section 6\(a\)](#) as specified on the Accepted Purchase Order. Delivery to the Delivery Point shall take place no later than the Guaranteed Delivery Date listed on the Accepted Purchase Order. [].
 - (e) If the Incoterm specified in the Accepted Purchase Order is EXW, the common meaning of EXW (Incoterms 2020) is modified so that delivery is complete and all risk of loss or damage to the System (or part) transfers to Buyer when the System (or part) has been loaded onto Buyer's carrier by Tesla at the Delivery Point, as evidenced by signature of a bill of lading or equivalent document by Buyer or its representative.
 - (f) Delivery Documentation. Tesla shall provide a separate bill of lading or similar shipping documentation for each delivery of BESS Components.
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- (g) Delayed Acceptance. If, on any date that Tesla would otherwise deliver the System identified in an Accepted Purchase Order (or a part thereof) to Buyer in accordance with the Incoterm, (a) Buyer or its Affiliate is in default of any material obligation under this Agreement; or (b) Buyer is not in a position to take delivery of the System (or part) or refuses acceptance of the System (or part) for reasons not permitted under this Agreement, then Tesla may elect to delay delivery of the System (or part), without liability, and Buyer shall pay Tesla liquidated damages in the amount of [] per kWh AC, per day of delay (“Delayed Acceptance Damages”), provided for Accepted Purchase Orders with an incoterm of EXW (Incoterms 2020), such Delayed Acceptance Damages shall not begin to accrue until [] after the Guaranteed Delivery Date so long as such delayed acceptance does not spill into the next calendar quarter, in which case Delayed Acceptance Damages will begin to accrue immediately. The Parties agree that the Delayed Acceptance Damages set forth herein are Liquidated Damages per Section 28. Additionally, Buyer shall pay to Tesla actual delivery costs incurred by Tesla if Tesla is unable to deliver the System due to Buyer’s inability or unwillingness to accept such delivery. All such damages shall be payable on a monthly basis within thirty (30) days of Tesla providing a written invoice to the Buyer Invoice Address. The Delayed Acceptance Damages shall not exceed in the aggregate [] percent ([]%) of the applicable Contract Price on the affected Accepted Purchase Order.
- (h) Buyer may delay the Guaranteed Delivery Date under an Accepted Purchase Order without penalty provided that: (a) Buyer informs Tesla in writing of the new Guaranteed Delivery Date at least eight (8) calendar weeks prior to the original Guaranteed Delivery Date; (b) the new Guaranteed Delivery Date is within the same calendar quarter as the original Guaranteed Delivery Date; and (c) the new Guaranteed Delivery Date is at least fourteen (14) days prior to the last day in the calendar quarter.
7. System Maintenance. Consistent with Section 6 of the Manufacturer’s Limited Warranty, Tesla shall not be liable, under the Manufacturer’s Limited Warranty or otherwise, for any System damage or failures resulting from (a) the maintenance or repair of the System by the end user or any third party other than a Tesla subcontractor and (b) a failure to perform (or failure to cause to be performed) maintenance of the System required under the applicable Tesla Manuals.
8. Inspection and Rejection.
- (a) In the case of DDP (Incoterms 2020) Accepted Purchase Orders, prior to unloading of the System, Tesla shall grant the representative of Buyer who takes delivery of a System in accordance with Section 6(a), the right to visually inspect the external packaging of each BESS Component []; provided that if the Incoterm is EXW (Incoterms 2020), Buyer’s visual inspection must occur prior to loading of the System. Buyer may reject any part of a System if, after such visual inspection, Buyer reasonably believes that such part is likely to be damaged or to not conform to the System Specifications. Any equipment that Buyer properly rejects pursuant to this Section 8(a), shall not be deemed delivered for purposes of this Agreement until Tesla has corrected the applicable damage or non-conformance, and Tesla shall incur Delivery Delay Damages after the Delivery Grace Period in accordance with Section 6(d).
- (b) Any Systems not rejected in accordance with Section 8(a) shall be deemed accepted by Buyer; provided, that such deemed acceptance shall not affect any right or remedy available to Buyer pursuant to the Manufacturer’s Limited Warranty. Once accepted, any defects discovered in a System shall be resolved pursuant to the terms and conditions of the Manufacturer’s Limited Warranty; provided, if a defect is discovered prior to the commencement of the Manufacturer’s Limited Warranty Period which prevents Buyer from completing installation and/or commissioning of the System or presents a safety concern, then Buyer shall provide notice of the defect to Tesla in accordance with the process described in the Manufacturer’s Limited Warranty, and Tesla shall address such defect under (and subject to) the terms of the Manufacturer’s Limited Warranty as if the Manufacturer’s Limited Warranty were then already in effect, to the extent that the defect is covered (and not excluded from coverage or otherwise not covered) by the Manufacturer’s Limited Warranty. For clarity, if a defect does not prevent Buyer from installing and commissioning the System and does not create any safety concerns, and is a defect that is covered (and not excluded from coverage or otherwise not covered) by the Manufacturer’s Limited Warranty such that Tesla must remedy it in accordance with the Manufacturer’s Limited Warranty, then Tesla may address such defect upon commencement of the Manufacturer’s Limited Warranty Period or
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commissioning of the System to avoid multiple site visits. For clarity, this Section 8(b) shall apply to any permitted assigns or transferees of Buyer in accordance with this Agreement.

9. Title; Risk of Loss. Risk of loss of each System (or part thereof) passes to Buyer in accordance with the Incoterm specified in the relevant Accepted Purchase Order (modified as set out in Section 6(e), if applicable). Title to the System shall transfer from Tesla to Buyer concurrently with the transfer of risk of loss. For clarity, if Buyer rejects the System in accordance with Section 8(b), title and risk of loss for the rejected System shall remain with Tesla.

10. Security Interest.

(a) If title to the System transfers from Tesla to Buyer prior to Buyer's payment in full for the System, Tesla shall retain, and Buyer hereby grants, a first priority security interest in and to all of the right, title and interest of Buyer in, to and under the System, as well as any insurance proceeds covering the System, until Tesla is paid in full for the System. Buyer authorizes Tesla to file financing statements in this regard and will take such action as is requested by Tesla to protect such interest.

(b) Until the Contract Price has been paid in full in cleared funds, Tesla may also exercise its rights under applicable mechanics' and suppliers' lien laws or any common law liens such as a common carrier's lien and other similar liens arising by operation of law or statute.

11. Commissioning Support.

(a) For Accepted Purchase Orders where Tesla is providing Commissioning Support, Tesla shall use commercially reasonable efforts to complete any requested Commissioning Support within four (4) weeks of Tesla's receipt of the completed Construction Checklist pursuant to the Commissioning Protocol. [].

(b) As part of such Commissioning Support, Tesla shall, no later than two (2) Business Days following completion of such Commissioning Support, remove any and all debris generated by its performance of such activities from the Installation Location.

[].

(c) If, after receiving a request for Commissioning Support as described in Section 11(a), Tesla attends the Installation Location to perform the Commissioning Support but is unable to do so because the BESS has not been properly and completely installed, then Buyer shall pay to Tesla the False Call-Out LDs set out in the Accepted Purchase Order, as liquidated damages for the time, costs and expenses incurred by Tesla in connection with such Installation Location visit. These liquidated damages have been agreed to by the Parties because the actual damages arising in these circumstances are difficult to predict. They represent a reasonable pre-estimate of the damages that Tesla would incur, and do not constitute a penalty. Payment of these liquidated damages shall be Tesla's exclusive remedy and Buyer's exclusive liability in the situation described above.

12. Included Technical Support; Warranty.

(a) Tesla shall provide the Commissioning Support in accordance with Exhibit A and the Key Terms of the Accepted Purchase Order ("Commissioning Support").

(b) Tesla shall use commercially reasonable efforts (at no out of pocket cost to Tesla) to assist with Buyer's reasonable requests for ordinary-course: (i) review of design and construction plans, (ii) questions from utilities or government authorities, (iii) support of third-party controller interface (excluding reprogramming, debugging monitoring and control interface(s), firewalls, jump servers, network devices or wiring to interact with the Tesla Site Controller), and (iv) interconnection related questions (excluding performance or functional testing support as needed to meet ISO, utility or market requirements).

(c) If the Accepted Purchase Order indicates that Tesla shall perform any Additional Technical Support, Tesla shall provide that Technical Support in accordance with Exhibit B and the Key Terms of the Accepted Purchase Order (collectively, "Additional Technical Support").

- (d) Tesla shall perform any Commissioning Support and any Additional Technical Support (together, the “Included Technical Support”) in accordance with Prudent Industry Practices, the BESS Commissioning Protocol, the BESS Operation & Maintenance Manuals published by Tesla or its Affiliate, this Agreement and the Manufacturer's Limited Warranty. “Prudent Industry Practices” means the methods approved by a significant portion of the electrical services industry operating in the Installation Location identified in the relevant Accepted Purchase Order that, in the exercise of reasonable judgment in light of the facts known at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with applicable law, reliability, safety, environmental protection, economy and expedition. Prudent Industry Practices are not limited to optimum methods, but rather include a spectrum of reasonable and prudent methods that take the conditions specific to the System into account.
- (e) Tesla warrants that (i) it shall perform all Included Technical Support in accordance with Prudent Industry Practices, this Agreement, the Accepted Purchase Order, and the Manufacturer’s Limited Warranty; and (ii) any labor performed in the performance of the Included Technical Support shall be free from defects in design and workmanship for twelve (12) months after such labor was performed were installed (collectively, the “Support Warranty”). Tesla shall remedy any defect or otherwise cure a breach of the Support Warranty, at its own cost and expense, as promptly as reasonably practicable after Buyer notifies Tesla in writing of such breach, in a manner and at such times that reasonably minimizes interruption of the operation of the System and revenue loss to Buyer. This shall be Tesla’s sole and exclusive liability, and Buyer’s sole and exclusive remedy, in connection with a breach of the Support Warranty.
- (f) EXCEPT AS PROVIDED FOR IN THIS AGREEMENT, TESLA MAKES NO WARRANTIES OR GUARANTEES WITH RESPECT TO THE INCLUDED TECHNICAL SUPPORT AND DISCLAIMS ANY WARRANTY OR GUARANTEE IMPLIED BY APPLICABLE LAWS, INCLUDING IMPLIED WARRANTIES OF PERFORMANCE, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND IMPLIED WARRANTIES OF CUSTOM OR USAGE.

13. Price; Invoicing; Payment; Late Payments.

- (a) The price payable for any System and any Included Technical Support shall be the Contract Price stated in the relevant Accepted Purchase Order.
- (b) Buyer shall pay the Contract Price in installments based on Tesla invoices. Tesla shall invoice Buyer in accordance with the Invoice Schedule. Tesla shall send invoices by electronic mail to the Buyer Invoice Address in the relevant Accepted Purchase Order or Accepted Capacity Reservation Order. Buyer shall be credited on a pro rata basis for a percentage of the Contract Price on an Accepted Purchase Order in an amount equal to the percentage paid on the Reserved Capacity Order that is attributable to the Reserved Components on an Accepted Purchase Order.
- (c) Buyer shall pay invoices in accordance with the Payment Terms in US\$ (except as otherwise agreed in writing), and by wire transfer or other electronic means approved by Tesla.
- (d) Buyer shall notify Tesla of any invoice dispute and provide substantiating documentation within twenty (20) days of Buyer’s receipt of the disputed invoice. Notwithstanding any dispute, Buyer shall pay all undisputed amounts in accordance with the Payment Terms.
- (e) Buyer shall pay interest on late payments at the lesser of the rate of []% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Buyer shall reimburse Tesla for all costs incurred in collecting any late payments, including reasonable and documented attorneys’ fees if Buyer is late in making payment by more than [].
- (f) Changes in Price. The Contract Price shall be based on the terms of an Accepted Purchase Order and shall be binding once the Purchase Order is accepted in accordance with Section 4(d), except as modified by mutual written agreement of the Parties. The limitation set forth in the immediately preceding sentence shall not preclude the application or collection of liquidated damages or other adjustments as expressly allowed under this Agreement.
- (g) [].

14. Taxes.

- (a) The Contract Price is exclusive of, and Buyer is solely responsible for, all sales, use and excise taxes, and any other similar taxes and charges of any kind imposed by any governmental authority of or within the country of the Delivery Point or Installation Location.
 - (b) Where required or allowed by law, unless Buyer furnishes to Tesla lawful evidence of exemption, Tesla will invoice Buyer for the amount of any such tax and remit such amount to the applicable taxing authority.
 - (c) If Buyer is required by law to deduct or withhold any amount of tax for which Buyer is responsible from a payment to Tesla, Buyer shall (a) promptly remit such amount to the applicable taxing authority and provide Tesla with a receipt for such remittance and (b) increase the amount of its payment to Tesla by the amount necessary to ensure Tesla receives the full amount which it would have received if no deduction or withholding had been made.
15. No Set-off Right. Any claim for money due or to become due from a Party under this Agreement shall not be subject to deduction or set-off by such Party against any amount due or to become due to such Party from the other Party or its Affiliates, whether relating to a claim under this Agreement or relating to any other transaction.
16. Purchase Order Changes. Except as expressly set forth in this Agreement, no changes may be made to an Accepted Purchase Order without the written consent of both Parties, as evidenced by an amendment to the Accepted Purchase Order executed by both Parties. For Purchase Order changes related solely to the adjustment of a Guaranteed Delivery Date of an Accepted Purchase Order, Buyer may delay the Guaranteed Delivery Date without penalty provided that (a) Buyer informs Seller in writing of the new Guaranteed Delivery Date at least eight (8) calendar weeks prior to the original Guaranteed Delivery Date; (b) the new Guaranteed Delivery Date is within the same calendar quarter as the original Guaranteed Delivery Date and (c) the new Guaranteed Delivery Date is at least fourteen (14) days before the last day in the calendar quarter.
17. Product Changes. Tesla shall use commercially reasonable efforts to notify Buyer of any material changes in the form, fit, function, or design of the BESS Components or otherwise provide any technical documents describing such changes. Notwithstanding the foregoing, Tesla may not change the Specifications or design of any System that is subject to an Accepted Capacity Reservation Order or Accepted Purchase Order without Buyer's prior written consent. Tesla may at its election provide any technical documents in Tesla's possession or control and customarily shared with its customers describing such changes to future product offerings; provided Tesla has no obligation to share such technical documents and will not be obligated to share any trade secrets.
18. Manufacturer's Limited Warranty.
- (a) Tesla provides the version of the manufacturer's limited warranty applicable to the System that is published in the Tesla Partner Portal as of the date of Buyer's submission of an Accepted Purchase Order (the "Manufacturer's Limited Warranty"). The version of the Manufacturer's Limited Warranty that applies as of the Effective Date is attached as Schedule 3 and the applicable version will be attached to each Purchase Order.
 - (b) Except as set out in the Manufacturer's Limited Warranty and this Agreement, Tesla does not make any other guarantees, warranties or representations, or agree to any conditions, express or implied, of any nature whatsoever, including as to merchantability, fitness for a particular purpose, or use, course of dealing or usage of trade. All such guarantees, warranties, representations and conditions are expressly disclaimed to the fullest extent permitted by law.
 - (c) Without limiting any of the other "exclusions" or "items not covered" identified in the Manufacturer's Limited Warranty, Buyer acknowledges that it shall be solely responsible for labor, travel, parts, shipping and transportation costs associated with repairing or replacing any components of the System (including but not limited to battery pods) that require repair or replacement as a result of (i) faulty installation by Buyer, including installation in a manner inconsistent with the Tesla Manuals; or (ii) Buyer's failure to connect and begin use and operation of the System within the time period specified in the BESS Transportation and Storage Guidelines or Buyer's disconnection of the System at any time during the term of the Manufacturer's Limited Warranty without prior written consent from Tesla, which shall not be
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unreasonably withheld. If Tesla incurs costs to remedy warranty claims caused by Buyer as described above, Buyer shall pay Tesla's costs within thirty (30) days of Tesla's notice thereof.

- (d) Buyer (or the end user, if applicable) is responsible for establishing and maintaining a backup remote internet connection to the System for purposes of Section 6 of the Manufacturer's Limited Warranty. If Buyer sells or transfers the System to an end user it shall ensure that it contractually obligates the end user to comply with this backup remote internet connection obligation.

19. [].

20. Remote Monitoring; Firmware Upgrades; etc.

- (a) As a condition to providing the Manufacturer's Limited Warranty for a System, Tesla requires the ability to (i) remotely monitor performance of the System and (ii) provide remote firmware and software upgrades to the System. Buyer hereby consents to Tesla performing such remote monitoring and providing such firmware and software upgrades as Tesla reasonably deems appropriate at any time. Tesla shall use commercially reasonable efforts to provide ten (10) Business Days advance written notice to schedule such firmware and software upgrades across impacted Systems and to minimize commercial impact to Buyer, provided that Buyer may request Tesla delay the proposed System upgrade if the proposed upgrade date and time will impact Buyer's commercial operation of the System, which Tesla may accommodate such delay in its sole discretion.
- (b) "Buyer Data" means the data that Section 3.3 of the Communications Manual specifies will be owned by Buyer. Buyer Data shall be Confidential Information owned by the System owner and shall be made available by Tesla to the System owner on request, in a reasonably accessible format. Buyer grants to Tesla an irrevocable, perpetual worldwide, royalty-free license to use of all data obtained via the remote monitoring of the System. Tesla may use Buyer Data (i) to perform its obligations under the Manufacturer's Limited Warranty for the relevant System, (ii) to improve Tesla's products and services generally (including by performing analyses on such information); provided that Tesla shall not reverse engineer such data to expose Buyer's dispatch algorithms, and (iii) to aggregate with other data. Notwithstanding anything to the contrary in the NDA, public disclosure of such information by Tesla is permitted if none of Buyer, the System owner nor the owner or long-term occupant of the Installation Location where the System is located (the "Site Host") could reasonably be identified from the publicly disclosed information. Any Buyer Data held by Tesla shall be maintained exercising the same degree of care Tesla uses to protect Tesla Data.
- (c) Any information obtained by Tesla through remote monitoring of a System other than Buyer Data shall be owned by Tesla ("Tesla Data"), shall be Confidential Information of Tesla, and shall not be required to be made available by Tesla to any person.
- (d) Buyer represents and warrants that, prior to the installation and/or resale of the System, it will obtain the written consent of the subsequent owner and (if different) the Site Host, with respect to the matters addressed in this Section 20. If the subsequent owner or Site Host is a natural person or otherwise benefits from the protection of applicable Privacy and Data Protection Laws, such consents shall include any consents required under such laws. Buyer shall deliver copies of all such consents to Tesla upon request.
- (e) "Communications Manual" means the Tesla Energy Controls and Communication Manual for the System that is published by Tesla or otherwise made available by Tesla to Buyer. "Privacy and Data Protection Laws" means all applicable international, federal, state, provincial and local laws, rules, regulations, directives and governmental requirements relating in any way to the privacy, confidentiality, security and protection of personal data.

21. Tesla Manuals. Buyer shall comply with the Tesla Manuals. Tesla may amend any Tesla Manual in its sole discretion from time to time. However, the version of any Tesla Manual that was published in the Tesla Partner Portal at the time an Accepted Purchase Order was submitted by Buyer shall always apply to the System covered by that Accepted Purchase Order.

22. Default, Suspension and Termination by Tesla.

- (a) Tesla may suspend performance of any of its obligations under any Accepted Purchase Order, including its delivery obligations, if Buyer at any time is in default of any material Buyer obligation under this Agreement and an Accepted Purchase Order, and all reasonable costs incurred by Tesla by reason of such suspension (such as costs to warehouse the System until an overdue payment is received) shall be a debt due and owing from Buyer to Tesla within [] of Buyer's receipt of a written invoice from Tesla at the Buyer Invoice Address.
- (b) In addition to any other remedies that may be provided under this Agreement and an Accepted Purchase Order, Tesla may terminate this Agreement and an Accepted Purchase Order by written notice to Buyer if (i) Buyer fails to pay any undisputed amount when due under the Accepted Purchase Order and the failure is not cured within [] after Buyer's receipt of written notice thereof from Tesla; (ii) Buyer has breached any material provision of the Accepted Purchase Order and the breach is not cured within [] after Buyer's receipt of written notice thereof from Tesla; (iii) Buyer fails to post any Buyer Credit Support specified in the Accepted Purchase Order and such breach is not cured within [], any Buyer Credit Support ceases to be in full force and effect or the party providing such Buyer Credit Support breaches the Buyer Credit Support and such breach is not cured within []; or (iv) Buyer or the party providing Buyer Credit Support becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy that are not dismissed within [], receivership, reorganization or assignment for the benefit of creditors (each, an "Insolvency Event").
- (c) Tesla may suspend the delivery of any System if (i) Buyer fails to pay any undisputed amount when due under the Agreement and the failure is not cured within [] after Buyer's receipt of written notice thereof from Tesla; (ii) Buyer has breached any material provision of the Agreement and the breach is not cured within [] after Buyer's receipt of written notice thereof from Tesla; or (iii) if an Insolvency Event occurs with respect to Buyer or the party providing Buyer Credit Support.
- (d) Upon any termination pursuant to this Section 22, Tesla shall have the right to pursue any and all remedies available to it at law or in equity. Tesla shall use reasonable efforts to mitigate its damages in connection with any such termination, provided, that Tesla shall not be obligated to mitigate with respect to the portion of the damages owed to it attributable to the System.

23. Termination by Buyer.

- (a) In addition to any other remedies that may be provided under this Agreement, Buyer may terminate any Accepted Purchase Order (i) if Tesla has breached any material provision thereof and such breach, to the extent curable, is not cured within [] after Tesla's receipt of written notice thereof; (ii) if an Insolvency Event occurs with respect to Tesla; or (iii) in the circumstances described in Section 6(d).
- (b) Upon any termination pursuant to this Section 23, Buyer shall have the right to pursue any and all remedies available to it at law or in equity. Buyer shall use reasonable efforts to mitigate its damages in connection with any such termination.

24. No Cross-Defaults. A default by a Party under an Accepted Purchase Order shall not result in a default under any other Accepted Purchase Order, except to the extent that such event is independently a default under such other Accepted Purchase Order. The foregoing shall not apply to, and Tesla at its sole option may treat as a default under any or all Accepted Purchase Orders, (i) a failure by Buyer to make payments due under any Accepted Purchase Order, which has not been cured per Section 22(b), or (ii) a failure by Buyer to maintain Buyer Credit Support under any Accepted Purchase Order which has not been cured per Section 22(b).

25. Confidentiality; Publicity.

- (a) The NDA sets out the Parties' confidentiality obligations under this Agreement. It is incorporated by reference into this Agreement, and the terms and conditions of the NDA will continue in force throughout the term of this Agreement and for three (3) years following its expiration or early termination. The terms and conditions of this Agreement shall be both Parties' Confidential Information for purposes of the NDA.
 - (b) Neither Party shall advertise or issue any public announcement regarding the execution of this Agreement or any Purchase Order or their contents, or use the other Party's mark, name or logo in any marketing literature, web sites, articles, press releases (including interviews with representatives of media organizations of any form), or any other document or electronic communication, without the prior written
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consent of the other Party. The foregoing shall not prohibit a Party from making any public disclosure or filing that it determines in good faith is required by law or the rules of the stock exchange on which its shares, or the shares of its parent company, are listed.

26. Proprietary Rights. As between the Parties, Tesla shall remain the sole and exclusive owner of any and all patents, trademarks, copyrights, mask work rights, trade secrets and any other intellectual or proprietary rights ("Proprietary Rights") associated with any System or any parts or derivations thereof. Tesla hereby grants to Buyer a limited, non-exclusive, non-sublicensable, non-transferable (other than where Buyer transfers or resells the System in accordance with Section 44) license to use (a) any embedded software (i.e., firmware) and (b) the Tesla Manuals referenced in the Key Terms of this Agreement, each solely in the operation of the System. Except for the foregoing, no license or other right to Tesla's Proprietary Rights is granted or implied hereby. The licenses granted under this Section 26 only relate to the software and Tesla Manuals as final forms of same are provided by Tesla to Buyer or are accessed by Buyer, as applicable.
27. Limitations of Liability.
- (a) IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY BY REASON OF BREACH OF THIS AGREEMENT OR OF STATUTORY DUTY OR BY REASON OF TORT (INCLUDING BUT NOT LIMITED TO NEGLIGENCE) FOR ANY LOSS OF PROFIT, LOSS OF USE, LOSS OF PRODUCTION, LOSS OF CONTRACTS OR FOR ANY FINANCIAL OR ECONOMIC LOSS OR FOR ANY INDIRECT OR CONSEQUENTIAL DAMAGE WHATSOEVER THAT MAY BE SUFFERED BY THE OTHER.
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- (b) NEITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO EACH ACCEPTED PURCHASE ORDER, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, SHALL EXCEED THE CONTRACT PRICE IDENTIFIED IN THE ACCEPTED PURCHASE ORDER FOR THE SYSTEM THAT GAVE RISE TO THE CLAIM. THE limitations of liability under this Section 27(b) and Section 8 of the Manufacturer's limited Warranty are cumulative. Neither Buyer nor any End User shall be entitled to make a claim arising out of the same defect, event or circumstances under both this Agreement and the Manufacturer's limited Warranty.
- (c) NEITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF THIS AGREEMENT (AND NOT AN ACCEPTED PURCHASE ORDER), WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, SHALL EXCEED [].
- (d) THE LIMITATIONS OF LIABILITY SET OUT IN THIS SECTION 27 SHALL NOT APPLY TO: (I) BUYER'S OBLIGATION TO MAKE PAYMENTS FOR THE SYSTEM UNDER THIS AGREEMENT OR ANY ACCEPTED PURCHASE ORDER; (II) DAMAGES ATTRIBUTABLE TO EITHER PARTY'S BREACH OF ITS CONFIDENTIALITY OBLIGATIONS; (III) ANY VIOLATION OF A PARTY'S INTELLECTUAL PROPERTY RIGHTS; (IV) CLAIMS THAT ARE THE SUBJECT OF INDEMNIFICATION UNDER THIS AGREEMENT; (V) DAMAGES ATTRIBUTABLE TO A PARTY'S INTENTIONAL TORTS, UNLAWFUL CONDUCT OR GROSS NEGLIGENCE; OR (VI) ANY OTHER ACTS OR OMISSIONS FOR WHICH LIABILITY CANNOT BE DISCLAIMED OR LIMITED UNDER APPLICABLE LAW.
28. Liquidated Damages. The Parties agree that it would be impracticable or extremely difficult to determine the actual damages resulting from certain acts or omissions of Tesla; therefore, the Parties further agree that those damages identified as "Liquidated Damages" represent a reasonable estimate of fair compensation for the foreseeable losses resulting from Tesla's acts or omissions, and such damages are not intended to be a penalty upon Tesla. The cumulative liquidated damages due for [] with respect to Systems purchased under a single Purchase Order shall be not exceed [] percent ([]%) of the total value of the Contract Price on such Accepted Purchase Order ("Aggregate Liquidated Damages Cap"). Once the Aggregate Liquidated Damages Cap has been reached Buyer shall have the right to terminate such Accepted Purchase Order pursuant to Section 23; provided that Buyer delivers such notice of termination to Tesla within thirty (30) days after the date on which the Aggregate Liquidated Damages Cap is exceeded.
29. General Indemnity. Each Party shall defend, indemnify and hold harmless the other Party, its Affiliates, and their respective directors, officers, partners, members, shareholders, agents, employees, subcontractors, successors and assigns (collectively, "Representatives") from and against any losses, damages, deficiencies, actions, judgments, interest, awards, penalties, fines, costs or expenses of whatever kind including reasonable attorneys' fees (collectively, "Losses") arising from (a) any claim, action, suit, proceedings, demand, investigation or assessment made or brought by any third party (excluding any of the foregoing brought by shareholders or employees of the indemnified Party) (collectively, "Claims") alleging injury or death of persons, or damage to or loss of property, to the extent caused by or arising from the negligent acts or omissions or acts of willful misconduct of the indemnifying Party or its Representatives in connection with any System, its use, or the performance of this Agreement; or (b) any failure by the indemnifying Party or its Representatives to comply with applicable laws (including, without limitation, the FCPA (as defined in Section 35) or any applicable export control laws). In addition, if Buyer resells a System in breach of Section 44, Buyer shall defend, indemnify and hold harmless Tesla and its Representatives from and against all Losses resulting from any Claim whatsoever that arises in connection with such breach (including, any acts or omissions of the purchaser and any subsequent transferee of a System).
30. Environmental Indemnity.
- (a) Tesla shall defend, indemnify, and hold harmless Buyer and Buyer's Representatives from and against all Claims arising out of or relating to any violations of any environmental laws by Tesla, including the release at, on, above, below or near the Installation Location in connection with the performance of this Agreement, of any hazardous materials to the extent such violation or release relates to (i) pre-existing hazardous materials or hazardous materials brought to the Installation Location by Buyer or anyone for whom Buyer is legally responsible (other than Tesla or its subcontractors), in either case whose presence and location were previously made known to Tesla by Buyer and that were released on the Installation Location by Tesla or its subcontractor, or (ii) hazardous materials brought to the Installation Location by Tesla or its subcontractor that are released by Tesla or its subcontractors.
- (b) Buyer shall defend, indemnify, and hold harmless Tesla and its Representatives from and against any and all Claims made against Tesla and/or any of its Representatives in connection with or arising from (i) pre-
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existing environmental conditions, including pre-existing hazardous materials, on the Installation Location (except those subject to Tesla indemnity in Section 30(a)), (ii) any releases of hazardous materials other than those for which Tesla is responsible under this Agreement, and (iii) any violations of any permits or environmental laws by Buyer or end user.

31. IP Indemnity.

- (a) Tesla shall indemnify, defend and hold harmless Buyer and its Representatives from any Losses arising out of any Claim alleging that a System infringes the intellectual property rights of a third party. However, Tesla shall have no obligation to indemnify Buyer or any of its Representatives to the extent the Claim arises out of: (a) use of the System in combination with any other products, materials or equipment not expressly authorized by Tesla in circumstances where the infringement would have been avoided by the use of the System not so combined; or (b) any modifications or changes made to the System other than by Tesla or directed by Tesla, in circumstances where the infringement would have been avoided without such modifications or changes. Without limiting Tesla's indemnification obligations herein, if a Claim for infringement or alleged infringement of any intellectual property rights is made, Tesla may, at its own expense, (i) modify any or all of the intellectual property rights so as to avoid the infringement or the alleged infringement; or (ii) take such other action as Tesla deems reasonable to avoid or settle such Claim in accordance with Section 32, and this shall be the sole and exclusive remedy available to Buyer in respect of such Claim.
- (b) Buyer shall indemnify and hold harmless Tesla and its Representatives from and against any and all Claims: (i) alleging infringement of any intellectual property right involving a particular design, process or product of a particular manufacturer or manufacturers required or specified by Buyer or where the copyright violations are contained in drawings, specifications or other documents prepared or provided by Buyer or others for whom Buyer is responsible, or (ii) involving (A) any Buyer modification (directly or indirectly), use or reuse of the work product, (B) use of the System in combination with any other products, materials or equipment not expressly authorized in writing by Tesla in circumstances where the infringement would have been avoided by the use of the System not so combined; or (C) any modifications or changes made to the System other than by Tesla or directed by Tesla, in circumstances where the infringement would have been avoided without such modifications or changes.

32. Indemnification Procedures. The indemnified Party will give the indemnifying Party prompt written notice of any claim for which indemnification is sought under Section 29, 30 or 31. Failure to give prompt notice will not diminish the indemnifying Party's obligations under this Section to the extent such failure does not materially prejudice the indemnifying Party's ability to defend the claim. The indemnifying Party shall control the defense of the claim, and the indemnified Party may participate in the defense at its own expense with counsel of its choice. The indemnified Party shall make available information and assistance as the indemnifying Party may reasonably request, at the indemnifying Party's expense. The indemnifying Party may not, without the prior written consent of the indemnified Party, consent to any judgment or settlement that (a) provides for injunctive or other non-monetary relief affecting the indemnified Party or its Representatives or (b) does not provide for an unconditional and full release of the indemnified Party and its Representatives and does not diminish any rights of the indemnified Party under this Agreement or result in additional fees or charges to the indemnified Party. If the indemnifying Party, within a reasonable time after receipt of a request for indemnification, fails to take reasonable steps to defend indemnified Party or its Representative against a claim, the indemnified Party may undertake the defense of such claim without waiving its rights and remedies under this Agreement.

33. Environmental Attributes. Tesla hereby waives and disclaims any rights to any Environmental Attributes as part of the transaction relating to any Systems sold to Buyer pursuant to this Agreement; all Environmental Attributes shall belong to Buyer or Buyer's Affiliates. "Environmental Attributes" means any and all credits, tradeable credits or certificates, benefits, incentives, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from or installation of the System or services purchased under this Agreement. Environmental Attributes include but are not limited to: (a) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SO_x), nitrogen oxides (NO_x), carbon monoxide (CO) and other pollutants identified now or in the future; (b) any avoided emissions of carbon dioxide (CO₂), methane (CH₄) and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere or that are subject to reporting pursuant to 40 CFR Part 98; (c) investment and/or production tax credits associated with the

construction or operation of the energy projects and other financial incentives in the form of credits, reductions, or allowances associated with the System that are applicable to a state or federal income or other taxation obligation; (d) reporting rights to these avoided emissions in compliance with federal or state law, if applicable, and to a federal or state agency or any other party including without limitation those reporting rights accruing under Section 1605(b) of The Energy Policy Act of 1992, 42 U.S.C. 13385(b), and the rules promulgated thereunder, and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program; and (e) state incentives, such as the Self Generation Incentive Plan (SGIP) in California or other similar or like programs in other states, cities, municipalities, utilities, school districts or other similar entities.

34. General Compliance with Laws; Approvals. Each Party shall comply with all laws applicable to the performance of this Agreement, including those laws applicable to each Party's use, sale and/or export of the goods and/or Included Technical Support purchased under this Agreement. Buyer shall obtain all approvals, certifications, licenses and permits required by any applicable law or governmental authority (collectively, "Approvals") in connection with the purchase, installation and use of any System. Tesla shall obtain all Approvals with respect to any System that are required on a nationwide basis in the USA, as at the Purchase Order Effective Date identified in that Accepted Purchase Order.
 35. Anti-Bribery Laws. Each Party shall comply with all national or international anti-bribery laws applicable to it, including without limitation the Foreign Corrupt Practices Act of 1977 (the "FCPA") and shall, at all times during the term of this Agreement, remain in compliance and maintain appropriate policies and procedures to ensure ongoing compliance with all such laws. As of the Effective Date, (a) neither Party has any employees who are foreign officials as defined under the FCPA, and (b) no foreign official as defined under the FCPA has any legal or beneficial interest in a Party (or, if a Party or its direct or indirect parent company is a publicly listed company, a more than 5% legal or beneficial interest in such Party). Each Party shall promptly notify the other Party in writing in the event any of the foregoing representations would be untrue if made by Buyer at any time during the Term. Each Party acknowledges that any violation of this Section 35 constitutes just cause for immediate termination of this Agreement by the other Party.
 36. Economic Sanctions Laws; Export Control Laws; End-User Statement. Buyer shall not (a) directly or indirectly export, re-export or otherwise transfer any System or any part thereof or (b) broker, finance or otherwise facilitate any transaction involving any System, in violation of any economic sanctions laws administered by the Office of Foreign Assets Control of the U.S. Treasury Department or any other governmental authority imposing economic sanctions and trade embargoes against designated countries, entities or persons. Buyer shall not, and shall not permit any third parties to, directly or indirectly, export, re-export or release any System, any part thereof, or any software, documentation or related technical data included with or contained in any System, in violation of applicable export control laws.
 37. Ethics and Code of Conduct. Tesla agrees to adhere to the Code of Business Ethics, which may be updated from time to time, as set forth in: https://tesla-cdn.thron.com/static/KEJJUV_Code_of_Business_Conduct_and_Ethics_rev_12.12.2017_UDJLCE.pdf.
 38. Governing Law; Dispute Resolution; Venue. This Agreement will be governed by and interpreted in accordance with California law. The Parties hereby agree that United Nations Convention on Contracts for the International Sale of Goods will not apply to this Agreement. Any dispute arising from or relating to this Agreement shall first be promptly referred to the Parties' senior level management for resolution. In the event the Parties' senior level management are unable to resolve any such dispute within twenty (20) days after referral, then either Party may take such dispute to binding arbitration in accordance with the then-current Streamlined Arbitration Rules of the Judicial Arbitration and Mediation Services ("JAMS"). The existence, content and result of the arbitration shall be held in confidence by the Parties, their representatives, any other participants and the arbitrator. The arbitration will be conducted by a single arbitrator selected by agreement of the Parties or, failing such agreement, appointed in accordance with the JAMS rules. The arbitration shall be conducted in English and in Santa Clara, California. Each Party will bear its own expenses in the arbitration and will share equally the costs of the arbitration; provided, however, that the arbitrator may, in their discretion, award reasonable costs and fees to the prevailing Party. Judgment upon the award rendered in the arbitration may be entered in any court of competent jurisdiction. In the event that any dispute in arbitration under this Agreement and any Accepted Purchase Order is substantially the same or involves common issues of law or fact (which may include, but not by way of limitation, matters involving other agreements related to the System), either Party shall be entitled to require that any such dispute be consolidated with the relevant arbitration pursuant hereto, and the other Party shall permit, and cooperate in,
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such consolidation. Notwithstanding the foregoing, each Party will have the right to apply at any time to a judicial authority for appropriate injunctive relief in connection with a breach by the other Party of its obligations in [Section 25](#), and by doing so will not be deemed to have breached its agreement to arbitrate or to have impaired the power reserved to the arbitrator.

39. Cumulative Remedies. Except as set out in [Section 40](#), all rights and remedies provided under this Agreement are cumulative and not exclusive, and the exercise by either Party of any right or remedy does not preclude the exercise of any other rights or remedies that may now or subsequently be available at law, in equity, by statute, in any other agreement between the Parties or otherwise.
 40. Certain Exclusive Remedies. The Parties understand and agree that Buyer's rights under the Manufacturer's Limited Warranty for any System are Buyer's exclusive remedies for the events or circumstances specified therein.
 41. Force Majeure. Neither Party shall be liable to the other Party, nor be deemed to have breached this Agreement, for any failure or delay in performing any non-monetary obligation under this Agreement if and to the extent such failure or delay is caused by or results from acts or circumstances that are not reasonably foreseeable and beyond the reasonable control of such Party, including, without limitation, acts of God, flood, fire, earthquake, extreme weather, explosion, pandemics, epidemics, government action, war, terrorist threats or acts or other civil unrest, lock-outs, strikes or other labor disputes (each, a "Force Majeure Event"), and shall include the inability or delay in obtaining supplies of adequate or suitable materials or delays by carriers in each case where caused by a Force Majeure Event. Notwithstanding the foregoing in no event shall a Party be entitled to relief under this Section for any of the following: changes in import duties, changes in import regulations, or general changes in market conditions for BESS and BESS Components, materials, or labor.
 42. Entire Agreement; Severability. This Agreement will be deemed to have been written by Parties, constitutes the entire agreement between the Parties regarding its subject matter and supersedes all prior agreements, representations and understandings, oral or written, between the Parties regarding its subject matter. If any provision of this Agreement is held by a court of competent jurisdiction to be illegal or unenforceable, such provision shall be interpreted so as to best accomplish the objectives of the original provision and the remaining provisions of this Agreement shall remain in full force and effect.
 43. Amendment; Modification; Waiver. No amendment or modification of this Agreement or an Accepted Purchase Order is effective unless it is in writing and signed by each Party. No waiver by either Party of any provision of this Agreement is effective unless set forth in writing and signed by such Party. No failure to exercise, or delay in exercising, any right or remedy arising from this Agreement operates as a waiver thereof. No single or partial exercise of any right or remedy hereunder precludes any other or further exercise of that right or remedy or the exercise of any other right or remedy.
 44. Resale; Assignment.
 - (a) Buyer may transfer title to the System prior to its installation and commissioning (whether to resellers, distributors, installers or end users) provided that: (i) if the applicable Accepted Purchase Order Contract Price is not paid in full at the time of such transfer, Tesla retains its first-priority security interest as set forth in [Section 10\(a\)](#); (ii) such resale or transfer does not limit or modify Buyer's obligations under this Agreement and the applicable Accepted Purchase Order; (iii) Buyer remains the primary point of contact for the applicable System until completion of commissioning; and (iv) such transfer or resale is not to a direct competitor of Tesla engaging in the manufacture and sale of battery energy storage systems. This Section does not prohibit Buyer from entering into an agreement with an installer or end user prior to installation and commissioning of the System which provides that in connection with any permitted assignment under this Agreement, title to the System shall transfer to the installer or end user following installation and commissioning.
 - (b) Subject to [Section 44\(c\)](#), neither Party may assign its right or obligations under this Agreement or any Accepted Purchase Order without the prior written consent of the other Party, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, Buyer may assign this Agreement or any Accepted Purchase Order as collateral in connection with its financing activities and the Manufacturer's Limited Warranty for any System shall transfer in accordance with its terms to any person to whom Buyer resells that System in accordance with [Section 44\(a\)](#). Any purported assignment or delegation in violation of this [Section 44\(b\)](#) is null and void. This Agreement shall be binding upon and inure to the benefit of and be enforceable by the respective successors and permitted assigns of the Parties.
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- (c) Each Party may (i) assign this Agreement to a successor in interest following a merger, acquisition or corporate reorganization (provided, that in the case of Buyer as assignor such assignee shall not be a direct or indirect competitor of Tesla with respect to the provision of battery energy storage equipment or maintenance services), and (ii) without the other Party's consent, collaterally assign this Agreement as security to or as part of any factoring arrangement with, any financing party; provided, however, that no assignment of this Agreement pursuant to the foregoing subsection (ii) shall release the assignor from its obligations and liabilities under this Agreement. A permitted assignee under this Section 44(c)(ii) shall be bound by the obligations of this Agreement upon consummation of a foreclosure of its security interest and shall, upon the other Party's request, deliver a written assumption of assignor's rights and obligations under this Agreement to the other Party.
45. No Third-Party Beneficiaries. This Agreement is for the sole benefit of the Parties and their respective successors and permitted assigns. Nothing herein 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. Claims by non-parties indemnified pursuant to this Agreement may only be brought by a party to this Agreement.
46. Notices. All notices under this Agreement shall be in writing and shall be deemed given (a) if sent by courier, on the date when left at the address of the recipient if such date is a Business Day or on the next Business Day if such date is not a Business Day and (b) if sent by email, upon receipt by the sender of an email confirming receipt of the notice by the recipient (in which case the email will be deemed received on the date it was actually received if such date is a Business Day, or on the next Business Day if such date is not a Business Day). An automatic "read receipt" shall not constitute confirmation of receipt for purposes of this Section. In each case, notices shall be sent to the Notice Address given for Tesla and Buyer in the Key Terms, or such other address as either Party may notify the other Party in writing from time to time. Nothing in this Section shall be construed to restrict the transmission of routine communications between representatives of Buyer and Tesla.
47. Expiry; Survival. Provisions of this Agreement which by their nature contemplate or govern performance or observance subsequent to the termination or expiration of this Agreement shall survive such termination or expiration; provided, that all warranties and licenses granted by Tesla to Buyer pursuant to an Accepted Purchase Order shall terminate upon Tesla's termination for Buyer's default based on Buyer's failure to pay Tesla the Contract Price in an Accepted Purchase Order in accordance with this Agreement.
48. Counterparts. This Agreement may be signed in duplicate originals, or in separate counterparts, which are effective as if the Parties signed a single original. A .pdf of an original signature or electronically signed version transmitted to the other Party is effective as if the original was sent to the other Party.
49. Representations.
- (a) Each Party represents and warrants to the other Party that (a) it is a legal entity, duly organized and in good standing under the laws of jurisdiction of incorporation; (b) this Agreement constitutes a legal, valid and binding obligation of such Party enforceable in accordance with its terms; and (c) the execution, delivery and performance of this Agreement (i) is within its powers, (ii) has been duly authorized by all requisite action and (iii) will not violate any agreement, commitment, certificate or other document to which it is a party or by which any of its assets may be bound or affected.
- (b) Buyer further represents and warrants to Tesla that (i) all financial information that it has provided to Tesla is true and accurate and fairly represents Buyer's financial position as at the date it was provided and (ii) it has all rights and consents required for Tesla to remotely monitor performance of the System.
50. Affiliate; Business Day. For purposes of this Agreement, (a) "Affiliate" means, with respect to a Party, an entity that controls, is controlled by or is under common control with such Party; (b) "control" means possessing, directly or indirectly, the power to direct or cause the direction of the management, policies or operations of an entity, whether through ownership of voting securities, by contract or otherwise; and (c) "Business Day," means any day other than weekends and days when banks are not generally open for business in San Francisco, California.

Information in this document (indicated by brackets) has been redacted pursuant to Item 601(b)(10)(iv) of Regulation S-K because such information is not material and is private or confidential.

**MASTER SUPPLY AGREEMENT
FOR PURCHASE AND SALE OF ENERGY STORAGE EQUIPMENT**

By and Between

Powin Energy Corporation

(“Supplier”)

And

Stem, Inc.

(“Customer”)

MASTER SUPPLY AGREEMENT

This Master Supply Agreement (together with all exhibits, schedules, purchase orders, and annexes hereto, this “Agreement”) is made and entered into as of September 14, 2020 (“Agreement Effective Date”) by and among Powin Energy Corporation, a Nevada corporation, with its principal place of business located at 20550 SW 115th Ave, Tualatin, OR 97062 (“Supplier”), and Stem, Inc., a company duly organized and existing under the laws of Delaware, located at 100 Rollins Road, Millbrae, CA 94030 (“Customer” or “STEM”). Supplier and Customer may, hereinafter, be referred to individually as a “Party” or collectively as the “Parties”. This Agreement sets forth the terms and conditions for the purchase and sale of the Products (as defined below). Capitalized terms used but not defined herein shall have the meanings assigned to them in the Exhibits hereto.

AGREEMENT

1. Scope of Agreement

1.1 Products Covered. Customer may purchase one or more of the products listed on **Exhibit A** attached hereto or as otherwise mutually agreed in writing by the Parties (the “Products”), subject to the terms and conditions contained herein. This Agreement shall govern the terms of all Purchase Orders (defined below) for Products regardless of whether such Purchase Order expressly references this Agreement. “Products” shall refer to the entire energy storage system unless context requires otherwise. Certain defined terms as used herein may be defined in the Exhibits, such as in the Warranty (defined below).

1.2 Non-exclusivity. This Agreement is not exclusive, meaning that Customer may purchase similar products from manufacturers or suppliers other than Supplier or its affiliates.

1.3 Document Priority. In the event of a conflict between this Agreement and a Purchase Order document, the Purchase Order shall control.

2. Products and Order Placement

2.1 Purchase Orders. From time to time, Customer may place orders to buy Products from Supplier, subject to the terms and specifications of such order (each, a “Purchase Order” or “PO”), the form of which is attached hereto as **Exhibit D**. Supplier shall accept or reject in writing a Purchase Order received from Customer as soon as possible, but in no event later than ten (10) business days after receipt of such Purchase Order, deeming such document an “Accepted Purchase Order” by countersigning such Purchase Order or providing a Purchase Order confirmation document, in either case without modification of the Purchase Order terms. Supplier’s failure to respond to a Purchase Order within the preceding time period shall be considered a rejection of such Purchase Order. If the Purchase Order cannot be accepted or rejected within ten (10) business days, then Supplier shall notify Customer as soon as possible, but in no event later than ten (10) business days after receipt of such Purchase Order, and shall provide the amount of additional time that Supplier will require to adequately assess the request; provided, at any time after the ten (10) business day period Customer may withdraw a pending Purchase Order prior to its acceptance in writing by Supplier. Except as expressly set forth in this Agreement, once Supplier accepts a Purchase Order, the Purchase Order shall not be modified without the written consent of both Parties. For purposes of this Agreement, all references to “business day” shall mean any day except a Saturday, Sunday, or an observed federal holiday in the United States.

2.2 Lead-times. With respect to Purchase Orders for Products listed in **Exhibit A**, Supplier shall deliver such Products within twenty-six (26) weeks to U.S. West Coast port of entry, twenty-eight (28) weeks to U.S. East Coast port of entry, and thirty (30) weeks to Toronto, Canada from the date of Supplier’s receipt of the initial payment milestone set forth in the Purchase Order (the “Standard Lead

Times”). Customer may submit a Purchase Order specifying a shorter lead time, and Supplier may accept or reject such Purchase Order at its sole discretion, provided that if Supplier accepts such Purchase Order, Supplier agrees to be bound by the agreed Guaranteed Delivery Date(s) (as defined below) in such Purchase Order, and such Purchase Order shall be considered to be placed under Standard Lead Times. With respect to Purchase Orders for any Products not listed in **Exhibit A**, such Products shall have lead-times as agreed to by the Parties as set forth in the respective Purchase Order.

2.3 Forecasts. Every three (3) months, on a predetermined schedule mutually agreed by the Parties, Customer shall provide to Supplier a non-binding forecast of the Products that Customer anticipates ordering from Supplier during the following six (6)-month period (“Order Volume Forecast”). Customer shall make all reasonable efforts to ensure the accuracy of the Order Volume Forecast.

3. **Pricing and Taxes.**

3.1 Pricing. The pricing set forth in **Exhibit C** shall remain valid during the Pricing Period as defined in **Exhibit C**. As set forth in **Exhibit C**, the prices for the Products sold under Purchase Orders issued by Customer shall vary based on their kilowatt hour (“kWh”) alternating current (“AC”) capacity and the cumulative volume of Products purchased by Customer. All kWh-based volume pricing shall be based on the “kWh AC Nameplate Capacity” of such Product sold under this Agreement unless it is explicitly specified as kWh DC. For a Purchase Order, the “Purchase Order Price” shall mean the total amount owed under a Purchase Order for all Products under such Purchase Order, including the upfront cost of the Products and Warranty associated with such Products if such Warranty costs are paid upfront (as opposed to annually during operation of the Product via the LTSA, as defined in Section 11.1) and are listed in the Purchase Order. Subject to Section 3.4, the “Product Price” is the equipment price for a particular Product purchased, excluding any warranty payments and/or maintenance fees. The Purchase Order Price, Product Price, and all prices herein are denominated in United States Dollars unless otherwise noted.

3.2 Changes in Prices. The Purchase Order Price shall be based on the terms of **Exhibit C** and shall be fixed once the Purchase Order is accepted, subject to the Annual Pricing Adjustment set forth in **Exhibit C**. The limitation set forth in the immediately preceding sentence shall not preclude the application or collection of liquidated damages or other adjustments as expressly allowed under this Agreement.

3.3 [].

3.4 Taxes. Unless otherwise agreed in an Accepted Purchase Order; (i) the applicable Product Price(s) and the Purchase Order Price shall include all non-U.S. taxes applicable to the Products, and taxes on Supplier’s income and payroll; and (ii) the applicable Product Price(s) and the Purchase Order Price excludes all sales and/or use taxes of any jurisdiction of the United States with respect to the purchase and sale of the applicable Products (such U.S. sales/use taxes, the “Customer Taxes”). Customer Taxes shall be the sole responsibility of Customer. If applicable, Customer shall provide Supplier a reseller’s certificate or other tax exemption documentation prior to Delivery of the applicable Products. If Supplier does not timely receive such tax exemption documentation from Customer, Supplier may invoice Customer for any applicable Customer Taxes which Supplier is required to collect and remit such Customer Taxes to the applicable taxing authority.

4. **Shipment and Delivery.**

4.1 Incoterms. Unless otherwise agreed in an Accepted Purchase Order, Supplier will ship Products according to the delivery terms set forth in **Exhibit C** and prices for Product shall reflect all costs of such delivery terms in accordance with **Exhibit C**.

4.2 Title and Risk of Loss. Title to the Products shall transfer to Customer at the earlier to occur of (i) delivery of the Products to the Delivery Location or (ii) Supplier's receipt of payment in full of the applicable Product Price. Supplier shall transfer title free and clear of all liens, claims, and encumbrances, except for those liens or security interests which Supplier maintains in the Products pending the receipt of payment in full from Customer. If any third-party liens or encumbrances arise in connection with the Products prior to the delivery of the Products to the Customer, Supplier shall, within ten (10) business days of learning of such liens or encumbrances, remove any such liens or encumbrances. Risk of loss to the Products shall pass to Customer upon delivery of the Products to the Delivery Location. In the case that Products are delivered in multiple pieces, parts, or components, risk of loss with respect to each piece, part, or component shall transfer as described in this Section 4.2. Title and risk of loss with respect to Products or components thereof that are rejected by Customer pursuant to Section 4.4 shall transfer back to Supplier at the Supplier's pick up of the rejected Products or components thereof, which shall take place within ten (10) business days of such rejection. Customer is solely responsible for providing adequate insurance for the Products when Supplier makes the Products available for unloading at the Delivery Location.

4.3 Delivery; Delivery Delay; Delivery Delay Damages. "Deliver", "Delivered" or "Delivery" means that Supplier has transported the Products to the Delivery Location and made such Products available to Customer (or its representatives or contractors) for unloading. Delivery Location means the location specified on an Accepted Purchase Order, which location may be the location where the Product will be installed and Commissioned ("Project Site") or any other location identified on an Accepted Purchase Order (collectively, the "Delivery Location"). Unless Delivery is rescheduled in accordance with Section 5.1, Delivery shall take place no later than the applicable delivery date(s) listed on the Accepted Purchase Order for the applicable Products (each such date, a "Guaranteed Delivery Date"). Unless otherwise set forth on an Accepted Purchase Order, Customer shall have the Delivery Location ready for Delivery no later than the applicable Scheduled Delivery Date. "Scheduled Delivery Date" means each date beginning on which Supplier is entitled to make Delivery of the applicable Product or Product Component, as set forth in an Accepted Purchase Order.

(a) Customer, at its own expense, shall be responsible for unloading the Products at the Delivery Location. Supplier shall be entitled to begin Delivery as of the applicable Scheduled Delivery Date. Upon receipt of the Product at the Delivery Location, Customer shall cause the Product to be unloaded within two (2) hours per truck after arrival, provided Supplier has included the Delivery Documentation required under Section 4.6. Customer shall be liable to Supplier for any demurrage or standby charges arising out of Customer's failure to do so.

(b) [].

(c) Each Guaranteed Delivery Date shall be adjusted on a day-for-day basis upon the occurrence and during the continuation of any Force Majeure event or any Customer-Caused Delay. "Customer-Caused Delay" means: (i) any delays by Customer in making any payment, non-compliance by Customer with the Accepted Purchase Order (including the Division of Responsibility attached thereto); or (ii) failure by Customer to have the Delivery Location prepared for Delivery by the applicable Scheduled Delivery Date.

(d) [].

(e) In addition to the relief described above, if Customer does not have the Delivery Location(s) prepared for Delivery by the applicable Guaranteed Delivery Date, Customer shall be liable for any demurrage, storage, or standby charges incurred by Supplier until the date the Delivery Location(s) are prepared for Delivery. Such charges shall be subject to a cost-plus Change Order. If Customer fails to have the Delivery Location(s) prepared for Delivery within four (4) weeks after the applicable Guaranteed Delivery Date, Customer shall provide written notice of such failure. Supplier may

then provide written notice to Customer requiring Customer to provide, within five (5) business days of such notice, a secondary delivery location reasonably proximate to the original Delivery Location to which Supplier may Deliver the Product. Upon such Supplier notice, the secondary delivery location shall be deemed the "Delivery Location" for purposes of Section 4.4 and the other provisions of this Agreement. In addition to the demurrage, storage, or standby charges set forth above, Customer shall reimburse Supplier for the incremental costs of changing the Delivery Location.

4.4 Inspection.

(a) Upon arrival and unloading of each shipment of Products or Product Components at the Delivery Location, Customer shall have [] ("Product Acceptance Period") to: (i) conduct a representative visual inspection of the Products or Product Components Delivered in such shipment, and (ii) conduct a count of the quantity of Products or Product Components Delivered in such shipment. Customer shall record any discrepancies in quantity, type, damage or nonconformity in writing on the packing slip for such shipment and request that the carrier's agent countersign such record of discrepancies. Customer shall also photograph any damaged exterior packaging before opening the Damaged Products discovered during the course of such inspection and provide copies of such photographs to Supplier as supporting documentation included in the Rejection Notice (as defined below).

(b) Any shortage in quantity of Products delivered shall be hereinafter referred to as a "**Shortage**." Any Product not in conformity with the requirements set forth under **Exhibit A** and **Exhibit B** at Delivery shall be hereinafter referred to as "**Damage**" or "**Damaged**". If Customer alleges the existence of any Shortage or Damage, Customer shall provide written notice to Supplier prior to expiration of the Product Acceptance Period setting forth reasonable evidence establishing the existence of Shortage or Damage, including without limitation the quantity and type of related Products, the date the related Products are Delivered or are supposed to be Delivered and supporting documentation of such allegations ("**Rejection Notice**"). Customer shall make all Damaged Products that are the subject to a Rejection Notice available at all reasonable times for inspection at the Delivery Location by Supplier's authorized representatives and shall provide all assistance to such authorized representatives as may reasonably be requested in conducting such inspection.

(c) For any Products subject to a Rejection Notice, Supplier shall at its sole discretion: (i) repair such Damage free of charge to like new condition; (ii) replace the Damaged Products; or (iii) for any Shortage, deliver additional Products to cure same. Supplier shall pay all costs associated with transporting the Damaged Products to and from the Delivery Location. During any period where the Damaged Products remain in the possession of Customer, Customer shall make commercially reasonable efforts to protect such Damaged Products from further damage, theft, or other loss, subject to Supplier's responsibility for the direct costs therefor; provided, however, Supplier shall be responsible for all costs, including the costs of storage, transportation to and from the Delivery Location, labor, equipment, and removal, directly caused by the rejection of any Products by Customer. Title to any replaced Damaged Products shall revert to Supplier upon Supplier's pick up of such replaced Damaged Products.

(d) If Customer fails to provide Supplier a Rejection Notice within the Product Acceptance Period for all or any portion of the Products or Product Components Delivered, such Products shall be deemed accepted by Customer as of the date of its Delivery to the Delivery Location; provided, however, for the avoidance of doubt, the inspection, acceptance and/or rejection of any portion of the Products by Customer pursuant to this Section 4.4(d) shall not reduce or diminish Supplier's Warranty obligations set forth under Article 11 with respect to such Products.

(e) If Customer discovers Damage to any Product after the Product Acceptance Period, which could not have reasonably been discovered during the Product Acceptance Period, and prior to the earlier of (i) installation of such Product, and (ii) Commissioning, then Customer shall provide

written notice to Supplier setting forth reasonable evidence establishing (1) the existence of such Damage, including without limitation the quantity and type of Damaged Products, and (2) that such Damage was caused by Supplier. If such Damage prevents Customer from completing its scope of work in the Division of Responsibility, Supplier agrees to commence to repair such Damaged Products (or, if applicable, commence to Deliver replacement Products to the Delivery Location) within five (5) business days of receipt of Customer's applicable notice of Damage. If such Damage does not prevent Customer from completing its scope of work in the Division of Responsibility, Supplier shall repair or replace the Damage Products prior to or during Commissioning of the Product.

(f) **On-Site Damage.** To the extent damage to the Products occurs as a result of Supplier's Product installation, Commissioning, or any other Project Site activities of Supplier or its employees, agents, or subcontractors, Supplier shall be responsible for all such damage. If Customer discovers such damage prior to completion of Commissioning, and provided that the Customer can provide solid evidence to prove it was Supplier's employees, agents or subcontractors that caused such damage, Supplier shall fix or replace such damaged Product prior to or during Commissioning of the Product. Except such Supplier-caused damage, Customer shall be responsible for any damage after Delivery or caused during inspection in each case that is not covered under the Warranty. If such damage is discovered after Commissioning and covered under the Warranty, then Customer may file a claim under the Warranty.

4.5 **Insurance.** Throughout the term of this Agreement and while any Product sold under this Agreement is still covered under the Warranty, Supplier shall comply with the insurance requirements stated in **Exhibit F-1**, and Customer shall comply with the insurance requirements stated in **Exhibit F-2**.

4.6 **Delivery Documentation.** Supplier shall provide a separate bill of lading or similar shipping documentation for each Delivery (the "Delivery Documentation"). The Delivery Documentation shall be physically affixed to the packaging of the Products and a copy emailed to Customer prior to Supplier's invoice for such Delivery. The Delivery Documentation shall include part numbers and quantities of each item or Products delivered.

4.7 **Product Installation and Commissioning.** Supplier agrees to perform the on-site Product installation as described in the Division of Responsibility ("DOR") and complete a successful Capacity Test as set forth in the Performance Guarantee attached as **Exhibit E-2** hereto ("Commissioning") of each Product at the Project Site on the date directed by Customer (the "Scheduled Commissioning Date"), provided that Customer provides Supplier at least twenty (20) days' prior written notice for remote battery-only Commissioning, and thirty-five (35) days' prior written notice if the scope of Commissioning described in the Statement of Work extends beyond the battery. As part of such installation and Commissioning, Supplier shall, no later than one (1) day following completion of such services, have removed any and all debris related to such activities from the Project Site if the garbage collection service is elected by the Customer. The Scheduled Commissioning Date shall be adjusted on a day-for-day basis upon the occurrence and during the continuation of any Force Majeure event or any Customer-Caused Delay. [].

4.8 **Equipment Commissioning Certificate.** Upon completion of Commissioning, Supplier shall complete and provide to Customer a Commissioning Certificate in the form attached as Exhibit H hereto.

5. **Rescheduling; Changes; Cancellations.**

5.1 **Rescheduling.** Customer may reschedule Delivery under a Purchase Order, provided that a fee ("Rescheduling Fee") may apply based on the timing of the rescheduling request and the applicable Guaranteed Delivery Date, as defined in the following table:

Rescheduling Fee Schedule	
Timing of Customer's Rescheduling Request	Rescheduling Fee (% of Product Price of rescheduled Product)
More than [] prior to the Scheduled Delivery date	[]%
[] prior to the Scheduled Delivery Date	Requires written permission of Supplier, with Rescheduling Fee to be determined pursuant to a Change Order

For minor scheduling changes, Supplier may in its discretion approve a rescheduling fee lower than as set forth in the above table. The Scheduled Delivery date for any Products rescheduled at the request of Customer under this Section 5.1 (the "Rescheduled Delivery Date") shall not be rescheduled by Customer more than once per Purchase Order, and shall not be delayed by more than [] after the original Scheduled Delivery Date, without the written permission of Supplier. If the Rescheduled Delivery Date is more than [] after the original Scheduled Delivery Date, both Parties must mutually agree in writing that the rescheduling request is accepted. If the rescheduling request is denied by Supplier, it will then be Customer's decision if it would like to proceed with a rescheduling request within the time frames noted above, keep the Purchase Order unchanged, or cancel the Purchase Order for convenience under the procedures noted in Section 5.2 of this Agreement. Once a Rescheduled Delivery Date has been established following a rescheduling request, such new date shall be considered the Scheduled Delivery Date with respect to such Products and associated Purchase Order.

5.2 Cancellation for Convenience.

(a) After Supplier accepts a Purchase Order per Section 2.1, Customer may cancel such Accepted Purchase Order (in whole or in part) for convenience, for any reason, as set forth in this Section 5.2, and the Product in such cancelled Accepted Purchase Order shall be hereinafter referred to as a "Canceled Product". In the event of such cancellation for convenience, unless otherwise set forth on the applicable Purchase Order or Section 5.2(b), Customer shall pay to Supplier, as Supplier's sole and exclusive remedy, a fee ("Convenience Cancellation Fee") according to the following table and terms:

Convenience Cancellation Fee Schedule for Products with Standard Lead Times	
Timing of Cancellation	Convenience Cancellation Fee (% of Product Price of Canceled Product)
[]	[]%
[]	[]%
[]	[]%
[]	[]%

Convenience Cancellation Fee Schedule for Products <u>not</u> subject to Standard Lead Times	
Timing of Cancellation	Convenience Cancellation Fee (% of Product Price of Canceled Product)
More than [] prior to the Scheduled Delivery Date	[]%
Fewer than [] prior to, but more than [] prior to the Scheduled Delivery Date	[]%
Fewer than [] prior to the Scheduled Delivery Date	[]%

All payments previously paid to Supplier for any Canceled Product shall be applied toward the applicable Convenience Cancellation Fee.

(b) Upon receipt of a cancellation notice, Supplier shall use best efforts for [] to reallocate the Canceled Products to a different Purchase Order or different customer. If Supplier is able to reallocate such Canceled Products at a cost less than the applicable Convenience Cancellation Fee, then except for Supplier’s reasonable costs incurred reallocating the Canceled Products (along with any vendor fees associated therewith, the “Re-allocation Costs”) Customer shall not owe the Convenience Cancellation Fee applicable to the re-allocated Canceled Products. In such case, Supplier shall invoice Customer for the the Re-allocation Costs, if any. Customer’s payment of the Re-allocation Costs shall be due to Supplier within thirty (30) days of receipt of such invoice; or if such Re-allocation Costs are less than the amounts already paid by Customer for the Canceled Products, Supplier shall refund any excess payment amounts within thirty (30) days of the successful re-allocation of the Canceled Products.

(c) If, within [] of Customer’s cancellation notice, Supplier is unable to reallocate such Canceled Products, then the Convenience Cancellation Fee amounts set forth in the above table shall

apply to the Canceled Products, subject to a potential credit as set forth in Section 5.2(d). If payments already made by Customer for any Canceled Product exceed the applicable Convenience Cancellation Fees due for such Canceled Product, Supplier shall refund Customer the difference between the two amounts within thirty (30) days of such receipt of notice of cancellation. If payments already made by Customer for any Canceled Product are less than the applicable Convenience Cancellation Fees due for such Canceled Product, Supplier shall invoice Customer for the remaining amount due for the Convenience Cancellation Fee, which Customer shall pay within thirty (30) days of receipt of such invoice.

(d) [].

(e) The Parties agree that the Convenience Cancellation Fee is in the nature of Liquidated Damages set forth in Section 25.10.

5.3 Purchase Order Changes. Change Orders (defined below) related to Third-Party Equipment (defined below) or components and that result in increased cost will be invoiced to Customer at the actual Third-Party costs billed to Supplier plus an additional [] percent ([]%). For Change Orders requiring additional provision of Supplier's service or equipment, Supplier will invoice such services and equipment at Supplier's then current standard rate. For the avoidance of doubt, "Third-Party" means suppliers of Product Components not branded as "Powin" equipment and those Product Components denoted as "Third-Party Equipment" in the Statement of Work (e.g., MVT or PCS). Except as expressly set forth in this Agreement or the applicable Accepted Purchase Order, no changes may be made to an Accepted Purchase Order without the written consent of both Parties, as evidenced by a signed change order ("Change Order") substantially in the form of **Exhibit G**.

6. **Product Changes**. Supplier shall use commercially reasonable efforts to provide Customer with one hundred and eighty (180) days advance written notice of any major change in the form, fit, function, or design of the Product as used by the Customer. Notwithstanding the foregoing, Supplier may not change the specifications or design of any Product that is subject to an Accepted Purchase Order without Customer's prior written consent.

7. **Firmware Updates.**

7.1 Remote Access. Customer shall provide to Supplier at no cost to Supplier, secure remote internet access capability to the Project Sites. Such remote access shall supply reliability and data rates sufficient to enable Supplier to download firmware and software updates to the Products. Upon reasonable notice to Customer, Customer agrees to use commercially reasonable efforts to provide timely access to the Project Sites and Products for purposes of such updates. The use of "data diodes" shall not qualify as remote access.

7.2 Firmware Updates. Supplier shall provide to Customer (or its successors, assigns and the System Owners of any such Products) any updates to the software or firmware incorporated into the Products sold to Customer under this Agreement for no charge, and Supplier further agrees to install any such updates to the Products onsite at the then location of such Products (e.g. whether at the Project Site for deployed Products, onsite at a Customer-specified location for those yet to be deployed, etc.), provided that the Products are still covered by the LCW, in each case at Supplier's cost. If remote access is not provided or allowed, and Supplier is prevented from installing any updates in a timely manner, the LCW shall be deemed void.

8. **Invoicing and Payment**. Supplier shall provide a separate invoice for each Delivery. Each invoice shall include the following: Customer purchase order number, date of arrival of the Product at the Delivery Location, along with net terms for the payment being requested. Payment terms shall be in

accordance with **Exhibit C**. If an invoice is not submitted in accordance with the payment terms outlined in **Exhibit C**, then the date of distribution must also be noted on the invoice.

9. **Late Payment.** All payments that are not received by Supplier by the date such payment is due may be charged interest until paid in full at the rate of [] percent ([]%) per month of the overdue balance, or the maximum rate allowable by law, whichever is less. In the event that Customer's account is past due more than thirty (30) days, without limitation to Supplier's termination rights in Section 17, Supplier shall have the right to suspend deliveries under any Purchase Orders until all overdue monies are paid to Supplier.

10. **All Sales Final.** Subject to inspection per Section 4.4 or valid Warranty claims, all sales are final. Supplier is under no obligation under any circumstance to accept returns of Products, other than pursuant to a rejection per Section 4.4, a Product Recall under Section 11.6, and/or an applicable Warranty claim.

11. **Warranty and Product Failures.**

11.1 Product Warranty; Performance Guarantee. All Products covered by this Agreement will be warranted per the terms set forth in the Limited Commercial Warranty ("LCW") attached hereto as Exhibit E-1, and the Performance Guarantee attached hereto as **Exhibit E-2**, and if elected and purchased by Customer, the Long Term Services Agreement ("LTSA") attached hereto as **Exhibit E-3**, (the LCW and the Performance Guarantee, along with the LTSA if selected by Customer, collectively, to be defined as the "Warranty").

11.2 Warranty Assignment. Customer, upon the transfer of title to Product, may assign the Warranty in accordance with the assignment terms and conditions set forth in the Warranty.

11.3 [].

11.4 No Additional Warranties. Customer acknowledges and agrees that, except for a valid assignment of the Warranty by Customer to a third party, any other warranty that might be granted by Customer to a third party, with the exception of the OEM Warranties, does not bind Supplier in any manner and is not applicable between Supplier and such third party. Likewise, all limitations of the Warranty stated in this Agreement apply to an assignee of the Warranty to the extent such limitations would apply to the original Customer.

11.5 Specification Compliance. The description and specifications for the Products are set forth on **Exhibit B**, attached hereto or in the Accepted Purchase Order (the "Specifications"). Supplier shall ensure that, at the time of Commissioning, the Product provided by Supplier hereunder shall comply in all respects with the Specifications.

11.6 Product Recalls. If, prior to the end of the LCW Warranty Period (as defined in the LCW) Supplier and/or any governmental authority issues a recall notice that is generally applicable to the Product or Product Component, or Supplier otherwise recognizes the need for a recall even in the absence of external notice (any of the foregoing events, a "Recall"), then Supplier shall (a) promptly provide, within five (5) days of Supplier's learning of such Recall, written notice to Customer and to the current owner of the Product, if such owner is different from Customer according to Supplier's records (such owner, whether Customer or a subsequent third-party owner, the "System Owner"); (b) to the extent Supplier issues a Recall on a Product Component, cause such Recall to apply to the Products; (c) at its sole cost and expense, redesign, repair or replace as necessary the affected Products and/or Product Components on all affected Products; and (d) certify in writing to Customer (and each System Owner, as applicable) after any redesign, repair or replacement has been completed that such affected Product

complies with the Specifications, any applicable safety standards and requirements, and any directives of the applicable Recall.

11.7 [].

11.8 Augmentation Services Option. Customer may optionally choose to engage Supplier under the applicable LTSA to augment the Products to increase the Product capacity ("Augmentation Services"). The Augmentation Services shall include the necessary equipment replacement, including without limitation the cost of any Stacks. If Customer desires Augmentation Services for a Product, Customer shall select Augmentation Services at the time of such Product purchase, and the Accepted Purchase Order shall expressly set forth a line item for Augmentation Services. If Augmentation Services are selected, the applicable LTSA shall include an annex detailing the Augmentation Services.

12. **Particular Uses**. Customer acknowledges that the Products are not designed for, and Supplier has no desire to make Products available for, life support, critical care, medical, safety equipment, or similar applications where Product failure could result in loss of life or personal or physical harm. Accordingly, Supplier disclaims all liability, and Customer assumes all risks arising from any such or similar application of the Products.

13. **Maintenance and Support**.

13.1. Generally. Pursuant to the Warranty and LTSA, Supplier will provide ongoing maintenance and support for the Products during the term that Supplier has any obligations under the Warranty for such Products, including use and operation of the Products (including, without limitation, the batteries), maintenance of a parts depot sufficient for maintenance and support and as required to support the service levels and other obligations described in this Agreement, and the identification of and communication to Customer of information about potential defects in or maintenance needed for the Products. Such ongoing maintenance and support shall include all required physical inspections at the Product installation locations, stocking of spare parts, data monitoring and preventative and regular maintenance of the Products at the installation locations, including at least annual onsite inspection (or more frequently as needed or recommended by the Product Specifications or Warranty), as described in the LTSA.

14. **Intellectual Property; Branding**.

14.1 IP Ownership. Supplier retains ownership of all rights to designs, technical data, and any other intellectual property relating to the Products, and to any models, drawings, patterns, composites, molds, masks, fixtures, and tools used in making them; provided that Supplier grants to Customer in a Purchase Order, a worldwide, perpetual, non-exclusive, royalty-free, transferable right and license to use the intellectual property necessary for operation of the Product. Such license is limited to the extent that the intellectual property is required to operate, maintain and repair the Product, and may be terminable at the discretion of Supplier if Supplier terminates the applicable Purchase Order due to non-payment default by Customer for such Products.

14.2 Branding. Customer agrees that it will not alter or remove any Supplier trademarks on the Products sold under this Agreement under any circumstances provided that Customer is given a sample of Supplier's anticipated branding prior to Delivery. Customer will provide Supplier a set of branding requirements within thirty (30) days after the date of an applicable Purchase Order, and Supplier shall consider the branding requirements and take reasonable efforts to incorporate it into the final Products, provided custom branding requirements will be subject to a cost-plus Change Order.

15. **Indemnity.**

15.1 **Indemnity.** Each Party (the “Indemnifying Party”) shall indemnify, defend and hold harmless, the other Party, its affiliates, and its and their officers, employees, agents, successors, and assigns, (each an “Indemnified Party”) against any and all losses, damages, liabilities, deficiencies, actions, judgements, interest, awards, penalties, fines, costs or including reasonable attorneys’ fees and expenses (“Losses”) to the extent resulting from a claim, action, suit, proceeding, demand, investigation, or assessment made or brought by any person or entity (“Claim”) for: (a) any injury or death to any person, and (b) destruction of real or tangible personal property of third parties arising out of, or in connection with, an act or omission or negligence of the Indemnifying Party or its officers, employees, agents or subcontractors acting within the scope of employment of the Indemnifying Party; *provided*, that the Indemnifying Party shall not be required to defend, indemnify or hold harmless any Indemnified Parties from and against, and no Indemnified Parties shall be exculpated from, any claims to the extent caused by any Indemnified Party or arising from the breach of this Agreement by Indemnified Party or the negligence, gross negligence, bad faith or willful misconduct of Indemnified Party or any Indemnified Party affiliates or otherwise not attributable to Indemnifying Party. The Indemnified Party will give the Indemnifying Party prompt written notice of any Claim for which indemnification is sought. Failure to give prompt notice will not diminish the Indemnifying Party’s obligations under this Agreement to the extent such failure does not materially prejudice the Indemnifying Party’s ability to defend the Claim. The Indemnifying Party shall control the defense of the Claim, and the Indemnified Party may participate in the defense at its own expense with counsel of its choice. If the Claim is one that cannot by its nature be defended solely by the Indemnifying Party, then the Indemnified Party will make available information and assistance as the Indemnifying Party may request, at the Indemnifying Party’s expense. The Indemnifying Party may not, without the prior written consent of the Indemnified Party, (a) consent to the entry of any judgement or enter into any settlement that provides for injunctive or other non-monetary relief affecting the Indemnified Party, or (b) consent to entry of any judgement or enter into any settlement unless such judgement or settlement that provides for an unconditional and full release of the Indemnified Party and does not diminish any rights of the Indemnified Party under this Agreement or result in additional fees or charges to the Indemnified Party. If the Indemnifying Party, within a reasonable time after receipt of a request for indemnification fails to take reasonable steps to defend the Indemnified Party against a Claim, the Indemnified Party may undertake the defense of such Claim without waiving its rights and remedies under this Agreement.

15.2 **Intellectual Property Indemnity.** Supplier will at its expense defend or settle (at its option) any third-party Claim against Customer arising from the infringement of any patent, copyright, mask work right, trade secret, or other intellectual property right by Product in the United States, and will pay any final judgment entered against Customer in such claim, provided that Customer notifies Supplier in writing of such claim promptly after knowing of it and allows Supplier to control the defense and all related settlement negotiations and cooperates in its defense as requested by Supplier. Without limitation to Supplier’s obligations under this Section 15.2, if any court or administrative agency issues an injunction prohibiting the use of any Products sold under this Agreement, then Supplier shall modify or replace the affected Products so as to avoid further infringement, or obtain a license to cure an infringement, in its sole discretion. Supplier’s duty to defend and indemnify will not apply if the alleged infringement arises from the combination of the Products with any other goods or products not provided by or directed to be used by Supplier, or the modification of any Products (unless performed or directed by Supplier or its authorized representatives), or any unauthorized use of the Products by the Customer if the infringement would not have occurred but for such unauthorized use. Supplier shall not be responsible for any settlement made by Customer of an indemnifiable claim hereunder, unless such claim was settled with Supplier’s prior written consent.

16. **Confidentiality.** “Confidential Information” shall mean: (i) trade secrets or other proprietary or confidential information; (ii) other materials designated in writing as confidential by the disclosing Party at the time of disclosure; and (iii) oral or written information reasonably discernable to be confidential

information of the disclosing Party. Confidential Information will not include any information that is either known to the general public or to the industry, or known to, or in the possession of, a receiving Party prior to disclosure by the other Party, that is disclosed as required by law, or that is independently developed by such Party. If disclosure of such Confidential Information is required by law, the Party receiving such Confidential Information shall notify the other Party prior to such disclosure and cooperate with the other Party with any efforts to prevent or oppose such disclosure. Each Party agrees that it will not disclose to any third party any Confidential Information it obtains with respect to the other Party during or after the term of this Agreement except as expressly permitted hereunder, and that it will treat all such information as confidential and will use such information only for carrying out the purposes of this Agreement; provided that either Party shall be permitted to disclose Confidential Information to their respective counsel, advisers, investors, financing parties, and affiliates, provided that the aforementioned are subject to similar confidentiality obligations. The confidentiality obligations of the Parties hereunder shall continue during the term of this Agreement for a period of three (3) years from the date of disclosure of Confidential Information. For clarity, this Agreement and related documents shall be confidential. Neither Party shall issue any press release or other public announcement regarding this Agreement or the subject matter herein without the prior written consent of the other Party, unless otherwise required under applicable law.

17. Term and Termination.

17.1 Term. This Agreement shall remain effective for one (1) year (the “Initial Term”) and shall renew for successive one (1) year terms (any such term, a “Renewal Term” and collectively with the Initial Term, the “Term”) upon written agreement from both Parties. Either Party can terminate this Agreement effective at the end of the then-current Term by providing three (3) months’ prior written notice. For further clarity without limiting the foregoing, six (6) months prior to each subsequent calendar year under this Agreement, the Parties will begin negotiating a new pricing exhibit for such subsequent calendar year.

17.2 Supplier Defaults. The occurrence of any one or more of the following events shall constitute an event of default by Supplier hereunder (a “Supplier Event of Default”):

(a) Supplier fails to pay Customer any payment required under this Agreement which is not in dispute, and such failure continues for [] after receipt of written notice of such failure;

(b) Any representation or warranty of Supplier contained in this Agreement shall prove to be false or misleading at the time such representation or warranty is made and has an adverse effect on either Party’s ability to perform its obligations hereunder, and such false or misleading representation or warranty and adverse effect continues uncured for [] after receipt of written notice from Customer;

(c) Any assignment by Supplier not in conformity with Section 25.3;

(d) Supplier fails to deliver any Products within [] of the Guaranteed Delivery Date (as such date may be extended by any valid Force Majeure and/or Customer-Caused Delay);

(e) The maximum [] cap set forth in Section 4.3 is reached with respect to a Purchase Order;

(f) The maximum cumulative liquidated damages cap set forth in Section 25.10 is reached with respect to a Purchase Order; or

(h) any proceeding or petition is brought or filed by or against Supplier seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief with

respect to any present or future bankruptcy laws, and, in the event of a proceeding filed on an involuntary basis, such proceeding is not dismissed within [].

17.3 Customer Defaults. The occurrence of any one or more of the following events shall constitute an event of default by Customer hereunder (a “Customer Event of Default”):

(a) Customer fails to pay to Supplier any payment required under this Agreement which is not in dispute, and such failure continues for [] after receipt of written notice of such failure;

(b) Any representation or warranty of Customer contained in this Agreement shall prove to be false or misleading at the time such representation or warranty is made and has an adverse effect on either Party’s ability to perform its obligations hereunder, and such false or misleading representation or warranty and adverse effect continues uncured for [] after receipt of written notice from Supplier;

(c) Any assignment by Customer not in conformity with Section 25.3, that is not cured within thirty (30) days after receipt of written notice of such failure; or

(d) any proceeding or petition is brought or filed by or against Customer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief with respect to any present or future bankruptcy laws, and, in the event of a proceeding filed on an involuntary basis, such proceeding is not dismissed within [].

17.4 Default for Other Breach. If either Party materially breaches in the performance of its obligations hereunder (other than those breaches set forth in Sections 17.2 and 17.3, respectively), the breaching Party agrees to use commercially reasonable efforts to correct the breach within [] after written notice of such breach from the non-breaching Party. If such breach is not reasonably capable of cure within [] but such breach is reasonably capable of cure within [] after delivery of notice of such breach, then the breaching Party shall be afforded [] to cure said breach, if the breaching Party commences to remedy the breach within such [] period and thereafter diligently pursues such remedy until such breach is fully cured, but in no event later than such [] period. If any such breach is not corrected within the applicable cure period, then such breach shall be a default under the applicable Purchase Order and this Agreement.

17.5 Rights upon Termination. Upon a default by a Party as set forth in this Section 17, the non-defaulting Party at its option may, in addition to any other remedies it may have under this Agreement, or at law or in equity, terminate any Purchase Order(s) and/or this Agreement immediately upon written notice to the defaulting Party, provided that without limiting the preceding rights in this sentence; (i) in the event of a termination by Supplier of an Accepted Purchase Order for a Customer Event of Default under this Section 17, Supplier shall be entitled to at least the Convenience Cancellation Fee set forth in Section 5.2 with respect to undelivered Products under such terminated Accepted Purchase Orders, less any amounts paid to Supplier for such terminated undelivered Products; or (ii) in the event of a termination by Customer of an Accepted Purchase Order for a Supplier Event of Default under this Section 17, Customer shall be entitled to at least a refund of amounts paid for terminated undelivered Products, and any accrued Delivery Delay Damages. Termination or expiration of this Agreement for any reason other than a default shall not affect or impair the rights and obligations of either Party, nor relieve any Party of any obligation or liability accrued hereunder prior to such termination or expiration or affect or impair the rights of either Party arising under this Agreement prior to such termination or expiration.

17.6 Termination for Bankruptcy. If the other Party files a petition in bankruptcy, files a petition seeking reorganization, arrangement, composition or similar relief, or makes an assignment for the benefit of creditors, or if any involuntary petition or proceeding under bankruptcy or insolvency laws

is instituted against such other Party and not stayed, enjoined or discharged within thirty (30) days, this Agreement may be terminated by either Party immediately, by giving written notice to the other Party to that effect.

18. **Compliance with Laws.** Supplier shall comply with all applicable federal, state, and local laws, order, and regulations with respect to all goods and services provided by Supplier hereunder, including Delivery and onsite services provided under the Warranty. Supplier shall ensure that its employees, agents, and subcontractors adhere to the same. This Agreement incorporates by reference all the clauses required by the provisions of said laws, orders, and regulations. Supplier further agrees that it and its employees, agents, and subcontractors comply with all reasonable Project Site compliance requirements of which Supplier receives actual notice, including but not limited to registration of personnel and vehicles, background checks, fingerprints, and other security measures.

19. **Arbitration.** The Parties agree that any dispute not resolved amicably by the Parties through mutual negotiation within thirty (30) days from the date a Party raises such dispute in writing shall be resolved by arbitration under the arbitration rules of the American Arbitration Association then in effect, by a panel of three (3) arbitrators appointed in accordance with such rules. The arbitration shall take place in the New York, New York metropolitan area and the language of the arbitration shall be English. Either Party may apply to any court having jurisdiction for injunctive relief necessary to protect its rights pending resolution of the arbitration. The award of arbitration shall be final and binding upon the Parties, and judgment thereon may be entered by any court of competent jurisdiction. The arbitrators may order equitable or injunctive relief consistent with the remedies and limitations in this Agreement. All information disclosed in connection with the arbitration, including the existence of the arbitration, will be Confidential Information governed by Section 16. The Parties may, however, disclose such information to an appropriate court, under confidentiality restrictions, as necessary to seek enforcement of any arbitration award or judgment or to seek any relief permitted under the terms hereof. The arbitrators shall award the prevailing Party in any dispute reimbursement of its arbitration costs and fees, including without limitation reasonable attorneys' fees, paid by the non-prevailing Party.

20. **Quarterly Meetings.** During the Term the Parties shall have quarterly meetings prior to the end of each calendar quarter to review sales and marketing policies and the outcome of such meetings shall be reported to each Party's management. The meeting held prior to the end of the fourth (4th) quarter of each year shall include discussions regarding annual sales and marketing policies, as well as new product introduction efforts and any major changes to the company structure coming in the next calendar year. All such meetings shall take place on dates agreed upon by the Parties.

21. **Restrictions on Data and System Access.** Supplier will only collect and use data and information (i) related to the operations of the Products that will be made available to Supplier by Customer, (ii) for Supplier's internal product research and development purposes, or (iii) that Customer allows to be collected directly by Supplier in the normal course of monitoring the Products' performance and reliability which is required by Supplier for the performance of its obligations under this Agreement. Customer shall make the data required by Supplier for the performance of Supplier's obligations hereunder available on an as-needed basis. The costs of remote data transmission from the Project Sites shall be borne by Customer. Supplier shall not collect or have access to Customer data or information or meter data related to the installed Products except as provided in this Section 21. Supplier may only use such data in the performance of the services under this Agreement and will not disclose any data or information to any third party (except as provided in this Agreement regarding maintenance and support) or otherwise use data or information for its internal operations. Customer may audit the collection and use of such data and information by Supplier. All data and information will be subject to physical, access and other security controls, and will be secured and encrypted when stored and accessed or transferred across any private or public network. Supplier's security systems and protocols related to data provided by Customer and/or collected by Supplier from the Products will be consistent with those guidelines established by ISO 27001:2013. All logins by Supplier personnel shall be identifiable to specific

individuals. Within thirty (30) days of the Agreement Effective Date, and to the extent not already completed by such date: (a) Supplier shall provide Customer with documentation describing Supplier's internal controls related to data security and Supplier's obligations under this Agreement; and (b) Supplier and Customer shall work collaboratively to ensure that all requirements of this Section 21 are fulfilled. Supplier acknowledges and agrees that all Customer software and other Customer proprietary technology provided to Supplier and that is or becomes part of the Products is the sole property of Customer and constitutes valuable trade secrets and intellectual property of Customer. Customer acknowledges and agrees that all Supplier software and proprietary technology that is part of the Products is the sole property of Supplier and constitutes valuable trade secrets and intellectual property of Supplier. Supplier agrees that it will not attempt to gain access to any software or other proprietary technology or any data or information generated by the Products, and will not attempt to copy, reverse engineer or otherwise exploit Customer's software and other proprietary technology.

22. **Environmental Attributes.** Supplier hereby waives and disclaims any rights to any Environmental Attributes as part of the transaction relating to this Agreement and/or the Products sold hereunder. All Environmental Attributes shall belong to Customer or Customer's affiliates. "Environmental Attributes" means any and all credits, tradeable credits or certificates, benefits, incentives, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from or installation of the Products or services purchased under this Agreement. Environmental Attributes include but are not limited to: (a) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SO_x), nitrogen oxides (NO_x), carbon monoxide (CO) and other pollutants identified now or in the future; (b) any avoided emissions of carbon dioxide (CO₂), methane (CH₄) and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere or that are subject to reporting pursuant to 40 CFR Part 98; (c) investment and/or production tax credits associated with the construction or operation of the energy projects and other financial incentives in the form of credits, reductions, or allowances associated with the project that are applicable to a state or federal income or other taxation obligation; (d) reporting rights to these avoided emissions in compliance with federal or state law, if applicable, and to a federal or state agency or any other party including without limitation those reporting rights accruing under Section 1605(b) of The Energy Policy Act of 1992, 42 U.S.C. 13385(b), and the rules promulgated thereunder, and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program; and (e) state incentives, such as the Self Generation Incentive Plan (SGIP) in California or other similar or like programs in other states, cities, municipalities, utilities, school districts or other similar entities.

23. **Recycling of Product.** At the end of the functional life or end of the LCW Warranty Period associated with the Product, whichever occurs first, upon written notice from Customer, Supplier agrees to make all reasonable efforts to recycle the Product or Product Components in an environmentally responsible way; provided, that Customer pays the cost of packing the Products for shipment, and shipping the Products to Supplier's then-designated location in China (including any duties, tariffs, and other costs).

24. **Bankability Report.** Upon request by Customer, Supplier shall provide to Customer a report developed by a U.S. nationally recognized independent engineer ("I.E."), reasonably approved by Customer. For clarity, Supplier's acquisition or lack thereof of this report shall not be deemed cause for breach or termination of this Agreement.

25. **General Terms.**

25.1 Governing Law and Trade Terms. This Agreement shall be governed by the laws of New York without regard to conflicts of laws provisions thereof. English shall be the governing language of this Agreement.

25.2 Communications and Notices. All approvals, consents, notices, and other communications required or permitted hereunder shall be in writing, even if not specifically designated herein. All notices, claims, requests, demands and other communications that the Parties may give to each other pursuant to this Agreement shall be in writing and shall be hand delivered or sent by registered or certified mail postage prepaid, return receipt requested, or by facsimile or by overnight courier service, postage prepaid, or by email, to the Parties at the applicable address set forth on the signature page hereto or to such other address or as either Party shall designate by written notice given in accordance with this Section 25.2. Notices given by facsimile or overnight mail shall be deemed given one (1) business day after being sent, and notices given by registered or certified mail shall be deemed given three (3) business days after being sent. Notice given by email shall be deemed given upon a receipt confirmation email sent by the receiving Party.

25.3 Assignment; Binding Effect.

(a) Neither Party shall, in any way, assign, transfer, or sub-contract its rights and obligations under this Agreement to any third party without the prior written consent of the other Party (such consent not to be unreasonably withheld) except as provided in this Agreement (including, but not limited to, transfers of title).

(b) Notwithstanding Section 25.3(a), the Warranty set forth in **Exhibit E-1, Exhibit E-2, and Exhibit E-3** (if elected by Customer) is assignable according to the terms of the Warranty. Assignees of the Warranty will have all rights of Customer under **Exhibit E-1, Exhibit E-2, and Exhibit E-3** (if elected by Customer) as against Supplier under the Warranty as set forth in Section 11.2 herein.

(c) After issuing to Supplier a Purchase Order in the name of Customer, Customer may assign rights under one or more Purchase Orders: (i) to an affiliate of Customer as long as such affiliate meets Supplier's creditworthiness standards (the "Assignee") (and any successors and assigns), as determined by Supplier; or (ii) so long as the Purchase Order Price is paid in full, and there are no past due amounts under the LTSA (if any), prior to the assignment.

25.4 Entire Agreement; Amendment. This Agreement embodies and sets forth the entire agreement and understanding of the Parties and supersedes all prior oral or written agreements understandings or arrangements relating to the subject matter of this Agreement. No modification, deletion, addition or waiver of the terms of this Agreement shall be binding on either Party unless made in writing and signed by a duly authorized representative of each Party.

25.5 Severability. In the event that any provision or provisions of this Agreement is held invalid or unenforceable for any reason under any jurisdiction, the invalidity or unenforceability of such provision or provisions shall not operate to invalidate the other provisions of this Agreement, and shall not operate to invalidate such provision or provisions in any other jurisdiction. Each provision of this Agreement shall be considered as a separate and divisible agreement.

25.6 Non-Waiver. No failure or delay on the part of either Party hereto to exercise any right or remedy under this Agreement shall be construed or operated as a waiver thereof. The rights and remedies provided in this Agreement are cumulative and are not exclusive of any rights or remedies provided by law.

25.7 Independent Contractors. The Parties are independent contractors, and nothing in this Agreement shall be construed to create a partnership, agency, or other similar relationship. Each Party shall not, under any circumstances, represent itself as having the power and authority to bind the other Party into an agreement or legally binding obligation.

25.8 Force Majeure. Neither Party shall be held responsible for any delays nor non-performance of its obligations hereunder that are attributable to Force Majeure. With regard to the occurrence of a Force Majeure event, the Parties' obligations (except those relating to confidentiality and payment for Product already delivered) shall be suspended during the pendency of the Force Majeure event, and adjustments shall be made to the Guaranteed Delivery Date(s), delivery schedule or other terms as agreed upon by the Parties for the period of the Force Majeure event and subsequent recovery therefrom. "Force Majeure" means the occurrence of any event which is outside of the reasonable control of the affected Party and not due to the fault or negligence of a Party, which are reasonably unforeseeable, unavoidable or insurmountable, and which prevent total or partial material performance by either Party. A Force Majeure event shall include, without limitation: war, blockade, revolution, insurrection, riot, or civil disturbance; serious fire, drought, flood, typhoon, earthquake, volcanic eruption, tornado, hurricane, tsunamis or other perils of the sea, extreme high winds, dust or sand storms or other extreme weather of sufficient intensity to prevent safe performance of work; vandalism, sabotage, and acts or threats of terrorism; any labor disturbance, strike or dispute (except as noted below), embargoes, closing or accidents to harbors, docks or canals; epidemic, pandemic, quarantine, acts of God, or other events as reasonably mutually agreed upon by the Parties in writing. The Party claiming Force Majeure shall promptly inform the other Party in writing and shall furnish within [] after learning of the impact of the event or circumstances sufficient proof of the occurrence and duration of such Force Majeure. The Party claiming Force Majeure shall also use commercially reasonable efforts to mitigate the Force Majeure and shall promptly consult with the other in order to find an equitable solution and minimize the consequences of such Force Majeure. As soon as the non-performing Party can safely resume performance of its obligations hereunder, that Party shall give the other Party written notice to that effect and shall promptly resume performance. The burden for proving the existence of a Force Majeure event shall be on the Party claiming relief from such Force Majeure. In the event that a Force Majeure event exceeds [] in duration, either Party shall be able to terminate the affected Purchase Order(s) without any liability, and any and all amounts paid by Customer with respect to Accepted Purchase Order(s) shall be held by Supplier to be applied to one or more future Purchase Order(s). The following, without limitation, shall not be considered a Force Majeure (in each case, except to the extent such events or conditions themselves are caused solely by a Force Majeure event):

- (a) the inability of a Party to make payments as and when due;
- (b) the inability of a Party to obtain raw materials or components from suppliers;
- (c) general changes in market conditions for raw materials, components, shipping costs;
- (d) changes in import duties or tariffs; and
- (e) labor disturbances, strikes or disputes that are specific only to a Party and/or its suppliers.

25.9 Survival. Neither the expiration nor termination of this Agreement shall relieve either Party of any obligation previously accrued, nor any obligation persisting, accruing or arising thereafter. Termination or expiration of this Agreement shall not release either Party from the obligation to make payment to the other Party of all amounts then and thereafter due and payable under this Agreement. The provisions of Section 11 (Warranty and Product Failures), Section 15 (Indemnity), Section 16 (Confidentiality), Section 19 (Arbitration), Section 25 (General Terms), Section 26 (Consequential Damages), and Section 27 (Limitations) shall survive the expiration or termination of this Agreement.

25.10 Liquidated Damages. The Parties agree that it would be impracticable or extremely difficult to determine the actual damages resulting from certain acts or omissions of Supplier; therefore the Parties further agree that those damages identified as "Liquidated Damages" represent a reasonable

estimate of fair compensation for the foreseeable losses resulting from Supplier's acts or omissions, and such damages are not intended to be a penalty upon Supplier. The cumulative liquidated damages due with respect to Products purchased under a single Purchase Order shall not exceed [] percent ([]%) of the total value of such Purchase Order Price.

26. **Consequential Damages.** EXCEPT FOR INDEMNIFICATION OBLIGATIONS HEREIN, IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY CONSEQUENTIAL, SPECIAL, INCIDENTAL, INDIRECT, EXEMPLARY, OR PUNITIVE DAMAGES (INCLUDING WITHOUT LIMITATION LOSS OF ACTUAL OR ANTICIPATED PROFITS, REVENUES OR PRODUCT; LOSS BY REASON OF SHUTDOWN OR NON-OPERATION; INCREASED EXPENSE OF OPERATION, BORROWING OR FINANCING; LOSS OF USE OR PRODUCTIVITY; AND INCREASED COST OF CAPITAL) WHETHER THE CLAIM IS BASED ON CONTRACT, TORT, STRICT LIABILITY, OR ANY OTHER THEORY OF LAW OR EQUITY, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. FOR AVOIDANCE OF DOUBT, LIQUIDATED DAMAGES AMOUNTS AGREED HEREIN SHALL NOT BE CONSIDERED CONSEQUENTIAL DAMAGES.

27. **Limitations.** Each Party's liability hereunder shall in no event exceed the total Purchase Order Price under the applicable Purchase Order(s); provided, however, that notwithstanding the foregoing, no such limitation shall apply to: (a) any liability pursuant to Section 15 (Indemnity); (b) any liability pursuant to Section 16 (Confidentiality); and/or (c) the gross negligence or willful misconduct of a Party.

28. **Security Interest.** Subject to Section 4.2, Customer acknowledges and agrees that Supplier will have the right to make any security filings, including protective filings under the Uniform Commercial Code, to defend and protect Supplier's right, title and interest in and to the Products. Supplier agrees to release any security interests on any Products once title has passed to Customer in accordance with Section 4.2.

29. **Trade Credit Insurance.** To secure the payment obligations of Customer to Supplier, Supplier shall have the right to obtain trade credit insurance ("Trade Credit Insurance"), and the cost of such Trade Credit Insurance shall be included as an additional cost item in the Purchase Order, with payment terms and credit limits more particularly set forth in **Exhibit C**.

30. **Discontinued Products.**

30.1 **Definitions.** "Product Discontinuation" means a process by which the electrical or mechanical components of a Product become no longer compatible with Product specification or the Product itself will no longer be in mass production, and there is replacement product then-available that is compatible with the Product and Exhibit B. "Last Buy" means the Products that Customer or System Owner purchases from Supplier prior to Product Discontinuation to account for the anticipated rate of defect for such Products.

30.2 **Product Discontinuation Notice.** Supplier shall notify Customer of its plan for Product Discontinuation six (6) months prior to the date on which such Product Discontinuation takes effect. Customer shall determine the Last Buy amount and notify Supplier within sixty (60) days of receiving Supplier's notification of Product Discontinuation ("Customer's Last Buy Notice"). Supplier shall confirm the Last Buy amount and supply schedule within thirty (30) days of receiving Customer's Last Buy Notice.

30.3 **Product Availability.** Product(s) defined in **Exhibit A** and with an Accepted Purchase Order will be maintained in production for a minimum of eighteen (18) months from the time of Purchase Order acceptance.

19453451v17

[Signatures on following page.]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

“SUPPLIER”

Powin Energy Corporation

By: /s/ Geoff Brown
Printed Name: Geoff Brown
Title: President

Notice Information:

Powin Energy Corporation
[]

“CUSTOMER”

By: /s/ Bill Bush
Printed Name: Bill Bush
Title: CFO

Notice Information:

Stem, Inc.
100 Rollins Road
Millbrae, CA 94030
[]

Exhibits:

Exhibit A – List of Products Subject to Agreement

Exhibit B – Product Specifications

Exhibit C – Pricing and Order Volumes

Exhibit D – Form of Purchase Order, Statement of Work, and Division of Responsibility

Exhibit E-1 – Form of Limited Commercial Warranty

Exhibit E-2 – Form of Performance Guarantee

Exhibit E-3 – Form of Long -Term Service Agreement

Exhibit F-1 – Supplier Insurance Requirements

Exhibit F-2 – Customer Insurance Requirements

Exhibit G – Form of Change Order

EXECUTION VERSION

Information in this document (indicated by brackets) has been redacted pursuant to Item 601(b)(10)(iv) of Regulation S-K because such information is not material and is private or confidential.

**FIRST AMENDED AND RESTATED MASTER SUPPLY AGREEMENT
FOR PURCHASE AND SALE OF ENERGY STORAGE EQUIPMENT**

By and Between

Sungrow USA Corporation

And

Sungrow Samsung SDI Energy Storage Power Supply Co, Ltd.

(“Supplier” or “Suppliers”)

And

Stem, Inc.

(“Customer”)

FIRST AMENDED AND RESTATED MASTER SUPPLY AGREEMENT

This First Amended and Restated Master Supply Agreement (together with all exhibits, schedules, purchase orders, and annexes hereto, this “Agreement”) is made and entered into as of February 28th, 2020 (“First Restated Agreement Effective Date”) by and among Sungrow USA Corporation, a Delaware corporation, with its principal place of business located at 575 Market St, 4th Floor, San Francisco, CA, USA, 94105 (“Sungrow USA” or “Supplier”), Sungrow Samsung SDI Energy Storage Power Supply Co, Ltd., a Chinese corporation, with its principal place of business located at No.788 Mingchuan Rd., Boyan Science & Technology Park, Hefei State Hi-tech Zone, P.R. China 230088 (“Sungrow Samsung SDI”), and Stem, Inc., a company duly organized and existing under the laws of Delaware, located at 100 Rollins Road, Millbrae, CA 94030 (“Customer” or “STEM”). Supplier and Customer may, hereinafter, be referred to individually as a “Party” or collectively as the “Parties”. This Agreement sets forth the terms and conditions for the purchase and sale of the Products (as defined below). Capitalized terms used but not defined herein shall have the meanings assigned to them in the Exhibits hereto.

RECITALS

- A.** Supplier and Customer entered into a master supply agreement for the purchase and sale of certain energy storage equipment (the “Original Agreement”) dated October 30th, 2018 (the “Original Agreement Effective Date”).
- B.** The Parties wish to make certain modifications to the Original Agreement, which are set forth in this Agreement. Therefore, the Parties have agreed to amend and entirely restate the Original Agreement, as set forth in this First Amended and Restated Agreement.

AGREEMENT

1. Scope of Agreement.

1.1 Products Covered. Customer may purchase one or more of the products listed on **Exhibit A** attached hereto (the “Products”), subject to the terms and conditions contained herein. This Agreement shall govern the terms of all Purchase Orders (defined below) for Products regardless of whether such Purchase Order expressly references this Agreement. “Products” shall refer to the entire energy storage system (“ESS”) unless context requires otherwise. “Battery Products” as used herein shall refer to lithium-ion battery modules and battery management systems (“BMS”). “PCS/BoS Products” as used herein shall include, but are not limited to: ESS PCS or DC converter, ESS cabinet, battery racks, and any balance of plant materials required to provide all auxiliary power supplies and transformers to operate the ESS. “PV PCS Products” as used herein shall include, but are not limited to: photovoltaic inverters used in conjunction with the ESS to store solar energy, associated accessories to utilized both the PV PCS Products and ESS. “Containerized Product” means any Product that is greater than or equal to twenty (20) feet in length with the exception of product ST548KWH-250 (defined below) which will not be classified as a Containerized Product. Certain defined terms as used herein may be defined in the Exhibits, such as in the Warranty.

1.2 Non-exclusivity. This Agreement is not exclusive, meaning that Customer may purchase similar products from manufacturers or suppliers other than Supplier or its affiliates.

1.3 Document Priority. In the event of a conflict between this Agreement and a Purchase Order document, the Purchase Order shall control.

2. **Products and Order Placement.**

2.1 **Purchase Orders.** From time to time, Customer may place orders to buy Products from Supplier, subject to the terms and specifications of such order (each, a “Purchase Order” or “PO”), the form of which is attached hereto as **Exhibit D**. Supplier shall accept or reject in writing a Purchase Order received from Customer as soon as possible, but in no event later than ten (10) business days after receipt of such Purchase Order, deeming such document an “Accepted Purchase Order”. Supplier’s failure to respond to a Purchase Order within the preceding time period shall be considered a rejection of such Purchase Order. If the Purchase Order cannot be accepted or rejected within ten (10) business days, then Supplier shall notify Customer as soon as possible, but in no event later than ten (10) business days after receipt of such Purchase Order, and shall provide the amount of additional time that Supplier will require to adequately assess the request; *provided*, Customer may withdraw a pending Purchase Order at any time prior to its acceptance in writing by Supplier. Except as expressly set forth in this Agreement, once Supplier accepts a Purchase Order, the Purchase Order shall not be modified without the written consent of both Parties. For purposes of this Agreement, all references to “business day” shall mean any day except a Saturday, Sunday, or an observed federal holiday in the United States.

2.2 **Lead-times.** With respect to Purchase Orders for Products listed in **Exhibit A**, Supplier shall deliver such Products within twenty-six (26) weeks to U.S. West Coast port of entry, twenty-eight (28) weeks to U.S. East Coast port of entry, and eighteen (18) weeks to Canada Toronto port of entry from the date of Purchase Order acceptance, at the specified Delivery Location (as defined below). Customer may submit a Purchase Order specifying a shorter lead time, and Supplier may accept or reject such Purchase Order its sole discretion, provided that if Supplier accepts such Purchase Order, Supplier agrees to be bound by the agreed Guaranteed Delivery Date(s) (as defined below) in such Purchase Order. With respect to Purchase Orders for any Products not listed in **Exhibit A**, such Products shall have lead-times as agreed to by the Parties as set forth in the respective Purchase Order. Every three (3) months, on a predetermined schedule mutually agreed by the Parties, Supplier shall provide Customer with confirmation of anticipated lead-times for all Products ordered.

2.3 **Forecasts.** Every three (3) months, on a predetermined schedule mutually agreed by the Parties, Customer shall provide to Supplier a non-binding forecast of the Products that Customer anticipates ordering during the following six-month period (“Order Volume Forecast”). Customer shall make all reasonable efforts to ensure the accuracy of the forecast. Purchase Orders submitted to Supplier that would cause the volume of Products to be delivered in any calendar quarter to exceed the volume set forth in the then-current Order Volume Forecast may be subject to lead-times as stated in Section 2.2, but in no event longer than thirty (30) weeks.

3. **Pricing and Taxes.**

3.1 **Pricing.** The pricing set forth in **Exhibit C** shall remain valid during the Pricing Period as defined in **Exhibit C**. As set forth in **Exhibit C**, the prices for the Products sold under Purchase Orders issued by Customer shall vary based on their kilowatt hour (“kWh”) alternating current (“AC”) capacity and the cumulative volume of Products purchased by Customer. All kWh-based volume pricing and liquidated damage calculations shall be based on the “kWh AC Nameplate Capacity” of such Product sold under this Agreement unless it is explicitly specified as kWh DC. For a Purchase Order, the “Purchase Order Price” shall mean the total amount owed under a Purchase Order for all Products under such Purchase Order, including the upfront cost of the Products plus any warranty or annual maintenance associated with such Products if such warranty or annual maintenance costs are paid upfront (as opposed to annually during operation of the ESS) and are listed in the Purchase Order. The “Product Price” is the equipment price for a particular Product purchased, excluding any warranty payments and maintenance fees.

3.2 Changes in Prices. The Purchase Order Price shall be based on the terms of **Exhibit C** and shall be fixed once the Purchase Order is accepted, subject to the Annual Pricing Adjustment set forth in **Exhibit C**. The limitation set forth in the immediately preceding sentence shall not preclude the application or collection of liquidated damages or other adjustments as expressly allowed under this Agreement.

3.3 [].

4. **Shipment and Delivery.**

4.1 Incoterms. Unless otherwise agreed in an accepted Purchase Order, Supplier will ship Products according to the delivery terms set forth in **Exhibit C** and prices for Product shall reflect all costs of such delivery terms in accordance with **Exhibit C**.

4.2 Title and Risk of Loss. []. Supplier shall transfer title free and clear of all liens, claims, and encumbrances, except for those liens or security interests which Supplier maintains in the Products pending the receipt of payment in full from Customer. If any third-party liens or encumbrances arise in connection with the Products prior to the delivery of the Products to the Customer, Supplier shall within five (5) business days remove any such liens or encumbrances. For Products delivered to the Project Site (as defined below), risk of loss to such Products shall pass to Customer upon delivery of the Products to the Project Site. For Products delivered to a Staging Warehouse (defined below), risk of loss to such Products shall remain with Supplier, as a bailee for Customer's Products, until Customer picks up the Products in accordance with Section 4.3. In the case that Products are delivered in multiple pieces, parts, or components, risk of loss with respect to each piece, part, or component shall transfer as described in this Section 4.2. Title and risk of loss with respect to Products or components thereof that are rejected by Customer pursuant to Section 4.4 shall transfer back to Supplier at the Supplier's pick up of the rejected Products or components thereof which shall take place within ten (10) business days of such rejection.

4.3 Delivery; Delivery Delay; Product Commissioning. Supplier shall deliver the Products to the requested location specified on the Purchase Order ("Delivery Location"), which location may be the location where the Product will be installed and Commissioned ("Project Site"), a mutually agreed upon warehouse location operated by Supplier ("Staging Warehouse"), or any other location identified on an accepted Purchase Order. Delivery to the Delivery Location shall take place no later than the applicable delivery date listed on the Purchase Order and associated order confirmation provided by Supplier ("Guaranteed Delivery Date"). [].

[].

For Products that are to be made available for pick up by Customer or its representative at a Staging Warehouse, Customer shall take delivery of the Products no later than [] following the later of (i) the Guaranteed Delivery Date specified on the Purchase Order or (ii) three (3) business days after the date of actual delivery of the Product if such delivery is after the Guaranteed Delivery Date ("Customer Pickup Deadline"). If Customer fails to take delivery of the Products by the Customer Pickup Deadline and continues to request storage of the Product by Supplier: (i) Customer shall be responsible for storage and handling costs of [] per kWh AC, per month, for the first two (2) months and [] per kWh AC, per month, for each subsequent month. Charges will be prorated if the Product is retrieved mid-month. Supplier shall store the Product on Customer's behalf up to [] after the Customer Pickup Deadline. At any time on or after [] after the Customer Pickup Deadline for a Product, Supplier may give [] notice that Supplier intends to reallocate such Product to another customer. If Customer fails to take delivery of the applicable Product within the foregoing notice period, Supplier may terminate the Purchase Order and may allocate the Product to another customer at Supplier's sole discretion. It is agreed by both Parties that Containerized PCS/BoS Products will only be delivered to the Project Site due to the size constraints of

any given Staging Warehouse. Storage of Battery Products for containerized solutions may be discussed on a case by case basis.

4.4 **Inspection.** If any of the Products or components thereof furnished hereunder are found at any time within [] of delivery to the Project Site (the “Product Acceptance Period”) to be defective in material or workmanship or otherwise not in conformity with the requirements of this Agreement or associated Purchase Order, then upon written notification from Customer to Supplier of such nonconformity, Supplier shall have ten (10) business days (“Correction Period”) to correct such defect or nonconformity. If such defect or nonconformity is not cured during the Correction Period, and such defect or nonconformity prevents the Customer from completing Commissioning or operating the Product safely and/or at its kWh AC Nameplate Capacity, then Supplier shall owe Delivery Delay Damages for each day beginning on the first day of the Correction Period and continuing until such defect or nonconformity is cured. If such defect or nonconformity does not affect the Customer from completing Commissioning or operating the Product safely and/or at its kWh AC Nameplate Capacity, then Supplier shall have an additional five (5) business days (“Additional Correction Period”) to correct such defect or nonconformity.

4.5 **Insurance.** Throughout the term of this Agreement and while any Product sold under this Agreement is still covered under the Warranty, Supplier shall comply with the insurance requirements stated in **Exhibit F**.

4.6 **Delivery Documentation.** Supplier shall provide a separate bill of lading or similar shipping documentation for each delivery of Products (the “Delivery Documentation”). The Delivery Documentation shall be physically affixed to the packaging of the Products and a copy emailed to Customer prior to Supplier’s invoice for such delivery. The Delivery Documentation shall include part numbers and quantities of each item or Products delivered.

4.7 **Battery Installation and Product Commissioning.** Supplier agrees to perform the on-site Battery Product installation and Commissioning of each Product at the Project Site on the date directed by Customer (the “Scheduled Commissioning Date”), provided that Customer provides at least twenty-eight (28) days’ prior written notice. As part of such installation and Commissioning, Supplier shall, no later than one (1) day following completion of such services, have removed any and all debris related to such activities from the Project Site if the garbage collection service is elected by the Customer. [].

4.8 **Damage During Delivery, Installation, or Commissioning.** To the extent that delivery, Battery Product installation, Commissioning, and/or any other on-site activities are carried out by Supplier or its employees, agents, or subcontractors, Supplier shall be responsible for all damage to the Products incurred during the performance of such activities by Supplier or its employees, agents, or subcontractors. If any Products are damaged during such activities by acts or omissions of Supplier or its representatives, then notwithstanding expiration of the Product Acceptance Period set forth in Section 4.4, if such damage is discovered prior to completion of Commissioning and provided that the Customer can provide solid evidence to prove it was Supplier’s employees, agents or subcontractors who made such damage, Customer may revoke its acceptance of such damaged Products and Supplier shall remedy such damage within the Correction Period set forth in Section 4.4 or be liable damages as set forth in Section 4.4. If such damage is discovered after Commissioning then Customer may file a claim under the Warranty.

5. **Rescheduling; Changes; Cancellations.**

5.1 **Rescheduling.** Customer may reschedule the delivery of Products under a Purchase Order, provided that a fee (“Rescheduling Fee”) may apply based on the timing of the rescheduling request and the applicable Guaranteed Delivery Date, as defined in the following table:

Rescheduling Fee Schedule for Products with a Delivery Location in the United States	
Timing of Rescheduling	Rescheduling Fee (% of purchase price of rescheduled Product)
More than [] from Purchase Order's Guaranteed Delivery Date	[]%
Between [] and [] from Purchase Order's Guaranteed Delivery Date	[]%
Less than [] from Purchase Order's Guaranteed Delivery Date	Requires written permission of Supplier, []%

Rescheduling Fee Schedule for Products with a Delivery Location in Canada	
Timing of Rescheduling	Rescheduling Fee (% of purchase price of rescheduled Product)
More than [] from Purchase Order's Guaranteed Delivery Date	[]%
Between [] and [] from Purchase Order's Guaranteed Delivery Date	[]%
Less than [] from Purchase Order's Guaranteed Delivery Date	Requires written permission of Supplier, []%

The delivery date for any Products rescheduled at the request of Customer under this Section shall not be rescheduled by Customer more than once per Purchase Order, and shall not be delayed by more than [] from the original Guaranteed Delivery Date, without the written permission of Seller. If the rescheduled delivery date is more than [] from the original Guaranteed Delivery Date, both parties must mutually agree in writing that rescheduling request is accepted. If the rescheduling request is denied by Supplier, it will then be Customer's decision if they would like to proceed with a rescheduling request within the time frames noted above or cancel the Purchase Order under the procedures noted in Section 5.2 of the Agreement. Once a new delivery date has been established following a rescheduled request, such new date shall be considered the Guaranteed Delivery Date with respect to such Products and associated Purchase Order.

5.2 Cancellation for Convenience. After Supplier accepts a Purchase Order per Section 2.1, Customer may cancel such Purchase Order (in whole or in part) for convenience, for any reason, as set forth in this Section. In the event of such cancellation for convenience, Customer shall pay to Supplier, as Supplier's sole and exclusive remedy for such cancellation, a fee ("Convenience Cancellation Fee") according to the following tables:

Convenience Cancellation Fee Schedule for Products Listed in Exhibit A and having a Delivery Location in the United States	
Timing of Cancellation	Convenience Cancellation Fee (% of purchase price of Canceled Product)
More than [] from Purchase Order's Guaranteed Delivery Date	[]%
Between [] and [] from Purchase Order's Guaranteed Delivery Date	[]%
Between [] and [] from Purchase Order's Guaranteed Delivery Date	[]%
Between [] and [] from Purchase Order's Guaranteed Delivery Date	[]%
Less than [] from Purchase Order's Guaranteed Delivery Date	[]%

Convenience Cancellation Fee Schedule for Products Listed in Exhibit A and having a Delivery Location in Canada	
Timing of Cancellation	Convenience Cancellation Fee (% of purchase price of Canceled Product)
More than [] from Purchase Order's Guaranteed Delivery Date	[]%
Between [] and [] from Purchase Order's Guaranteed Delivery Date	[]%
Between [] and [] from Purchase Order's Guaranteed Delivery Date	[]%
Between [] and [] from Purchase Order's Guaranteed Delivery Date	[]%
Less than [] from Purchase Order's Guaranteed Delivery Date	[]%

Convenience Cancellation Fee Schedule for Products Not Listed in Exhibit A	
Timing of Cancellation	Convenience Cancellation Fee (% of purchase price of Canceled Product)
More than [] from Purchase Order's Guaranteed Delivery Date	[]%
Between [] and [] from Purchase Order's Guaranteed Delivery Date	[]%
Between [] and [] from Purchase Order's Guaranteed Delivery Date	[]%
Less than [] from Purchase Order's Guaranteed Delivery Date	[]%

Customer shall pay any Convenience Cancellation Fee due within thirty (30) days of receipt of an invoice from Supplier. The Parties agree that the Convenience Cancellation Fee is in the nature of Liquidated Damages.

5.3 **Purchase Order Changes.** Except as expressly set forth in this Agreement, no changes may be made to an accepted Purchase Order without the written consent of both Parties, as evidenced by a signed change order ("Change Order") substantially in the form of **Exhibit G**.

6. **Product Changes.** Supplier shall provide Customer with one hundred and eighty (180) days advance written notice of any major change in the form, fit, function, or design of the Product as used by the Customer. Notwithstanding the foregoing, Supplier may not change the specifications or design of any Product that is subject to a confirmed Purchase Order without Customer's prior written consent.

7. **Firmware Updates.**

7.1 **Remote Access.** Customer shall provide to Supplier, to the extent available to Customer, at no cost to Supplier, secure remote internet access capability to the Project Sites. Such remote access, to the extent available, shall supply reliability and data rates sufficient to enable Supplier to download firmware and software updates to the Products. Upon reasonable notice to Customer, and if permission is granted by any subsequent purchasers of the Products, Customer agrees to use commercially reasonable efforts to provide timely access to the Project Sites and Products for purposes of such updates.

7.2 **Firmware Updates.** If remote access to the system is provided to Supplier, Supplier shall provide to Customer (or its successors, assigns and the System Owners of any such Products) any updates to the software or firmware incorporated into the Products sold to Customer under this Agreement for no charge, and Supplier further agrees to install any such updates to the Products onsite at the then location of such Products (e.g. whether at the Project Site for deployed Products, onsite at a Customer-specified location for those yet to be deployed, etc.), provided that the Products are still covered by Supplier's Warranty, in each case at Supplier's cost. If remote access is not provided, then (i) if the firmware update is one that if not installed could lead to a violation of Supplier's Warranty or is otherwise a safety

concern, Supplier shall pay labor and materials expenses for firmware updates that are made at the Project Site by Supplier personnel; and (ii) if the firmware update is otherwise a general product efficiency or benefit upgrade, Customer shall pay labor and materials expenses for firmware updates that are requested by Customer in writing to be made by Supplier at the Project Site by Supplier personnel.

8. **Invoicing and Payment.** Supplier shall provide a separate invoice for each delivery. Each invoice shall include the following: Customer purchase order number, date of arrival of the Product at Project Site or Staging Warehouse, along with net terms for the payment being requested. Payment terms shall be in accordance with **Exhibit C**. If an invoice is not submitted in accordance with the payment terms outlined in **Exhibit C**, then the date of distribution must also be noted on the invoice.

9. **Late Payment.** All payments that are not received by Supplier by the date such payment is due may be charged interest until paid in full at the rate of []% percent ([]%) per month of the overdue balance., or the maximum rate allowable by law, whichever is less. In the event that Customer's account is past due more than thirty (30) days, without limitation to Supplier's termination rights in Section 17.2, Supplier shall have the right to suspend performance under any delinquent Purchase Orders until all overdue monies are paid to Supplier. For clarity, Supplier may only suspend performance obligations associated with the Purchase Order(s) suffering late payment, all other Purchase Order and Product performance obligations shall remain intact.

10. **All Sales Final.** Subject to inspection per Section 4.4 or valid Warranty Claims, all sales are final. Supplier is under no obligation under any circumstance to accept returns of Products, other than pursuant to a rejection per Section 4.4, a Product Recall under Section 11.5, and/or an applicable Warranty Claim.

11. **Warranty and Product Failures.**

11.1 **Product Warranty.** All Products covered by this Agreement will be warranted per the terms set forth in **Exhibit E**, attached hereto (the "Warranty"). The Warranty includes a manufacturer's warranty, preventative maintenance, and capacity performance guarantee (if included or purchased separately) for the Products.

11.2 **Warranty Assignment.** Customer, upon the transfer of title to Product, may assign the Warranty in accordance with the assignment terms and conditions set forth in the Warranty.

11.3 **No Additional Warranties.** Customer acknowledges and agrees that, except for a valid assignment of the Warranty by Customer to a third party, any other warranty that might be granted by Customer to a third party does not bind Supplier in any manner and is not applicable between Supplier and such third party. Likewise, all limitations of the Warranty stated in this Agreement apply to an assignee of the Warranty to the extent such limitations would apply to the original Customer.

11.4 **Specification Compliance.** The description and specifications for the Products to be sold and purchased under this Agreement are set forth on **Exhibit B**, attached hereto (the "Specifications"). Supplier shall ensure that, at the time of Commissioning, the Product provided by Supplier hereunder shall comply in all respects with the Specifications.

11.5 **Product Recalls.** If Supplier and/or any governmental authority issues a recall notice that is generally applicable to the Product or Product Component, or Supplier otherwise recognizes the need for a recall even in the absence of external notice (any of the foregoing events, a "Recall"), then Supplier shall (a) promptly provide, within five (5) days of such Recall, written notice to Customer and to the owner of the Product (such owner, whether Customer or a subsequent third-party owner, the "System Owner"); (b) to the extent Supplier issues a Recall on a Product component, cause such Recall to apply to the Products; (c) at its sole cost and expense, redesign, repair or replace as necessary the affected Products

and/or Product components on all affected Products; and (d) certify in writing to Customer (and each System Owner, as applicable) after any redesign, repair or replacement has been completed that such affected Product complies with the Specifications, any applicable safety standards and requirements, and any directives of the applicable Recall.

11.6 [].

11.7 [].

12. **Particular Uses.** Customer acknowledges that the Products are not designed for, and Supplier has no desire to make Products available for, life support, critical care, medical, safety equipment, or similar applications where Product failure could result in loss of life or personal or physical harm. Accordingly, Supplier disclaims all liability, and Customer assumes all risks arising from any such or similar application of the Products.

13. **Maintenance and Support.**

13.1 Generally. Supplier will provide ongoing maintenance and support for the Products during the term that Supplier has any obligations under the Warranty for such Products, including use and operation of the Products (including, without limitation, the batteries), maintenance of a parts depot sufficient for maintenance and support and as required to support the service levels and other obligations described in this Agreement, and the identification of and communication to Customer of information about potential defects in or maintenance needed for the Products. Such ongoing maintenance and support shall include all required physical inspections at the Product installation locations, and preventative and regular maintenance of the Products at the installation locations, including at least annual onsite inspection (or more frequently as needed or recommended by the Product Specifications or Warranty).

13.2 Spare Parts. Supplier will also provide additional spare parts depots at mutually agreed upon locations, to be stocked and maintained at Supplier's expense. Inventory levels and spare parts depot requirements will be reviewed by the Parties and agreed on a semi-annual basis. Battery spare module inventory are excluded in this scope of work and may be addressed separately by the Parties. For the term of the Warranty, Supplier is responsible for stocking spare parts of equal or enhanced functionality on all Products shipped and installed by Customer.

13.3 Data Monitoring. Customer shall be responsible for collecting, monitoring and storing the data and alerts regarding the installed Products, to ensure that all operations conform to the required operating parameters of the Products, including cabinet temperatures and other operating parameters. In the event that a Defect in the Product or Product Components or problem in the performance of the Products is identified, or the Products are operating outside of expected parameters, Customer shall make best efforts to make available all related data to Supplier. Supplier shall promptly diagnose, repair or replace all necessary Product components so that the Products function consistent with the Product Specifications. If the performance problem is not covered by the Warranty, Customer shall reimburse Supplier for direct and actual documented expenses incurred, including Supplier's labor. Supplier will collect all data necessary to be able to report information required by suppliers or manufacturers of Product components used in the Products and will report all such information in a timely manner. For the next generation product, Supplier agrees to provide additional data storage hardware at additional cost to the Customer in order to provide temporary storage, as means of data backup for the purpose of Warranty Claims and Capacity Performance Guarantee Claims in case there is date outage or corruption on Customer's side.

13.4 Service Levels; Service Delay Damages. For any [] related Warranty Claims, Supplier shall provide maintenance and support consistent with the following service levels, based on the severity

of the support issue. Customer shall, within [] of detecting a Defect, inform Supplier of any defects and provide all technical information associated to this Warranty claim for trouble shooting. All of the below-listed response times shall be calculated starting from Supplier’s receipt of the official Warranty claim submitted by Customer. If Supplier is delayed in its ability to provide a remedy plan resulting from Customer’s failure to make the data available for failure analysis, any delayed time shall be added to the guaranteed issue resolution time.

Severity 1: Severity 1 is [].

Severity 2: Severity 2 is [].

Severity 3: Severity 3 is [].

Severity Level	Acknowledgement of Issue	Issue Resolution Time	Damages for Failure to meet Service Level in \$ / kWh /day
Severity 1	[]	[]	[\$]
Severity 2	[]	[]	[\$]
Severity 3	[]	[]	[\$]

Table 1. [] Products Service Level Agreement

[]

For Severity 1 issues, Supplier may request up to [] of resolution time in addition to the Issue Resolution Time listed above, and such request shall not be unreasonably denied by Customer. Supplier and Customer may mutually agree in writing to extend the above response times if there are no actual or potential damages to Customer resulting from such extension. []. Damages shall begin to accrue upon and after the expiration of the applicable issue resolution time. Customer shall cooperate with Supplier and provide Supplier with all necessary information and data necessary to resolve such issues, and for any inaccessibility to the Product for service not caused by Supplier, such delayed period shall not be accrued in the resolution times listed above. Notwithstanding the above response times, for Products posing a safety risk, Supplier shall act as soon as possible, and provide any interim instructions to immediately alleviate or mitigate any safety risk.

For any [] Warranty claims, the following service levels will be followed. All response times below shall be calculated starting from Supplier’s receipt of the official Warranty claim submitted by System Owner. If Supplier is delayed in its ability to provide a remedy plan resulting from Customer’s failure to make the data available for failure analysis, any delayed time shall be added to the guaranteed issue resolution time.

Severity Level	Acknowledgement of Issue	Issue Resolution Time
All	[]	[]

Table 2. [] Service Level Agreement

13.5 [].

13.6 Response Time Pass-through Option. Supplier agrees that the response times for acknowledgment and resolution of an issue set forth above in this Section 13 may be passed through to a subsequent System Owner; *provided*, (a) such System Owner (as defined in Section 11.5) shall adhere to all of Customer's obligations in **Exhibit E**, (b) the response times passed through in **Exhibit E** shall not be stricter than the times set forth in the table above in this Section 13, and (c) the response times set forth in this Section 13 shall still apply to any request for service by Customer with respect to the same Product.

13.7 Service Delay Damages Pass-through Option. Supplier agrees that the Liquidated Damages set forth in this Section 13 are payable to Customer. Customer may, at its sole option, wholly or partially pass through Liquidated Damages to a subsequent System Owner, provided that: (a) the Liquidated Damages passed through are no greater than those set forth in this Section 13; (b) the response deadlines before Liquidated Damages begin to accrue are not stricter than those set forth in this Section 13; (c) Customer provides written notice to Supplier of the election of Liquidated Damages pass through for a particular Product; (d) Supplier may owe such damages to Customer and/or subsequent System Owner concurrently but in no event shall Supplier's maximum aggregate liability to Customer and to subsequent System Owner exceed the total amounts set forth in this Section 13.7 (i.e., Supplier's total liability is no event expanded or increased due to Customer's election of any whole or partial pass through of damages); and (e) Supplier has remote access to Product data in accordance with this Section 13.

13.8 Applicability of Service Delay Damages. [] Service Delay Damages and response times for regions not listed above shall be discussed and mutually agreed between both parties within sixty (60) days of execution of this Agreement. Costs, damages, and response times for Products installed at other locations shall be mutually agreed to be both Parties on a case-by-case basis. If a Defect is covered under the Warranty, all expenses for issue resolution shall be paid by Supplier. In no event shall Supplier perform any major repairs that are not covered under the Warranty without prior written permission from Customer or System Owner, as applicable. Further, if the root cause of the issue is excluded from the Warranty or obligations herein, then Service Delay Damages shall not accrue.

13.9 Temporary Suspension of Obligations. If Supplier's ability to resolve the issue is impeded or delayed in any way by factors outside of Supplier's reasonable and foreseeable control, including inability to access the Project Site or required data, Customer readiness for testing and evaluation, host site, authorities having jurisdiction ("AHJ"), utility interconnection delays, or permitting, no Service Delay Damages shall accrue during the period of the delay.

13.10 Services Workmanship Warranty. Supplier warrants that all services will be performed or rendered safely and in a good workmanlike manner in accordance with industry standards. Supplier shall have fully trained personnel capable of efficiently and safely operating such equipment and performing service and repair for Customer.

14. **Intellectual Property; Branding.**

14.1 IP Ownership. Supplier retains ownership of all rights to designs, technical data, and any other intellectual property relating to the Products, and to any models, drawings, patterns, composites, molds, masks, fixtures, and tools used in making them, and nothing in this sale conveys any license, expressly or by implication or estoppel under any such rights to Customer.

14.2 Branding. Customer agrees that it will not alter or remove any Seller trademarks on the Products sold under this Agreement under any circumstances provided that Customer is given a sample of Seller's anticipated branding prior to Product Delivery; Customer will provide Seller a set of branding requirements within ninety (90) days after the date of this Agreement, and Seller shall consider this

branding requirements and take reasonable efforts to incorporate it into the final rendering of the Products.

15. **Indemnity.**

15.1 **Indemnity.** Each Party (the “Indemnifying Party”) shall indemnify, defend and hold harmless, the other Party, its affiliates, and its and their officers, employees, agents, successors, and assigns, (each an “Indemnified Party”) against any and all losses, damages, liabilities, deficiencies, actions, judgements, interest, awards, penalties, fines, costs or including reasonable attorneys’ fees and expenses (“Losses”) to the extent resulting from a claim, action, suit, proceeding, demand, investigation, or assessment made or brought by any person or entity (“Claim”) for: (a) any injury or death to any person, and (b) destruction of real or tangible personal property of third parties arising out of, or in connection with, an act or omission or negligence of the Indemnifying Party or its officers, employees, agents or subcontractors acting within the scope of employment of the Indemnifying Party. The Indemnifying Party’s liability shall be limited by the Indemnified Party’s own proportional negligence and/or willful conduct. The Indemnified Party will give the Indemnifying Party prompt written notice of any claim for which indemnification is sought. Failure to give prompt notice will not diminish the Indemnifying Party’s obligations under this Agreement to the extent such failure does not materially prejudice the Indemnifying Party’s ability to defend the claim. The Indemnifying Party shall control the defense of the Claim, and the Indemnified Party may participate in the defense at its own expense with counsel of its choice. If the Claim is one that cannot by its nature be defended solely by the Indemnifying Party, then the Indemnified Party will make available information and assistance as the Indemnifying Party may request, at the Indemnifying Party’s expense. The Indemnifying Party may not, without the prior written consent of the Indemnified Party, (a) consent to the entry of any judgement or enter into any settlement that provides for injunctive or other non-monetary relief affecting the Indemnified Party, or (b) consent to entry of any judgement or enter into any settlement unless such judgement or settlement that provides for an unconditional and full release of the Indemnified Party and does not diminish any rights of the Indemnified Party under this Agreement or result in additional fees or charges to the Indemnified Party. If the Indemnifying Party, within a reasonable time after receipt of a request for indemnification fails to take reasonable steps to defend the Indemnified Party against a Claim, the Indemnified Party may undertake the defense of such Claim without waiving its rights and remedies under this Agreement.

15.2 **Intellectual Property Indemnity.** Supplier will at its expense defend or settle (at its option) any third-party Claim against Customer arising from the infringement of any patent, copyright, mask work right, trade secret, or other intellectual property right by Product in the United States, and will pay any final judgment entered against Customer in such claim, provided that Customer notifies Supplier in writing of such claim promptly after knowing of it and allows Supplier to control the defense and all related settlement negotiations and cooperates in its defense as requested by Supplier. Without limitation to Supplier’s obligations under this Section, if any court or administrative agency issues an injunction prohibiting the use of any Products sold under this Agreement, then Supplier shall modify or replace the affected Products so as to avoid further infringement, or obtain a license to cure an infringement, in its sole discretion. Supplier’s duty to defend and indemnify will not apply if the alleged infringement arises from the combination of the Products with any other goods or products not provided by or directed to be used by Supplier, or the modification of any Products (unless performed or directed by Supplier or its authorized representatives), or any unauthorized use of the Products by the Customer if the infringement would not have occurred but for such unauthorized use. Supplier shall not be responsible for any settlement made by Customer of an indemnifiable claim hereunder, unless such claim was settled with Supplier’s prior written consent.

16. **Confidentiality.** “Confidential Information” shall mean: (i) trade secrets or other proprietary or confidential information; (ii) other materials designated in writing as confidential by the disclosing Party at the time of disclosure; and (iii) oral or written information reasonably discernable to be confidential information of the disclosing Party. Confidential Information will not include any information that is

either known to the general public or to the industry, or known to, or in the possession of, a receiving Party prior to disclosure by the other Party, that is disclosed as required by law, or that is independently developed by such Party. If disclosure of such Confidential Information is required by law, the Party receiving such Confidential Information shall notify the other Party prior to such disclosure and cooperate with the other Party with any efforts to prevent or oppose such disclosure. Each Party agrees that it will not disclose to any third party any Confidential Information it obtains with respect to the other Party during or after the term of this Agreement except as expressly permitted hereunder, and that it will treat all such information as confidential and will use such information only for carrying out the purposes of this Agreement; provided that either Party shall be permitted to disclose Confidential Information to their respective counsel, advisers, investors, financing parties, and affiliates, provided that the aforementioned are subject to similar confidentiality obligations. The confidentiality obligations of the Parties hereunder shall continue during the term of this Agreement for a period of three (3) years from the date of disclosure of Confidential Information. For clarity, this Agreement and related documents shall be confidential. Neither Party shall issue any press release or other public announcement regarding this Agreement or the subject matter herein without the prior written consent of the other Party, unless otherwise required under applicable law.

17. **Term and Termination.**

17.1 **Term.** Subject to Section 31, this First Restated Agreement shall supersede the Original Agreement on the First Restated Agreement Effective Date and remain effective for one (1) year thereafter (the “Initial Term”) and shall renew for successive one (1) year terms (any such term, a “Renewal Term” and collectively with the Initial Term, the “Term”) upon written agreement from both parties. Either party can terminate this Agreement effective at the end of the then-current Term by providing three (3) months’ prior written notice. For further clarity without limiting the foregoing, six (6) months prior to each subsequent calendar year under the Agreement, the Parties will begin negotiating a new pricing exhibit for such subsequent calendar year.

17.2 **Termination for Breach.** If either Party materially defaults in the performance of its obligations hereunder, the defaulting Party agrees to use commercially reasonable efforts to correct the default within [] after written notice of default from the non-defaulting Party. If such breach is not reasonably capable of cure within [] but such breach is reasonably capable of cure within [] after delivery of notice of such breach, then the breaching Party shall be afforded [] to cure said breach, if the breaching Party commences to remedy the breach within such [] period and thereafter diligently pursues such remedy until such breach is fully cured, but in no event later than such [] period.

If any such default is not corrected within the applicable cure period, then the non-defaulting Party at its option may, in addition to any other remedies it may have under this Agreement, or at law or in equity, terminate any Purchase Order(s) and/or this Agreement immediately upon written notice to the other Party.

17.3 **Rights upon Termination.** The termination or expiration of this Agreement for any reason other than a default shall not affect or impair the rights and obligations of either Party, nor relieve any Party of any obligation or liability accrued hereunder prior to such termination or expiration or affect or impair the rights of either Party arising under this Agreement prior to such termination or expiration.

Termination for Bankruptcy. If the other Party files a petition in bankruptcy, files a petition seeking reorganization, arrangement, composition or similar relief, or makes an assignment for the benefit of creditors, or if any involuntary petition or proceeding under bankruptcy or insolvency laws is instituted against such other Party and not stayed, enjoined or discharged within [], this Agreement may be terminated by either Party immediately, by giving written notice to the other Party to that effect.

18. **Compliance with Laws.** Supplier shall comply with all applicable federal, state, and local laws, order, and regulations with respect to all goods and services provided by Supplier hereunder, including delivery of the Products and onsite services provided under the Warranty. Supplier shall ensure that its employees, agents, and subcontractors adhere to the same. This Agreement incorporates by reference all the clauses required by the provisions of said laws, orders, and regulations. Supplier further agrees that it and its employees, agents, and subcontractors comply with all reasonable Project Site compliance requirements of which Supplier receives actual notice, including but not limited to registration of personnel and vehicles, background checks, fingerprints, and other security measures.

19. **Arbitration.** The Parties agree that any dispute not resolved amicably by the Parties through mutual negotiation within thirty (30) days from the date a Party raises such dispute in writing shall be resolved by arbitration under the arbitration rules of the American Arbitration Association then in effect, by a panel of three arbitrators appointed in accordance with such rules. The arbitration shall take place in the San Francisco, California metropolitan area and the language of the arbitration shall be English. Either Party may apply to any court having jurisdiction for injunctive relief necessary to protect its rights pending resolution of the arbitration. The award of arbitration shall be final and binding upon the Parties, and judgment thereon may be entered by any court of competent jurisdiction. The arbitrators may order equitable or injunctive relief consistent with the remedies and limitations in this Agreement. All information disclosed in connection with the arbitration, including the existence of the arbitration, will be Confidential Information governed by Section 16. The Parties may, however, disclose such information to an appropriate court, under confidentiality restrictions, as necessary to seek enforcement of any arbitration award or judgment or to seek any relief permitted under the terms hereof. The arbitrators shall award the prevailing Party in any dispute reimbursement of its arbitration costs and fees, including without limitation reasonable attorneys' fees, paid by the non-prevailing Party.

20. **Quarterly Meetings.** During the Term the Parties shall have quarterly meetings prior to the end of each calendar quarter to review sales and marketing policies and the outcome of such meetings shall be reported to each Party's management. The meeting held prior to the end of the fourth quarter of each year shall include discussions regarding annual sales and marketing policies, as well as new product introduction efforts and any major changes to the company structure coming in the next calendar year. All such meetings shall take place on dates agreed upon by the Parties.

21. **Restrictions on Data and System Access.** Supplier will only collect and use data and information related to the operations of the Products that will be made available to Supplier by Customer, or data Customer allows to be collected directly by Supplier in the normal course of monitoring the Products' performance and reliability which is required by Supplier for the performance of its obligations under this Agreement. Customer shall make the data required by Supplier for the performance of Supplier's obligations hereunder available on an as-needed basis. The costs of remote data transmission from the Project Sites shall be borne by Customer. Supplier shall not collect or have access to Customer data or information or meter data related to the installed Products except as provided in this Section 21. Supplier may only use such data in the performance of the services under this Agreement and will not disclose any data or information to any third party (except as provided in this Agreement regarding maintenance and support) or otherwise use data or information for its internal operations. Customer may audit the collection and use of such data and information by Supplier. All data and information will be subject to physical, access and other security controls, and will be secured and encrypted when stored and accessed or transferred across any private or public network. Supplier's security systems and protocols related to data provided by Customer and/or collected by Supplier from the Products will be consistent with those guidelines establish by SANS for Critical Security Controls. All logins by Supplier personnel shall be identifiable to specific individuals. Within thirty (30) days of the First Restated Agreement Effective Date, and to the extent not already completed by such date: (a) Supplier shall provide Customer with documentation describing Supplier's internal controls related to data security and Supplier's obligations under this Agreement; and (b) Supplier and Customer shall work collaboratively to ensure that all requirements of this Section 21 are fulfilled. Supplier acknowledges and agrees that all Customer

software and other Customer proprietary technology provided to Supplier and that is or becomes part of the Products is the sole property of Customer and constitutes valuable trade secrets and intellectual property of Customer. Customer acknowledges and agrees that all Supplier software and proprietary technology that is part of the Products is the sole property of Supplier and constitutes valuable trade secrets and intellectual property of Supplier. Supplier agrees that it will not attempt to gain access to any software or other proprietary technology or any data or information generated by the Products, and will not attempt to copy, reverse engineer or otherwise exploit Customer's software and other proprietary technology.

22. **Environmental Attributes.** Supplier hereby waives and disclaims any rights to any Environmental Attributes as part of the transaction relating to this Agreement and/or the Products sold hereunder; all Environmental Attributes shall belong to Customer or Customer's affiliates. "Environmental Attributes" means any and all credits, tradeable credits or certificates, benefits, incentives, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from or installation of the Products or services purchased under this Agreement. Environmental Attributes include but are not limited to: (a) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SO_x), nitrogen oxides (NO_x), carbon monoxide (CO) and other pollutants identified now or in the future; (b) any avoided emissions of carbon dioxide (CO₂), methane (CH₄) and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere or that are subject to reporting pursuant to 40 CFR Part 98; (c) investment and/or production tax credits associated with the construction or operation of the energy projects and other financial incentives in the form of credits, reductions, or allowances associated with the project that are applicable to a state or federal income or other taxation obligation; (d) reporting rights to these avoided emissions in compliance with federal or state law, if applicable, and to a federal or state agency or any other party including without limitation those reporting rights accruing under Section 1605(b) of The Energy Policy Act of 1992, 42 U.S.C. 13385(b), and the rules promulgated thereunder, and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program; and (e) state incentives, such as the Self Generation Incentive Plan (SGIP) in California or other similar or like programs in other states, cities, municipalities, utilities, school districts or other similar entities.

23. **Recycling of Product.** At the end of the functional life or end of the Warranty Period associated with the Product, whichever occurs first, upon written notice from Customer, Supplier agrees to accept all Supplier provided Battery Products at the cost agreed by both parties at that time of recycling (such cost not to exceed twenty-five dollars (\$25) per kWh of DC Nameplate Rating), and to make all reasonable efforts to recycle the Product or Product components in an environmentally responsible way. For better clarity without limiting the generality of the foregoing, such cost shall not include the cost of demolition and transportation of the Battery Products to the designated location, which shall be borne by Customer.

24. **Bankability Report.** Upon request by Customer, Supplier shall provide to Customer a report developed by a U.S. nationally recognized independent engineer ("I.E."), reasonably approved by Customer. For clarity, Supplier's acquisition or lack thereof of this report shall not be deemed cause for breach or termination of the Agreement.

25. **General Terms.**

25.1 **Governing Law and Trade Terms.** This Agreement shall be governed by the laws of California without regard to conflicts of laws provisions thereof. English shall be the governing language of this Agreement.

25.2 **Communications and Notices.** All approvals, consents, notices, and other communications required or permitted hereunder shall be in writing, even if not specifically designated

herein. All notices, claims, requests, demands and other communications that the Parties may give to each other pursuant to this Agreement shall be in writing and shall be hand delivered or sent by registered or certified mail postage prepaid, return receipt requested, or by facsimile or by overnight courier service, postage prepaid, or by email, to the Parties at the applicable address set forth on the signature page hereto or to such other address or as either Party shall designate by written notice given in accordance with this Section. Notices given by facsimile or overnight mail shall be deemed given one (1) business day after being sent, and notices given by registered or certified mail shall be deemed given three (3) business days after being sent. Notice given by email shall be deemed given upon a receipt confirmation email sent by the receiving Party.

25.3 Assignment; Binding Effect.

(a) Neither Party shall, in any way, assign, transfer, or sub-contract its rights and obligations under this Agreement to any third party without the prior written consent of the other Party (such consent not to be unreasonably withheld) except as provided in this Agreement (including, but not limited to, assignments of the Warranty and transfers of title).

(b) Notwithstanding Section 25.3(a), the Warranty set forth in **Exhibit E** is assignable according to the terms of the Warranty. Assignees of the Warranty will have all rights of Customer under **Exhibit E** as against Supplier under the Warranty as set forth in Section 11.2 herein.

(c) After issuing to Supplier a Purchase Order in the name of Customer, Customer may assign rights under Purchase Orders to an affiliate of Customer (the "Assignee") (and any successors and assigns), and the Assignee will have all rights but not any of the obligations (including payments) of Customer under the Purchase Order as against Supplier. Notwithstanding the assignment, Customer does not assign and shall retain all obligations including payment obligations to pay to Supplier under this Agreement and the Purchase Order.

25.4 Entire Agreement; Amendment. This Agreement embodies and sets forth the entire agreement and understanding of the Parties and supersedes all prior oral or written agreements understandings or arrangements relating to the subject matter of this Agreement. No modification, deletion, addition or waiver of the terms of this Agreement shall be binding on either Party unless made in writing and signed by a duly authorized representative of each Party.

25.5 Severability. In the event that any provision or provisions of this Agreement is held invalid or unenforceable for any reason under any jurisdiction, the invalidity or unenforceability of such provision or provisions shall not operate to invalidate the other provisions of this Agreement, and shall not operate to invalidate such provision or provisions in any other jurisdiction. Each provision of this Agreement shall be considered as a separate and divisible agreement.

25.6 Non-Waiver. No failure or delay on the part of either party hereto to exercise any right or remedy under this Agreement shall be construed or operated as a waiver thereof. The rights and remedies provided in this Agreement are cumulative and are not exclusive of any rights or remedies provided by law.

25.7 Independent Contractors. The Parties are independent contractors, and nothing in this Agreement shall be construed to create a partnership, agency, or other similar relationship. Each party shall not, under any circumstances, represent itself as having the power and authority to bind the other Party into an agreement or legally binding obligation.

25.8 Force Majeure. Neither Party shall be held responsible for any delays nor non-performance of its obligations hereunder that are attributable to Force Majeure. With regard to the occurrence of a Force Majeure event, the Parties' obligations (except those relating to confidentiality and

payment for Product already delivered) shall be suspended during the pendency of the Force Majeure event, and adjustments shall be made to the delivery schedule or other terms as agreed upon by the Parties for the period of the Force Majeure event and subsequent recovery therefrom. "Force Majeure" means the occurrence of any event which is outside of the reasonable control of the affected party and not due to the fault or negligence of a Party, which are reasonably unforeseeable, unavoidable or insurmountable, and which prevent total or partial material performance by either Party. A Force Majeure event shall include, without limitation: war, serious fire, flood, typhoon, earthquake, acts of terrorism, or other events as reasonably mutually agreed upon by the Parties in writing. The Party claiming Force Majeure shall promptly inform the other Party in writing and shall furnish within [] thereafter sufficient proof of the occurrence and duration of such Force Majeure. The Party claiming Force Majeure shall also use commercially reasonable efforts to terminate the Force Majeure and shall promptly consult with the other in order to find an equitable solution and minimize the consequences of such Force Majeure. As soon as the non-performing Party can resume performance of its obligations hereunder, that Party shall give the other Party written notice to that effect and shall promptly resume performance. The burden of proving the existence of a Force Majeure event shall be on the Party claiming relief from such Force Majeure. In the event that a Force Majeure event exceeds [] in duration, either Party shall be able to terminate the affected Purchase Orders without any liability, and Supplier shall return to Customer any and all amounts paid by Customer with respect to such Purchase Order(s). The following, without limitation, shall not be considered a Force Majeure event: the inability of a Party to make payments as and when due, the inability of a Party to obtain raw materials or components from suppliers; general changes in market conditions for raw materials, components, shipping costs; changes in import duties or tariffs.

25.9 **Survival.** Neither the expiration nor termination of this Agreement shall relieve either Party of any obligation previously accrued, nor any obligation persisting, accruing or arising thereafter. Termination or expiration of this Agreement shall not release either Party from the obligation to make payment to the other Party of all amounts then and thereafter due and payable under this Agreement. The provisions of Section 11 (Warranty and Product Failures), Section 15 (Indemnity), Section 16 (Confidentiality), Section 19 (Arbitration), Section 25 (General Terms), Section 26 (Consequential Damages), and Section 27 (Limitations) shall survive the expiration or termination of this Agreement.

25.10 **Liquidated Damages.** The Parties agree that it would be impracticable or extremely difficult to determine the actual damages resulting from certain acts or omissions of Supplier; therefore the Parties further agree that those damages identified as "Liquidated Damages" represent a reasonable estimate of fair compensation for the foreseeable losses resulting from Supplier's acts or omissions, and such damages are not intended to be a penalty upon Supplier. The cumulative liquidated damages due with respect to Products purchased under a single Purchase Order shall be not exceed [] percent ([]%) of the total value of such Purchase Order Price. Without prejudice to any other rights of Customer, including termination rights under Section 17.2, once the cumulative liquidated damages reach such maximum amount, it shall be considered a material breach of the Agreement, and Customer shall have all rights and remedies hereunder or at law or equity.

26. **Consequential Damages.** EXCEPT FOR INDEMNIFICATION OBLIGATIONS HEREIN, IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY CONSEQUENTIAL, SPECIAL, INCIDENTAL, INDIRECT, OR PUNITIVE DAMAGES, INCLUDING WITHOUT LIMITATION LOST PROFITS, WHETHER THE CLAIM IS BASED ON CONTRACT, TORT, STRICT LIABILITY, OR ANY OTHER THEORY OF LAW OR EQUITY, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. FOR AVOIDANCE OF DOUBT, LIQUIDATED DAMAGES AMOUNTS AGREED HEREIN SHALL NOT BE CONSIDERED CONSEQUENTIAL DAMAGES.

27. **Limitations.** Each Party's liability hereunder shall in no event exceed the total purchase price under the applicable Purchase Order(s); provided, however, that notwithstanding the foregoing, no such limitation shall apply to: (a) any liability pursuant to Section 15 (Indemnity); (b) any liability pursuant to Section 16 (Confidentiality); and/or (c) the gross negligence or willful misconduct of a Party.

28. **Security Interest.** Subject to Section 4.2, Customer acknowledges and agrees that Supplier will have the right to make any security filings, including protective filings under the Uniform Commercial Code, to defend and protect Supplier's right title and interest in and to the Products. Supplier agrees to release any security interests on any Products once title has passed to Customer in accordance with Section 4.2.

29. **Trade Credit Insurance.** To secure the payment obligations of Customer to Supplier, Supplier shall have the right to obtain trade credit insurance ("Trade Credit Insurance"), and the cost of such Trade Credit Insurance shall be included as an additional cost item in the Purchase Order, with payment terms and credit limits more particularly set forth in **Exhibit C**.

30. **Discontinued Products.**

30.1 **Definitions.** "Product Discontinuation" means a process by which the electrical or mechanical components of a Product become no longer compatible with Product specification or the Product itself will no longer be in mass production. "Last Buy" means the Products that Customer or System Owner purchases from Supplier prior to Product Discontinuation to account for the anticipated rate of defect for such Products.

30.2 **Product Discontinuation Notice.** Supplier shall notify Customer of its plan for Product Discontinuation six (6) months prior to the date on which such Product Discontinuation takes effect. Customer shall determine the Last Buy amount and notify Supplier within thirty (30) days of receiving Supplier's notification of Product Discontinuation. Supplier shall confirm the Last Buy amount and supply schedule within thirty (30) days of receiving Customer's notification of Last Buy amount.

Product availability: Product(s) defined in **Exhibit A** and with an accepted Customer Purchase Order will be maintained in production for a minimum of eighteen (18) months from time of Purchase Order acceptance.

30.3 **Last Buy Process.** The Parties agree to the following regarding Last Buy process:

(a) The final determination of the date of Product Discontinuation shall be negotiated with Customer in a good faith; however, the final date of Product Discontinuation shall be solely determined by Supplier.

(b) Customer shall be responsible for calculating Last Buy amount.

(c) Supplier shall be responsible for accepting Purchase Orders and manufacturing the Last Buy amount up to sixty (60) days after final termination date.

(d) Customer must purchase the entire Last Buy amount manufactured by Supplier and stored by Customer or Supplier upon request, as calculated by Customer.

(e) The price of such Last Buy Product shall be calculated by adding the storage cost and interest amount to the fixed price of such Product after Product Discontinuation. Supplier shall notify Customer of such price prior to Product Discontinuation.

31. **Effect of First Restated Agreement.** The terms of this First Restated Agreement shall apply to all Purchase Orders accepted after the First Restated Agreement Effective Date. Purchase Orders accepted prior to the First Restated Agreement Effective Date shall remain unmodified by this First Restated Agreement.

32. **Service of Process.**

(a) Supplier hereby irrevocably designates and appoints _____ (the “Supplier Service of Process Agent”) at the following United States address: _____, with respect to any action or proceeding in the United States as its authorized agent to receive, accept, and acknowledge on its behalf service of all process in any proceedings in any court. Supplier agrees that service of process, writ, judgment, or other notice of legal process upon the Service of Process Agent shall be deemed and held in every respect to be effective personal service upon it. A copy of any such process so served shall be promptly mailed to Supplier at Supplier’s notice address indicated. Nothing herein shall affect the right to serve process in any other manner permitted by law.

(b) Sungrow Samsung SDI hereby irrevocably designates and appoints _____ (the “Sungrow Samsung SDI Service of Process Agent”) at the following United States address: _____, with respect to any action or proceeding in the United States as its authorized agent to receive, accept, and acknowledge on its behalf service of all process in any proceedings in any court. Sungrow Samsung SDI agrees that service of process, writ, judgment, or other notice of legal process upon the Service of Process Agent shall be deemed and held in every respect to be effective personal service upon it. A copy of any such process so served shall be promptly mailed to Sungrow Samsung SDI at Sungrow Samsung SDI’s notice address indicated. Nothing herein shall affect the right to serve process in any other manner permitted by law.

33. **Joint and Several Liability.** Sungrow Samsung SDI hereby agrees to be jointly and severally liable for Supplier’s obligations under this Agreement.

[Signatures on following page.]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

“SUPPLIER”

Sungrow USA Corporation

By: /s/ Hanyu Zheng
Printed Name: Hanyu Zheng
Title: Managing Director

Notice Information:

Sungrow USA Corporation
c/o Sungrow Samsung SDI Energy Storage Power Supply Co, Ltd.
[]

“SUNGROW SAMSUNG SDI”

Samsung SDI Energy Storage Power Supply Co, Ltd

By: /s/ Mizhi Zhang
Printed Name: Mizhi Zhang
Title: General Manager

Notice Information:

Sungrow Samsung SDI Energy Storage Power Supply Co, Ltd.
[]

“CUSTOMER”

By: /s/ Bill Bush
Printed Name: Bill Bush
Title: CFO

Notice Information:

Stem, Inc.
100 Rollins Road
Millbrae, CA 94030
Attn: Bill Bush
Telephone: []
E-mail: []

Exhibits:

Exhibit A – List of Products Subject to Agreement

Exhibit B – Product Specifications

Exhibit C – Pricing and Order Volumes

Exhibit D – Form of Purchase Order and Payment Terms

Exhibit E – Form of Manufacturer's Warranty, Extended Warranty and Performance Guarantee

Exhibit F – Supplier Insurance Requirements

Exhibit G – Form of Change Order

Exhibit H – Installation, Commissioning Process Flow Chart

CERTIFICATION OF CHIEF EXECUTIVE OFFICER

I, John Carrington, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q for the three months ended June 30, 2022 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) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on 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: August 4, 2022

By: /s/ John Carrington

Name: John Carrington

Title: Chief Executive Officer

CERTIFICATION OF CHIEF FINANCIAL OFFICER

I, William Bush, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q for the three months ended June 30, 2022 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) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on 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: August 4, 2022

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

**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 Quarterly Report on Form 10-Q of Stem, Inc. (the "Company") for the three months ended June 30, 2022 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, John Carrington, Chief Executive 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, 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 registrant.

STEM, INC.

Date: August 4, 2022

By: /s/ John Carrington

Name: John Carrington

Title: Chief Executive Officer

A signed original of this written statement required by Section 906 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.

This certification accompanies the Report pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 and shall not be deemed filed by the Company for purposes of Section 18 of the Exchange Act.

**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 Quarterly Report on Form 10-Q of Stem, Inc. (the "Company") for the three months ended June 30, 2022 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, 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 registrant.

STEM, INC.

Date: August 4, 2022

By: /s/ William Bush

Name: William Bush
Title: Chief Financial Officer
(Principal Financial Officer)

A signed original of this written statement required by Section 906 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.

This certification accompanies the Report pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 and shall not be deemed filed by the Company for purposes of Section 18 of the Exchange Act.