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

FORM 8-K

CURRENT REPORT

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

Date of Report (Date of earliest event reported): November 10, 2021

EMBARK TECHNOLOGY, INC.

(Exact name of registrant as specified in its charter)

Delaware	**001-39881**	**86-3343695**
(State or other jurisdiction of incorporation)	(Commission File Number)	(IRS Employer Identification No.)

424 Townsend Street
San Francisco, CA 94107
(Address of principal executive offices, including zip code)

Registrant's telephone number, including area code: (415)671-9628

NORTHERN GENESIS ACQUISITION CORP. II

(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

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

Title of each class	**Trading Symbol(s)**	**Name of each exchange on which registered**
Class A common stock, par value $0.0001 per share	EMBK	The Nasdaq Stock Market LLC
Warrants to purchase one share of Class A common stock, each at an exercise price of $11.50 per share	EMBKW	The Nasdaq Stock Market LLC

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter). ☒

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. ☐

INTRODUCTORY NOTE

Unless the context otherwise requires, "we," "us," "our," "Embark Technology" and the "Company" refer to Embark Technology, Inc., a Delaware corporation, and its consolidated subsidiaries. All references herein to the "Board" refer to the board of directors of Embark Technology. Terms used but not defined herein, or for which definitions are not otherwise incorporated by reference herein, shall have the meaning given to such terms in the Proxy and such definitions are incorporated herein by reference.

Merger Transaction

As previously announced, Northern Genesis Acquisition Corp. II ("NGA" and, after the Closing (as defined below), "Embark Technology"), a Delaware corporation, previously entered into an agreement and plan of merger, dated as of June 22, 2021 (the "Merger Agreement"), by and among NGA, NGAB Merger Sub Inc., a Delaware corporation ("Merger Sub"), and Embark Trucks Inc., a Delaware corporation ("Embark Trucks").

On November 10, 2021, as contemplated by the Merger Agreement and described in the section titled "*Proposal No.1 — The Business Combination Proposal*" beginning on page 65 of the final prospectus and definitive proxy statement, dated October 18, 2021 (the "Proxy") and filed with the Securities and Exchange Commission (the "SEC"), NGA consummated the merger transaction contemplated by the Merger Agreement (the "Closing"), whereby Merger Sub merged with and into Embark Trucks, the separate corporate existence of Merger Sub ceasing and Embark Trucks being the surviving corporation and a wholly owned subsidiary of NGA (the "Merger" and, together with the related transactions contemplated by the Merger Agreement, the "Business Combination"). In connection with the consummation of the Business Combination, NGA changed its name to "Embark Technology, Inc." ("Embark Technology"). The shares of Class A common stock, par value $0.0001 per share, of NGA (the "NGA Class A common stock") and redeemable warrants to acquire one share of NGA Class A common stock (the "NGA warrants") became shares of Embark Technology Class A Common Stock or Embark Technology warrants, as applicable, upon consummation of the Business Consummation.

Immediately prior to the Effective Time (as defined below), NGA amended and restated its Amended and Restated Certificate of Incorporation (as amended and restated, the "Embark Technology Charter") to implement a new dual-class capital structure with (i) shares of Class A common stock, par value $0.0001 per share ("Embark Technology Class A Common Stock"), carrying voting rights of one vote per share, and (ii) shares of Class B common stock, par value $0.0001 per share ("Embark Technology Class B Common Stock" and collectively with the Embark Technology Class A Common Stock, "Embark Technology Common Stock"), carrying voting rights of ten votes per share. Each share of NGA Common Stock issued and outstanding at the time of effectiveness of the Embark Technology Charter was automatically reclassified as a share of Embark Technology Class A Common Stock.

At the effective time of the Merger (the "Effective Time"), each share of Embark Trucks common stock, par value $0.00001 per share ("Embark Trucks common stock") outstanding as of immediately prior to the Effective Time (including shares of Embark Trucks common stock resulting from the conversion of Embark Trucks preferred stock prior to the Merger, but excluding (i) any shares of Embark Trucks common stock subject to Embark Awards (as described below), (ii) any shares of Embark Trucks common stock as to which appraisal rights were properly exercised in accordance with Delaware law and (iii) shares of Embark Trucks common stock held by Embark Trucks as treasury stock) were converted into a right to receive a number of shares of Embark Technology Common Stock at a rate of 2.98300687596923 shares of Embark Technology Common Stock for each share of Embark Trucks common stock (the "Exchange Ratio"). With respect to the Embark Trucks Awards (as defined below), all (i) options to purchase shares of Embark Trucks common stock, (ii) restricted stock units based on shares of Embark Trucks common stock and (iii) restricted shares of Embark Trucks common stock outstanding as of immediately prior to the Effective Time (collectively, the "Embark Trucks Awards") were converted into (a) options to purchase shares of Embark Technology Class A Common Stock ("Embark Technology Options"), (b) restricted stock units based on shares of Embark Technology Class A Common Stock ("Embark Technology RSUs") and (c) restricted shares of Embark Technology Class A Common Stock ("Embark Technology Restricted Stock"), respectively.

Subscription Agreements

As previously announced, on June 22, 2021, concurrently with the execution of the Merger Agreement, NGA entered into subscription agreements, pursuant to which certain accredited investors (the "PIPE Investors") agreed to purchase an aggregate of 16,000,000 shares of NGA Class A common stock that became shares of Embark Technology Class A Common Stock upon the consummation of the Business Combination (the "PIPE Financing"), for a price of $10.00 per share for an aggregate commitment of $160 million in the PIPE Financing. In addition, pursuant to certain forward purchase agreements previously entered into by NGA, on April 21 2021 (the "Forward Purchase Agreements"), certain investors (the "FPA PIPE Investors") agreed to purchase, and NGA agreed to sell to the FPA PIPE Investors, an aggregate of 4,000,000 units of NGA, each consisting of one share of Embark Technology Class A Common Stock and one-sixth of a warrant to purchase one share of Embark Technology Class A Common Stock (the "PIPE Units"), for a purchase price of $10.00 per unit and $40 million in the aggregate, in the PIPE Financing.

Immediately after giving effect to the Business Combination and the PIPE Financing, there were 362,474,085 shares of Embark Technology Class A Common Stock, 87,078,981 shares of Embark Technology Class B Common Stock and 22,486,667 Embark Technology warrants outstanding. Upon the consummation of the Business Combination, the NGA Class A common stock and NGA warrants ceased trading on the New York Stock Exchange and on November 11, 2021, Embark Technology's Class A common stock and warrants began trading on The Nasdaq Stock Market LLC under the symbols "EMBK" and "EMBKW," respectively.

Item 1.01. Entry into a Material Definitive Agreement.

Registration Rights Agreement

In connection with the Closing, Embark Technology entered into an amended and restated registration rights agreement (the "Registration Rights Agreement") among Embark Technology, Northern Genesis Sponsor II LLC, a Delaware limited liability company (the "Sponsor"), and certain former Embark Trucks stockholders (such stockholders, together with their respective Permitted Transferees (as defined in the Registration Rights Agreement), the "Embark Trucks Holders"). The Registration Rights Agreement, subject to the terms thereof, requires Embark Technology to, among other things, file a resale shelf registration statement on behalf of the Sponsor and the Embark Trucks Holders and their respective permitted transferees within thirty (30) calendar days following the Closing. The Registration Rights Agreement also provides for certain demand rights and piggyback registration rights in favor of each of the Sponsor and the Embark Trucks Holders and their respective permitted transferees, subject to customary underwriter cutbacks. Embark Technology will agree to pay certain fees and expenses relating to registrations under the Registration Rights Agreement.

The foregoing description of the Registration Rights Agreement does not purport to be complete and is qualified in its entirety by the terms and conditions of the Registration Rights Agreement, which is attached hereto as Exhibit 10.4 and is incorporated herein by reference.

Sponsor Support Agreement

As described in the Proxy, in connection with the execution of the Merger Agreement, the Sponsor entered into an agreement (the "Sponsor Support Agreement") with Embark Trucks and NGA pursuant to which the Sponsor agreed, among other things, to not to (i) transfer any of its shares of Embark Technology Class A Common Stock or warrants for certain periods of time as set forth in the Sponsor Support Agreement, subject to certain customary exceptions or (ii) enter into any voting arrangement that was inconsistent with the commitment under the Sponsor Support Agreement to vote in favor of the approval and adoption of the Business Combination. Pursuant to the Sponsor Support Agreement, Sponsor forfeited 311,904 shares of NGA Class A common stock purchased by the Sponsor prior to the time of NGA's initial public offering (the "Founder Shares") in connection with the Forward Purchase Agreement investment.

Bylaws

Lock-up Provisions

As described in the Proxy, the amended and restated bylaws of Embark Technology (the "Embark Technology Bylaws") provide that the holders of the Embark Technology Common Stock issued (a) pursuant to the Merger, as consideration for common stock or other securities of Embark Trucks outstanding immediately prior to the closing of the Merger or (b) to directors, officers and employees of Embark Trucks upon the settlement or exercise of restricted stock units, stock options or other equity awards outstanding as of immediately following the closing of the Merger in respect of Embark Trucks Awards outstanding immediately prior to the closing of the Merger, may not transfer any (x) shares of Embark Trucks Common Stock held by such holders immediately following the closing of the Merger (other than shares of common stock acquired in the public market or pursuant to a transaction exempt from registration under the Securities Act, pursuant to a subscription agreement where the issuance of common stock occurs on or after the closing of the Merger) and any shares of Embark Technology Common Stock received upon the settlement or exercise of restricted stock units, stock options or other equity awards outstanding as of immediately following the closing of the Merger in respect of Embark Trucks Awards outstanding immediately prior to the closing of the Merger; provided, that, for clarity, shares of Embark Technology Class A Common Stock issued in connection with the PIPE Financing shall not constitute securities subject to the foregoing lock-up; and (y) any securities of Embark Technology that are issued in respect of or upon any conversion, exercise or exchange of any securities subject to the foregoing lock-up, including as a result of any stock split, reverse stock split, stock dividend, reorganization, recapitalization, reclassification, combination, exchange of shares or other similar change, in each case, until the date that is 180 days after (and excluding) the Closing, subject to (i) an early lock-up release based on the price of the shares of Embark Technology Class A Common Stock, and (ii) an early lock-up release in the event that the lock-up would have otherwise expired during certain black-out dates with respect to trading.

Indemnification Agreements

On the Closing Date, Embark Technology entered into indemnification agreements with each of its directors and executive officers.

Each indemnification agreement provides for indemnification and advancements by Embark Technology of certain expenses and costs relating to claims, suits or proceedings arising from each director or executive officer's service to Embark Technology, or, at Embark Technology's request, service as directors or officers of other entities, in each case, to the maximum extent permitted by applicable law.

The foregoing description of the indemnification agreements does not purport to be complete and is qualified in its entirety by the terms and conditions of the indemnification agreements, a form of which is attached hereto as Exhibit 10.9 and is incorporated herein by reference.

Embark Technology, Inc. 2021 Incentive Award Plan

On November 10, 2021, the Embark Technology, Inc. 2021 Incentive Award Plan (the "Embark Technology 2021 Plan") became effective. At the special meeting of the NGA shareholders held on November 9, 2021 (the "Special Meeting"), the NGA shareholders approved the Embark Technology 2021 Plan. The Embark Technology 2021 Plan provides for the grant of stock options, including incentive stock options and nonqualified stock options, stock appreciation rights, restricted stock, dividend equivalents, restricted stock units and other stock or cash-based awards. Employees, consultants and directors, and employees and consultants of Embark Technology and its subsidiaries may be eligible to receive awards under the Embark Technology 2021 Plan. The Embark Technology 2021 Plan is administered by the Board or a committee of the Board, to which authority is delegated by the Board referred to herein as the "plan administrator," subject to the limitations imposed under the Embark Technology 2021 Plan, Section 16 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), stock exchange rules and other applicable laws. The plan administrator has the authority to take all actions and make all determinations under the Embark Technology 2021 Plan, to interpret the Embark Technology 2021 Plan and award agreements, to correct defects and ambiguities, supply omissions and reconcile inconsistencies in the Embark Technology 2021 Plan or any award, to institute and determine the terms and conditions of any exchange program, and to adopt, amend and repeal rules for the administration of the Embark Technology 2021 Plan as it deems advisable. The plan administrator also has the authority to determine which eligible service providers receive awards, grant awards and set the terms and conditions of all awards under the Embark Technology 2021 Plan, including any vesting and vesting acceleration provisions, subject to the conditions and limitations in the Embark Technology 2021 Plan.

The aggregate number of shares of Embark Technology Common Stock available for issuance under the 2021 Plan, which may be issued shall not exceed the sum of (i) 58,713,535 shares of Embark Technology Class A Common Stock and (ii) annual increases beginning January 1, 2022 and ending on and including January 1, 2031 of 5% of the aggregate number of shares of Embark Technology Class A Common Stock outstanding on the last day of the preceding calendar year (or a lesser number determined by the Board prior to the date of the annual increase). The maximum number of Shares of Embark Technology Class A Common Stock that may be issued on the exercise of incentive stock options under the Embark Technology 2021 Plan is 58,713,535 shares.

A more complete summary of the terms of the Embark Technology 2021 Plan is set forth beginning on page 105 of the Proxy, in the section titled "*Proposal No. 5 — The Incentive Plan Proposal*." That summary and the foregoing description of the Embark Technology 2021 Plan are qualified in their entirety by reference to the text of the Embark Technology 2021 Plan, which is filed as Exhibit 10.16 hereto and incorporated herein by reference.

Embark Technology, Inc. 2021 Employee Stock Purchase Plan

On November 10, 2021, the Embark Technology, Inc. 2021 Employee Stock Purchase Plan (the "ESPP") became effective. At the Special Meeting, the NGA shareholders approved the ESPP.

The ESPP is comprised of two distinct components in order to provide increased flexibility to grant options to purchase shares under the ESPP. Specifically, the ESPP authorizes (1) the grant of options that are intended to qualify for favorable U.S. federal tax treatment under Section 423 of the Code (the "Section 423 Component") and (2) the grant of options that are not intended to be tax-qualified under Section 423 of the Code (the "Non-Section 423 Component"). All of Embark Technology's employees are expected to be eligible to participate in the ESPP. However, with respect to the Section 423 Component, an employee may not be granted rights to purchase stock under the ESPP if the employee, immediately after the grant, would own (directly or through attribution) stock possessing 5% or more of the total combined voting power or value of all classes of Embark Technology's common stock. Unless otherwise determined by the Board, the ESPP is administered by the compensation committee of the Board (or another committe or subcommittee of the Board), referred to herein as the "ESPP administrator."

The maximum number of shares of Embark Technology Class A Common Stock that may be issued under the ESPP is 11,742,707 shares. Additionally, the number of shares of Embark Technology Class A Common Stock reserved for issuance under the ESPP will automatically increase on January 1st of each year, beginning on January 1, 2022 and continuing through and including January 1, 2031, by the lesser of (i) 1% of the total number of shares of Embark Technology Class A Common Stock outstanding on December 31st of the preceding calendar year, or (ii) such lesser number of shares of Embark Technology as determined by the Board. Shares subject to purchase rights granted under the ESPP that terminate without having been exercised in full will not reduce the number of shares available for issuance under the ESPP. The maximum number of Shares of Embark Technology Class A Common Stock that may be issued or transferred pursuant to rights granted under the Section 423 Component is 117,427,070 shares.

A more complete summary of the terms of the ESPP is set forth beginning on page 113 of the Proxy in the section titled "*Proposal No.6: The Employee Stock Purchase Plan Proposal*." That summary and the foregoing description of the ESPP are qualified in their entirety by reference to the text of the ESPP, which is filed as Exhibit 10.17 hereto and incorporated herein by reference.

Item 2.01. Completion of Acquisition or Disposition of Assets.

The disclosure set forth under "*Introductory Note — Merger Transaction*" above is incorporated into this Item 2.01 by reference.

Forward-Looking Statements

This Current Report on Form 8-K, and some of the information incorporated herein by reference, includes forward-looking statements regarding, among other things, the plans, strategies and prospects, both business and financial, of Embark Technology. These statements are based on the beliefs and assumptions of the management of Embark Technology. Although Embark Technology believes that its plans, intentions and expectations reflected in or suggested by these forward-looking statements are reasonable, it cannot assure you that it will achieve or realize these plans, intentions or expectations. Forward-looking statements are inherently subject to risks, uncertainties and assumptions. Generally, statements that are not historical facts, including statements concerning possible or assumed future actions, business strategies, events or results of operations, are forward-looking statements. These statements may be preceded by, followed by or include the words "believes", "estimates", "expects", "projects", "forecasts", "may", "will", "should", "seeks", "plans", "scheduled", "anticipates" or "intends" or similar expressions. Forward-looking statements contained in this Current Report on Form 8-K include, but are not limited to, statements about:

- the ability of Embark Technology to realize the benefits expected from the Business Combination;
- the ability to maintain the listing of Embark Technology Class A Common Stock on Nasdaq;
- Embark Technology's ability to raise financing in the future;
- the impact of the regulatory environment and complexities with compliance related to such environment;
- Embark Technology's ability to retain or recruit, or adapt to changes required in, its founders, senior executives, key personnel or directors;
- Embark Technology's ability to effectively manage its growth;
- the impact of the COVID-19 pandemic;
- the ability of Embark Technology to maintain an effective system of internal controls over financial reporting;

- the nature of autonomous driving as an emerging technology;
- Embark Technology's limited operating history;
- the acceptance of Embark Technology's technology by users and stakeholders in the freight transportation industry;
- the expected success of Embark Technology's business model, including its ability to maintain and develop customer relationships
- the ability of Embark Technology to maintain a successful manufacturer-agnostic approach to its technology
- the ability of Embark Technology to achieve and maintain profitability in the future; and
- other factors detailed in the Proxy in the section entitled "*Risk Factors*," which is incorporated herein by reference.

These and other factors that could cause actual results to differ from those implied by the forward-looking statements in this Current Report on Form 8-K and in any document incorporated by reference are more fully described under the heading "*Risk Factors*" and elsewhere in the Proxy, which is incorporated herein by reference. The risks described in the Proxy under the heading "*Risk Factors*" are not exhaustive. Other sections of the Proxy describe additional factors that could adversely affect the business, financial condition or results of operations of Embark Technology. New risk factors emerge from time to time and it is not possible to predict all such risk factors, Embark Technology assess the impact of all such risk factors on its business, or the extent to which any factor or combination of factors may cause actual results to differ materially from those contained in any forward-looking statements. Forward-looking statements are not guarantees of performance. You should not put undue reliance on these statements, which speak only as of the date hereof. All forward-looking statements made by Embark Technology or persons acting on its behalf are expressly qualified in their entirety by the foregoing cautionary statements. Embark Technology undertakes no obligation to update or revise publicly any forward-looking statements, whether as a result of new information, future events or otherwise, except as required by law.

Business

The business of NGA prior to the Business Combination is described in the Proxy in the section titled "*Information About NGA*" and that information is incorporated herein by reference. The business of Embark Technology is described in the Proxy in the section titled "*Information about Embark*" and that information is incorporated herein by reference.

Risk Factors

The risk factors related to Embark Technology's business and operations are set forth in the Proxy in the section titled "*Risk Factors*" and that information is incorporated herein by reference.

Financial Information

Reference is made to the disclosure set forth in Item 9.01 of this Current Report on Form 8-K concerning the financial information of NGA and Embark Trucks. Reference is further made to the disclosure contained in the Proxy in the sections titled *"Management's Discussion and Analysis of Financial Condition and Results of Operations of NGA"*, and *"Management's Discussion and Analysis of Financial Condition and Results of Operations of Embark"*, which are incorporated herein by reference. Reference is further made to the disclosure contained in NGA's Quarterly Report on Form 10-Q for the quarterly period ended September 30, 2021 and filed with the SEC on November 10, 2021 ("NGA's 10-Q") in the section titled *"Management's Discussion and Analysis of Financial Condition and Results of Operations"*, which is incorporated herein by reference.

Management's Discussion and Analysis of Financial Condition and Results of Operations

The Management's Discussion and Analysis of Financial Condition and Results of Operations for Embark Trucks for the nine months ended September 30, 2021 is filed herewith as Exhibit 99.3 and incorporated herein by reference.

The Management's Discussion and Analysis of Financial Condition and Results of Operations of NGA for the nine months ended September 30, 2021 is described in NGA's 10-Q in the section titled "*Management's Discussion and Analysis of Financial Condition and Results of Operations*," which is incorporated herein by reference.

Quantitative and Qualitative Disclosures about Market Risk

Reference is made to the disclosure contained in the Proxy in the section titled *"Embark's Management's Discussion and Analysis of Financial Condition and Results of Operations—Quantitative and Qualitative Disclosures About Market Risk"*, which is incorporated herein by reference.

Reference is also made to the disclosure contained in NGA's 10-Q in the section titled "*Quantitative and Qualitative Disclosures About Market Risk*," which is incorporated herein by reference.

Security Ownership of Certain Beneficial Owners and Management

The following table sets forth information known to the Company regarding the beneficial ownership of Embark Technology Common Stock as of the closing date of the Business Combination (the "Closing Date") by:

- each person who is a named executive officer or director of Embark Technology;
- all executive officers and directors of Embark Technology as a group; and
- each person who is a beneficial owner of more than 5% of Embark Technology Class A Common Stock or Embark Technology Class B Common Stock.

Beneficial ownership is determined according to the rules of the SEC, which generally provide that a person has beneficial ownership of a security if he, she or it possesses sole or shared voting or investment power over that security, including options and warrants that are currently exercisable or exercisable within 60 days. Unless otherwise indicated, Embark Technology believes that all persons named in the table below have sole voting and investment power with respect to the voting securities beneficially owned by them.

The beneficial ownership of Embark Technology Common Stock is based on 362,474,085 shares of Embark Technology Class A Common Stock, 87,078,981 shares of Embark Technology Class B Common Stock and 22,486,667 public warrants to purchase shares of Embark Technology Class A Common Stock issued and outstanding as of the Closing Date.

Name and Address of Beneficial Owner(1)	Number of Shares of Class A Common Stock	%	Number of Shares of Class B Common Stock	%
5% Holders				
Entities Affiliated With Sequoia Capital(2)	53,144,138	14.7%	—	—
Data Collective IV, L.P.(3)	63,720,154	17.6%	—	—
Entities Affiliated with YCombinator(4)	27,913,857	7.7%	—	—
Directors and Executive Officers			—	—
Alex Rodrigues(5)	—	—	50,034,332	57.5%
Brandon Moak(6)	—	—	37,044,649	42.5%
Richard Hawwa	—	—	—	—
Siddhartha Venkatesan	—	—	—	—
Elaine Chao	279,657	*	—	—
Pat Grady(7)	53,886,635	14.9 %	—	—
Patricia Chiodo	1,460	*	—	—
Ian Robertson(8)	18,724,763	5.0%	—	—
All directors and officers as a group (eight individuals)	72,892,515	20.0%	87,078,981	100.0%

* Less than one percent.

(1) Unless otherwise noted, the business address of each of the following entities or individuals is 424 Townsend Street, San Francisco, CA 94107.

(2) Consists of (i) 18,679,330 shares of Embark Technology Class A Common Stock held of record by Sequoia Capital U.S. Growth Fund VII, L.P. ("GFVII"); (ii) 1,106,850 shares of Embark Technology Class A Common Stock held of record by Sequoia Capital U.S. Growth VII Principals Fund, L.P. ("GFVII PF", and collectively with GFVII, the "GFVII Funds"); (iii) 25,631,605 shares of Embark Technology Class A Common Stock held of record by Sequoia Capital U.S. Venture Fund XV, L.P. ("SC XV"); (iv) 1,542,608 shares of Embark Technology Class A Common Stock held of record by Sequoia Capital U.S. Venture Partners Fund XV (Q), L.P. ("STPQ XV"); (v) 554,099 shares of Embark Technology Class A Common Stock held of record by Sequoia Capital U.S. Venture Partners Fund XV, L.P. ("STP XV"); and (vi) 5,629,646 shares of Embark Technology Class A Common Stock held of record by Sequoia Capital U.S. Venture XV Principals Fund, L.P. ("SC XV PF", and collectively with SC XV, STPQ XV and STP XV, the "SC XV Funds"). SC US (TTGP), Ltd. is (i) the general partner of SC U.S. Growth VII Management, L.P., which is the general partner of each of the GFVII Funds, and (ii) the general partner of SC U.S. Venture XV Management, L.P., which is the general partner of each of the SC XV Funds. The directors and stockholders SC U.S. Venture XV Management, L.P. who exercise voting and investment discretion with respect to the SC XV Funds include Douglas Leone, Roelof Botha, Alfred Lin and James Goetz. The directors and stockholders of SC US (TTGP), Ltd. who exercise voting and investment discretion with respect to the GFVII Funds include Pat Grady, one of Embark Technology's director nominees. The directors and stockholders of SC US (TTGP), Ltd. who exercise voting and investment discretion with respect to the GFVII Funds include Douglas Leone, Roelof Botha, Pat Grady, Carl Eschenback and James Goetz. Mr. Grady expressly disclaims beneficial ownership of the shares held by the GF VII Funds. The address for each of the Sequoia Capital entities identified in this footnote is 2800 Sand Hill Road, Suite 101, Menlo Park, California 94025.

(3) Consists of 63,720,154 shares of Embark Technology Class A Common Stock held of record by Data Collective IV, L.P. Data Collective IV GP, LLC, or DCVC IV GP, is the general partner of Data Collective IV, L.P. ("DCVC IV"). Zachary Bogue and Matthew Ocko are the managing members of DCVC IV GP. Zachary Bogue and Matthew Ocko exercise voting and dispositive power over the shares held by DCVC IV. The address of the entities listed herein is 270 University Avenue, Palo Alto, California 94301.

(4) Consists of (i) 9,601,126 shares of Embark Technology Class A Common Stock to be held of record by Y Combinator Continuity Holdings I, LLC; (ii) 12,123,166 shares of Embark Technology Class A Common Stock to be held of record by Y Combinator Investments, LLC Series W 16; (iii) 3,546,851 shares of Embark Technology Class A Common Stock held of record by YC Holdings II, LLC; and (iv) 2,642,714 shares of Embark Technology Class A Common Stock to be held of record by YCVC Fund I, L.P. Power to exercise voting and investment decisions with respect to each such entity is held by of Jonathan Levy, Kirsty Nathoo and Geoff Ralston. The address for each of the entities identified in this footnote is 335 Pioneer Way, Mountain View, CA 94041.

(5) Consists of shares Embark Technology Class B Common Stock held by Mr. Rodrigues as grantor-trustee of the Alex Rodrigues Living Trust. Does not include 37,044,649 shares of Class B Common Stock held by Brandon Moak over which Mr. Rodriguez exercises voting rights pursuant to the Proxy Agreement (as defined below).

(6) Consists of shares Embark Technology Class B Common Stock held by Mr. Moak as grantor-trustee of the Brandon Moak Living Trust. Pursuant to the proxy voting agreement, dated November 10, 2021, (the "Proxy Agreement"), Mr. Moak has granted Alex Rodrigues an irrevocable proxy to vote all shares of Class B Common Stock held by Mr. Moak on all matters submitted to a vote of stockholders of Embark Technology at an annual or special meeting of stockholders or through the solicitation of a written consent of stockholders (whether of any individual class of stock or of multiple classes of stock voting together) other than with respect to certain expected matters as provided in the Proxy Agreement, for so long the agreement is in effect and Mr. Rodrigues has a higher number of Class B Common Stock shares than Mr. Moak.

(7) Consists of (a) 742,497 shares of Embark Technology Class A Common Stock held by Mr. Grady and (b) shares listed in footnote 3 above to be held of record by entities affiliated with Sequoia Capital. Mr. Grady, one of Embark Technology's director nominees, is a partner of Sequoia Capital and, therefore, may be deemed to exercise voting and investment discretion with respect to the shares listed in footnote 3 above. Mr. Grady disclaims beneficial ownership of the shares held by the Sequoia Capital entities.

(8) Northern Genesis Sponsor II LLC, the Sponsor, is the record holder of these shares. Messrs. Robertson, together with other individuals, serve as Managing Members of the Sponsor and accordingly exercise voting and dispositive power over such shares. The address for these stockholders is 4801 Main Street, Suite 1000 Kansas City, Missouri 64112.

Directors and Executive Officers

The Company's directors and executive officers after the consummation of the Transactions are described in the Proxy in the section titled "*Management of Embark Technology Following the Business Combination*" and that information is incorporated herein by reference.

Director Independence

Information with respect to the independence of the Company's directors is set forth in the Proxy in the section titled "*Management of Embark Technology Following the Business Combination — Corporate Governance — Director Independence*" and that information is incorporated herein by reference.

Committees of the Board of Directors

Information with respect to the composition of the committees of the Board immediately after the Closing is set forth in the Proxy in the section titled "*Management of Embark Technology Following the Business Combination — Corporate Governance — Committees of Board of Directors*" and that information is incorporated herein by reference.

Executive Compensation

A description of the compensation of the named executive officers of NGA before the consummation of the Business Combination and the named executive officers of Embark Technology after the consummation of the Business Combination is set forth in the Proxy in the section titled "*Executive Compensation*" and that information is incorporated herein by reference.

On June 28, 2021, the board of directors of Embark Trucks approved a program that will grant performance-vesting restricted stock units to Alex Rodrigues and Brandon Moak. Such restricted stock units collectively represent a right to receive up to an aggregate amount of shares equal to 10% of the fully-diluted shares as of the date of the approval of the grants by the board of directors of Embark Trucks under such program. Such restricted stock units are eligible to vest in equal installments upon achievement of escalating share price thresholds intended to represent an increase in Embark Trucks' valuation to 2.0x, 3.5x, 5.0x, 6.5x, 8.0x and 10.0x of its pre-money valuation in the context of the Business Combination (calculated based on the 90-day volume weighted average price or, in the event of a change in control, the fair market value based on the terms of such change in control) following the first anniversary of the consummation of the Business Combination, and subject to certain other terms and conditions, including certain specified treatment in the event of change of control or change in role of either Mr. Rodrigues or Mr. Moak, as applicable.

Reference is made to the disclosure set forth above in Item 1.01 of this Current Report on Form 8-K under the headings "Embark Technology, Inc. 2021 Incentive Award Plan" and "Embark Technology, Inc. 2021 Employee Stock Purchase Plan," which is incorporated herein by reference.

Director Compensation

None of Embark Trucks' directors for the fiscal year ended December 31, 2020 or any prior fiscal years have received any compensation for their services as a director. In 2021, Elaine Chao commenced her services as a non-employee director and received a grant of stock options to purchase shares of Embark Technology's Common Stock, which vest in equal monthly installments over the first 48 months of her continuous service, subject to certain acceleration to the extent she terminates her service due to her acceptance of a qualifying governmental position. In addition, Ms. Chao is entitled to an annual cash retainer of $125,000, payable in quarterly installments. Further, in 2021, Patricia Chiodo commenced her services as a non-employee director and is expected to receive a grant of restricted stock units with a grant date value of $175,000, which vest in equal monthly installments over the first 48 months of her continuous service. Ms. Chiodo may also be entitled to future annual equity awards with a grant date value of $175,000 each, which will vest in equal monthly installments over 12 months following grant. In addition, Ms. Chiodo is entitled to an annual cash retainer of $75,000, payable in quarterly installments. Subject to our agreements with Ms. Chao and Ms. Chiodo we did not have a non-employee director compensation program in place upon Closing of the Business Combination. Embark Technology intends to adopt a non-employee compensation program consistent with market practices to the extent appropriate.

A description of the compensation of the directors of NGA before the consummation of the Business Combination and is set forth in the Proxy in the sections titled "*Executive Compensation — NGA*" "*Executive Compensation — Embark — Director Compensation"*, respectively, and that information is incorporated herein by reference.

Certain Relationships and Related Party Transactions

Certain relationships and related party transactions of the Company are described in the Proxy in the section titled "*Certain Relationships and Related Person Transactions*" and that information is incorporated herein by reference.

Legal Proceedings

Reference is made to the disclosure regarding legal proceedings in the section of the Proxy titled "*Information About NGA—Legal Proceedings"* and "*Information About Embark —Legal Proceedings*" and that information is incorporated herein by reference.

Market Price of and Dividends on the Registrant's Common Equity and Related Stockholder Matters

Information about the ticker symbol, number of stockholders and dividends for NGA's securities is set forth in the Proxy in the section titled "*Market Price and Dividend Information*" and such information is incorporated herein by reference.

As of the Closing Date, there were approximately 144 holders of record of Embark Technology's Class A common stock, two holders of record of Embark Technology's Class B common stock and approximately 16 holders of record of Embark Technology's warrants to purchase Embark Technology Class A Common Stock.

Embark Technology's Class A common stock and warrants began trading on Nasdaq under the symbols "EMBK" and "EMBKW", respectively, on November 11, 2021. NGA's public units automatically separated into their component securities upon consummation of the Business Combination and, as a result, no longer trade as a separate security and were delisted from the New York Stock Exchange.

Embark Technology has not paid any cash dividends on shares of its Class A common stock to date. The payment of cash dividends in the future will be dependent upon it revenues and earnings, if any, capital requirements and general financial condition. The payment of any dividends will be within the discretion of the Board.

Recent Sales of Unregistered Securities

Reference is made to the disclosure set forth below under Item 3.02 of this Current Report on Form 8-K concerning the issuance and sale by NGA of certain unregistered securities, which is incorporated herein by reference.

Description of Registrant's Securities to Be Registered

The description of Embark Technology's securities is contained in the Proxy in the section titled "*Description of Embark Technology Securities*" and that information is incorporated herein by reference.

Immediately following the Closing, there were 362,474,085 shares of Embark Technology Class A Common Stock issued and outstanding, held of record by 144 holders; 87,078,981 shares of Embark Technology Class B Common Stock issued and outstanding, held of record by two holders; no shares of preferred stock outstanding; and 22,486,667 Embark Technology warrants outstanding held of record by 16 holders. Such amounts do not include DTC participants or beneficial owners holding shares through nominee names.

Indemnification of Directors and Officers

The information set forth under Item 1.01 of this Current Report on Form 8-K is incorporated herein by reference.

Financial Statements and Exhibits

The information set forth under Item 9.01 of this Current Report on Form 8-K is incorporated herein by reference.

Changes in and Disagreements with Accountants on Accounting and Financial Disclosure

The information set forth under Item 4.01 of this Current Report on Form 8-K is incorporated herein by reference.

Item 3.02. Unregistered Sales of Equity Securities.

Transaction Consideration

The information set forth in the "Introductory Note—PIPE Investment" above is incorporated into this Item 3.02 by reference.

The shares of NGA Class A common stock issued to the PIPE Investors and the FPA PIPE Investors became shares of Embark Technology Class A Common Stock upon consummation of the Business Combination. The shares issued by NGA to the PIPE Investors and the FPA PIPE Investors in the private placement on the Closing Date were issued pursuant to and in accordance with the exemption from registration under the Securities Act under Section 4(a)(2) and/or Regulation D promulgated under the Securities Act.

Item 3.03. Material Modification to Rights of Security Holders.

Upon the consummation of the Business Combination, Embark Technology adopted the Embark Technology Charter. The material terms Embark Technology Charter and the general effect upon the rights of holders of NGA's capital stock are discussed in the Proxy in the sections titled "*Proposal No.2 — The Charter Proposals*" beginning on page 95, and "*Comparison of Corporate Governance and Stockholder Rights* " beginning on page 221, which are incorporated by reference herein.

As disclosed below in Item 8.01, in accordance with Rule 12g-3(a) under the Securities Exchange Act, Embark Technology is the successor issuer to NGA and has succeeded to the attributes of NGA as the registrant. In addition, the shares of common stock of Embark Technology, as the successor to NGA, are deemed to be registered under Section 12(b) of the Exchange Act.

Second Amended and Restated Certificate of Incorporation (Embark Technology Charter)

Upon consummation of the Business Consummation, NGA's amended and restated certificate of incorporation, was replaced with the Embark Technology Charter, which, among other things:

(a) increases the total number of authorized shares of capital stock to 4,110,000,000 shares of common stock, including 4,000,000,000 shares of Embark Technology Class A Common Stock, par value $0.0001 per share, 100,000,000 shares of Embark Technology Class B Common Stock, par value $0.0001 per share, and 10,000,000 shares of preferred stock, par value $0.0001 per share;

(b) approves the provisions authorizing holders of shares of Embark Technology Class A Common Stock to cast one vote per share of Embark Technology Class A Common Stock and holders of shares of Embark Technology Class B Common Stock to cast ten votes per share of Embark Technology Class B Common Stock on each matter properly submitted to Embark Technology's stockholders entitled to vote;

(c) authorizes the provisions permitting that the number of directors on the Board be fixed from time to time solely by resolution of the Board, and dividing the Board into three classes;

(d) amends the terms for the authorizations providing for the increase and decrease of Embark Technology capital stock; and

(e) provides for certain additional changes, including, among other things, removing certain provisions related to NGA's status as a blank check company.

The shareholders of NGA approved these amendments at the Special Meeting. This summary is qualified in its entirety by reference to the text of the second amended and restated certificate of incorporation, which is included as Exhibit 3.1 hereto and incorporated herein by reference.

Amended and Restated Bylaws

Upon the closing of the Business Combination, the NGA's bylaws were amended and restated to be consistent with the Embark Technology Charter and to make certain other changes that Embark Technology's board of directors deemed appropriate for a public operating company. This summary is qualified in its entirety by reference to the text of the amended and restated bylaws, which is included as Exhibit 3.2 hereto and incorporated herein by reference.

Item 4.01. Change in Registrant's Certifying Accountant.

(a) Dismissal of independent registered public accounting firm

On the Closing Date, the Audit Committee of the Board approved the engagement of Deloitte & Touche LLP ("Deloitte") as the Company's independent registered public accounting firm to audit the Company's consolidated financial statements for the year ending December 31, 2021. Marcum LLP ("Marcum") served as independent registered public accounting firm of NGA prior to the consummation of the Business Combination. Accordingly, Marcum was informed that it would be replaced by Deloitte as the Company's independent registered public accounting firm.

The reports of Marcum on NGA's, the Company's legal predecessor, balance sheet as of December 31, 2020 and the statements of operations, changes in stockholder's equity and cash flows for the period from September 25, 2020 (date of inception) through December 31, 2020, did not contain an adverse opinion or a disclaimer of opinion, and were not qualified or modified as to uncertainties, audit scope or accounting principles.

During the period from September 25, 2020 (date of inception) through December 31, 2020 and the subsequent interim period through the Closing Date, there were no disagreements between NGA and Marcum on any matter of accounting principles or practices, financial disclosure or auditing scope or procedure, which disagreements, if not resolved to the satisfaction of Marcum, would have caused it to make reference to the subject matter of the disagreements in its reports on NGA's financial statements for such period.

During the period from September 25, 2020 (date of inception) through December 31, 2020 and the subsequent interim period through the Closing Date, there were no "reportable events" (as defined in Item 304(a)(1)(v) of Regulation S-K under the Exchange Act, except for material weaknesses related to the accounting for complex financial instruments as disclosed in the Company's Quarterly Report on Form 10-Q for the period ending September 30, 2021 and the Current Report on Form 8-K, dated November 17, 2021).

During the period from September 25, 2020 (date of inception) to the date the Board approved the engagement of Deloitte as the Company's independent registered public accounting firm, NGA did not consult with Deloitte on matters that involved the application of accounting principles to a specified transaction, the type of audit opinion that might be rendered on NGA's consolidated financial statements or any other matter that was either the subject of a disagreement or reportable event.

The Company has provided Marcum with a copy of the foregoing disclosures and has requested that Marcum furnish the Company with a letter addressed to the SEC stating whether it agrees with the statements made by the Company set forth above. A copy of Marcum's letter, dated November 17, 2021, is filed as Exhibit 16.1 to this Current Report on Form 8-K.

Item 5.01. Changes in Control of Registrant.

Reference is made to the disclosure in the Proxy in the section titled "*Proposal No. 1 —The Business Combination Proposal*," which is incorporated herein by reference. Further reference is made to the information contained in Item 2.01 to this Current Report on Form 8-K, which is incorporated herein by reference.

Immediately after giving effect to the Business Combination, there were 362,474,085 shares of Embark Technology Class A Common Stock outstanding, 87,078,981 shares of Embark Technology Class B Common Stock outstanding and 14,753,330 warrants to purchase shares of Embark Technology Class A Common Stock outstanding. As of such time, Embark Technology's executive officers and directors and their affiliated entities held 75.79% of the total voting power of Embark Technology's outstanding capital stock.

Item 5.02. Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers.

Upon the Closing, and in accordance with the terms of the Merger Agreement, certain executive officer of NGA and Merger Sub, ceased serving in such capacities; Paul Dalglish, Chris Jarratt, Ken Manget, Robert Schaefer, and Brad Sparkes ceased serving on NGA's board of directors. Alex Rodrigues, Brandon Moak, Elaine Chao, Pat Grady, and Patricia Chiodo were appointed as directors of the Company, and Ian Robertson continued to serve in the Board, each will serve until the annual meeting of stockholders in which their class of directors are subject to a vote and until their successors are elected and qualified.

Upon the consummation of the Business Combination, the Company established the following three committees of the Board: audit committee, compensation committee and nominating and corporate governance committee. Ms. Chiodo, Ms. Chao and Mr. Robertson were appointed to serve on the Company's audit committee, with Ms. Chiodo serving as the chair and qualifying as an audit committee financial expert, as such term is defined in Item 407(d)(5) of Regulation S-K. Mr. Grady, and Ms. Chiodo were appointed to serve on the Company's compensation committee. Mr. Grady, Mr. Robertson and Mr. Rodrigues were appointed to serve on the Company's nominating and corporate governance committee.

Additionally, upon consummation of the Business Combination, Mr. Rodrigues was appointed as the Company's Chief Executive Officer; Mr. Moak was appointed as Chief Technology Officer; Richard Hawwa was appointed as Chief Financial Officer; and Siddhartha Venkatesan was appointed as Chief Legal Officer and Secretary.

Reference is made to the disclosure described in the Proxy in the section titled "*Management of Embark Technology Following the Business Combination*" beginning on page 198 for biographical information about each of the directors and officers following the Transactions, which is incorporated herein by reference.

The information set forth under Item 1.01. "Entry into a Material Definitive Agreement—Indemnification Agreement", "—Embark Technology, Inc. 2021 Incentive Award Plan" and "—Embark Technology, Inc. Employee Stock Purchase Plan" of this Current Report on Form 8-K is incorporated herein by reference.

Item 5.03. Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year.

The disclosure set forth in Item 3.03 of this Current Report on Form 8-K is incorporated in this Item 5.03 by reference.

Item 5.06. Change in Shell Company Status.

As a result of the Business Combination, which fulfilled the definition of an "initial business combination" as required by NGA's organizational documents, NGA ceased to be a shell company upon the closing of the Business Combination. The material terms of the Business Combination are described in the section titled "*Proposal No. 1 — The Business Combination Proposal*" beginning on page 65, of the Proxy, and is incorporated herein by reference.

Item 8.01. Other Events.

By operation of Rule 12g-3(a) under the Exchange Act, the Company is the successor issuer to NGA and has succeeded to the attributes of NGA as the registrant, including NGA's SEC file number (001-39881) and CIK Code (0001827980). The Company's Class A common stock and public warrants are deemed to be registered under Section 12(b) of the Exchange Act, and the Company will hereafter file reports and other information with the SEC using NGA's SEC file number (001-39881).

The Company's Class A common stock and public warrants are listed for trading on The Nasdaq Stock Market LLC under the symbols "EMBK" and "EMBKW," respectively, and the CUSIP numbers relating to the Company's Class A common stock and public warrants are 29079J103 and 29079J111, respectively.

Holders of uncertificated shares of NGA's Class A common stock immediately prior to the Business Combination have continued as holders of shares of uncertificated shares of Embark Technology Class A Common Stock.

Holders of NGA's shares who have filed reports under the Exchange Act with respect to those shares should indicate in their next filing, or any amendment to a prior filing, filed on or after the Closing Date that the Company is the successor to NGA.

Item 9.01. Financial Statements and Exhibits.

(a) Financial statements of businesses acquired.

The unaudited condensed financial statements of Embark Trucks Inc., as of June 30, 2021, and for the six months ended June 30, 2021 and 2020, and the financial statements of Embark Trucks Inc. as of and for the years ended December 31, 2020 and 2019, the related notes and the report of independent registered public accounting firm thereto are set forth in the Proxy beginning on page F-40 and are incorporated herein by reference. The unaudited condensed financial statements of Embark Trucks Inc. as of September 30, 2021 and for the nine months ended September 30, 2021 and 2020 and the related notes thereto are filed herewith as Exhibit 99.1 and incorporated herein by reference.

The unaudited condensed consolidated financial statements of NGA as of September 30, 2021 and for the nine months ended September 30, 2021 and the related notes thereto are set forth in NGA's 10-Q beginning on page 1 and are incorporated herein by reference. In the Current Report on Form 8-K, dated November 17, 2021, the Company clarified that adjustments included in the notes to the financial statements as part of NGA's 10-Q for the period ended September 30, 2021 that were referred to as "revisions" should have been identified as "restatements" of previously issued financial statements. Such 8-K is incorporated herein by reference.

(b) Pro forma financial information.

Certain pro forma financial information of the Company as of and for the nine months ended September 30, 2021 and for the year ended December 31, 2020 is attached hereto as Exhibit 99.2 and is incorporated herein by reference.

(d) Exhibits.

Exhibit Number	Description
2.1†	Agreement and Plan of Merger, dated as of June 22, 2021, by and among Northern Genesis Acquisition Corp. II, NGAB Merger Sub Inc. and Embark Trucks Inc. (incorporated by reference to Exhibit 2.1 of NGA's Current Report on Form 8-K filed with the SEC on June 22, 2021).

3.1	Second Amended and Restated Certificate of Incorporation of Northern Genesis Acquisition Corp. II
3.2	Bylaws of Embark Technology, Inc.
4.1	Specimen Warrant Certificate of Embark Technology, Inc. (incorporated by reference to Exhibit 4.5 to Amendment No. 4 to the Registration Statement on Form S-4 (File No. 333-257647), filed with the SEC on October 13, 2021).
4.2	Specimen Class A Common Stock Certificate of Embark Technology, Inc. (incorporated by reference to Exhibit 4.6 to Amendment No. 4 to the Registration Statement on Form S-4 (File No. 333-257647), filed with the SEC on October 13, 2021).
4.3	Warrant Agreement, dated as of January 12, 2021, by and among Northern Genesis Acquisition Corp. II and Continental Stock Transfer & Trust Company, as warrant agent (incorporated by reference to Exhibit 4.1 of NGA's Current Report on Form 8-K (File No. 001-39881), filed with the SEC on January 19, 2021).
10.1	Sponsor Support Agreement, dated June 22, 2021, by and among Northern Genesis Sponsor II LLC, Northern Genesis Acquisition Corp. II, each officer and director of Northern Genesis Acquisition Corp. II and Embark Trucks Inc. (incorporated by reference to Annex B to the Registration Statement on Form S-4 (File No. 333-257647), filed with the SEC on July 2, 2021).
10.2	Company Holders Support Agreement, dated June 22, 2021, by and among Northern Genesis Acquisition Corp. II, Embark Trucks Inc. and certain stockholders of Embark Trucks Inc. (incorporated by reference to the Current Report on Form 8-K of Northern Genesis Acquisition Corp. II filed on June 23, 2021).
10.3	Form of Subscription Agreement, by and between the Registrant and the undersigned subscriber party thereto (incorporated by reference to the Current Report on Form 8-K of Northern Genesis Acquisition Corp. II filed on June 23, 2021).
10.4	Registration Rights Agreement, dated November 10, 2021, by and among Embark Technology, Inc., Northern Genesis Sponsor II LLC, and certain former stockholders of Embark Trucks Inc.
10.5‡	Form of Letter Agreement from Northern Genesis II LLC and Northern Genesis Acquisition Corp. II's officers, directors and director nominees (incorporated by reference to Amendment No. 1 to the Registration Statement on Form S-1 (File No. 333-251639) of Northern Genesis Acquisition Corp. II filed on January 4, 2021).
10.6‡	Investment Management Trust Agreement, dated January 12, 2021, between Northern Genesis Acquisition Corp. II and Continental Stock Transfer & Trust Company, as trustee (incorporated by reference to the Current Report on Form 8-K of Northern Genesis Acquisition Corp. II filed on January 19, 2021).
10.7	Administrative Services Agreement, dated January 12, 2021, between Northern Genesis Acquisition Corp. II and Northern Genesis Sponsor II LLC (incorporated by reference to the Current Report on Form 8-K of Northern Genesis Acquisition Corp. II filed on January 19, 2021).

10.8	Private Placement Warrant Subscription Agreement, dated January 12, 2021, between Northern Genesis Acquisition Corp. II and Northern Genesis Sponsor II LLC (incorporated by reference to the Current Report on Form 8-K of Northern Genesis Acquisition Corp. II filed on January 19, 2021).
10.9	Form of Indemnification Agreement with Executive Officers and Directors of Northern Genesis Acquisition Corp. II dated January 12, 2021 (incorporated by reference to the Current Report on Form 8-K of Northern Genesis Acquisition Corp. II filed on January 19, 2021).
10.10	Amended and Restated Forward Purchase Agreement, dated April 21, 2021, between Northern Genesis Acquisition Corp. II and Northern Genesis Capital LLC (incorporated by reference to the Current Report on Form 8-K of Northern Genesis Acquisition Corp. II filed on April 27, 2021).
10.11	Form of Forward Purchase Agreement, dated as of April 21, 2021, between Northern Genesis Acquisition Corp. II and certain additional investors (incorporated by reference to the Current Report on Form 8-K of Northern Genesis Acquisition Corp. II filed on April 27, 2021).
10.12	Founder Shares Purchase Agreement, dated October 2, 2020, between Northern Genesis Acquisition Corp. II and Northern Genesis Sponsor II LLC (incorporated by reference to Amendment No. 1 to the Registration Statement on Form S-1 (File No. 333-251639) of Northern Genesis Acquisition Corp. II filed on January 4, 2021).
10.13+	Form of Notice Stock Option Grant and Embark Trucks Inc. 2016 Stock Option Agreement (incorporated by reference to Exhibit 10.13 to the Registration Statement on Form S-4 (File No. 333-257647), filed with the SEC on July 2, 2021).
10.14+	Form of Notice of Restricted Stock Unit Grant Award and Embark Trucks Inc. 2016 Stock Plan (incorporated by reference to Exhibit 10.14 to the Registration Statement on Form S-4 (File No. 333-257647), filed with the SEC on July 2, 2021).
10.15+	Embark Trucks Inc. Amended and Restated 2016 Stock Plan (incorporated by reference to Exhibit 10.15 to the Registration Statement on Form S-4 (File No. 333-257647), filed with the SEC on July 2, 2021).
10.16+	Form of Embark Technology, Inc. 2021 Incentive Award Plan (incorporated by reference to Annex E to Amendment No. 4 to the Registration Statement on Form S-4 (File No. 333-257647), filed with the SEC on October 13, 2021).
10.17+	Form of Embark Technology, Inc. 2021 Employee Stock Purchase Plan (incorporated by reference to Annex F to Amendment No. 4 to the Registration Statement on Form S-4 (File No. 333-257647), filed with the SEC on October 13, 2021).
10.18+	Offer Letter Agreement, dated as of May 9, 2018, by and between Embark Trucks Inc. and Alex Rodrigues (incorporated by reference to Exhibit 10.18 to Amendment No. 1 to the Registration Statement on Form S-4 (File No. 333- 257647), filed with the SEC on July 2, 2021).
10.19+	Offer Letter Agreement, dated as of May 9, 2018, by and between Embark Trucks Inc. and Brandon Moak (incorporated by reference to Exhibit 10.19 to Amendment No. 1 to the Registration Statement on Form S-4 (File No. 333- 257647), filed with the SEC on July 2, 2021).

10.20+	Offer Letter Agreement, dated as of May 9, 2018, by and between Embark Trucks Inc. and Mike Reid (incorporated by reference to Exhibit 10.20 to Amendment No. 1 to the Registration Statement on Form S-4 (File No. 333- 257647), filed with the SEC on July 2, 2021).
10.21	Proxy Voting Agreement, dated November 10, 2021.
16.1	Letter from Marcum LLP to the Securities and Exchange Commission.
99.1	Unaudited condensed financial statements of Embark Trucks Inc. for the nine months ended September 30, 2021 and 2020.
99.2	Unaudited pro forma condensed combined financial information of NGA and Embark Trucks, Inc. as of and for the nine months ended September 30, 2021.
99.3	Management's Discussion and Analysis of Financial Condition and Results of Operations for Embark Trucks Inc. for the nine months ended September 30, 2021.

† The annexes, schedules, and certain exhibits to this Exhibit have been omitted pursuant to Item 601(b)(2) of Regulation S-K. The Registrant hereby agrees to furnish supplementally a copy of any omitted annex, schedule or exhibit to the SEC upon request.

‡ Certain confidential information contained in this Exhibit has been omitted because it is (i) not material and (ii) of the type that the registrant treats as private or confidential.

+ Indicates a management contract or compensatory plan.

SIGNATURES

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 hereunto duly authorized.

EMBARK TECHNOLOGY, INC.

By: /s/ Richard Hawwa
Name: Richard Hawwa
Title: Chief Financial Officer

Date: November 17, 2021

Delaware
The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE RESTATED CERTIFICATE OF "NORTHERN GENESIS ACQUISITION CORP. II", CHANGING ITS NAME FROM "NORTHERN GENESIS ACQUISITION CORP. II" TO "EMBARK TECHNOLOGY, INC.", FILED IN THIS OFFICE ON THE TENTH DAY OF NOVEMBER, A.D. 2021, AT 12 O'CLOCK P.M.

/s/ Jeffrey W. Bullock
Jeffrey W. Bullock, Secretary of State

3747340 8100
SR# 20213757856
You may verify this certificate online at corp.delaware.gov/authver.shtml

Authentication: 204652343
Date: 11-10-21

State of Delaware
Secretary of State
Division of Corporations
Delivered 12:00 PM 11/10/2021
FILED 12:00 PM 11/10/2021
SR 20213757856 - File Number 3747340

SECOND AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
NORTHERN GENESIS ACQUISITION CORP. II

Northern Genesis Acquisition Corp. II, a corporation organized and existing under the laws of the state of Delaware (the "Corporation"), does hereby certify as follows:

1. The name of the Corporation is "Northern Genesis Acquisition Corp. II". The original certificate of incorporation of the Corporation was filed with the Secretary of State of the State of Delaware on September 25, 2020 (the "Original Certificate"). The name under which the Original Certificate was filed is "Northern Genesis Acquisition Corp. II".

2. The Corporation amended and restated the Original Certificate on January 13, 2021 (the "First A&R Certificate").

3. This Second Amended and Restated Certificate of Incorporation (this "Second A&R Certificate"), which both restates and amends the provisions of the First A&R Certificate, was duly adopted in accordance with Sections 228, 242 and 245 of the General Corporation Law of the State of Delaware, as amended from time to time.

4. This Second A&R Certificate shall become effective upon filing with the Secretary of State of the State of Delaware (the "Filing Effective Time" and the date thereof, the "Filing Date").

5. This Second A&R Certificate has been adopted in connection with the transactions contemplated by that certain Agreement and Plan of Merger, dated as of June 22, 2021, by and among the Corporation, NGAB Merger Sub Inc. and Embark Trucks Inc. (as amended, modified, supplemented or waived from time to time, the "Merger Agreement").

6. This Second A&R Certificate hereby amends and restates the provisions of the First A&R Certificate to read in its entirety as follows:

ARTICLE I

The name of the corporation is Embark Technology, Inc. (the "Corporation").

ARTICLE II

The address of the Corporation's registered office in the State of Delaware is 1013 Centre Road, Suite 403-B, in the City of Wilmington, County of New Castle, State of Delaware, 19805, and the name of the Corporation's registered agent at such address is Vcorp Services, LLC.

ARTICLE III

The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware (the "DGCL") as it now exists or may hereafter be amended and supplemented.

ARTICLE IV

The total number of shares of capital stock that the Corporation shall have authority to issue is 4,110,000,000, consisting of: (i) 4,000,000,000 shares of Class A common stock, having a par value of $0.0001 per share (the "Class A Common Stock"); (ii) 100,000,000 shares of Class B common stock, having a par value of $0.0001 per share (the "Class B Common Stock" and together with the Class A Common Stock, the "Common Stock"); and (iii) 10,000,000 shares of preferred stock, having a par value of $0.0001 per share (the "Preferred Stock").

Immediately upon the Filing Effective Time, each share of common stock, having a par value of $0.0001 per share, that is issued and outstanding immediately prior to the Effective Time (the "Old Common Stock") shall be automatically reclassified and become one validly issued, fully paid and non-assessable share of the Class A Common Stock authorized by this Article IV, without any action by the holder thereof. Each certificate that prior to the Filing Effective Time represented shares of Old Common Stock shall thereafter represent shares of Class A Common Stock equal in number to the number of shares of Old Common Stock previously represented by such certificate; provided, that each person holding of record a stock certificate or certificates that represented shares of Old Common Stock shall receive, upon surrender of such certificate or certificates, a new certificate or certificates (or book-entry shares in lieu of a new certificate or certificates) evidencing and representing shares of Class A Common Stock equal in number to the number of shares of Old Common Stock previously represented by such surrendered certificate or certificates.

ARTICLE V

The designations and the powers, privileges and rights, and the qualifications, limitations or restrictions thereof in respect of each class of capital stock of the Corporation are as follows:

A. COMMON STOCK

1. General. The voting, dividend, liquidation and other rights and powers of the Common Stock are subject to and qualified by the rights, powers and preferences of any series of Preferred Stock as may be designated by the Board of Directors of the Corporation (the "Board of Directors") and outstanding from time to time. Except as expressly provided in this Article V, all shares of Common Stock shall, as among each other, have the same rights, preferences and privileges and rank equally, share ratably and be identical in all respects as to all matters, except to the extent such requirement is waived in advance by the written consent or affirmative vote of the holders of shares representing a majority of the voting power of each outstanding class of Common Stock (each voting separately as a class) that is adversely affected, relative to any other outstanding class of Common Stock, by such different treatment.

2. Voting. Except as otherwise provided herein or expressly required by law, each holder of Common Stock, as such, shall be entitled to vote on each matter submitted to a vote of stockholders generally and shall be entitled to one vote for each share of Class A Common Stock and, prior to conversion thereof into Class A Common Stock, ten votes for each share of Class B Common Stock, in each case, held of record by such holder as of the record date for determining stockholders entitled to vote on such matter. Except as otherwise required in this Certificate of Incorporation or by the DGCL, the holders of Common Stock will vote together as a single class on all matters (or, if any holders of Preferred Stock are entitled to vote together with such holders of Common Stock, as a single class with the holders of Preferred Stock).

Except as otherwise required by law, holders of Common Stock, as such, shall not be entitled to vote on any amendment to this Second A&R Certificate, as may be amended and/or restated from time to time (including any Certificate of Designation (as defined below)) (this "Certificate of Incorporation") that relates solely to the rights, powers, preferences (or the qualifications, limitations or restrictions thereof) or other terms of one or more outstanding series of Preferred Stock or other classes of Common Stock if the holders of such affected series of Preferred Stock or Common Stock, as applicable, are entitled exclusively, either separately or together with the holders of one or more other such series, to vote thereon pursuant to this Certificate of Incorporation (including any Certificate of Designation) or pursuant to the DGCL.

Except as otherwise required pursuant to this Certificate of Incorporation and subject to the rights of any holders of any outstanding series of Preferred Stock, the number of authorized shares of each class of Common Stock or Preferred Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority of the stock of the Corporation entitled to vote, irrespective of the provisions of Section 242(b)(2) of the DGCL (or any successor provision thereto).

3. Dividends.

(i) Subject to applicable law and the rights and preferences of any holders of any outstanding series of Preferred Stock, the holders of Common Stock, as such, shall be entitled to the payment of dividends on the Common Stock when, as and if declared by the Board of Directors in accordance with applicable law.

(ii) Except to the extent waived in advance by the written consent or affirmative vote of the holders of shares representing a majority of the voting power of each outstanding class of Common Stock (each voting separately as a class) that is adversely affected, relative to any other outstanding class of Common Stock, by different treatment: (a) dividends of cash or property may not be declared or paid on any class of Common Stock unless a dividend of the same amount per share and same type of cash or property (or combination thereof) per share is concurrently declared or paid on the other classes of outstanding Common Stock; and (b) in no event will any stock dividend, stock split, reverse stock split, combination of stock, subdivision, exchange, reclassification or recapitalization be declared or made on any class of Common Stock (each, a "Stock Adjustment") unless a corresponding Stock Adjustment for all other classes of Common Stock at the time outstanding is made in the same proportion and the same manner.

(iii) Stock dividends with respect to each class of Common Stock shall only be paid with shares of stock of the same class of Common Stock.

4. Liquidation. Subject to the rights and preferences of any holders of any shares of any outstanding series of Preferred Stock, in the event of any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, the funds and assets of the Corporation that may be legally distributed to the Corporation's stockholders shall be distributed among the holders of the then outstanding Common Stock *pro rata* in accordance with the number of shares of Common Stock held by each such holder.

5. Merger, Consolidation, Tender or Exchange Offer. Unless such requirement as to different treatment of such class of Common Stock is waived in advance by the affirmative vote or written consent of holders of shares representing a majority of the voting power of any outstanding class of Common Stock (voting separately as a class) that is adversely affected, relative to any other outstanding class of Common Stock, by such different treatment: (i) in the event of a merger, consolidation or other business combination requiring the approval of the holders of the Corporation's capital stock entitled to vote thereon (whether or not the Corporation is the surviving entity), the holders of any class of Common Stock shall have the right to receive, or the right to elect to receive, the same form of consideration, if any, as the holders of any other class of Common Stock, and the holders of any class of Common Stock shall have the right to receive, or the right to elect to receive, at least the same amount of consideration, if any, on a per share basis as the holders of any other class of Common Stock; and (ii) in the event of (a) any tender or exchange offer to acquire any shares of Common Stock by any third party pursuant to an agreement to which the Corporation is a party or (b) any tender or exchange offer by the Corporation to acquire any shares of Common Stock, pursuant to the terms of the applicable tender or exchange offer, the holders of any class of Common Stock shall have the right to receive, or the right to elect to receive, the same form of consideration, if any, as the holders of any other class of Common Stock, and the holders of any class of Common Stock shall have the right to receive, or the right to elect to receive, at least the same amount of consideration, if any, on a per share basis as the holders of any other class of Common Stock; provided that, for the purposes of the foregoing clauses (i) and (ii) and notwithstanding any other provision of this Certificate of Incorporation, in the event any such consideration includes securities, the consideration payable to holders of Class B Common Stock shall be deemed the same form of consideration and at least the same amount of consideration on a per share basis as the holders of Class A Common Stock on a per share basis if the only difference in the per share distribution to the holders of Class B Common Stock is that each share of the securities distributed to such holders has up to ten times the voting power of each share of the securities distributed to the holder of a share of Class A Common Stock, provided that any such securities distributed to a holder of Class B Common Stock remain subject to automatic conversion to an equal number of securities distributed to a holder of Class A Common Stock upon the terms set forth in Article IV, Section A.7 of this Certificate of Incorporation.

6. Transfer Rights. Subject to applicable law and the transfer restrictions set forth in Article VII of the Bylaws and Article V, Section A.7 of this Certificate of Incorporation, shares of Common Stock and the rights and obligations associated therewith shall be fully transferable to any transferee.

7. Conversion of Class B Common Stock.

(i) Voluntary Conversion. Each share of Class B Common Stock shall be convertible into one share of Class A Common Stock at the option of the holder thereof at any time upon written notice to the transfer agent of the Corporation.

(ii) Automatic Conversion.

(a) Each share of Class B Common Stock shall automatically, without any further action, convert into one share of Class A Common Stock upon a Transfer of such share other than to a Qualified Stockholder.

(b) Each share of Class B Common Stock held by a Founder or by any Permitted Trust, Permitted IRA, Permitted Entity or Permitted Foundation of such Founder shall automatically, without any further action, convert into one share of Class A Common Stock upon the date that is nine months following the last date on which such Founder provided services to the Corporation or any of its subsidiaries as a member of the senior leadership team, officer or director, whether as a result of death, resignation, removal or otherwise.

(c) Every share of Class B Common Stock shall automatically, without any further action, convert into one share of Class A Common Stock upon the earlier of (x) the date that is nine months following the last date on which both Founders provided services to the Corporation or any of its subsidiaries as a member of the senior leadership team, officer or director, whether as a result of death, resignation, removal or otherwise, and (y) the date as of which the Qualified Stockholders have Transferred, in the aggregate, to one or more persons that are not Qualified Stockholders, more than seventy-five (75%) of the total shares of Class B Common Stock that were held by the Qualified Stockholders immediately following the Effective Time (as defined in the Merger Agreement) (the "Effective Time").

(iii) Procedures. The Corporation may, from time to time, establish such policies and procedures relating to the conversion of Class B Common Stock into Class A Common Stock and the general administration of this multi-class stock structure, including the issuance of stock certificates (or the establishment of book-entry positions) with respect thereto, as it may deem reasonably necessary or advisable, and may from time to time request that holders of shares of Class B Common Stock furnish certifications, affidavits or other proof to the Corporation as it deems necessary to verify the ownership of Class B Common Stock and to confirm that a conversion into Class A Common Stock has not occurred. A determination in good faith by the Board of Directors that a Transfer results or has resulted in a conversion into Class A Common Stock shall be conclusive and binding.

(iv) Effect of Conversion. Conversion of shares of Class B Common Stock into shares of Class A Common Stock pursuant to this Article V, Section A.7 shall be deemed to have been made immediately upon any Transfer resulting in such conversion, or otherwise at 11:59 pm on the date of such conversion. Upon any conversion of Class B Common Stock into Class A Common Stock, all rights of the holder of shares of Class B Common Stock shall cease and the person or persons in whose names or names the certificate or certificates (or book-entry position(s)) representing the shares of Class A Common Stock are to be issued shall be treated for all purposes as having become the record holder or holders of such shares of Class A Common Stock. Shares of Class B Common Stock that are converted into shares of Class A Common Stock as provided in this Article V, Section A.7 shall be retired and may not be reissued. The date on which all outstanding shares of Class B Common Stock have been converted into Class A Common Stock is referred to herein as the "Sunset Date".

(v) Reservation of Stock. The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Class A Common Stock, solely for the purpose of effecting the conversion of the shares of Class B Common Stock, such number of shares of Class A Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of Class B Common Stock into shares of Class A Common Stock.

8. No Further Issuances. Except for a dividend payable in accordance with Article V, Section A.3 or a Stock Adjustment effectuated in accordance with Article V or Section A.3, the Corporation shall not at any time after the Effective Time issue any additional shares of Class B Common Stock, unless such issuance is approved by the affirmative vote of the holders of a majority of the outstanding shares of Class A Common Stock, voting as a separate class. After the Sunset Date, the Corporation shall not issue any additional shares of Class B Common Stock.

9. Certain Terms. For purposes of this Article V, Section A, references to:

(i) "Change of Control Issuance" means the issuance by the Corporation, in a transaction or series of related transactions, of voting securities to any person or persons acting as a group as contemplated in Rule 13d-5(b) under the Securities Exchange Act of 1934, as amended (the "Exchange Act") (or any successor provision) that immediately prior to such transaction or series of related transactions held fifty percent (50%) or less of the total voting power of the outstanding voting securities of the Corporation (assuming that the Class A Common Stock and Class B Common Stock each entitle the holder thereof to one vote per share), such that, immediately following such transaction or series of related transactions, such person or group of persons would hold more than fifty percent (50%) of the total voting power of the outstanding voting securities of the Corporation (assuming that the Class A Common Stock and Class B Common Stock each entitle the holder thereof to one vote per share).

(ii) "Change of Control Transaction" means (a) the sale, lease, exclusive license, exchange, or other disposition (other than liens and encumbrances created in the ordinary course of business, including liens or encumbrances to secure indebtedness for borrowed money that are approved by the Board of Directors, so long as no foreclosure occurs in respect of any such lien or encumbrance) of all or substantially all of the Corporation's property and assets (which shall for such purpose include the property and assets of any direct or indirect subsidiary of the Corporation), provided that any sale, lease, exclusive license, exchange or other disposition of property or assets exclusively between or among the Corporation and any direct or indirect subsidiary or subsidiaries of the Corporation shall not be deemed a "Change of Control Transaction"; (b) the merger, consolidation, business combination, or other similar transaction of the Corporation with any other entity, other than a merger, consolidation, business combination, or other similar transaction that would result in the voting securities of the Corporation outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity or its parent) more than fifty percent (50%) of the total voting power represented by the outstanding voting securities of the Corporation (or such surviving or parent entity) or more than fifty percent (50%) of the total number of outstanding shares of the Corporation's (or such surviving or parent entity's) capital stock, in each case as outstanding immediately after such merger, consolidation, business combination, or other similar transaction, and the stockholders of the Corporation immediately prior to the merger, consolidation, business combination, or other similar transaction continuing to own voting securities of the Corporation, the surviving entity or its parent immediately following the merger, consolidation, business combination, or other similar transaction in substantially the same proportions (vis-à-vis each other only) as such stockholders owned of the voting securities of the Corporation immediately prior to the transaction; (c) a recapitalization, liquidation, dissolution, or other similar transaction involving the Corporation, other than a recapitalization, liquidation, dissolution, or other similar transaction that would result in the voting securities of the Corporation outstanding immediately prior thereto continuing to represent (either by remaining outstanding or being converted into voting securities of the surviving entity or its parent) more than fifty percent (50%) of the total voting power represented by the voting securities of the Corporation (or such surviving or parent entity) or more than fifty percent (50%) of the total number of outstanding shares of the Corporation's (or such surviving or parent entity's) capital stock, in each case as outstanding immediately after such recapitalization, liquidation, dissolution or other similar transaction, and the stockholders of the Corporation immediately prior to the recapitalization, liquidation, dissolution or other similar transaction continuing to own voting securities of the Corporation, the surviving entity or its parent immediately following the recapitalization, liquidation, dissolution or other similar transaction in substantially the same proportions (vis-à-vis each other only) as such stockholders owned the voting securities of the Corporation immediately prior to the transaction; and (d) any Change of Control Issuance.

(iii) "Dispositive Power" means the power to directly or indirectly cause a Transfer of the owner's shares (including, without limitation, the power to direct a trustee of a Permitted Trust to Transfer such Permitted Trust's shares).

(iv) "Family Member" means an individual's spouse, ex-spouse, domestic partner, lineal (including by adoption) descendant or antecedent, brother or sister, or the spouse or domestic partner of any child, adopted child or grandchild (including by adoption) of such individual.

(v) "Founders" means Alex Rodrigues and Brandon Moak and any Permitted Trust (as defined below) of either Person.

(vi) "Permitted Entity" means, with respect to a Qualified Stockholder, (a) a corporation in which such Qualified Stockholder directly, or indirectly through one or more Permitted Entities, owns shares with sufficient Voting Control in the corporation, or otherwise has legally enforceable rights, such that the Qualified Stockholder retains Dispositive Power and Voting Control with respect to the shares of Class B Common Stock held by such corporation; (b) a partnership in which such Qualified Stockholder directly, or indirectly through one or more Permitted Entities, owns partnership interests with sufficient Voting Control in the partnership, or otherwise has legally enforceable rights, such that the Qualified Stockholder retains Dispositive Power and Voting Control with respect to the shares of Class B Common Stock held by such partnership; or (c) a limited liability company in which such Qualified Stockholder directly, or indirectly through one or more Permitted Entities, owns membership interests with sufficient Voting Control in the limited liability company, or otherwise has legally enforceable rights, such that the Qualified Stockholder retains Dispositive Power and Voting Control with respect to the shares of Class B Common Stock held by such limited liability company.

(vii) "Permitted Foundation" means, with respect to a Qualified Stockholder, a trust or private non-operating organization that is tax-exempt under Section 501(c)(3) of the Code so long as such Qualified Stockholder has Dispositive Power and Voting Control with respect to the shares of Class B Common Stock held by such trust or organization and the Transfer to such trust does not involve any payment of cash, securities, property or other consideration (other than an interest in such trust or organization) to such Qualified Stockholder.

(viii) "Permitted IRA" means an Individual Retirement Account, as defined in Section 408(a) of the Internal Revenue Code (the "Code"), or a pension, profit sharing, stock bonus or other type of plan or trust of which a Qualified Stockholder is a participant or beneficiary and which satisfies the requirements for qualification under Section 401 of the Code; provided that in each case such Qualified Stockholder has Dispositive Power and Voting Control with respect to the shares of Class B Common Stock held in such account, plan or trust.

(ix) "Permitted Transfer" means, and is restricted to, any Transfer of a share of Class B Common Stock: (a) by a Qualified Stockholder to any Permitted Trust, Permitted IRA, Permitted Entity, or Permitted Foundation of such Qualified Stockholder; or (b) by a Permitted Trust, Permitted IRA, Permitted Entity or Permitted Foundation of a Qualified Stockholder to such Qualified Stockholder or to any Permitted Trust, Permitted IRA, Permitted Entity or Permitted Foundation of such Qualified Stockholder.

(x) "Permitted Trust" means, with respect to a Qualified Stockholder, a trust which (a) is held for the benefit of such Qualified Stockholder and/or one or more Family Members of the Qualified Stockholder in which no person other than such Qualified Stockholder and/or one or more Family Members of the Qualified Stockholder is then a beneficiary entitled to distributions of income or principal from such trust, and (b) confers upon the Qualified Stockholder a Dispositive Power and Voting Control with respect to the shares of Class B Common Stock held by such trust.

(xi) "Qualified Stockholder" means (a) a Founder; (b) any Permitted Trust, Permitted IRA, Permitted Entity or Permitted Foundation of a Founder that becomes a registered holder of one or more shares of Class B Common Stock upon and by virtue of (x) the Effective Time, (y) the exercise, conversion or settlement of a Right (provided that such Right was issued to and at all times held by a holder who would have been a Qualified Stockholder if such Right had been a share and without reference to this clause (y)), or (z) a Permitted Transfer.

(xii) "Rights" means any option, restricted stock unit, warrant, conversion right or contractual right of any kind to acquire (through purchase, conversion or otherwise) shares of the Corporation's authorized but unissued capital stock (or issued but not outstanding capital stock).

(xiii) "Transfer" means, with respect to a share of Class B Common Stock, any sale, assignment, transfer, conveyance, hypothecation or other transfer or disposition of such share or any legal or beneficial interest in such share, whether or not for value and whether voluntary or involuntary or by operation of law, including, without limitation, a transfer to a broker or other nominee (regardless of whether there is a corresponding change in beneficial ownership), or the transfer of, or entering into a binding agreement with respect to, Voting Control over such share by proxy or otherwise; provided that the following shall not be considered a "Transfer": (a) the granting of a revocable proxy to officers or directors or agents of the Corporation with the approval and at the request of the Board of Directors in connection with actions to be taken at an annual or special meeting of stockholders; (b) entering into a voting trust, agreement or arrangement (with or without granting a proxy) (x) solely with stockholders who are holders of Class B Common Stock that (I) is disclosed either in a Schedule 13D filed with the Securities and Exchange Commission or in writing to the Secretary of this Corporation, (II) either has a term not exceeding one year or is terminable by the holder of the shares subject thereto at any time and (III) does not involve any payment of cash, securities, property or other consideration to the holder of the shares subject thereto other than the mutual promise to vote shares in a designated manner, or (y) pursuant to a written agreement to which the Corporation is a party; (c) in connection with a Change of Control Transaction that has been approved by the Board of Directors, the entering into a support, voting, tender or similar agreement or arrangement (in each case, with or without the grant of a proxy) that has also been approved by the Board of Directors; (d) the pledge of shares of Class B Common Stock by a stockholder that creates a mere security interest in such shares pursuant to a bona fide loan or indebtedness transaction for so long as such stockholder (or Founder) continues to exercise Voting Control over such pledged shares and no such Voting Control is exercised by the Person to whom the shares are pledged (other than a Founder if such Founder is the Person to whom the shares are pledged), provided that a foreclosure on such shares or other similar action by the pledgee shall constitute a "Transfer" unless such foreclosure or similar action qualifies as a "Permitted Transfer" or (e) the fact that, as of the Effective Time or at any time after the Effective Time, the spouse of any holder of Class B Common Stock possesses or obtains an interest in such holder's shares of Class B Common Stock arising solely by reason of the application of the community property laws of any jurisdiction, so long as no other event or circumstance shall exist or have occurred that constitutes a Transfer of such shares of Class B Common Stock (including a Transfer by operation of law pursuant to a qualified domestic order or in connection with a divorce settlement or any other court order).

A Transfer shall also be deemed to have occurred with respect to a share of Class B Common Stock beneficially held by (a) an entity that is a Permitted Trust, Permitted IRA, Permitted Entity or Permitted Foundation, if there occurs any act or circumstance that causes such entity to no longer be a Permitted Trust, Permitted IRA, Permitted Entity or Permitted Foundation or if there occurs a Transfer on a cumulative basis, from and after the Effective Time, of a majority of the voting power of the voting securities of such entity or any direct or indirect Parent of such entity, other than a Transfer to parties that are, as of the Effective Time, holders of voting securities of any such entity or Parent of such entity, or (b) an entity that is a Qualified Stockholder, if there occurs a Transfer on a cumulative basis, from and after the Effective Time, of a majority of the voting power of the voting securities of such entity or any direct or indirect Parent of such entity, other than a Transfer to parties that are, as of the Effective Time, holders of voting securities of any such entity or Parent of such entity.

(xiv) "Voting Control" means, with the respect to a share of Class B Common Stock, the power (whether directly or indirectly) to vote or direct the voting of an equity interest, interest in a trust or other interest or security by proxy, voting agreement, or otherwise. For this purpose, the Voting Control with respect to shares transferred to and held in a Permitted Trust shall be deemed to be held exclusively by the trustee of such Permitted Trust; provided, however, if there is any individual powerholder who possesses the power to remove and replace the trustee of such Permitted Trust (a) without cause, (b) for any reason, and (c) not less often than once in any twelve (12) month period, then the Voting Control of such Permitted Trust's shares shall be deemed to be held exclusively by such individual powerholder (and not the trustee of such Permitted Trust).

B. PREFERRED STOCK

Shares of Preferred Stock may be issued from time to time in one or more series, each of such series to have such terms as stated or expressed herein and in the resolution or resolutions providing for the creation and issuance of such series adopted by the Board of Directors as hereinafter provided.

Authority is hereby expressly granted to the Board of Directors from time to time to issue the Preferred Stock in one or more series, and in connection with the creation of any such series, by adopting a resolution or resolutions providing for the issuance of the shares thereof and by filing a certificate of designation relating thereto in accordance with the DGCL (a "Certificate of Designation"), to determine and fix the number of shares of such series and such voting powers, full or limited, or no voting powers, and such designations, preferences and relative participating, optional or other special rights, and qualifications, limitations or restrictions thereof, including without limitation thereof, dividend rights, conversion rights, redemption privileges and liquidation preferences, and to increase or decrease (but not below the number of shares of such series then outstanding) the number of shares of any series as shall be stated and expressed in such resolutions, all to the fullest extent now or hereafter permitted by the DGCL. Without limiting the generality of the foregoing, the resolution or resolutions providing for the creation and issuance of any series of Preferred Stock may provide that such series shall be superior or rank equally or be junior to any other series of Preferred Stock to the extent permitted by law and this Certificate of Incorporation (including any Certificate of Designation). Except as otherwise required by law, holders of any series of Preferred Stock shall be entitled only to such voting rights, if any, as shall expressly be granted thereto by this Certificate of Incorporation (including any Certificate of Designation).

ARTICLE VI

For the management of the business and for the conduct of the affairs of the Corporation it is further provided that:

A. The directors of the Corporation shall be classified with respect to the time for which they severally hold office into three classes, designated as Class I, Class II and Class III. Each class shall consist, as nearly as may be possible, of one third of the total number of directors constituting the whole Board.

B. The initial Class I directors shall serve for a term expiring at the first annual meeting of the stockholders following the Filing Effective Time; the initial Class II directors shall serve for a term expiring at the second annual meeting of the stockholders following the Filing Effective Time; and the initial Class III directors shall serve for a term expiring at the third annual meeting following the Filing Effective Time. At each annual meeting of stockholders of the Corporation beginning with the first annual meeting of stockholders following the Filing Effective Time, the successors of the class of directors whose term expires at that meeting shall be elected to hold office for a term expiring at the annual meeting of stockholders held in the third year following the year of their election. If the number of such directors is changed, any increase or decrease shall be apportioned among the classes so as to maintain the number of directors in each class as nearly equal as possible, and any such additional director of any class elected to fill a newly created directorship resulting from an increase in such class shall hold office for a term that shall coincide with the remaining term of that class, but in no case shall a decrease in the number of directors remove or shorten the term of any incumbent director. Any such director shall hold office until the annual meeting at which his or her term expires and until his or her successor shall be elected and qualified, or his or her death, resignation, retirement, disqualification or removal from office. The Board is authorized to assign members of the Board already in office to their respective class. Each director shall hold office until his or her successor is duly elected and qualified or until his or her earlier death, resignation, disqualification or removal in accordance with this Certificate of Incorporation.

C. Except as otherwise expressly provided by the DGCL or this Certificate of Incorporation, the business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors. The number of directors that shall constitute the whole Board of Directors shall be fixed exclusively by one or more resolutions adopted from time to time by the Board of Directors in accordance with the Bylaws.

D. Subject to the special rights of the holders of one or more outstanding series of Preferred Stock to elect directors, (i) beginning on the Trigger Date (as defined below) and until the Sunset Date, the Board of Directors or any individual director may be removed from office at any time, with or without cause and only by the affirmative vote of the holders of at least a majority of the voting power of all of the then outstanding shares of voting stock of the Corporation entitled to vote at an election of directors; and (ii) during any other period, the Board of Directors or any individual director may be removed from office at any time only for cause and only by the affirmative vote of the holders of at least a majority of the voting power of all of the then outstanding shares of voting stock of the Corporation entitled to vote at an election of directors. For purposes of this Second A&R Certificate, "Trigger Date" shall mean the date that is the earlier of (a) the second (2^{nd}) anniversary of the Filing Date, or (b) the date that is the first (1^{st}) anniversary of the first date on which the last sales price of the Class A Common Stock has equaled or exceeded $12.00 per share (as adjusted for stock splits, stock dividends, reorganizations, recapitalizations and the like following the Filing Date) for any twenty (20) trading days (whether or not consecutive) within any 30-trading day period commencing at least one hundred fifty (150) days after the Filing Date.

E. Subject to the special rights of the holders of one or more outstanding series of Preferred Stock to elect directors, except as otherwise provided by law, any vacancies on the Board of Directors resulting from death, resignation, disqualification, retirement, removal or other causes and any newly created directorships resulting from any increase in the number of directors shall be filled (i) following the Trigger Date and until the Sunset Date, only by the affirmative vote of the holders of at least a majority of the voting power of all of the then outstanding shares of voting stock of the Corporation entitled to vote at an election of directors, and (ii) during any other period, by the affirmative vote of a majority of the directors then in office, even though less than a quorum, or by a sole remaining director.

F. Whenever the holders of any one or more series of Preferred Stock issued by the Corporation shall have the right, voting separately as a series or separately as a class with one or more such other series, to elect directors at an annual or special meeting of stockholders, the election, term of office, removal and other features of such directorships shall be governed by the terms of this Certificate of Incorporation (including any Certificate of Designation). Notwithstanding anything to the contrary in this Article VI, the number of directors that may be elected by the holders of any such series of Preferred Stock shall be in addition to the number fixed pursuant to paragraph C of this Article VI, and the total number of directors constituting the whole Board of Directors shall be automatically adjusted accordingly. Except as otherwise provided in the Certificate of Designation(s) in respect of one or more series of Preferred Stock, whenever the holders of any series of Preferred Stock having such right to elect additional directors are divested of such right pursuant to the provisions of such Certificate of Designation(s), the terms of office of all such additional directors elected by the holders of such series of Preferred Stock, or elected to fill any vacancies resulting from the death, resignation, disqualification or removal of such additional directors, shall forthwith terminate (in which case each such director thereupon shall cease to be qualified as, and shall cease to be, a director) and the total authorized number of directors of the Corporation shall automatically be reduced accordingly.

G. In furtherance and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized to adopt, amend or repeal the Bylaws, without the assent or vote of the stockholders of the Corporation entitled to vote with respect thereto in any manner not inconsistent with the laws of the State of Delaware or this Certificate of Incorporation; provided, however, that the provisions of Section 7.12 of the Bylaws adopted pursuant to the Merger Agreement shall not be waived, amended, or repealed prior to the Lock-Up Expiration Date (as defined therein) without the affirmative vote of a majority of the directors then in office (including the NG Representative (as defined in the Merger Agreement)), Notwithstanding anything to the contrary contained in this Certificate of Incorporation or any provision of law that might otherwise permit a lesser vote of the stockholders, in addition to any vote of the holders of any class or series of stock of the Corporation required by applicable law or by this Certificate of Incorporation (including any Certificate of Designation(s) in respect of one or more series of Preferred Stock) or the Bylaws of the Corporation, the adoption, amendment or repeal of the Bylaws of the Corporation by the stockholders of the Corporation shall require at any time (i) prior to the Trigger Date, the affirmative vote of the holders of a majority of the voting power of all of the then outstanding shares of each class of Common Stock (each voting separately as a class), (ii) after the Trigger Date and until the Sunset Date, the affirmative vote of the holders of at least a majority of the voting power of all of the then outstanding shares of voting stock of the Corporation entitled to vote generally in an election of directors, and (iii) after the Sunset Date, the affirmative vote of the holders of at least two-thirds (66 2/3%) of the voting power of all of the then outstanding shares of voting stock of the Corporation entitled to vote generally in an election of directors, voting as a single class.

H. The directors of the Corporation need not be elected by written ballot unless the Bylaws so provide.

ARTICLE VII

A. Beginning on the Trigger Date and until the Sunset Date, any action required or permitted to be taken by the stockholders of the Corporation may be effected at a duly called annual or special meeting of stockholders or may, except as otherwise required by applicable law or this Certificate of Incorporation, be taken without a meeting, without prior notice and without a vote, if a consent in writing, setting forth the action so taken, shall be signed by the holders of outstanding shares of stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted and shall be delivered to the Corporation in accordance with the applicable provisions of the DGCL. During all other periods, any action required or permitted to be taken by the stockholders of the Corporation must be effected at an annual or special meeting of the stockholders of the Corporation and, except to the extent expressly provided in this Certificate of Incorporation, shall not be taken by written consent in lieu of a meeting. Notwithstanding the foregoing, any action required or permitted to be taken by the holders of any series of Preferred Stock, voting separately as a series or separately as a class with one or more other such series, may be taken without a meeting, without prior notice and without a vote, to the extent expressly so provided by the applicable Certificate of Designation relating to such series of Preferred Stock, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holders of outstanding shares of the relevant series of Preferred Stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted and shall be delivered to the Corporation in accordance with the applicable provisions of the DGCL.

B. Subject to the special rights of the holders of one or more series of Preferred Stock, and to the requirements of applicable law, special meetings of the stockholders of the Corporation may be called for any purpose or purposes, at any time by or at the direction of the Board of Directors, the Chairperson of the Board of Directors or the Chief Executive Officer, in each case, in accordance with the Bylaws. In addition, beginning on the Trigger Date and until the Sunset Date, special meetings of the stockholders of the Corporation may and shall be called for any purpose or purposes by the Secretary of the Corporation upon the request, in writing, of any one or more holders of record that collectively hold, in the aggregate, at least 25% of the voting power of the issued and outstanding shares of stock of the Corporation. Special meetings of the stockholders of the Corporation shall not be called by any person or persons other than as set forth in this Article VII, Section B. Any such special meeting so called may be postponed, rescheduled or cancelled by the Board of Directors or other person calling the meeting.

C. Advance notice of stockholder nominations for the election of directors and of other business proposed to be brought by stockholders before any meeting of the stockholders of the Corporation shall be given in the manner provided in the Bylaws. Any business transacted at any special meeting of stockholders shall be limited to matters relating to the purpose or purposes identified in the notice of meeting.

ARTICLE VIII

No director of the Corporation shall have any personal liability to the Corporation or its stockholders for monetary damages for any breach of fiduciary duty as a director, except to the extent such exemption from liability or limitation thereof is not permitted under the DGCL as the same exists or hereafter may be amended. Any amendment, repeal or modification of this Article VIII, or the adoption of any provision of this Certificate of Incorporation inconsistent with this Article VIII, shall not adversely affect any right or protection of a director of the Corporation with respect to any act or omission occurring prior to such amendment, repeal, modification or adoption. If the DGCL is amended after approval by the stockholders of this Article VIII to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the DGCL as so amended.

ARTICLE IX

A. The Corporation hereby expressly elects not to be governed by Section 203 of the DGCL. By operation of Section 203(b)(3) of the DGCL, the restrictions on business combinations (as defined in Section 203(c)(3) of the DGCL) under Section 203 of the DGCL shall continue to apply until the Trigger Date, at which time they shall cease to apply by virtue of the election set forth in the immediately preceding sentence (the "203 Opt-Out Effective Date"). The provisions of Article IX(B)-(D), including the restrictions on business combinations (as defined in Article IX(D)(3) below) set forth in Article IX(B) below, shall not apply before the 203 Opt-Out Effective Date, From and after the 203 Opt-Out Date, the provisions of Article IX(B)-(D) below shall become effective if, and shall continue in effect for so long as, the Class A Common Stock is registered under Section 12(b) or 12(g) of the Exchange Act.

B. The Corporation shall not engage in any business combination with any interested stockholder (as defined below) for a period of three years following the time that such stockholder became an interested stockholder, unless:

(1) prior to such time, the Board of Directors approved either the business combination or the transaction that resulted in the stockholder becoming an interested stockholder;

(2) upon consummation of the transaction that resulted in the stockholder becoming an interested stockholder, the interested stockholder owned at least 85% of the voting stock (as defined below) of the Corporation outstanding at the time the transaction commenced, excluding for purposes of determining the voting stock outstanding (but not the outstanding voting stock owned by the interested stockholder) those shares owned by (i) persons who are directors and also officers and (ii) employee stock plans in which employee participants do not have the right to determine confidentially whether shares held subject to the plan will be tendered in a tender or exchange offer; or

(3) at or subsequent to such time, the business combination is approved by the Board of Directors and authorized at an annual or special meeting of stockholders, and not by written consent, by the affirmative vote of at least two-thirds (66 2/3%) of the outstanding voting stock of the Corporation which is not owned by the interested stockholder.

C. The restrictions contained in the foregoing Article IX(B) shall not apply if:

(1) a stockholder becomes an interested stockholder inadvertently and (i) as soon as practicable divests itself of ownership of sufficient shares so that the stockholder ceases to be an interested stockholder and (ii) would not, at any time, within the three-year period immediately prior to the business combination between the Corporation and such stockholder, have been an interested stockholder but for the inadvertent acquisition of ownership; or

(2) the business combination is proposed prior to the consummation or abandonment of and subsequent to the earlier of the public announcement or the notice required hereunder of a proposed transaction which (i) constitutes one of the transactions described in the second sentence of this Article IX(C)(2), (ii) is with or by a person who either was not an interested stockholder during the previous three years or who became an interested stockholder with the approval of the Board of Directors and (iii) is approved by a majority of the directors then in office (but not less than one) who were directors prior to any person becoming an interested stockholder during the previous three years or were recommended for election or elected to succeed such directors by a majority of such directors. The proposed transactions referred to in the preceding sentence are limited to (x) a merger or consolidation of the Corporation (except for a merger in respect of which, pursuant to Section 251(f) of the DGCL, no vote of the stockholders of the Corporation is required), (y) a sale, lease, exchange, mortgage, whether as part of a dissolution or otherwise, of assets of the Corporation or of any direct or indirect majority-owned subsidiary of the Corporation (other than to any direct or indirect wholly owned subsidiary or to the Corporation) having an aggregate market value equal to fifty percent or more of either that aggregate market value of all the assets of the Corporation determined on a consolidated basis or the aggregate market value of all the outstanding stock of the Corporation or (z) a proposed tender or exchange offer for 50% or more of the outstanding voting stock of the Corporation, The Corporation shall give not less than 20 days' notice to all interested stockholders prior to the consummation of any of the transactions described in clause (x) or (y) of the second sentence of this Article IX(C)(2).

D. For purposes of this Article IX, references to:

(1) "affiliate" means a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, another person.

(2) "associate," when used to indicate a relationship with any person, means: (i) any corporation, partnership, unincorporated association or other entity of which such person is a director, officer or partner or is, directly or indirectly, the owner of 20% or more of the voting power thereof; (ii) any trust or other estate in which such person has at least a 20% beneficial interest or as to which such person serves as trustee or in a similar fiduciary capacity; and (iii) any relative or spouse of such person, or any relative of such spouse, who has the same residence as such person.

(3) "business combination," when used in reference to the Corporation and any interested stockholder of the Corporation, means:

a. any merger or consolidation of the Corporation or any direct or indirect majority-owned subsidiary of the Corporation (a) with the interested stockholder, or (b) with any other corporation, partnership, unincorporated association or other entity if the merger or consolidation is caused by the interested stockholder and as a result of such merger or consolidation subsection (B) of this Article IX is not applicable to the surviving entity;

b. any sale, lease, exchange, mortgage, pledge, transfer or other disposition (in one transaction or a series of transactions), except proportionately as a stockholder of the Corporation, to or with the interested stockholder, whether as part of a dissolution or otherwise, of assets of the Corporation or of any direct or indirect majority-owned subsidiary of the Corporation which assets have an aggregate market value equal to 10% or more of either the aggregate market value of all the assets of the Corporation determined on a consolidated basis or the aggregate market value of all the outstanding stock of the Corporation;

c. any transaction which results in the issuance or transfer by the Corporation or by any direct or indirect majority-owned subsidiary of the Corporation of any stock of the Corporation or of such subsidiary to the interested stockholder, except: (i) pursuant to the exercise, exchange or conversion of securities exercisable for, exchangeable for or convertible into stock of the Corporation or any such subsidiary which securities were outstanding prior to the time that the interested stockholder became such; (ii) pursuant to a merger under Section 251(g) of the DGCL; (iii) pursuant to a dividend or distribution paid or made, or the exercise, exchange or conversion of securities exercisable for, exchangeable for or convertible into stock of the Corporation or any such subsidiary which security is distributed, pro rata to all holders of a class or series of stock of the Corporation subsequent to the time the interested stockholder became such; (iv) pursuant to an exchange offer by the Corporation to purchase stock made on the same terms to all holders of said stock; or (v) any issuance or transfer of stock by the Corporation; provided, however, that in no case under items (iii) through (v) of this subsection shall there be an increase in the interested stockholder's proportionate share of the stock of any class or series of the Corporation or of the voting stock of the Corporation (except as a result of immaterial changes due to fractional share adjustments);

d. any transaction involving the Corporation or any direct or indirect majority-owned subsidiary of the Corporation which has the effect, directly or indirectly, of increasing the proportionate share of the stock of any class or series, or securities convertible into the stock of any class or series, of the Corporation or of any such subsidiary which is owned by the interested stockholder, except as a result of immaterial changes due to fractional share adjustments or as a result of any purchase or redemption of any shares of stock not caused, directly or indirectly, by the interested stockholder; or

e. any receipt by the interested stockholder of the benefit, directly or indirectly (except proportionately as a stockholder of the Corporation), of any loans, advances, guarantees, pledges, or other financial benefits (other than those expressly permitted in subsections (a) through (d) above) provided by or through the Corporation or any direct or indirect majority-owned subsidiary.

(4) "control," including the terms "controlling," "controlled by" and "under common control with," means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting stock, by contract, or otherwise. A person who is the owner of 20% or more of the outstanding voting stock of a corporation, partnership, unincorporated association or other entity shall be presumed to have control of such entity, in the absence of proof by a preponderance of the evidence to the contrary. Notwithstanding the foregoing, a presumption of control shall not apply where such person holds voting stock, in good faith and not for the purpose of circumventing this subsection (D) of Article IX, as an agent, bank, broker, nominee, custodian or trustee for one or more owners who do not individually or as a group have control of such entity.

(5) "interested stockholder" means any person (other than the Corporation or any direct or indirect majority-owned subsidiary of the Corporation) that (i) is the owner of 15% or more of the outstanding voting stock of the Corporation, or (ii) is an affiliate or associate of the Corporation and was the owner of 15% or more of the outstanding voting stock of the Corporation at any time within the three year period immediately prior to the date on which it is sought to be determined whether such person is an interested stockholder; and the affiliates and associates of such person; but "interested stockholder" shall not include (a) any Stockholder Party, any Stockholder Party Direct Transferee, any Stockholder Party Indirect Transferee or any of their respective affiliates or successors or any "group," or any member of any such group, to which such persons are a party under Rule 13d-5 of the Exchange Act, or (b) any person whose ownership of shares in excess of the 15% limitation set forth herein is the result of any action taken solely by the Corporation; provided, further, that in the case of clause (b) such person shall be an interested stockholder if thereafter such person acquires additional shares of voting stock of the Corporation, except as a result of further corporate action not caused, directly or indirectly, by such person. For the purpose of determining whether a person is an interested stockholder, the voting stock of the Corporation deemed to be outstanding shall include stock deemed to be owned by the person through application of the definition of "owner" below.

(6) "owner," including the terms "own," "owned," and "ownership" when used with respect to any stock, means a person that individually or with or through any of its affiliates or associates:

a. beneficially owns such stock, directly or indirectly;

b. has (i) the right to acquire such stock (whether such right is exercisable immediately or only after the passage of time) pursuant to any agreement, arrangement or understanding, or upon the exercise of conversion rights, exchange rights, warrants or options, or otherwise; provided, however, that a person shall not be deemed the owner of stock tendered pursuant to a tender or exchange offer made by such person or any of such person's affiliates or associates until such tendered stock is accepted for purchase or exchange; or (ii) the right to vote such stock pursuant to any agreement, arrangement or understanding; provided, however, that a person shall not be deemed the owner of any stock because of such person's right to vote such stock if the agreement, arrangement or understanding to vote such stock arises solely from a revocable proxy or consent given in response to a proxy or consent solicitation made to 10 or more persons; or

c. has any agreement, arrangement or understanding for the purpose of acquiring, holding, voting (except voting pursuant to a revocable proxy or consent as described in item (ii) of subsection (b) above), or disposing of such stock with any other person that beneficially owns, or whose affiliates or associates beneficially own, directly or indirectly, such stock.

(7) "person" means any individual, corporation, partnership, unincorporated association or other entity.

(8) "stock" means, with respect to any corporation, capital stock and, with respect to any other entity, any equity interest.

(9) "Stockholder Party" means any Qualified Stockholder of the Corporation.

(10) "Stockholder Party Direct Transferee" means any person that acquires (other than in a registered public offering) directly from any Stockholder Party or any of its successors or any "group," or any member of any such group, of which such persons are a party under Rule 13d-5 of the Exchange Act ownership of 15% or more of the then outstanding voting stock of the Corporation.

(11) "Stockholder Party Indirect Transferee" means any person that acquires (other than in a registered public offering) directly from any Stockholder Party Direct Transferee or any other Stockholder Party Indirect Transferee ownership of 15% or more of the then outstanding voting stock of the Corporation.

(12) "voting stock" means stock of any class or series entitled to vote generally in the election of directors and, with respect to any entity that is not a corporation, any equity interest entitled to vote generally in the election of the governing body of such entity. Every reference to a percentage of voting stock shall be calculated on the basis of the aggregate number of votes applicable to all outstanding shares of such voting stock, and by allocating to each share of voting stock, that number of votes to which such share is entitled.

ARTICLE X

A. Subject to Article X(C), the Corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Corporation), by reason of the fact that such person is or was a director or officer of the Corporation, or while a director or officer of the Corporation, is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe such person's conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which such person reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that such person's conduct was unlawful.

B. Subject to Article X(C), the Corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that such person is or was a director or officer of the Corporation, or while a director or officer of the Corporation, is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Corporation; except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the Corporation unless and only to the extent that the Court of Chancery of the State of Delaware or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

C. Any indemnification under this Article X (unless ordered by a court) shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification of the present or former director or officer is proper in the circumstances because such person has met the applicable standard of conduct set forth in Article X(A) or Article X(B), as the case may be. Such determination shall be made, with respect to a person who is a director or officer at the time of such determination, (i) by a majority vote of the directors who are not parties to such action, suit or proceeding, even though less than a quorum, or (ii) by a committee of such directors designated by a majority vote of such directors, even though less than a quorum, or (iii) if there are no such directors, or if such directors so direct, by independent legal counsel in a written opinion or (iv) by the stockholders. Such determination shall be made, with respect to former directors and officers, by any person or persons having the authority to act on the matter on behalf of the Corporation. To the extent, however, that a present or former director or officer of the Corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding described above, or in defense of any claim, issue or matter therein, such person shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection therewith, without the necessity of authorization in the specific case.

D. For purposes of any determination under Article X(C), a person shall be deemed to have acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Corporation, or, with respect to any criminal action or proceeding, to have had no reasonable cause to believe such person's conduct was unlawful, if such person's action is based on the records or books of account of the Corporation or another enterprise, or on information supplied to such person by the officers of the Corporation or another enterprise in the course of their duties, or on the advice of legal counsel for the Corporation or another enterprise or on information or records given or reports made to the Corporation or another enterprise by an independent certified public accountant or by an appraiser or other expert selected with reasonable care by the Corporation or another enterprise. The provisions of this Article X(D) shall not be deemed to be exclusive or to limit in any way the circumstances in which a person may be deemed to have met the applicable standard of conduct set forth in Article X(A) or Article X(B), as the case may be.

E. Notwithstanding any contrary determination in the specific case under Article X(C), and notwithstanding the absence of any determination thereunder, any director or officer may apply to the Court of Chancery of the State of Delaware or any other court of competent jurisdiction in the State of Delaware for indemnification to the extent otherwise permissible under Article X(A) or Article X(B). The basis of such indemnification by the Corporation shall be a determination by such court that indemnification of the director or officer is proper in the circumstances because such person has met the applicable standard of conduct set forth in Article X(A) or Article X(B), as the case may be. Neither a contrary determination in the specific case under Article X(C) nor the absence of any determination thereunder shall be a defense to such application or create a presumption that the director or officer seeking indemnification has not met any applicable standard of conduct. Notice of any application for indemnification pursuant to this Article X shall be given to the Corporation promptly upon the filing of such application. If successful, in whole or in part, the director or officer seeking indemnification shall also be entitled to be paid the expense of prosecuting such application.

F. Expenses (including attorneys' fees) incurred by a present or former director or officer in appearing at, participating in or defending any civil, criminal, administrative or investigative action, suit or proceeding in advance of its final disposition or in connection with a proceeding brought to establish or enforce a right to indemnification or advancement of expenses under this Article X shall be paid by the Corporation upon receipt of an undertaking by or on behalf of such director or officer to repay such amount if it shall ultimately be determined that such person is not entitled to be indemnified by the Corporation as authorized in this Article X. Such expenses (including attorneys' fees) incurred by employees and agents of the Corporation or by persons acting at the request of the Corporation as directors, officers, employees or agents of another corporation, partnership, joint venture, trust or other enterprise may be so paid upon such terms and conditions, if any, as the Corporation deems appropriate.

G. The indemnification and advancement of expenses provided by, or granted pursuant to, this Article X shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under this Certificate of Incorporation, the Bylaws, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in such person's official capacity and as to action in another capacity while holding such office, it being the policy of the Corporation that indemnification of the persons specified in Article X(A) or Article X(B) shall be made to the fullest extent permitted by law. The provisions of this Article X shall not be deemed to preclude the indemnification of any person who is not specified in Article X(A) or Article X(B) but whom the Corporation has the power or obligation to indemnify under the provisions of the DGCL, or otherwise.

H. The Corporation may purchase and maintain insurance on behalf of any person who is or was a director or officer of the Corporation, or is or was a director or officer of the Corporation serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against such person and incurred by such person in any such capacity, or arising out of such person's status as such, whether or not the Corporation would have the power or the obligation to indemnify such person against such liability under the provisions of this Article X.

I. For purposes of this Article X, references to "the Corporation" shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors or officers, so that any person who is or was a director or officer of such constituent corporation, or is or was a director or officer of such constituent corporation serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under the provisions of this Article X with respect to the resulting or surviving corporation as such person would have with respect to such constituent corporation if its separate existence had continued. The term "another enterprise" as used in this Article X shall mean any other corporation or any partnership, joint venture, trust, employee benefit plan or other enterprise of which such person is or was serving at the request of the Corporation as a director, officer, employee or agent. For purposes of this Article X, references to "fines" shall include any excise taxes assessed on a person with respect to an employee benefit plan; and references to "serving at the request of the Corporation" shall include any service as a director, officer, employee or agent of the Corporation which imposes duties on, or involves services by, such director or officer with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner such person reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner "not opposed to the best interests of the Corporation" as referred to in this Article X.

J. The indemnification and advancement of expenses provided by, or granted pursuant to, this Article X shall, unless otherwise provided when authorized or ratified as provided in this Article X, continue as to a person who has ceased to be a director or officer and shall inure to the benefit of the heirs, executors and administrators of such a person.

K. Notwithstanding anything contained in this Article X to the contrary, except for proceedings to enforce rights to indemnification (which shall be governed by Article X, Section E), the Corporation shall not be obligated to indemnify any present or former director or officer (or his or her heirs, executors or personal or legal representatives) or advance expenses in connection with a proceeding (or part thereof) initiated by such person unless such proceeding (or part thereof) was authorized or consented to by the Board of the Corporation.

L. The Corporation may, to the extent authorized from time to time by the Board, provide rights to indemnification and to the advancement of expenses to employees and agents of the Corporation and to persons serving at the request of the Corporation as directors, officers, employees and agents of another corporation, partnership, joint venture, trust or other enterprise similar to those conferred in this Article X to directors and officers of the Corporation.

M. Notwithstanding that a director, officer, employee or agent of the Corporation (collectively, the "Covered Persons") may have certain rights to indemnification, advancement of expenses and/or insurance provided by other persons (collectively, the "Other Indemnitors"), with respect to the rights to indemnification, advancement of expenses and/or insurance set forth herein, the Corporation: (i) shall be the indemnitor of first resort (i.e., its obligations to Covered Persons are primary and any obligation of the Other Indemnitors to advance expenses or to provide indemnification for the same expenses or liabilities incurred by Covered Persons are secondary); and (ii) shall be required to advance the full amount of expenses incurred by Covered Persons and shall be liable for the full amount of all liabilities, without regard to any rights Covered Persons may have against any of the Other Indemnitors. No advancement or payment by the Other Indemnitors on behalf of Covered Persons with respect to any claim for which Covered Persons have sought indemnification from the Corporation shall affect the immediately preceding sentence, and the Other Indemnitors shall have a right of contribution and/or be subrogated to the extent of such advancement or payment to all of the rights of recovery of Covered Persons against the Corporation. Notwithstanding anything to the contrary herein, the obligations of the Corporation under this Article X(M) shall only apply to Covered Persons in their capacity as Covered Persons.

N. Any repeal or amendment of this Article X by the Board or the stockholders of the Corporation or by changes in applicable law, or the adoption of any other provision of this Certificate of Incorporation inconsistent with this Article X, will, to the extent permitted by applicable law, be prospective only (except to the extent such amendment or change in applicable law permits the Corporation to provide broader indemnification rights to indemnitees on a retroactive basis than permitted prior thereto), and will not in any way diminish or adversely affect any right or protection existing hereunder in respect of any act or omission occurring prior to such repeal or amendment or adoption of such inconsistent provision.

ARTICLE XI

A. Unless the Corporation consents in writing to the selection of an alternative forum, the Court of Chancery (the "Chancery Court") of the State of Delaware (or, in the event that the Chancery Court does not have jurisdiction, the federal district court for the District of Delaware or other state courts of the State of Delaware) and any appellate court thereof shall, to the fullest extent permitted by law, be the sole and exclusive forum for (i) any derivative action, suit or proceeding brought on behalf of the Corporation, (ii) any action, suit or proceeding asserting a claim of breach of a fiduciary duty owed by any current or former director, officer, stockholder or employee of the Corporation to the Corporation or to the Corporation's stockholders, (iii) any action, suit or proceeding arising pursuant to any provision of the DGCL or the Bylaws or this Certificate of Incorporation (as either may be amended from time to time), (iv) any action, suit or proceeding as to which the DGCL confers jurisdiction on the Chancery Court, or (v) any action, suit or proceeding asserting a claim against the Corporation or any current or former director, officer or stockholder governed by the internal affairs doctrine. If any action the subject matter of which is within the scope of the immediately preceding sentence is filed in a court other than the courts in the State of Delaware (a "Foreign Action") in the name of any stockholder, such stockholder shall be deemed to have consented to (a) the personal jurisdiction of the state and federal courts in the State of Delaware in connection with any action brought in any such court to enforce the provisions of the immediately preceding sentence and (b) having service of process made upon such stockholder in any such action by service upon such stockholder's counsel in the Foreign Action as agent for such stockholder. Notwithstanding the foregoing, the provisions of this Article XI(A) shall not apply to suits brought to enforce any liability or duty created by the Securities Act of 1933, as amended (the "Securities Act"), the Exchange Act or any other claim for which the federal courts of the United States have exclusive jurisdiction.

B. Unless the Corporation consents in writing to the selection of an alternative forum, to the fullest extent permitted by law, the federal district courts of the United States of America shall be the exclusive forum for the resolution of any complaint asserting a cause of action arising under the Securities Act.

C. Any person or entity purchasing or otherwise acquiring any interest in any security of the Corporation shall be deemed to have notice of and consented to this Article XI.

ARTICLE XII

A. In recognition and anticipation that (a) certain directors, principals, officers, employees and/or other representatives of an Exempted Person (as defined below) and its Affiliates (as defined below) may serve as directors, officers or agents of the Corporation, (b) an Exempted Person and its Affiliates, including (i) any portfolio company in which it or any of its investment fund Affiliates have made a debt or equity investment (and vice versa) or (ii) any of its limited partners, non-managing members or other similar direct or indirect investors may now engage and may continue to engage in the same or similar activities or related lines of business as those in which the Corporation, directly or indirectly, may engage and/or other business activities that overlap with or compete with those in which the Corporation, directly or indirectly, may engage, and (c) members of the Board of Directors who are not employees of the Corporation ("Non-Employee Directors") and their respective Affiliates, including (i) any portfolio company in which they or any of their respective investment fund Affiliates have made a debt or equity investment (and vice versa) or (ii) any of their respective limited partners, non-managing members or other similar direct or indirect investors may now engage and may continue to engage in the same or similar activities or related lines of business as those in which the Corporation, directly or indirectly, may engage and/or other business activities that overlap with or compete with those in which the Corporation, directly or indirectly, may engage, the provisions of this Article XII are set forth to regulate and define the conduct of certain affairs of the Corporation with respect to certain classes or categories of business opportunities as they may involve any Exempted Person, Non-Employee Director or their respective Affiliates and the powers, rights, duties and liabilities of the Corporation and its directors, officers and stockholders in connection therewith.

B. Neither (i) any Exempted Person nor (ii) any Non-Employee Director (including any Non-Employee Director who serves as an officer of the Corporation in both his or her director and officer capacities) or his or her Affiliates (other than the Corporation, any of its subsidiaries or their respective officers or employees) (the Persons (as defined below) identified in (i) and (ii) above being referred to, collectively, as "Identified Persons" and, individually, as an "Identified Person") shall, to the fullest extent permitted by law, have any fiduciary duty to refrain from directly or indirectly (A) engaging in and possessing interests in other business ventures of every type and description, including those engaged in the same or similar business activities or lines of business in which the Corporation or any of its subsidiaries now engages or proposes to engage or (B) competing with the Corporation or any of its Affiliates or subsidiaries, on its own account, or in partnership with, or as an employee, officer, director or shareholder of any other Person (other than the Corporation or any of its subsidiaries), and, to the fullest extent permitted by law, no Identified Person shall be liable to the Corporation or its stockholders or to any Affiliate of the Corporation for breach of any fiduciary duty solely by reason of the fact that such Identified Person engages in any such activities. To the fullest extent permitted from time to time by the laws of the State of Delaware, the Corporation hereby renounces any interest or expectancy in, or right to be offered an opportunity to participate in, any business opportunity that may be a corporate opportunity for an Identified Person and the Corporation or any of its Affiliates, except as provided in Section C of Article XII. Subject to Section C of Article XII, in the event that any Identified Person acquires knowledge of a potential transaction or matter that may be a corporate or other business opportunity for itself, herself or himself, or any of its or his or her Affiliates, and the Corporation or any of its Affiliates, such Identified Person shall, to the fullest extent permitted by law, have no duty (fiduciary, contractual or otherwise) to communicate or present such transaction or matter to the Corporation or any of its subsidiaries, as the case may be and, to the fullest extent permitted by law, shall not be liable to the Corporation or its stockholders or to any subsidiary of the Corporation for breach of any duty (fiduciary, contractual or otherwise) as a stockholder or director of the Corporation by reason of the fact that such Identified Person, directly or indirectly, pursues or acquires such opportunity for itself, herself or himself, directs such opportunity to another Person or does not present such opportunity to the Corporation or any of its subsidiaries (or its Affiliates).

C. The Corporation does not renounce its interest in any corporate opportunity offered to any Non-Employee Director (including any Non-Employee Director who serves as an officer of this Corporation in both his or her director and officer capacities) if such opportunity is expressly offered to such person solely in his or her capacity as a director or officer of the Corporation, and the provisions of Section B of this Article XII shall not apply to any such corporate opportunity.

D. In addition to and notwithstanding the foregoing provisions of this Article XII, a corporate opportunity shall not be deemed to be a potential corporate opportunity for the Corporation if it is a business opportunity that (a) the Corporation is neither financially or legally able, nor contractually permitted, to undertake, (b) from its nature, is not in the line of the Corporation's business or is of no practical advantage to the Corporation or (c) is one in which the Corporation has no interest or reasonable expectancy.

E. For purposes of this Article XII, (i) "Affiliate" means (a) in respect of an Exempted Person, any Person that, directly or indirectly, is controlled by such Exempted Person, controls such Exempted Person or is under common control with such Exempted Person and shall include any principal, member, director, partner, stockholder, officer, employee or other representative of any of the foregoing (other than the Corporation and any entity that is controlled by the Corporation), (b) in respect of a Non-Employee Director, any Person that, directly or indirectly, is controlled by such Non-Employee Director (other than the Corporation and any entity that is controlled by the Corporation) and (c) in respect of the Corporation, any Person that, directly or indirectly, is controlled by the Corporation; (ii) "Exempted Person" means Sequoia Capital, Northern Genesis Sponsor II LLC and their respective Affiliates; and (iii) "Person" means any individual, corporation, general or limited partnership, limited liability company, joint venture, trust, association or any other entity.

F. To the fullest extent permitted by law, any Person purchasing or otherwise acquiring any interest in any shares of capital stock of the Corporation shall be deemed to have notice of and to have consented to the provisions of this Article XII.

ARTICLE XIII

A. Notwithstanding anything contained in this Certificate of Incorporation to the contrary, in addition to any vote required by applicable law, the provisions of Article V through this Article XIII of this Certificate of Incorporation may not be amended, altered, repealed or rescinded, in whole or in part, and no provision inconsistent therewith or herewith may be adopted, without (i) prior to the Trigger Date, the affirmative vote of the holders of at least a majority of the voting power of all of the then outstanding shares of each class of Common Stock (each voting separately as a class), and (ii) on or after the Trigger Date, the affirmative vote of the holders of at least two-thirds (66 2/3%) of the total voting power of all the then outstanding shares of stock of the Corporation entitled to vote thereon, voting together as a single class; provided, however, that, in addition to any other vote required by law or this Certificate of Incorporation, any amendment to this Certificate of Incorporation that (x) increases the voting power of the Class B Common Stock pursuant to Article V, Section A.2 or (y) alters or changes Article V, Section A.7 in a manner that adversely affects the holders of Class A Common Stock shall not be approved, in each case, without the affirmative vote of the holders of at least a majority of the total voting power of all then-outstanding shares of Class A Common Stock of the Corporation entitled to vote thereon, voting as a separate class.

B. If any provision or provisions of this Certificate of Incorporation shall be held to be invalid, illegal or unenforceable as applied to any circumstance for any reason whatsoever: (i) the validity, legality and enforceability of such provisions in any other circumstance and of the remaining provisions of this Certificate of Incorporation (including, without limitation, each portion of any paragraph of this Certificate of Incorporation containing any such provision held to be invalid, illegal or unenforceable that is not itself held to be invalid, illegal or unenforceable) shall not, to the fullest extent permitted by applicable law, in any way be affected or impaired thereby and (ii) to the fullest extent permitted by applicable law, the provisions of this Certificate of Incorporation (including, without limitation, each such portion of any paragraph of this Certificate of Incorporation containing any such provision held to be invalid, illegal or unenforceable) shall be construed so as to permit the Corporation to protect its directors, officers, employees and agents from personal liability in respect of their good faith service to or for the benefit of the Corporation to the fullest extent permitted by law.

[*Remainder of page intentionally left blank.*]

IN WITNESS WHEREOF, the Corporation has caused this Second A&R Certificate to be executed by its duly authorized officer as this 10th day of November, 2021.

Northern Genesis Acquisition Corp. II

By: /s/ Ian Robertson
Name: Ian Robertson
Title: Director and Chief Executive Officer

[Signature Page - Second A&R Certificate of Incorporation - NG II]

Exhibit 3.2

Final Form

Amended and Restated Bylaws

of

Embark Technology, Inc.

(a Delaware corporation)

Table of Contents

Table of Contents
(continued)

Amended and Restated Bylaws
of
Embark Technology, Inc.

Article I - Corporate Offices

1.1 Registered Office.

The address of the registered office of Embark Technology, Inc. (the "Corporation") in the State of Delaware, and the name of its registered agent at such address, shall be as set forth in the Corporation's certificate of incorporation, as the same may be amended and/or restated from time to time (the "Certificate of Incorporation").

1.2 Other Offices.

The Corporation may have additional offices at any place or places, within or outside the State of Delaware, as the Corporation's board of directors (the "Board") may from time to time establish or as the business of the Corporation may require.

Article II - Meetings of Stockholders

2.1 Place of Meetings.

Meetings of stockholders shall be held at any place within or outside the State of Delaware, designated by the Board. The Board may, in its sole discretion, determine that a meeting of stockholders shall not be held at any place, but may instead be held solely by means of remote communication as authorized by Section 211(a)(2) of the General Corporation Law of the State of Delaware (the "DGCL"). In the absence of any such designation or determination, stockholders' meetings shall be held at the Corporation's principal executive office.

2.2 Annual Meeting.

The Board shall designate the date and time of the annual meeting. At the annual meeting, directors shall be elected and other proper business properly brought before the meeting in accordance with Section 2.4 of these bylaws may be transacted. The Board may postpone, reschedule or cancel any previously scheduled annual meeting of stockholders.

2.3 Special Meeting.

Special meetings of the stockholders may be called, postponed, rescheduled or cancelled only by such persons and only in such manner as set forth in the Certificate of Incorporation.

No business may be transacted at any special meeting of stockholders other than the business specified in the notice of such meeting.

2.4 Notice of Business to be Brought before a Meeting.

(i) At an annual meeting of the stockholders, only such business shall be conducted as shall have been properly brought before the meeting. To be properly brought before an annual meeting, business must be (i) specified in a notice of meeting (or any supplement thereto) given by or at the direction of the Board, (ii) if not specified in a notice of meeting, otherwise brought before the meeting by the Board or the Chairperson of the Board or (iii) otherwise properly brought before the meeting by a stockholder present in person who (A) (1) was a record owner of shares of the Corporation both at the time of giving the notice provided for in this Section 2.4 and at the time of the meeting, (2) is entitled to vote at the meeting, and (3) has complied with this Section 2.4 in all applicable respects or (B) properly made such proposal in accordance with Rule 14a-8 under the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder (as so amended and inclusive of such rules and regulations, the "Exchange Act"). The foregoing clause (iii) shall be the exclusive means for a stockholder to propose business to be brought before an annual meeting of the stockholders. For purposes of this Section 2.4, "present in person" shall mean that the stockholder proposing that the business be brought before the annual meeting of the Corporation, or a qualified representative of such proposing stockholder, appear at such annual meeting. A "qualified representative" of such proposing stockholder shall be a duly authorized officer, manager or partner of such stockholder or any other person authorized by a writing executed by such stockholder or an electronic transmission delivered by such stockholder to act for such stockholder as proxy at the meeting of stockholders and such person must produce such writing or electronic transmission, or a reliable reproduction of the writing or electronic transmission, at the meeting of stockholders. Stockholders seeking to nominate persons for election to the Board must comply with Section 2.5 and Section 2.6 and this Section 2.4 shall not be applicable to nominations except as expressly provided in Section 2.5 and Section 2.6.

(ii) Without qualification, for business to be properly brought before an annual meeting by a stockholder pursuant to Section 2.4(i)(iii), the stockholder must (i) provide Timely Notice (as defined below) thereof in writing and in proper form to the Secretary of the Corporation and (ii) provide any updates or supplements to such notice at the times and in the forms required by this Section 2.4. To be timely, a stockholder's notice must be delivered to, or mailed and received at, the principal executive offices of the Corporation not less than 90 days nor more than 120 days prior to the one-year anniversary of the preceding year's annual meeting (which, in the case of the first annual meeting of stockholders following the Effective Time (as defined in the Corporation's Certification of Incorporation), the date of the preceding year's annual meeting shall be deemed to be June 10, 2021); provided, however, that if the date of the annual meeting is more than 30 days before or more than 60 days after such anniversary date, notice by the stockholder to be timely must be so delivered, or mailed and received, not later than the 90th day prior to such annual meeting or, if later, the 10th day following the day on which public disclosure of the date of such annual meeting was first made by the Corporation (such notice within such time periods, "Timely Notice"). In no event shall any adjournment or postponement of an annual meeting or the announcement thereof commence a new time period (or extend any time period) for the giving of Timely Notice as described above.

(iii) To be in proper form for purposes of this Section 2.4, a stockholder's notice to the Secretary shall set forth:

(a) As to each Proposing Person (as defined below), (1) the name and address of such Proposing Person (including, if applicable, the name and address that appear on the Corporation's books and records); and (2) the class or series and number of shares of the Corporation that are, directly or indirectly, owned of record or beneficially owned (within the meaning of Rule 13d-3 under the Exchange Act) by such Proposing Person, except that such Proposing Person shall in all events be deemed to beneficially own any shares of any class or series of the Corporation as to which such Proposing Person has a right to acquire beneficial ownership at any time in the future (the disclosures to be made pursuant to the foregoing clauses (1) and (2) are referred to as "Stockholder Information");

(b) As to each Proposing Person, (1) the full notional amount of any securities that, directly or indirectly, underlie any "derivative security" (as such term is defined in Rule 16a-1(c) under the Exchange Act) that constitutes a "call equivalent position" (as such term is defined in Rule 16a-1(b) under the Exchange Act) ("Synthetic Equity Position") and that is, directly or indirectly, held or maintained by such Proposing Person with respect to any shares of any class or series of shares of the Corporation; provided that, for the purposes of the definition of "Synthetic Equity Position," the term "derivative security" shall also include any security or instrument that would not otherwise constitute a "derivative security" as a result of any feature that would make any conversion, exercise or similar right or privilege of such security or instrument becoming determinable only at some future date or upon the happening of a future occurrence, in which case the determination of the amount of securities into which such security or instrument would be convertible or exercisable shall be made assuming that such security or instrument is immediately convertible or exercisable at the time of such determination; and, provided, further, that any Proposing Person satisfying the requirements of Rule 13d-1(b)(1) under the Exchange Act (other than a Proposing Person that so satisfies Rule 13d-1(b)(1) under the Exchange Act solely by reason of Rule 13d-1(b)(1)(ii)(E)) shall not be deemed to hold or maintain the notional amount of any securities that underlie a Synthetic Equity Position held by such Proposing Person as a hedge with respect to a bona fide derivatives trade or position of such Proposing Person arising in the ordinary course of such Proposing Person's business as a derivatives dealer, (2) any rights to dividends on the shares of any class or series of shares of the Corporation owned beneficially by such Proposing Person that are separated or separable from the underlying shares of the Corporation, (3) any material pending or threatened legal proceeding in which such Proposing Person is a party or material participant involving the Corporation or any of its officers or directors, or any affiliate of the Corporation, (4) any other material relationship between such Proposing Person, on the one hand, and the Corporation, any affiliate of the Corporation, on the other hand, (5) any direct or indirect material interest in any material contract or agreement of such Proposing Person with the Corporation or any affiliate of the Corporation (including, in any such case, any employment agreement, collective bargaining agreement or consulting agreement), (6) a representation that such Proposing Person intends or is part of a group which intends to deliver a proxy statement or form of proxy to holders of at least the percentage of the Corporation's outstanding capital stock required to approve or adopt the proposal or otherwise solicit proxies from stockholders in support of such proposal, (7) a description of any agreement, arrangement or understanding with respect to the nomination or proposal and/or the voting of shares of any class or series of stock of the Corporation between or among the Proposing Persons, (8) a description of any agreement, arrangement or understanding (including without limitation any contract to purchase or sell, acquisition or grant of any option, right or warrant to purchase or sell, swap or other instrument) to which any Proposing Person is a party, the intent or effect of which may be (i) to transfer to or from any Proposing Person, in whole or in part, any of the economic consequences of ownership of any security of the Corporation, (ii) to increase or decrease the voting power of any Proposing Person with respect to shares of any class or series of stock of the Corporation and/or (iii) to provide any Proposing Person, directly or indirectly, with the opportunity to profit or share in any profit derived from, or to otherwise benefit economically from, any increase or decrease in the value of any security of the Corporation and (9) any other information relating to such Proposing Person that would be required to be disclosed in a proxy statement or other filing required to be made in connection with solicitations of proxies or consents by such Proposing Person in support of the business proposed to be brought before the meeting pursuant to Section 14(a) of the Exchange Act (the disclosures to be made pursuant to the foregoing clauses (1) through (9) are referred to as "Disclosable Interests"); provided, however, that Disclosable Interests shall not include any such disclosures with respect to the ordinary course business activities of any broker, dealer, commercial bank, trust company or other nominee who is a Proposing Person solely as a result of being the stockholder directed to prepare and submit the notice required by these bylaws on behalf of a beneficial owner; and

(c) As to each item of business that the stockholder proposes to bring before the annual meeting, (1) a brief description of the business desired to be brought before the annual meeting, the reasons for conducting such business at the annual meeting and any material interest in such business of each Proposing Person, (2) the text of the proposal or business (including the text of any resolutions proposed for consideration and in the event that such business includes a proposal to amend the bylaws of the Corporation, the language of the proposed amendment), (3) a reasonably detailed description of all agreements, arrangements and understandings (x) between or among any of the Proposing Persons or (y) between or among any Proposing Person and any other record or beneficial holder(s) or persons(s) who have a right to acquire beneficial ownership at any time in the future of the shares of any class or series of the Corporation or any other person or entity (including their names) in connection with the proposal of such business by such stockholder; and (4) any other information relating to such item of business that would be required to be disclosed in a proxy statement or other filing required to be made in connection with solicitations of proxies in support of the business proposed to be brought before the meeting pursuant to Section 14(a) of the Exchange Act; provided, however, that the disclosures required by this paragraph (c) shall not include any disclosures with respect to any broker, dealer, commercial bank, trust company or other nominee who is a Proposing Person solely as a result of being the stockholder directed to prepare and submit the notice required by these bylaws on behalf of a beneficial owner.

For purposes of this Section 2.4, the term "Proposing Person" shall mean (i) the stockholder providing the notice of business proposed to be brought before an annual meeting, (ii) the beneficial owner or beneficial owners, if different, on whose behalf the notice of the business proposed to be brought before the annual meeting is made, and (iii) any participant (as defined in paragraphs (a)(ii)-(vi) of Instruction 3 to Item 4 of Schedule 14A) with such stockholder in such solicitation.

(iv) A Proposing Person shall update and supplement its notice to the Corporation of its intent to propose business at an annual meeting, if necessary, so that the information provided or required to be provided in such notice pursuant to this Section 2.4 shall be true and correct as of the record date for stockholders entitled to vote at the meeting and as of the date that is 10 business days prior to the meeting or any adjournment or postponement thereof, and such update and supplement shall be delivered to, or mailed and received by, the Secretary at the principal executive offices of the Corporation not later than five business days after the record date for stockholders entitled to vote at the meeting (in the case of the update and supplement required to be made as of such record date), and not later than eight business days prior to the date for the meeting or, if practicable, any adjournment or postponement thereof (and, if not practicable, on the first practicable date prior to the date to which the meeting has been adjourned or postponed) (in the case of the update and supplement required to be made as of 10 business days prior to the meeting or any adjournment or postponement thereof). For the avoidance of doubt, the obligation to update and supplement as set forth in this paragraph or any other Section of these bylaws shall not limit the Corporation's rights with respect to any deficiencies in any notice provided by a stockholder, extend any applicable deadlines hereunder or enable or be deemed to permit a stockholder who has previously submitted notice hereunder to amend or update any proposal or to submit any new proposal, including by changing or adding matters, business or resolutions proposed to be brought before a meeting of the stockholders.

(v) Notwithstanding anything in these bylaws to the contrary, no business shall be conducted at an annual meeting that is not properly brought before the meeting in accordance with this Section 2.4. The Board or chairperson of the meeting shall, if the facts warrant, determine that the business was not properly brought before the meeting in accordance with this Section 2.4, and if he or she should so determine, he or she shall so declare to the meeting and any such business not properly brought before the meeting shall not be transacted. Notwithstanding the foregoing provisions of this Section 2.4, if the Proposing Person (or a qualified representative of the Proposing Person) does not appear at the annual meeting to present the proposed business, such proposed business shall not be transacted, notwithstanding that proxies in respect of such matter may have been received by the Corporation.

(vi) This Section 2.4 is expressly intended to apply to any business proposed to be brought before an annual meeting of stockholders other than any proposal made in accordance with Rule 14a-8 under the Exchange Act and included in the Corporation's proxy statement. In addition to the requirements of this Section 2.4 with respect to any business proposed to be brought before an annual meeting, each Proposing Person shall comply with all applicable requirements of the Exchange Act with respect to any such business. Nothing in this Section 2.4 shall be deemed to affect the rights of stockholders to request inclusion of proposals in the Corporation's proxy statement pursuant to Rule 14a-8 under the Exchange Act. Notwithstanding anything to the contrary contained in this Section 2.4, beginning on the Trigger Date (as defined in the Corporation's Certification of Incorporation) and until the Sunset Date (as defined in the Corporation's Certification of Incorporation), any holder of record of at least 25% in voting power of the outstanding capital stock of the Corporation entitled to vote in an election of directors generally shall not be subject to the notice procedures set forth in the foregoing provisions of this Section 2.4 and may bring any business before an annual meeting of stockholders in person at the annual meeting, without prior notice.

(vii) For purposes of these bylaws, "public disclosure" shall mean disclosure in a press release reported by a national news service, in a document publicly filed by the Corporation with the Securities and Exchange Commission pursuant to Sections 13, 14 or 15(d) of the Exchange Act or by such other means as is reasonably designed to inform the public or securityholders of the Corporation in general of such information including, without limitation, posting on the Corporation's investor relations website.

2.5 Notice of Nominations for Election to the Board of Directors.

(i) Subject in all respects to the provisions of the Certificate of Incorporation, nominations of any person for election to the Board at an annual meeting or at a special meeting (but only if the election of directors is a matter specified in the notice of meeting given by or at the direction of the person calling such special meeting) may be made at such meeting only (x) by or at the direction of the Board, including by any committee or persons authorized to do so by the Board or these bylaws, or (y) by a stockholder present in person (A) who was a record owner of shares of the Corporation both at the time of giving the notice provided for in this Section 2.5 and at the time of the meeting, (B) is entitled to vote at the meeting, and (C) has complied with this Section 2.5 and Section 2.6 as to such notice and nomination. For purposes of this Section 2.5, "present in person" shall mean that the stockholder proposing that the business be brought before the meeting of the Corporation, or a qualified representative of such stockholder, appear at such meeting. A "qualified representative" of such proposing stockholder shall be a duly authorized officer, manager or partner of such stockholder or any other person authorized by a writing executed by such stockholder or an electronic transmission delivered by such stockholder to act for such stockholder as proxy at the meeting of stockholders and such person must produce such writing or electronic transmission, or a reliable reproduction of the writing or electronic transmission, at the meeting of stockholders. Except as may be otherwise provided by the terms of one or more series of Preferred Stock with respect to the rights of holders of one or more series of Preferred Stock to elect directors, the foregoing clause (y) shall be the exclusive means for a stockholder to make any nomination of a person or persons for election to the Board at an annual meeting or special meeting.

(ii) Without qualification, for a stockholder to make any nomination of a person or persons for election to the Board at an annual meeting, the stockholder must (1) provide Timely Notice (as defined in Section 2.4) thereof in writing and in proper form to the Secretary of the Corporation, (2) provide the information, agreements and questionnaires with respect to such stockholder and its candidate for nomination as required to be set forth by this Section 2.5 and Section 2.6 and (3) provide any updates or supplements to such notice at the times and in the forms required by this Section 2.5 and Section 2.6.

(iii) Without qualification, if the election of directors is a matter specified in the notice of meeting given by or at the direction of the person calling a special meeting in accordance with the Certificate of Incorporation, then for a stockholder to make any nomination of a person or persons for election to the Board at a special meeting, the stockholder must (1) provide timely notice thereof in writing and in proper form to the Secretary of the Corporation at the principal executive offices of the Corporation, (2) provide the information with respect to such stockholder and its candidate for nomination as required by this Section 2.5 and Section 2.6 and (3) provide any updates or supplements to such notice at the times and in the forms required by this Section 2.5. To be timely, a stockholder's notice for nominations to be made at a special meeting must be delivered to, or mailed and received at, the principal executive offices of the Corporation not earlier than the 120th day prior to such special meeting and not later than the 90th day prior to such special meeting or, if later, the 10th day following the day on which public disclosure (as defined in Section 2.4) of the date of such special meeting was first made.

(iv) In no event shall any adjournment or postponement of an annual meeting or special meeting or the announcement thereof commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above.

(v) In no event may a Nominating Person provide notice with respect to a greater number of director candidates than are subject to election by stockholders at the applicable meeting. If the Corporation shall, subsequent to such notice, increase the number of directors subject to election at the meeting, such notice as to any additional nominees shall be due on the later of (i) (x) in the case of an annual meeting, the conclusion of the time period for Timely Notice or (y) in the case of a special meeting, the conclusion of the time period for Timely Notice as set forth in Section 2.5(iii), or (iii) the tenth day following the date of public disclosure (as defined in Section 2.4) of such increase.

(vi) To be in proper form for purposes of this Section 2.5, a stockholder's notice to the Secretary shall set forth:

(a) As to each Nominating Person (as defined below), the Stockholder Information (as defined in Section 2.4(iii)(a), except that for purposes of this Section 2.5 the term "Nominating Person" shall be substituted for the term "Proposing Person" in all places it appears in Section 2.4(iii)(a));

(b) As to each Nominating Person, any Disclosable Interests (as defined in Section 2.4(iii)(b), except that for purposes of this Section 2.5 the term "Nominating Person" shall be substituted for the term "Proposing Person" in all places it appears in Section 2.4(iii)(b) and the disclosure with respect to the business to be brought before the meeting in Section 2.4(iii)(b) shall be made with respect to the election of directors at the meeting); and

(c) As to each candidate whom a Nominating Person proposes to nominate for election as a director, (A) all information with respect to such candidate for nomination that would be required to be set forth in a stockholder's notice pursuant to this Section 2.5 and Section 2.6 if such candidate for nomination were a Nominating Person, (B) all information relating to such candidate for nomination that is required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for election of directors in a contested election pursuant to Section 14(a) under the Exchange Act (including such candidate's written consent to being named in the Corporation's proxy statement as a nominee and to serving as a director if elected), (C) a description of any direct or indirect material interest in any material contract or agreement between or among any Nominating Person, on the one hand, and each candidate for nomination or his or her respective associates or any other participants in such solicitation, on the other hand, including, without limitation, all information that would be required to be disclosed pursuant to Item 404 under Regulation S-K if such Nominating Person were the "registrant" for purposes of such rule and the candidate for nomination were a director or executive officer of such registrant (the disclosures to be made pursuant to the foregoing clauses (A) through (C) are referred to as "Nominee Information"), and (D) a completed and signed questionnaire, representation and agreement as provided in Section 2.6(i).

For purposes of this Section 2.5, the term "Nominating Person" shall mean (i) the stockholder providing the notice of the nomination proposed to be made at the meeting, (ii) the beneficial owner or beneficial owners, if different, on whose behalf the notice of the nomination proposed to be made at the meeting is made, and (iii) any other participant in such solicitation.

(vii) A stockholder providing notice of any nomination proposed to be made at a meeting shall further update and supplement such notice, if necessary, so that the information provided or required to be provided in such notice pursuant to this Section 2.5 shall be true and correct as of the record date for stockholders entitled to vote at the meeting and as of the date that is 10 business days prior to the meeting or any adjournment or postponement thereof, and such update and supplement shall be delivered to, or mailed and received by, the Secretary at the principal executive offices of the Corporation not later than five business days after the record date for stockholders entitled to vote at the meeting (in the case of the update and supplement required to be made as of such record date), and not later than eight business days prior to the date for the meeting or, if practicable, any adjournment or postponement thereof (and, if not practicable, on the first practicable date prior to the date to which the meeting has been adjourned or postponed) (in the case of the update and supplement required to be made as of 10 business days prior to the meeting or any adjournment or postponement thereof). For the avoidance of doubt, the obligation to update and supplement as set forth in this paragraph or any other Section of these bylaws shall not limit the Corporation's rights with respect to any deficiencies in any notice provided by a stockholder, extend any applicable deadlines hereunder or enable or be deemed to permit a stockholder who has previously submitted notice hereunder to amend or update any nomination or to submit any new nomination.

(viii) In addition to the requirements of this Section 2.5 with respect to any nomination proposed to be made at a meeting, each Nominating Person shall comply with all applicable requirements of the Exchange Act with respect to any such nominations. Notwithstanding anything to the contrary contained in this Section 2.5, beginning on the Trigger Date and until the Sunset Date, any holder of record of at least 25% in voting power of the outstanding capital stock of the Corporation entitled to vote in an election of directors generally shall not be subject to the notice procedures set forth in the foregoing notice and nomination provisions of this Section 2.5 and Section 2.6 and may nominate any person for election at an annual meeting or at a special meeting in person at the annual or special meeting, without prior notice.

2.6 Additional Requirements for Valid Nomination of Candidates to Serve as Director and, if Elected, to be Seated as Directors.

(i) To be eligible to be a candidate for election as a director of the Corporation at an annual or special meeting, a candidate must be nominated in the manner prescribed in Section 2.5 and the candidate for nomination, whether nominated by the Board or by a stockholder of record, must have previously delivered (in accordance with the time period prescribed for delivery in a notice to such candidate given by or on behalf of the Board), to the Secretary at the principal executive offices of the Corporation, (i) a completed written questionnaire (in a form provided by the Corporation) with respect to the background, qualifications, stock ownership and independence of such proposed nominee, and such additional information with respect to such proposed nominee as would be required to be provided by the Corporation pursuant to Schedule 14A if such proposed nominee were a participant in the solicitation of proxies by the Corporation in connection with such annual or special meeting and (ii) a written representation and agreement (in form provided by the Corporation) that such candidate for nomination (A) is not and, if elected as a director during his or her term of office, will not become a party to (1) any agreement, arrangement or understanding with, and has not given and will not give any commitment or assurance to, any person or entity as to how such proposed nominee, if elected as a director of the Corporation, will act or vote on any issue or question (a "Voting Commitment") or (2) any Voting Commitment that could limit or interfere with such proposed nominee's ability to comply, if elected as a director of the Corporation, with such proposed nominee's fiduciary duties under applicable law, (B) is not, and will not become a party to, any agreement, arrangement or understanding with any person or entity other than the Corporation with respect to any direct or indirect compensation or reimbursement for service as a director that has not been disclosed therein or to the Corporation, (C) if elected as a director of the Corporation, will comply with all applicable corporate governance, conflict of interest, confidentiality, stock ownership and trading and other policies and guidelines of the Corporation applicable to directors and in effect during such person's term in office as a director (and, if requested by any candidate for nomination, the Secretary of the Corporation shall provide to such candidate for nomination all such policies and guidelines then in effect), (D) if elected as director of the Corporation, intends to serve the entire term until the next meeting at which such candidate would face re-election and (E) consents to being named as a nominee in the Corporation's proxy statement pursuant to Rule 14a-4(d) under the Exchange Act and any associated proxy card of the Corporation and agrees to serve if elected as a director.

(ii) The Board may also require any proposed candidate for nomination as a Director to furnish such other information as may be requested by the Board in writing prior to the meeting of stockholders at which such candidate's nomination is to be acted upon in order for the Board to determine the eligibility of such candidate for nomination to be an independent director of the Corporation in accordance with the Corporation's Corporate Governance Guidelines, the Exchange Act and applicable stock exchange rules.

(iii) A candidate for nomination as a director shall further update and supplement the materials delivered pursuant to this Section 2.6, if necessary, so that the information provided or required to be provided pursuant to this Section 2.6 shall be true and correct as of the record date for stockholders entitled to vote at the meeting and as of the date that is 10 business days prior to the meeting or any adjournment or postponement thereof, and such update and supplement shall be delivered to, or mailed and received by, the Secretary at the principal executive offices of the Corporation (or any other office specified by the Corporation in any public announcement) not later than five business days after the record date for stockholders entitled to vote at the meeting (in the case of the update and supplement required to be made as of such record date), and not later than eight business days prior to the date for the meeting or, if practicable, any adjournment or postponement thereof (and, if not practicable, on the first practicable date prior to the date to which the meeting has been adjourned or postponed) (in the case of the update and supplement required to be made as of 10 business days prior to the meeting or any adjournment or postponement thereof). For the avoidance of doubt, the obligation to update and supplement as set forth in this paragraph or any other Section of these bylaws shall not limit the Corporation's rights with respect to any deficiencies in any notice provided by a stockholder, extend any applicable deadlines hereunder or enable or be deemed to permit a stockholder who has previously submitted notice hereunder to amend or update any proposal or to submit any new proposal, including by changing or adding nominees, matters, business or resolutions proposed to be brought before a meeting of the stockholders.

(iv) No candidate shall be eligible for nomination as a director of the Corporation unless such candidate for nomination and the Nominating Person seeking to place such candidate's name in nomination has complied with Section 2.5 and this Section 2.6, as applicable. The Board or chairperson of the meeting shall, if the facts warrant, determine that a nomination was not properly made in accordance with Section 2.5 and this Section 2.6, and if he or she should so determine, he or she shall so declare such determination to the meeting, the defective nomination shall be disregarded and any ballots cast for the candidate in question (but in the case of any form of ballot listing other qualified nominees, only the ballots cast for the nominee in question) shall be void and of no force or effect. Notwithstanding the foregoing provisions of Section 2.5, if the stockholder (or a qualified representative of the stockholder) does not appear at the meeting of stockholders of the Corporation to present the nomination, such nomination shall be disregarded, notwithstanding that proxies in respect of such nomination may have been received by the Corporation.

(v) Notwithstanding anything in these bylaws to the contrary, no candidate for nomination shall be eligible to be seated as a director of the Corporation unless nominated and elected in accordance with Section 2.5 and this Section 2.6.

2.7 Notice of Stockholders' Meetings.

Unless otherwise provided by law, the Certificate of Incorporation or these bylaws, the notice of any meeting of stockholders shall be sent or otherwise given in accordance with Section 8.1 of these bylaws not less than 10 nor more than 60 days before the date of the meeting to each stockholder entitled to vote at such meeting. The notice shall specify the place, if any, date and time of the meeting, the means of remote communication, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting, the record date for determining the stockholders entitled to vote at the meeting (if such date is different from the record date for stockholders entitled to notice of the meeting) and, in the case of a special meeting, the purpose or purposes for which the meeting is called.

2.8 Quorum.

Unless otherwise provided by law, the Certificate of Incorporation or these bylaws, the holders of a majority in voting power of the stock issued and outstanding and entitled to vote, present in person, or by remote communication, if applicable, or represented by proxy, shall constitute a quorum for the transaction of business at all meetings of the stockholders, except that when specified business is to be voted on by a class or series of stock voting as a class, the holders of shares representing a majority of the voting power of the outstanding shares of such class or series shall constitute a quorum of such class or series for the transaction of such business. A quorum, once established at a meeting, shall not be broken by the withdrawal of enough votes to leave less than a quorum. If, however, a quorum is not present or represented at any meeting of the stockholders, then either (i) the person presiding over the meeting or (ii) a majority in voting power of the stockholders entitled to vote at the meeting, present in person, or by remote communication, if applicable, or represented by proxy, shall have power to recess the meeting or adjourn the meeting from time to time in the manner provided in Section 2.9 of these bylaws until a quorum is present or represented. At any recessed or adjourned meeting at which a quorum is present or represented, any business may be transacted that might have been transacted at the meeting as originally noticed.

2.9 Adjourned Meeting; Notice.

When a meeting is adjourned to another time or place, unless these bylaws otherwise require, notice need not be given of the adjourned meeting if the time, place, if any, thereof, and the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such adjourned meeting are announced at the meeting at which the adjournment is taken. At any adjourned meeting, the Corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than 30 days, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting. If after the adjournment a new record date for determination of stockholders entitled to vote is fixed for the adjourned meeting, the Board shall fix as the record date for determining stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote at the adjourned meeting, and shall give notice of the adjourned meeting to each stockholder of record entitled to vote at such meeting as of the record date so fixed for notice of such adjourned meeting.

2.10 Conduct of Business.

The chairperson of each annual and special meeting shall be the Chairperson of the Board or, in the absence (or inability or refusal to act) of the Chairperson of the Board, the Chief Executive Officer (if he or she shall be a director) or, in the absence (or inability or refusal to act) of the Chief Executive Officer or if the Chief Executive Officer is not a director, the President (if he or she shall be a director) or, in the absence (or inability or refusal to act) of the President or if the President is not a director, such other person as shall be appointed by the Board. The date and time of the opening and the closing of the polls for each matter upon which the stockholders will vote at a meeting shall be announced at the meeting by the chairperson of the meeting. The Board may adopt by resolution such rules and regulations for the conduct of the meeting of stockholders as it shall deem appropriate. Except to the extent inconsistent with such rules and regulations as adopted by the Board, the chairperson of the meeting of stockholders shall have the right and authority to convene and (for any or no reason) to recess and/or adjourn the meeting, to prescribe such rules, regulations and procedures (which need not be in writing) and to do all such acts as, in the judgment of the chairperson of the meeting, are appropriate for the proper conduct of the meeting. Such rules, regulations or procedures, whether adopted by the Board or prescribed by the chairperson of the meeting, may include, without limitation, the following: (i) the establishment of an agenda or order of business for the meeting; (ii) rules and procedures for maintaining order at the meeting and the safety of those present (including, without limitation, rules and procedures for removal of disruptive persons from the meeting); (iii) limitations on attendance at or participation in the meeting to stockholders entitled to vote at the meeting, their duly authorized and constituted proxies or such other persons as the chairperson of the meeting shall determine; (iv) restrictions on entry to the meeting after the time fixed for the commencement thereof; and (v) limitations on the time allotted to questions or comments by participants. The chairperson of the meeting, in addition to making any other determinations that may be appropriate to the conduct of the meeting (including, without limitation, determinations with respect to the administration and/or interpretation of any of the rules, regulations or procedures of the meeting, whether adopted by the Board or prescribed by the chairperson of the meeting), shall, if the facts warrant, determine and declare to the meeting that a matter of business was not properly brought before the meeting and if such chairperson should so determine, such chairperson shall so declare to the meeting and any such matter or business not properly brought before the meeting shall not be transacted or considered. Unless and to the extent determined by the Board or the chairperson of the meeting, meetings of stockholders shall not be required to be held in accordance with the rules of parliamentary procedure. The secretary of each annual and special meeting of stockholders shall be the Secretary or, in the absence (or inability or refusal to act) of the Secretary, an Assistant Secretary so appointed to act by the chairperson of the meeting. In the absence (or inability or refusal to act) of the Secretary and all Assistant Secretaries, the chairperson of the meeting may appoint any person to act as secretary of the meeting.

2.11 Voting.

Except as may be otherwise provided in the Certificate of Incorporation, these bylaws or the DGCL, each stockholder shall be entitled to one vote for each share of capital stock held by such stockholder.

Except as otherwise provided by the Certificate of Incorporation and subject to the rights of the holders of one or more series of Preferred Stock, voting separately by class or series, to elect directors pursuant to the terms of one or more series of Preferred Stock, at all duly called or convened meetings of stockholders at which a quorum is present, for the election of directors, a plurality of the votes cast shall be sufficient to elect a director. Except as otherwise provided by the Certificate of Incorporation, these bylaws, the rules or regulations of any stock exchange applicable to the Corporation, or applicable law or pursuant to any regulation applicable to the Corporation or its securities, each other matter presented to the stockholders at a duly called or convened meeting at which a quorum is present shall be decided by a majority of the votes cast (excluding abstentions and broker non-votes) on such matter.

2.12 Record Date for Stockholder Meetings and Other Purposes.

In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, the Board may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board, and which record date shall, unless otherwise required by law, not be more than 60 days nor less than 10 days before the date of such meeting. If the Board so fixes a date, such date shall also be the record date for determining the stockholders entitled to vote at such meeting unless the Board determines, at the time it fixes such record date, that a later date on or before the date of the meeting shall be the date for making such determination. If no record date is fixed by the Board, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be the close of business on the next day preceding the day on which notice is first given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board may fix a new record date for determination of stockholders entitled to vote at the adjourned meeting; and in such case shall also fix as the record date for stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote in accordance herewith at the adjourned meeting.

Unless otherwise restricted by the Certificate of Incorporation, in order that the Corporation may determine the stockholders entitled to express consent to corporate action without a meeting, the Board may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board, and which record date shall not be more than ten (10) days after the date upon which the resolution fixing the record date is adopted by the Board. If no record date for determining stockholders entitled to express consent to corporate action without a meeting is fixed by the Board, (i) when no prior action of the Board is required by the DGCL, the record date for such purpose shall be the first date on which a signed consent setting forth the action taken or proposed to be taken is delivered to the Corporation in accordance with applicable law, and (ii) if prior action by the Board is required by the DGCL, the record date for such purpose shall be at the close of business on the day on which the Board adopts the resolution taking such prior action.

In order that the Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment or any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of capital stock, or for the purposes of any other lawful action, the Board may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall be not more than 60 days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board adopts the resolution relating thereto.

2.13 Proxies.

Each stockholder entitled to vote at a meeting of stockholders or to express consent or dissent to corporate action in writing without a meeting may authorize another person or persons to act for such stockholder by proxy authorized by an instrument in writing or by a transmission permitted by law in any manner provided under Section 212(c) of the DGCL or as otherwise provided under applicable law and filed in accordance with the procedure established for the meeting, but no such proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period. The revocability of a proxy that states on its face that it is irrevocable shall be governed by the provisions of Section 212 of the DGCL. A proxy may be in the form of an electronic transmission that sets forth or is submitted with information from which it can be determined that the transmission was authorized by the stockholder.

2.14 List of Stockholders Entitled to Vote.

The Corporation shall prepare, at least 10 days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting (provided, however, that if the record date for determining the stockholders entitled to vote is less than 10 days before the date of the meeting, the list shall reflect the stockholders entitled to vote as of the tenth day before the meeting date), arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. The Corporation shall not be required to include electronic mail addresses or other electronic contact information on such list. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting for a period of at least 10 days prior to the meeting: (i) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting, or (ii) during ordinary business hours, at the Corporation's principal executive office. In the event that the Corporation determines to make the list available on an electronic network, the Corporation may take reasonable steps to ensure that such information is available only to stockholders of the Corporation. If the meeting is to be held at a place, then the list shall be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present. If the meeting is to be held solely by means of remote communication, then the list shall also be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting. Such list shall presumptively determine the identity of the stockholders entitled to vote at the meeting and the number of shares held by each of them. Except as otherwise provided by law, the stock ledger shall be the only evidence as to who are the stockholders entitled to examine the list of stockholders required by this Section 2.14 or to vote in person or by proxy at any meeting of stockholders.

2.15 Inspectors of Election.

Before any meeting of stockholders, the Corporation shall appoint an inspector or inspectors of election to act at the meeting or its adjournment and make a written report thereof. The Corporation may designate one or more persons as alternate inspectors to replace any inspector who fails to act. If any person appointed as inspector or any alternate fails to appear or fails or refuses to act, then the person presiding over the meeting shall appoint a person to fill that vacancy.

Such inspectors shall:

(i) determine the number of shares outstanding and the voting power of each, the number of shares represented at the meeting and the validity of any proxies and ballots;

(ii) count all votes or ballots;

(iii) count and tabulate all votes;

(iv) determine and retain for a reasonable period a record of the disposition of any challenges made to any determination by the inspector(s); and

(v) certify its or their determination of the number of shares represented at the meeting and its or their count of all votes and ballots.

Each inspector, before entering upon the discharge of the duties of inspector, shall take and sign an oath faithfully to execute the duties of inspection with strict impartiality and according to the best of such inspector's ability. Any report or certificate made by the inspectors of election is prima facie evidence of the facts stated therein. The inspectors of election may appoint such persons to assist them in performing their duties as they determine.

2.16 Delivery to the Corporation.

Whenever this Article II requires one or more persons (including a record or beneficial owner of stock) to deliver a document or information to the Corporation or any officer, employee or agent thereof (including any notice, request, questionnaire, revocation, representation or other document or agreement), such document or information shall be in writing exclusively (and not in an electronic transmission) and shall be delivered exclusively by hand (including, without limitation, overnight courier service) or by certified or registered mail, return receipt requested, and the Corporation shall not be required to accept delivery of any document not in such written form or so delivered. For the avoidance of doubt, the Corporation expressly opts out of Section 116 of the DGCL with respect to the delivery of information and documents to the Corporation required by this Article II.

Article III - Directors

3.1 Powers.

Except as otherwise provided by the Certificate of Incorporation or the DGCL, the business and affairs of the Corporation shall be managed by or under the direction of the Board.

3.2 Number of Directors.

Subject to the Certificate of Incorporation or any certificate of designation with respect to any series of Preferred Stock, the total number of directors constituting the Board shall be determined from time to time by resolution of the Board. Except as otherwise provided in the Certificate of Incorporation, no reduction of the authorized number of directors shall have the effect of removing any director before that director's term of office expires.

3.3 Election, Qualification and Term of Office of Directors.

Directors shall be elected by stockholders at their annual meeting or at a special meeting (but only if the election of directors is a matter specified in the notice of meeting given by or at the direction of the person calling such special meeting), and the term of each director shall be as set forth in the Certificate of Incorporation. Directors need not be stockholders. The Certificate of Incorporation or these bylaws may prescribe qualifications for directors.

3.4 Resignation and Vacancies.

Any director may resign at any time upon notice given in writing or by electronic transmission to the Corporation. The resignation shall take effect at the time specified therein or upon the happening of an event specified therein, and if no time or event is specified, at the time of its receipt. When one or more directors so resigns and the resignation is effective at a future date or upon the happening of an event to occur on a future date, a majority of the directors then in office, including those who have so resigned, shall have power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective, and each director so chosen shall hold office as provided in Section 3.3.

Unless otherwise provided in the Certificate of Incorporation or these bylaws, subject to the special rights of the holders of one or more series of Preferred Stock to elect directors, except as otherwise provided by applicable law, vacancies resulting from the death, resignation, disqualification or removal of any director, and newly created directorships resulting from any increase in the authorized number of directors shall be filled (i) beginning on the Trigger Date and until the Sunset Date, only by the affirmative vote of the holders of at least a majority of the voting power of all of the then outstanding shares of voting stock of the Corporation entitled to vote at an election of directors, or (ii) at any other time, only by the affirmative vote of a majority of the directors then in office, even though less than a quorum, or by a sole remaining director.

3.5 Place of Meetings; Meetings by Telephone.

The Board may hold meetings, both regular and special, either within or outside the State of Delaware.

Unless otherwise restricted by the Certificate of Incorporation or these bylaws, members of the Board, or any committee designated by the Board, may participate in a meeting of the Board, or any committee, by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and such participation in a meeting pursuant to this bylaw shall constitute presence in person at the meeting.

3.6 Regular Meetings.

Regular meetings of the Board may be held within or outside the State of Delaware and at such time and at such place as which has been designated by the Board and publicized among all directors, either orally or in writing, by telephone, including a voice-messaging system or other system designed to record and communicate messages, facsimile, telegraph or telex, or by electronic mail or other means of electronic transmission. No further notice shall be required for regular meetings of the Board.

3.7 Special Meetings; Notice.

Special meetings of the Board for any purpose or purposes may be held within or outside the State of Delaware and called at any time by the Chairperson of the Board, the Chief Executive Officer, the President, the Secretary or a majority of the total number of directors constituting the Board.

Notice of the time and place of special meetings shall be:

(i) delivered personally by hand, by courier or by telephone;

(ii) sent by United States first-class mail, postage prepaid;

(iii) sent by facsimile or electronic mail; or

(iv) sent by other means of electronic transmission,

directed to each director at that director's address, telephone number, facsimile number or electronic mail address, or other address for electronic transmission, as the case may be, as shown on the Corporation's records.

If the notice is (i) delivered personally by hand, by courier or by telephone, (ii) sent by facsimile or electronic mail, or (iii) sent by other means of electronic transmission, it shall be delivered or sent at least 24 hours before the time of the holding of the meeting. If the notice is sent by U.S. mail, it shall be deposited in the U.S. mail at least four days before the time of the holding of the meeting. The notice need not specify the place of the meeting (if the meeting is to be held at the Corporation's principal executive office) nor the purpose of the meeting.

3.8 Quorum.

At all meetings of the Board, unless otherwise provided by the Certificate of Incorporation, a majority of the total number of directors shall constitute a quorum for the transaction of business. The vote of a majority of the directors present at any meeting at which a quorum is present shall be the act of the Board, except as may be otherwise specifically provided by statute, the Certificate of Incorporation or these bylaws. If a quorum is not present at any meeting of the Board, then the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum is present.

3.9 Board Action without a Meeting.

Unless otherwise restricted by the Certificate of Incorporation or these bylaws, any action required or permitted to be taken at any meeting of the Board, or of any committee thereof, may be taken without a meeting if all members of the Board or committee, as the case may be, consent thereto in writing or by electronic transmission. After an action is taken, the consent or consents relating thereto shall be filed with the minutes of the proceedings of the Board, or the committee thereof, in the same paper or electronic form as the minutes are maintained. Such action by written consent or consent by electronic transmission shall have the same force and effect as a unanimous vote of the Board.

3.10 Fees and Compensation of Directors.

Unless otherwise restricted by the Certificate of Incorporation or these bylaws, the Board shall have the authority to fix the compensation, including fees and reimbursement of expenses, of directors for services to the Corporation in any capacity.

Article IV - Committees

4.1 Committees of Directors.

The Board may designate one or more committees, each committee to consist of one or more of the directors of the Corporation. The Board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another member of the Board to act at the meeting in the place of any such absent or disqualified member. Each committee of the Board may fix its own rules of procedure and shall hold its meetings as provided by such rules, except as may otherwise be provided by a resolution of the Board designating such committee. Unless otherwise provided in such a resolution, the presence of at least a majority of the members of the committee shall be necessary to constitute a quorum unless the committee shall consist of one or two members, in which event one member shall constitute a quorum; and all matters shall be determined by a majority vote of the members present at a meeting of the committee at which a quorum is present. Any such committee, to the extent provided in the resolution of the Board or in these bylaws, shall have and may exercise all the powers and authority of the Board in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers that may require it; but no such committee shall have the power or authority to (i) approve or adopt, or recommend to the stockholders, any action or matter (other than the election or removal of directors) expressly required by the DGCL to be submitted to stockholders for approval, or (ii) adopt, amend or repeal any bylaw of the Corporation.

4.2 Meetings and Actions of Committees.

Meetings and actions of committees shall be governed by, and held and taken in accordance with, the provisions of:

(i) Section 3.5 (place of meetings; meetings by telephone);

(ii) Section 3.6 (regular meetings);

(iii) Section 3.7 (special meetings; notice);

(iv) Section 3.9 (board action without a meeting); and

(v) Section 7.14 (waiver of notice),

with such changes in the context of those bylaws as are necessary to substitute the committee and its members for the Board and its members.

4.3 Subcommittees.

Unless otherwise provided in the Certificate of Incorporation, these bylaws, the resolutions of the Board designating the committee or the charter of such committee adopted by the Board, a committee may create one or more subcommittees, each subcommittee to consist of one or more members of the committee, and delegate to a subcommittee any or all of the powers and authority of the committee.

Article V - Officers

5.1 Officers.

The officers of the Corporation shall include a Chief Executive Officer, a President and a Secretary. The Corporation may also have, at the discretion of the Board, a Chairperson of the Board, a Vice Chairperson of the Board, a Chief Financial Officer, a Treasurer, one or more Vice Presidents, one or more Assistant Vice Presidents, one or more Assistant Treasurers, one or more Assistant Secretaries, and any such other officers as may be appointed in accordance with the provisions of these bylaws. Any number of offices may be held by the same person. No officer need be a stockholder or director of the Corporation.

5.2 Appointment of Officers.

The Board shall appoint the officers of the Corporation, except such officers as may be appointed in accordance with the provisions of Section 5.3 of these bylaws.

5.3 Subordinate Officers.

The Board may appoint, or empower the Chief Executive Officer or, in the absence of a Chief Executive Officer, the President, to appoint, such other officers and agents as the business of the Corporation may require. Each of such officers and agents shall hold office for such period, have such authority, and perform such duties as are provided in these bylaws or as the Board may from time to time determine.

5.4 Removal and Resignation of Officers.

Subject to the rights, if any, of an officer under any contract of employment, any officer may be removed, either with or without cause, by the Board or, except in the case of an officer chosen by the Board, by any officer upon whom such power of removal may be conferred by the Board.

Any officer may resign at any time by giving written notice to the Corporation. Any resignation shall take effect at the date of the receipt of that notice or at any later time specified in that notice. Unless otherwise specified in the notice of resignation, the acceptance of the resignation shall not be necessary to make it effective. Any resignation is without prejudice to the rights, if any, of the Corporation under any contract to which the officer is a party.

5.5 Vacancies in Offices.

Any vacancy occurring in any office of the Corporation shall be filled as provided in Section 5.2 or Section 5.3, as applicable.

5.6 Representation of Shares of Other Corporations.

The Chairperson of the Board, the Chief Executive Officer or the President of this Corporation, or any other person authorized by the Board, the Chief Executive Officer or the President, is authorized to vote, represent and exercise on behalf of this Corporation all rights incident to any and all shares or voting securities of any other corporation or other person standing in the name of this Corporation. The authority granted herein may be exercised either by such person directly or by any other person authorized to do so by proxy or power of attorney duly executed by such person having the authority.

5.7 Authority and Duties of Officers.

All officers of the Corporation shall respectively have such authority and perform such duties in the management of the business of the Corporation as may be provided herein or designated from time to time by the Board and, to the extent not so provided, as generally pertain to their respective offices, subject to the control of the Board.

5.8 Compensation.

The compensation of the officers of the Corporation for their services as such shall be fixed from time to time by or at the direction of the Board. An officer of the Corporation shall not be prevented from receiving compensation by reason of the fact that he or she is also a director of the Corporation.

Article VI - Records

A stock ledger consisting of one or more records in which the names of all of the Corporation's stockholders of record, the address and number of shares registered in the name of each such stockholder, and all issuances and transfers of stock of the corporation are recorded in accordance with Section 224 of the DGCL shall be administered by or on behalf of the Corporation. Any records administered by or on behalf of the Corporation in the regular course of its business, including its stock ledger, books of account, and minute books, may be kept on, or by means of, or be in the form of, any information storage device, or method, or one or more electronic networks or databases (including one or more distributed electronic networks or databases), provided that the records so kept can be converted into clearly legible paper form within a reasonable time and, with respect to the stock ledger, that the records so kept (i) can be used to prepare the list of stockholders specified in Sections 219 and 220 of the DGCL, (ii) record the information specified in Sections 156, 159, 217(a) and 218 of the DGCL, and (iii) record transfers of stock as governed by Article 8 of the Uniform Commercial Code as adopted in the State of Delaware.

Article VII - General Matters

7.1 Execution of Corporate Contracts and Instruments.

The Board, except as otherwise provided in these bylaws, may authorize any officer or officers, or agent or agents, to enter into any contract or execute any instrument in the name of and on behalf of the Corporation; such authority may be general or confined to specific instances.

7.2 Stock Certificates.

The shares of the Corporation shall be uncertificated, provided that the Board by resolution may provide that some or all of the shares of any class or series of stock of the Corporation shall be certificated. Certificates for the shares of stock, if any, shall be in such form as is consistent with the Certificate of Incorporation and applicable law. Every holder of stock represented by a certificate shall be entitled to have a certificate signed by, or in the name of the Corporation by, any two officers authorized to sign stock certificates representing the number of shares registered in certificate form. The Chairperson or Vice Chairperson of the Board, Chief Executive Officer, the President, the Treasurer, any Assistant Treasurer, the Secretary or any Assistant Secretary of the Corporation shall be specifically authorized to sign stock certificates. Any or all of the signatures on the certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate has ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if he or she were such officer, transfer agent or registrar at the date of issue.

7.3 Special Designation of Certificates.

If the Corporation is authorized to issue more than one class of stock or more than one series of any class, then the powers, the designations, the preferences and the relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights shall be set forth in full or summarized on the face or on the back of the certificate that the Corporation shall issue to represent such class or series of stock (or, in the case of uncertificated shares, set forth in a notice provided pursuant to Section 151 of the DGCL); provided, however, that except as otherwise provided in Section 202 of the DGCL, in lieu of the foregoing requirements, there may be set forth on the face of back of the certificate that the Corporation shall issue to represent such class or series of stock (or, in the case of any uncertificated shares, included in the aforementioned notice) a statement that the Corporation will furnish without charge to each stockholder who so requests the powers, the designations, the preferences and the relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights.

7.4 Lost Certificates.

Except as provided in this Section 7.4, no new certificates for shares shall be issued to replace a previously issued certificate unless the latter is surrendered to the Corporation and cancelled at the same time. The Corporation may issue a new certificate of stock or uncertificated shares in the place of any certificate theretofore issued by it, alleged to have been lost, stolen or destroyed, and the Corporation may, in addition to any other requirements as may be imposed by the Corporation, require the owner of the lost, stolen or destroyed certificate, or such owner's legal representative, to give the Corporation a bond sufficient to indemnify it against any claim that may be made against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new certificate or uncertificated shares.

7.5 Shares Without Certificates

The Corporation may adopt a system of issuance, recordation and transfer of its shares of stock by electronic or other means not involving the issuance of certificates, provided the use of such system by the Corporation is permitted in accordance with applicable law.

7.6 Construction; Definitions.

Unless the context requires otherwise, the general provisions, rules of construction and definitions in the DGCL shall govern the construction of these bylaws. Without limiting the generality of this provision, the singular number includes the plural and the plural number includes the singular.

7.7 Dividends.

The Board, subject to any restrictions contained in either (i) the DGCL or (ii) the Certificate of Incorporation, may declare and pay dividends upon the shares of its capital stock. Dividends may be paid in cash, in property or in shares of the Corporation's capital stock.

The Board may set apart out of any of the funds of the Corporation available for dividends a reserve or reserves for any proper purpose and may abolish any such reserve. Such purposes shall include but not be limited to equalizing dividends, repairing or maintaining any property of the Corporation, and meeting contingencies.

7.8 Fiscal Year.

The fiscal year of the Corporation shall be fixed by resolution of the Board and may be changed by the Board.

7.9 Seal.

The Corporation may adopt a corporate seal, which shall be adopted and which may be altered by the Board. The Corporation may use the corporate seal by causing it or a facsimile thereof to be impressed or affixed or in any other manner reproduced.

7.10 Transfer of Stock.

Subject to the restrictions set forth in Section 7.12, shares of stock of the Corporation shall be transferred on the books of the Corporation only by the holder of record thereof or by such holder's attorney duly authorized in writing, upon surrender to the Corporation of the certificate or certificates representing such shares endorsed by the appropriate person or persons (or by delivery of duly executed instructions with respect to uncertificated shares), with such evidence of the authenticity of such endorsement or execution, transfer, authorization and other matters as the Corporation may reasonably require, and accompanied by all necessary stock transfer stamps. No transfer of stock shall be valid as against the Corporation for any purpose until it shall have been entered in the stock records of the Corporation by an entry showing the names of the persons from and to whom it was transferred.

7.11 Stock Transfer Agreements.

The Corporation shall have power to enter into and perform any agreement with any number of stockholders of any one or more classes or series of stock of the Corporation to restrict the transfer of shares of stock of the Corporation of any one or more classes owned by such stockholders in any manner not prohibited by the DGCL or other applicable law.

7.12 Lock-Up.

(i) Subject to Section 7.12(ii), the holders (the "Lock-up Holders") of the Class A common stock and the Class B common stock of the Corporation issued (a) pursuant to the merger of NGAB Merger Sub Inc., a Delaware corporation ("Merger Sub"), with and into Embark Trucks Inc., a Delaware corporation ("Embark"), with Embark the surviving corporation (the "Merger"), as consideration for common stock or other securities of Embark outstanding immediately prior to the closing of the Merger or (b) to directors, officers and employees of the Corporation upon the settlement or exercise of restricted stock units, stock options or other equity awards outstanding as of immediately following the closing of the Merger in respect of awards of Embark outstanding immediately prior to the closing of the Merger (excluding, for the avoidance of doubt, the Acquiror Warrants (as defined in the Agreement and Plan of Merger, dated as of June 22, 2021, by and among Northern Genesis Acquisition Corp. II, a Delaware corporation, Merger Sub and Embark (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "Merger Agreement"))) (such shares referred to in this Section 7.12(i)(b), the "Embark Equity Award Shares"), may not Transfer any Lock-up Shares until the end of the Lock-up Period (the "Lock-up").

(ii) Notwithstanding the provisions set forth in Section 7.12(i), the Lock-up Holders or their respective Permitted Transferees may Transfer the Lock-up Shares during the Lock-up Period (a) to (i) any Related Holder of such Lock-up Holder, (ii) any of the Corporation's officers or directors or any of their respective Related Holders, or (iii) any other Lock-up Holder or any of their respective Related Holders; (b) in the case of an individual, by virtue of laws of descent and distribution upon death of the individual; (c) in the case of an individual, pursuant to a qualified domestic relations order; (d) in connection with any mortgage, encumbrance or pledge in connection with any indebtedness or the secured party's exercise or enforcement of rights thereunder, including its foreclosure, sale, pledge, rehypothecation, assignment or other use of such collateral; (f) to the Corporation; (g) to Qualified Stockholders (as defined in the Certificate of Incorporation) in the case of shares of Class B common stock, or (h) subsequent to the closing date of the Merger, in connection with a liquidation, merger, stock exchange, reorganization, tender offer approved by the Board or a duly authorized committee thereof or other similar transaction which results in all of the Corporation's stockholders having the right to exchange their shares of common stock for cash, securities or other property; provided, however, that the Lock-up Shares acquired by any transferee pursuant to the foregoing clauses (a), (b), (c) or (g) shall remain subject to the restrictions set forth in Section 7.12(i) and the other provisions of this Section 7.12 following transfer to such transferee.

(iii) Notwithstanding the provisions set forth in Section 7.12(i), if (A) at least 120 days have elapsed since the closing date of the Merger and (B) the Lock-up Period is scheduled to end during a Blackout Period or within five Trading Days prior to a Blackout Period (such period, the "Specified Period"), the Lock-up Period shall end 10 Trading Days prior to the commencement of the Blackout Period (the "Blackout-Related Release"); *provided* that the Corporation shall announce the date of the expected Blackout-Related Release through a major news service, or on a Form 8-K, at least two Trading Days in advance of the Blackout-Related Release; and *provided further* that the Blackout-Related Release shall not occur unless the Corporation shall have publicly released its earnings results for the quarterly period during which the Closing occurred. For the avoidance of doubt, in no event shall the Lock-Up Period end earlier than 120 days after the Closing Date pursuant to the Blackout-Related Release.

(iv) Notwithstanding the provisions set forth in Section 7.12(i) or Section 7.12(iii), if the last reported sale price of the common stock on the exchange on which the common stock is listed (the "Closing Price") equals or exceeds $12.50 per share (as adjusted for stock splits, stock dividends, reorganizations, recapitalizations and the like) (the "Threshold Price") for 20 out of any 30 consecutive Trading Days commencing at least 30 days after the Closing Date, including the last day of such 30 Trading Day period (any such 30 Trading Day period during which such condition is satisfied, the "Measurement Period"), then 50% of the Lock-up Holder's Lock-Up Shares (with such 50% being calculated inclusive of all outstanding shares and equity awards, determined as if, with respect to any Embark Equity Award Shares that can be net settled, such Embark Equity Award Shares are cash settled, and rounded down to the nearest whole share) that are subject to the Lock-Up Period, which percentage shall be calculated based on the number of Lock-Up Shares subject to the Lock-Up Period as of the last day of the Measurement Period, will be automatically released from such restrictions (an "Early Lock-Up Expiration") immediately prior to the opening of trading on the exchange on which the common stock is listed on the second Trading Day following the end of the Measurement Period (an "Early Lock-Up Expiration Date"); provided that if the Threshold Price equals or exceeds $15.00 per share (as adjusted for stock splits, stock dividends, reorganizations, recapitalizations and the like) for 20 Trading Days during any Measurement Period, then an additional 50% of the Lock-up Holder's Lock-Up Shares (as calculated above) will be automatically released from such restrictions pursuant to the terms set forth above.

(v) Notwithstanding the provisions of Section 7.12(i) or Section 7.12(iv), if, at the time of any the Lock-Up Expiration Date or any Early Lock-Up Expiration Date, the Corporation is in a Blackout Period, the actual date of the Lock-Up Expiration Date or such Early Lock-Up Expiration shall be delayed (the "Lock-Up Expiration Extension") until immediately prior to the opening of trading on the second Trading Day (the "Extension Expiration Date") following the first date (such first date, the "Extension Expiration Measurement Date") that (i) the Corporation is no longer in a Blackout Period under its insider trading policy and (ii) the Closing Price on the Extension Expiration Measurement Date is at least greater than the Threshold Price; provided, further, that, in the case of any of an Early Lock-Up Expiration or any Lock-Up Expiration Extension, the Corporation shall announce through a major news service, or on a Form 8-K, the Early Lock-Up Expiration and the Early Lock-Up Expiration Date, or the Lock-Up Expiration Extension and the Extension Expiration Date, as the case may be, at least one full Trading Day prior to the opening of trading on the Early Lock-Up Expiration Date or the Extension Expiration Date, as applicable. For the avoidance of doubt, in the event that this Section 7.12(v) conflicts with the foregoing provisions, the Lock-Up Holders will be entitled to the earliest release date for the maximum number of Lock-Up Shares available.

(vi) Notwithstanding the other provisions of these bylaws, the provisions of this Section 7.12 shall not be waived, amended, or repealed prior to the Lock-Up Expiration Date without the affirmative vote of a majority of the directors then in office (including the NG Representative (as defined in the Merger Agreement)).

(vii) For purposes of this Section 7.12:

(a) the term "Blackout Period" means a broadly applicable and regularly scheduled period during which trading in the Corporation's securities would not be permitted under the Corporation's insider trading policy;

(b) the term "Lock-Up Expiration Date" means the date that is 180 days after (and excluding) the closing date (the "Closing Date") of the Merger, subject to any Early Lock-Up Expiration Date and/or Lock-Up Expiration Extension;

(c) the term "Lock-up Period" means the period beginning on the Closing Date and ending at 8:00 am Eastern Time on the Lock-Up Expiration Date;

(d) the term "Lock-up Shares" means (x) the shares of Class A common stock and Class B common stock held by the Lock-up Holders immediately following the closing of the Merger (other than shares of common stock acquired in the public market or pursuant to a transaction exempt from registration under the Securities Act of 1933, as amended, pursuant to a subscription agreement where the issuance of common stock occurs on or after the closing of the Merger) and the Embark Equity Award Shares; provided, that, for clarity, shares of Class A common stock issued in connection with the FPA Investment or PIPE Investment (each as defined in the Merger Agreement) shall not constitute Lock-up Shares; and (y) any securities of the Corporation that are issued in respect of or upon any conversion, exercise, or exchange of, any Lock-Up Shares, including as a result of any stock split, reverse stock split, stock dividend, reorganization, recapitalization, reclassification, combination, exchange of shares or other similar change;

(e) the term "Permitted Transferees" means, prior to the expiration of the Lock-up Period, (x) any person or entity to whom such Lock-up Holder is permitted to transfer such shares of common stock prior to the expiration of the Lock-up Period pursuant to Section 7.12(ii), or (y) solely with respect to shares of Class B common stock, any Qualified Stockholder (as such term is defined in the Certificate of Incorporation in effect as of immediately following the closing of the Merger);

(f) the term "Related Holder" means (i) in the case of a holder that is an entity, any securityholder, partner, member or affiliate (as defined below) of such holder; and (ii) in the case of a holder that is a natural person, (A) any member of such holder's immediate family, (B) any trust, the beneficiaries of which are such holder, one or more members of such holder's immediate family, and/or any charitable organization, or the assets of which are deemed for federal income tax purposes to be owned by such holder and/or one or more members of such holder's immediate family, or (C) any entity that is directly or indirectly controlled by the holder and/or any combination of any of the foregoing; and for purposes of the foregoing, (x) "immediate family" of a specified person means his or her spouse or domestic partner, any parent of such specified person or of his or her spouse or domestic partner, or any lineal descendant of any of the foregoing (including by adoption), (y) "affiliate" of a specified person or entity means any other person or entity that directly, or indirectly through one or more other affiliates, controls or is controlled by, or is under common control with, the specified person or entity, and (z) "control" means the possession, directly or indirectly, or as trustee or executor, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, as trustee or executor, by contract or otherwise, and, in the case of a fund, includes the power to direct or cause the direction of the investment decisions of such fund, whether through authority as the manager, investment manager, general partner, or otherwise;

(g) the term "Trading Day" is a day on which the Nasdaq Stock Market (or if not listed thereon, any national securities exchange on which the shares of Class A common stock and Class B common stock are then listed) is open for the buying and selling of securities; and

(h) the term "Transfer" means (i) to sell, assign, offer to sell, contract or agree to sell, grant any option to purchase or otherwise dispose of or agree to dispose of legal title to, or file (or participate in the filing of) a registration statement with the SEC (other than the Registration Statement) with respect to, any security, which transaction, offer, contract, or agreement provides for settlement or transfer prior to the date on which the Merger Agreement terminates, or (ii) publicly announce any intention to effect any transaction specified in clause (i) other than any public filings required by applicable Law (as defined in the Merger Agreement), other than, with respect to shares of Class B common stock, any Permitted Transfer (as such term is defined in the Certificate of Incorporation in effect as of immediately following the closing of the Merger).

7.13 Registered Stockholders.

The Corporation:

(i) shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends and to vote as such owner; and

(ii) shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of another person, whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of the State of Delaware.

7.14 Waiver of Notice.

Whenever notice is required to be given under any provision of the DGCL, the Certificate of Incorporation or these bylaws, a written waiver, signed by the person entitled to notice, or a waiver by electronic transmission by the person entitled to notice, whether before or after the time of the event for which notice is to be given, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the stockholders need be specified in any written waiver of notice or any waiver by electronic transmission unless so required by the Certificate of Incorporation or these bylaws.

Article VIII - Notice

8.1 Delivery of Notice; Notice by Electronic Transmission.

Without limiting the manner by which notice otherwise may be given effectively to stockholders, any notice to stockholders given by the Corporation under any provisions of the DGCL, the Certificate of Incorporation, or these bylaws may be given in writing directed to the stockholder's mailing address (or by electronic transmission directed to the stockholder's electronic mail address, as applicable) as it appears on the records of the Corporation and shall be given (1) if mailed, when the notice is deposited in the U.S. mail, postage prepaid, (2) if delivered by courier service, the earlier of when the notice is received or left at such stockholder's address or (3) if given by electronic mail, when directed to such stockholder's electronic mail address unless the stockholder has notified the Corporation in writing or by electronic transmission of an objection to receiving notice by electronic mail. A notice by electronic mail must include a prominent legend that the communication is an important notice regarding the Corporation.

Without limiting the manner by which notice otherwise may be given effectively to stockholders, any notice to stockholders given by the Corporation under any provision of the DGCL, the Certificate of Incorporation or these bylaws shall be effective if given by a form of electronic transmission consented to by the stockholder to whom the notice is given. Any such consent shall be revocable by the stockholder by written notice or electronic transmission to the Corporation. Notwithstanding the provisions of this paragraph, the Corporation may give a notice by electronic mail in accordance with the first paragraph of this section without obtaining the consent required by this paragraph.

Any notice given pursuant to the preceding paragraph shall be deemed given:

(i) if by facsimile telecommunication, when directed to a number at which the stockholder has consented to receive notice;

(ii) if by a posting on an electronic network together with separate notice to the stockholder of such specific posting, upon the later of (A) such posting and (B) the giving of such separate notice; and

(iii) if by any other form of electronic transmission, when directed to the stockholder.

Notwithstanding the foregoing, a notice may not be given by an electronic transmission from and after the time that (1) the Corporation is unable to deliver by such electronic transmission two consecutive notices given by the Corporation and (2) such inability becomes known to the Secretary or an Assistant Secretary of the Corporation or to the transfer agent, or other person responsible for the giving of notice, provided, however, the inadvertent failure to discover such inability shall not invalidate any meeting or other action.

An affidavit of the Secretary or an Assistant Secretary or of the transfer agent or other agent of the Corporation that the notice has been given shall, in the absence of fraud, be prima facie evidence of the facts stated therein.

Article IX - Indemnification

9.1 Power to Indemnify in Actions, Suits or Proceedings other than Those by or in the Right of the Corporation.

Subject to Section 9.3, the Corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Corporation), by reason of the fact that such person is or was a director or officer of the Corporation, or while a director or officer of the Corporation, is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe such person's conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which such person reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that such person's conduct was unlawful.

9.2 Power to Indemnify in Actions, Suits or Proceedings by or in the Right of the Corporation.

Subject to Section 9.3, the Corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that such person is or was a director or officer of the Corporation, or while a director or officer of the Corporation, is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Corporation; except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the Corporation unless and only to the extent that the Court of Chancery of the State of Delaware or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

9.3 Authorization of Indemnification.

Any indemnification under this Article IX (unless ordered by a court) shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification of the present or former director or officer is proper in the circumstances because such person has met the applicable standard of conduct set forth in Section 9.1 or Section 9.2, as the case may be. Such determination shall be made, with respect to a person who is a director or officer at the time of such determination, (i) by a majority vote of the directors who are not parties to such action, suit or proceeding, even though less than a quorum, or (ii) by a committee of such directors designated by a majority vote of such directors, even though less than a quorum, or (iii) if there are no such directors, or if such directors so direct, by independent legal counsel in a written opinion or (iv) by the stockholders. Such determination shall be made, with respect to former directors and officers, by any person or persons having the authority to act on the matter on behalf of the Corporation. To the extent, however, that a present or former director or officer of the Corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding described above, or in defense of any claim, issue or matter therein, such person shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection therewith, without the necessity of authorization in the specific case.

9.4 Good Faith Defined.

For purposes of any determination under Section 9.3, a person shall be deemed to have acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Corporation, or, with respect to any criminal action or proceeding, to have had no reasonable cause to believe such person's conduct was unlawful, if such person's action is based on the records or books of account of the Corporation or another enterprise, or on information supplied to such person by the officers of the Corporation or another enterprise in the course of their duties, or on the advice of legal counsel for the Corporation or another enterprise or on information or records given or reports made to the Corporation or another enterprise by an independent certified public accountant or by an appraiser or other expert selected with reasonable care by the Corporation or another enterprise. The provisions of this Section 9.4 shall not be deemed to be exclusive or to limit in any way the circumstances in which a person may be deemed to have met the applicable standard of conduct set forth in Section 9.1 or 9.2, as the case may be.

9.5 Indemnification by a Court.

Notwithstanding any contrary determination in the specific case under Section 9.3, and notwithstanding the absence of any determination thereunder, any director or officer may apply to the Court of Chancery of the State of Delaware or any other court of competent jurisdiction in the State of Delaware for indemnification to the extent otherwise permissible under Section 9.1 or 9.2. The basis of such indemnification by the Corporation shall be a determination by such court that indemnification of the director or officer is proper in the circumstances because such person has met the applicable standard of conduct set forth in Section 9.1 or Section 9.2, as the case may be. Neither a contrary determination in the specific case under Section 9.3 nor the absence of any determination thereunder shall be a defense to such application or create a presumption that the director or officer seeking indemnification has not met any applicable standard of conduct. Notice of any application for indemnification pursuant to this Article IX shall be given to the Corporation promptly upon the filing of such application. If successful, in whole or in part, the director or officer seeking indemnification shall also be entitled to be paid the expense of prosecuting such application.

9.6 Expenses Payable in Advance.

Expenses (including attorneys' fees) incurred by a present or former director or officer in appearing at, participating in or defending any civil, criminal, administrative or investigative action, suit or proceeding in advance of its final disposition or in connection with a proceeding brought to establish or enforce a right to indemnification or advancement of expenses under this Article IX shall be paid by the Corporation upon receipt of an undertaking by or on behalf of such director or officer to repay such amount if it shall ultimately be determined that such person is not entitled to be indemnified by the Corporation as authorized in this Article IX. Such expenses (including attorneys' fees) incurred by employees and agents of the Corporation or by persons acting at the request of the Corporation as directors, officers, employees or agents of another corporation, partnership, joint venture, trust or other enterprise may be so paid upon such terms and conditions, if any, as the Corporation deems appropriate.

9.7 Nonexclusivity of Indemnification and Advancement of Expenses.

The indemnification and advancement of expenses provided by, or granted pursuant to, this Article IX shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under the Certificate of Incorporation, these bylaws, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in such person's official capacity and as to action in another capacity while holding such office, it being the policy of the Corporation that indemnification of the persons specified in Section 9.1 or 9.2 shall be made to the fullest extent permitted by law. The provisions of this Article IX shall not be deemed to preclude the indemnification of any person who is not specified in Section 9.1 or Section 9.2 but whom the Corporation has the power or obligation to indemnify under the provisions of the DGCL, or otherwise.

9.8 Insurance.

The Corporation may purchase and maintain insurance on behalf of any person who is or was a director or officer of the Corporation, or is or was a director or officer of the Corporation serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against such person and incurred by such person in any such capacity, or arising out of such person's status as such, whether or not the Corporation would have the power or the obligation to indemnify such person against such liability under the provisions of this Article IX.

9.9 Certain Definitions.

For purposes of this Article IX, references to "the Corporation" shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors or officers, so that any person who is or was a director or officer of such constituent corporation, or is or was a director or officer of such constituent corporation serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under the provisions of this Article IX with respect to the resulting or surviving corporation as such person would have with respect to such constituent corporation if its separate existence had continued. The term "another enterprise" as used in this Article IX shall mean any other corporation or any partnership, joint venture, trust, employee benefit plan or other enterprise of which such person is or was serving at the request of the Corporation as a director, officer, employee or agent. For purposes of this Article IX, references to "fines" shall include any excise taxes assessed on a person with respect to an employee benefit plan; and references to "serving at the request of the Corporation" shall include any service as a director, officer, employee or agent of the Corporation which imposes duties on, or involves services by, such director or officer with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner such person reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner "not opposed to the best interests of the Corporation" as referred to in this Article IX.

9.10 Survival of Indemnification and Advancement of Expenses.

The indemnification and advancement of expenses provided by, or granted pursuant to, this Article IX shall, unless otherwise provided when authorized or ratified as provided in this Article IX, continue as to a person who has ceased to be a director or officer and shall inure to the benefit of the heirs, executors and administrators of such a person.

9.11 Limitation on Indemnification.

Notwithstanding anything contained in this Article IX to the contrary, except for proceedings to enforce rights to indemnification (which shall be governed by Section 9.5), the Corporation shall not be obligated to indemnify any present or former director or officer (or his or her heirs, executors or personal or legal representatives) or advance expenses in connection with a proceeding (or part thereof) initiated by such person unless such proceeding (or part thereof) was authorized or consented to by the Board of the Corporation.

9.12 Indemnification of Employees and Agents.

The Corporation may, to the extent authorized from time to time by the Board, provide rights to indemnification and to the advancement of expenses to employees and agents of the Corporation and to persons serving at the request of the Corporation as directors, officers, employees and agents of another corporation, partnership, joint venture, trust or other enterprise similar to those conferred in this Article IX to directors and officers of the Corporation.

9.13 Primacy of Indemnification.

Notwithstanding that a director, officer, employee or agent of the Corporation (collectively, the "Covered Persons") may have certain rights to indemnification, advancement of expenses and/or insurance provided by other persons (collectively, the "Other Indemnitors"), with respect to the rights to indemnification, advancement of expenses and/or insurance set forth herein, the Corporation: (i) shall be the indemnitor of first resort (i.e., its obligations to Covered Persons are primary and any obligation of the Other Indemnitors to advance expenses or to provide indemnification for the same expenses or liabilities incurred by Covered Persons are secondary); and (ii) shall be required to advance the full amount of expenses incurred by Covered Persons and shall be liable for the full amount of all liabilities, without regard to any rights Covered Persons may have against any of the Other Indemnitors. No advancement or payment by the Other Indemnitors on behalf of Covered Persons with respect to any claim for which Covered Persons have sought indemnification from the Corporation shall affect the immediately preceding sentence, and the Other Indemnitors shall have a right of contribution and/or be subrogated to the extent of such advancement or payment to all of the rights of recovery of Covered Persons against the Corporation. Notwithstanding anything to the contrary herein, the obligations of the Corporation under this Section 9.13 shall only apply to Covered Persons in their capacity as Covered Persons.

9.14 Amendments. Any repeal or amendment of this Article IX by the Board or the stockholders of the Corporation or by changes in applicable law, or the adoption of any other provision of these bylaws inconsistent with this Article IX, will, to the extent permitted by applicable law, be prospective only (except to the extent such amendment or change in applicable law permits the Corporation to provide broader indemnification rights to indemnitees on a retroactive basis than permitted prior thereto), and will not in any way diminish or adversely affect any right or protection existing hereunder in respect of any act or omission occurring prior to such repeal or amendment or adoption of such inconsistent provision.

Article X - Amendments

Except as otherwise expressly provided herein, the Board is expressly empowered to adopt, amend or repeal the bylaws of the Corporation. The stockholders also shall have power to adopt, amend or repeal the bylaws of the Corporation; provided, however, that such action by stockholders shall require, in addition to any other vote required by the Certificate of Incorporation or applicable law (including any Certificate of Designation(s) in respect of one or more series of Preferred Stock), at any time (i) prior to the Trigger Date, the affirmative vote of the holders of a majority of the voting power of all of the then outstanding shares of each class of Common Stock (each voting separately as a class), (ii) after the Trigger Date and until the Sunset Date, the affirmative vote of the holders of at least a majority of the voting power of all of the then outstanding shares of voting stock of the Corporation entitled to vote generally in an election of directors, and (iii) after the Sunset Date, the affirmative vote of the holders of at least two-thirds (66 2/3%) of the voting power of all the then-outstanding shares of voting stock of the Corporation with the power to vote generally in an election of directors, voting together as a single class.

Article XI - Definitions

As used in these bylaws, unless the context otherwise requires, the following terms shall have the following meanings:

An "electronic transmission" means any form of communication, not directly involving the physical transmission of paper, including the use of, or participation in, one or more electronic networks or databases (including one or more distributed electronic networks or databases), that creates a record that may be retained, retrieved and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process.

An "electronic mail" means an electronic transmission directed to a unique electronic mail address (which electronic mail shall be deemed to include any files attached thereto and any information hyperlinked to a website if such electronic mail includes the contact information of an officer or agent of the Corporation who is available to assist with accessing such files and information).

An "electronic mail address" means a destination, commonly expressed as a string of characters, consisting of a unique user name or mailbox (commonly referred to as the "local part" of the address) and a reference to an internet domain (commonly referred to as the "domain part" of the address), whether or not displayed, to which electronic mail can be sent or delivered.

The term "person" means any individual, general partnership, limited partnership, limited liability company, corporation, trust, business trust, joint stock company, joint venture, unincorporated association, cooperative or association or any other legal entity or organization of whatever nature, and shall include any successor (by merger or otherwise) of such entity.

[*Remainder of page intentionally left blank.*]

Exhibit 10.4

FORM OF
AMENDED AND RESTATED
REGISTRATION RIGHTS AGREEMENT

THIS AMENDED AND RESTATED REGISTRATION RIGHTS AGREEMENT (this "***Agreement***"), dated as of November 10, 2021, is made and entered into by and among Embark Technology, Inc., a Delaware corporation (the "***Company***") (formerly known as Northern Genesis Acquisition Corp. II), a Delaware corporation, Northern Genesis Sponsor II LLC, a Delaware limited liability company ("***Sponsor***" and, together with its Permitted Transferees, the "***Sponsor Holders***"), certain former stockholders of Embark Trucks Inc. ("***Embark***") identified on the signature pages hereto, including the Founders (as defined below) (such stockholders, together with their respective Permitted Transferees, the "***Embark Holders***" and, collectively with the Sponsor Holders, and any person or entity who hereafter becomes a party to this Agreement pursuant to Section 5.10 of this Agreement, the "***Holders***" and each, a "***Holder***"), and solely for purposes of Section 5.12 hereof, Northern Genesis Capital II LLC, a Delaware limited liability company ("***NG Capital***").

RECITALS

WHEREAS, the Company, the Sponsor and NG Capital are party to that certain Registration Rights Agreement, dated as of January 12, 2021 (the "***Original RRA***");

WHEREAS, the Company has entered into that certain Agreement and Plan of Merger, dated as of June 22, 2021 (as amended or supplemented from time to time prior to the date hereof, the "***Merger Agreement***"), by and among the Company, NGAB Merger Sub Inc., a Delaware corporation and a direct wholly owned subsidiary of the Company, and Embark;

WHEREAS, on the date hereof, pursuant to the Merger Agreement, the Embark Holders received shares of Class A common stock, par value $0.0001 per share, and Class B common stock, par value $0.0001 per share, of the Company (collectively, the "***Common Stock***");

WHEREAS, on the date hereof, certain other investors (such other investors, collectively, the "***Third Party Investor Stockholders***") purchased an aggregate of 4,000,000 shares of Common Stock and 666,667 warrants to purchase shares of Common Stock (collectively, the "***Investor Securities***") in a transaction exempt from registration under the Securities Act pursuant to an Amended and Restated Forward Purchase Agreement between the Company and such Third Party Investor Stockholder (including by joinder thereto), dated as of April 21, 2021 (each, a "***Forward Purchase Agreement***"), and/or the respective Subscription Agreement, each dated as of June 22, 2021, entered into by and between the Company and such Third Party Investor Stockholder (each of the foregoing, including such Forward Purchase Agreements, a "***Subscription Agreement***" and, collectively, the "***Subscription Agreements***");

WHEREAS, pursuant to Section 6.6 of the Original RRA any amendment to the Original RRA is effective as to the Parties thereto only to the extent executed in writing by such Parties and each party to the Original RRA is a party to this Agreement; and

WHEREAS, the Company and the Sponsor desire to amend and restate the Original RRA in its entirety and enter into this Agreement, pursuant to which the Company shall grant the Holders certain registration rights with respect to the Registrable Securities (as defined below) on the terms and conditions set forth in this Agreement, and NG Capital desires to consent to the foregoing and to be removed as a party hereto.

NOW, THEREFORE, in consideration of the representations, covenants and agreements contained herein, and certain other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

ARTICLE I
DEFINITIONS

1.1 Definitions. The terms defined in this Article I shall, for all purposes of this Agreement, have the respective meanings set forth below:

"***Additional Holder***" shall have the meaning given in Section 5.10.

"***Additional Holder Common Stock***" shall have the meaning given in Section 5.10.

"***Adverse Disclosure***" shall mean any public disclosure of material non-public information, which disclosure, after consultation with counsel to the Company, in the good faith judgment of the Chief Executive Officer or the Chief Financial Officer of the Company (i) would be required to be made in any Registration Statement or Prospectus in order for the applicable Registration Statement or Prospectus not to contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements contained therein (in the case of any Prospectus and any preliminary Prospectus, in the light of the circumstances under which they were made) not misleading, (ii) would not be required to be made at such time if the Registration Statement were not being filed, declared effective or used, as the case may be, and (iii) the Company has a bona fide business purpose for not making such information public.

"***Agreement***" shall have the meaning given in the Preamble hereto.

"***Block Trade***" shall have the meaning given in Section 2.4.1.

"***Board***" shall mean the Board of Directors of the Company.

"***Bylaws***" shall mean the bylaws of the Company, as the same may be amended and/or restated from time to time.

"***Closing***" shall have the meaning given in the Merger Agreement.

"***Closing Date***" shall have the meaning given in the Merger Agreement.

"***Commission***" shall mean the U.S. Securities and Exchange Commission.

"***Common Stock***" shall have the meaning given in the Recitals hereto.

"***Company***" shall have the meaning given in the Preamble hereto and includes the Company's successors by recapitalization, merger, consolidation, spin-off, reorganization or similar transaction.

"***Demanding Holders***" shall have the meaning given in Section 2.1.4.

"***Embark Holders***" shall have the meaning given in the Preamble hereto.

"***Exchange Act***" shall mean the U.S. Securities Exchange Act of 1934, as it may be amended from time to time.

"***Form S-1 Shelf***" shall have the meaning given in Section 2.1.1.

"***Form S-3 Shelf***" shall have the meaning given in Section 2.1.1.

"***Founders***" shall mean Alex Rodrigues and Brandon Moak and any Permitted Trust (as defined in the Acquiror Second A&R Charter) of either Person.

"***Holder Information***" shall have the meaning given in Section 4.1.2.

"***Holders***" shall have the meaning given in the Preamble hereto, for so long as such person or entity holds any Registrable Securities.

"***Investor Securities***" shall have the meaning given in the Recitals hereto.

"***Joinder***" shall have the meaning given in Section 5.10.

"***Lock-up Period***" shall mean (a) with respect to the Sponsor Holders, the Lock-up Period as defined in that certain Sponsor Support Agreement, dated as of June 22, 2021, by and among the Company, the Sponsor and the other parties thereto (the "***Sponsor Support Agreement***"), and (b) with respect to the Embark Holders, the Lock-up Period as defined in the Bylaws.

"***Maximum Number of Securities***" shall have the meaning given in Section 2.1.5.

"***Merger Agreement***" shall have the meaning given in the Recitals hereto.

"***Minimum Takedown Threshold***" shall have the meaning given in Section 2.1.4.

"***Misstatement***" shall mean an untrue statement of a material fact or an omission to state a material fact required to be stated in a Registration Statement or Prospectus or necessary to make the statements in a Registration Statement or Prospectus (in the case of a Prospectus, in the light of the circumstances under which they were made) not misleading.

"***Original RRA***" shall have the meaning given in the Recitals hereto.

"***Other Coordinated Offering***" shall have the meaning given in Section 2.4.1.

"***Permitted Transferees***" shall mean (a) with respect to the Sponsor and its respective Permitted Transferees, (i) prior to the expiration of the Lock-up Period, any person or entity to whom such Holder is permitted to transfer such Registrable Securities prior to the expiration of the Lock-up Period pursuant Section 2.2 of the Sponsor Support Agreement and (ii) after the expiration of the Lock-up Period, any person or entity, except to the extent that any applicable agreement between such Holder and the Company prohibits such transfer; (b) with respect to the Embark Holders and their respective Permitted Transferees, (i) prior to the expiration of the Lock-up Period, any person or entity to whom such Holder is permitted to transfer such Registrable Securities prior to the expiration of the Lock-up Period pursuant to Section 7.12 of the Bylaws of the Company and (ii) after the expiration of the Lock-up Period, any person or entity, except to the extent that any applicable agreement between such Holder and the Company prohibits such transfer; and (d) with respect to all other Holders and their respective Permitted Transferees, any person or entity, except to the extent that any applicable agreement between such Holder and the Company prohibits such transfer.

"***Piggyback Registration***" shall have the meaning given in Section 2.2.1.

"***Prospectus***" shall mean the prospectus included in any Registration Statement, as supplemented by any and all prospectus supplements and as amended by any and all post-effective amendments and including all materials incorporated by reference in such prospectus.

"***Registrable Security***" shall mean (a) any outstanding shares of Common Stock or any other equity security (including warrants to purchase shares of Common Stock, and shares of Common Stock issued or issuable upon the exercise of any such warrant or other equity security) of the Company held by a Holder immediately following the Closing; (b) any outstanding shares of Common Stock or any other equity security (including warrants to purchase shares of Common Stock and shares of Common Stock issued or issuable upon the exercise of any such warrant or other equity security) of the Company acquired by a Holder following the date hereof to the extent that such securities are "restricted securities" (as defined in Rule 144) or are otherwise held by an "affiliate" (as defined in Rule 144) of the Company; (c) any Additional Holder Common Stock; and (d) any other equity security of the Company or any of its subsidiaries issued or issuable with respect to any securities referenced in clause (a), (b) or (c) above by way of a stock dividend or stock split or in connection with a recapitalization, merger, consolidation, spin-off, reorganization or similar transaction; provided, however, that, as to any particular Registrable Security, such securities shall cease to be Registrable Securities upon the earliest to occur of: (A) a Registration Statement with respect to the sale of such securities shall have become effective under the Securities Act and such securities shall have been sold, transferred, disposed of or exchanged in accordance with such Registration Statement by the applicable Holder; (B) (i) such securities shall have been otherwise transferred, (ii) new certificates for such securities not bearing (or book entry positions not subject to) a legend restricting further transfer shall have been delivered by the Company or (iii) subsequent public distribution of such securities shall not require registration under the Securities Act; (C) such securities shall have ceased to be outstanding; (D) such securities may be sold without registration pursuant to Section 4(a)(1) of the Securities Act or Rule 144 or Rule 145 promulgated under the Securities Act (or any successor rule promulgated thereafter by the Commission) (but with no volume or other restrictions or limitations including as to manner or timing of sale); and (E) such securities have been sold to, or through, a broker, dealer or underwriter in a public distribution or other public securities transaction.

"***Registration***" shall mean a registration, including any related Shelf Takedown, effected by preparing and filing a Registration Statement, Prospectus or similar document in compliance with the requirements of the Securities Act, and the applicable rules and regulations promulgated thereunder, and such Registration Statement becoming effective.

"***Registration Expenses***" shall mean the documented out-of-pocket expenses of a Registration, including, without limitation, the following:

(A) all registration and filing fees (including fees with respect to filings required to be made with the Financial Industry Regulatory Authority, Inc. and any national securities exchange on which the Common Stock is then listed);

(B) fees and expenses of compliance with securities or blue sky laws (including reasonable fees and disbursements of outside counsel for the Underwriters in connection with blue sky qualifications of Registrable Securities);

(C) printing, messenger, telephone and delivery expenses;

(D) reasonable fees and disbursements of counsel for the Company;

(E) reasonable fees and disbursements of all independent registered public accountants of the Company incurred specifically in connection with such Registration; and

(F) in an Underwritten Offering or Other Coordinated Offering, reasonable and documented fees and expenses not to exceed $30,000 in the aggregate for each Registration of one (1) legal counsel selected by the majority-in-interest of the Demanding Holders with the approval of the Company, which approval shall not be unreasonably withheld.

"***Registration Statement***" shall mean any registration statement that covers Registrable Securities pursuant to the provisions of this Agreement, including the Prospectus included in such registration statement, amendments (including post-effective amendments) and supplements to such registration statement, and all exhibits to and all materials incorporated by reference in such registration statement.

"***Securities Act***" shall mean the U.S. Securities Act of 1933, as amended from time to time.

"***Shelf***" shall mean the Form S-1 Shelf, the Form S-3 Shelf or any Subsequent Shelf Registration Statement, as the case may be.

"***Shelf Registration***" shall mean a registration of securities pursuant to a registration statement filed with the Commission in accordance with and pursuant to Rule 415 promulgated under the Securities Act (or any successor rule then in effect).

"***Shelf Takedown***" shall mean an Underwritten Shelf Takedown or any proposed transfer or sale using a Registration Statement, including a Piggyback Registration.

"***Sponsor***" shall have the meaning given in the Preamble hereto.

"***Subsequent Shelf Registration Statement***" shall have the meaning given in Section 2.1.2.

"***Transfer***" shall mean the (a) sale or assignment of, offer to sell, contract or agreement to sell, hypothecate, pledge, grant of any option to purchase or otherwise dispose of or agreement to dispose of, directly or indirectly, or establishment or increase of a put equivalent position or liquidation with respect to or decrease of a call equivalent position within the meaning of Section 16 of the Exchange Act with respect to, any security, (b) entry into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of any security, whether any such transaction is to be settled by delivery of such securities, in cash or otherwise, or (c) public announcement of any intention to effect any transaction specified in clause (a) or (b).

"***Underwriter***" shall mean a securities dealer who purchases any Registrable Securities as principal in an Underwritten Offering and not as part of such dealer's market-making activities.

"***Underwritten Offering***" shall mean a Registration in which securities of the Company are sold to an Underwriter in a firm commitment underwriting for distribution to the public.

"***Underwritten Shelf Takedown***" shall have the meaning given in Section 2.1.4.

"***Withdrawal Notice***" shall have the meaning given in Section 2.1.6.

ARTICLE II
REGISTRATIONS AND OFFERINGS

2.1 Shelf Registration.

2.1.1 Filing. Within thirty (30) calendar days following the Closing Date, the Company shall submit to or file with the Commission a Registration Statement for a Shelf Registration on Form S-1 (the "***Form S-1 Shelf***") or a Registration Statement for a Shelf Registration on Form S-3 (the "***Form S-3 Shelf***"), if the Company is then eligible to use a Form S-3 Shelf, in each case, covering the resale of all the Registrable Securities (determined as of two (2) business days prior to such submission or filing) on a delayed or continuous basis and shall use its commercially reasonable efforts to have such Shelf declared effective as soon as practicable after the filing thereof, but no later than the earlier of (a) the ninetieth (90th) calendar day following the filing date thereof if the Commission notifies the Company that it will "review" the Registration Statement and (b) the tenth (10th) business day after the date the Company is notified (orally or in writing, whichever is earlier) by the Commission that the Registration Statement will not be "reviewed" or will not be subject to further review. Such Shelf shall provide for the resale of the Registrable Securities included therein pursuant to any method or combination of methods legally available to, and requested by, any Holder named therein. The Company shall maintain a Shelf in accordance with the terms hereof, and shall prepare and file with the Commission such amendments, including post-effective amendments, and supplements as may be necessary to keep a Shelf continuously effective, available for use to permit the Holders named therein to sell their Registrable Securities included therein and in compliance with the provisions of the Securities Act until such time as there are no longer any Registrable Securities. In the event the Company files a Form S-1 Shelf, the Company shall use its commercially reasonable efforts to convert the Form S-1 Shelf (and any Subsequent Shelf Registration Statement) to a Form S-3 Shelf as soon as practicable after the Company is eligible to use Form S-3. The Company's obligation under this Section 2.1.1, shall, for the avoidance of doubt, be subject to Section 3.4.

2.1.2 Subsequent Shelf Registration. If any Shelf ceases to be effective under the Securities Act for any reason at any time while Registrable Securities are still outstanding, the Company shall, subject to Section 3.4, use its commercially reasonable efforts to as promptly as is reasonably practicable cause such Shelf to again become effective under the Securities Act (including using its commercially reasonable efforts to obtain the prompt withdrawal of any order suspending the effectiveness of such Shelf), and shall use its commercially reasonable efforts to as promptly as is reasonably practicable amend such Shelf in a manner reasonably expected to result in the withdrawal of any order suspending the effectiveness of such Shelf or file an additional registration statement as a Shelf Registration (a "***Subsequent Shelf Registration Statement***") registering the resale of all Registrable Securities (determined as of two (2) business days prior to such filing), and pursuant to any method or combination of methods legally available to, and requested by, any Holder named therein. If a Subsequent Shelf Registration Statement is filed, the Company shall use its commercially reasonable efforts to (i) cause such Subsequent Shelf Registration Statement to become effective under the Securities Act as promptly as is reasonably practicable after the filing thereof (it being agreed that the Subsequent Shelf Registration Statement shall be an automatic shelf registration statement (as defined in Rule 405 promulgated under the Securities Act) if the Company is a well-known seasoned issuer (as defined in Rule 405 promulgated under the Securities Act) at the most recent applicable eligibility determination date) and (ii) keep such Subsequent Shelf Registration Statement continuously effective, available for use to permit the Holders named therein to sell their Registrable Securities included therein and in compliance with the provisions of the Securities Act until such time as there are no longer any Registrable Securities. Any such Subsequent Shelf Registration Statement shall be on Form S-3 to the extent that the Company is eligible to use such form. Otherwise, such Subsequent Shelf Registration Statement shall be on another appropriate form. The Company's obligation under this Section 2.1.2, shall, for the avoidance of doubt, be subject to Section 3.4.

2.1.3 Additional Registrable Securities. Subject to Section 3.4, in the event that any Holder holds Registrable Securities that are not registered for resale on a delayed or continuous basis, the Company, upon written request of a Sponsor Holder or an Embark Holder, shall promptly use its commercially reasonable efforts to cause the resale of such Registrable Securities to be covered by either, at the Company's option, any then available Shelf (including by means of a post-effective amendment) or by filing a Subsequent Shelf Registration Statement and cause the same to become effective as soon as practicable after such filing and such Shelf or Subsequent Shelf Registration Statement shall be subject to the terms hereof; provided, however, that the Company shall only be required to cause such Registrable Securities to be so covered (i) twice per calendar year for the Sponsor Holders, collectively, and (ii) twice per calendar year for the Embark Holders, collectively.

2.1.4 Requests for Underwritten Shelf Takedowns. Subject to Section 3.4, following the expiration of the Lock-Up Period, at any time and from time to time when an effective Shelf is on file with the Commission, any one or more Holders (each, a "***Demanding Holder***") may request to sell all or any portion of its Registrable Securities in an Underwritten Offering that is registered pursuant to the Shelf (each, an "***Underwritten Shelf Takedown***"); provided that the Company shall only be obligated to effect an Underwritten Shelf Takedown if such offering shall include Registrable Securities proposed to be sold by the Demanding Holder, either individually or together with other Demanding Holders, with an anticipated aggregate offering price, net of underwriting discounts and commissions, of at least $100 million (the "***Minimum Takedown Threshold***"). All requests for Underwritten Shelf Takedowns shall be made by giving written notice to the Company, which shall specify the approximate number of Registrable Securities proposed to be sold in the Underwritten Shelf Takedown. Subject to Section 2.4.4, the Company shall have the right to select the Underwriters for such offering (which shall consist of one or more reputable nationally recognized investment banks), subject to the initial Demanding Holder's prior approval (which shall not be unreasonably withheld, conditioned or delayed). The Sponsor Holders, collectively, may demand not more than two (2) Underwritten Shelf Takedowns and the Embark Holders, collectively, may demand not more than three (3) Underwritten Shelf Takedowns, in each case, pursuant to this Section 2.1.4 in any twelve (12) month period. Notwithstanding anything to the contrary in this Agreement, the Company may effect any Underwritten Offering pursuant to any then effective Registration Statement, including a Form S-3, that is then available for such offering.

2.1.5 Reduction of Underwritten Offering. If the underwriter in an Underwritten Shelf Takedown advises the Demanding Holders in writing that marketing factors require a limitation of the number of shares to be underwritten, then the Demanding Holders shall so advise all Holders of Registrable Securities that would otherwise be underwritten pursuant hereto, and the number of shares of Registrable Securities that may be included in the underwriting (such maximum number of such securities, the "***Maximum Number of Securities***") shall be allocated among all participating Holders thereof, including the Demanding Holders, in proportion (as nearly as practicable) to the amount of Registrable Securities of the Company owned by each participating Holder; provided, however, that the number of shares of Registrable Securities to be included in such underwriting shall not be reduced unless all other securities are first entirely excluded from the underwriting.

2.1.6 Withdrawal. Prior to the filing of the applicable "red herring" prospectus or prospectus supplement used for marketing such Underwritten Shelf Takedown, a majority-in-interest of the Demanding Holders initiating an Underwritten Shelf Takedown shall have the right to withdraw from such Underwritten Shelf Takedown for any or no reason whatsoever upon written notification (a "***Withdrawal Notice***") to the Company and the Underwriter or Underwriters (if any) of their intention to withdraw from such Underwritten Shelf Takedown; provided that one or more remaining participating Holders may elect to have the Company continue an Underwritten Shelf Takedown if the Minimum Takedown Threshold would still be satisfied by the Registrable Securities proposed to be sold in the Underwritten Shelf Takedown by such participating Holders, as applicable. If withdrawn, a demand for an Underwritten Shelf Takedown shall constitute a demand for an Underwritten Shelf Takedown by the withdrawing Demanding Holder for purposes of Section 2.1.4, unless either (i) such Demanding Holder has not previously withdrawn any Underwritten Shelf Takedown or (ii) such Demanding Holder reimburses the Company for all Registration Expenses with respect to such Underwritten Shelf Takedown (or, if there is more than one Demanding Holder, a pro rata portion of such Registration Expenses based on the respective number of Registrable Securities that each Demanding Holder has requested be included in such Underwritten Shelf Takedown); provided that, if one or more participating Holders elect to continue an Underwritten Shelf Takedown pursuant to the proviso in the immediately preceding sentence, such Underwritten Shelf Takedown shall instead count as an Underwritten Shelf Takedown demanded by such participating Holders for purposes of Section 2.1.4. Following the receipt of any Withdrawal Notice, the Company shall promptly forward such Withdrawal Notice to any other Holders that had elected to participate in such Shelf Takedown. Notwithstanding anything to the contrary in this Agreement, the Company shall be responsible for the Registration Expenses incurred in connection with a Shelf Takedown prior to its withdrawal under this Section 2.1.6, other than if a Demanding Holder elects to pay such Registration Expenses pursuant to clause (ii) of the second sentence of this Section 2.1.6.

2.2 Piggyback Registration.

2.2.1 Piggyback Rights. Subject to Section 2.4.3 and the terms of any lock-up contained in the Sponsor Support Agreement and/or the Bylaws, if the Company or any Holder proposes to conduct a registered offering of, or if the Company proposes to file a Registration Statement under the Securities Act with respect to the Registration of equity securities, or securities or other obligations exercisable or exchangeable for, or convertible into equity securities, for its own account or for the account of security holders of the Company (or by the Company and by any security holders of the Company including, without limitation, an Underwritten Shelf Takedown pursuant to Section 2.1), other than a Registration Statement (or any registered offering with respect thereto) (i) filed in connection with any employee stock option or other benefit plan, (ii) for an exchange offer or offering of securities solely to the Company's existing security holders, (iii) pursuant to a Registration Statement on Form S-4 (or similar form that relates to a transaction subject to Rule 145 under the Securities Act or any successor rule thereto), (iv) for an offering of debt (other than warrants) that is convertible into equity securities of the Company, (v) for a dividend reinvestment plan or (vi) filed to register equity securities issued in connection with the Subscription Agreements, then the Company shall give written notice of such proposed offering to all of the Applicable Holders as soon as practicable but not less than ten (10) days before the anticipated filing date of such Registration Statement or, in the case of an Underwritten Offering pursuant to a Shelf Registration, the applicable "red herring" prospectus or prospectus supplement used for marketing such offering, which notice shall (A) describe the amount and type of securities to be included in such offering, the intended method(s) of distribution, and the name of the proposed managing Underwriter or Underwriters, if any, in such offering, and (B) offer to all of the Applicable Holders of Registrable Securities the opportunity to include in such registered offering such number of Registrable Securities as such Applicable Holders may request in writing within five (5) days after receipt of such written notice (such registered offering, a "***Piggyback Registration***"). As used herein, "***Applicable Holder***" means any Holder of Registrable Securities that are not subject to an applicable Lock-up Period as of the effectiveness of the applicable Registration Statement or, in the case of an Underwritten Offering pursuant to a Shelf Registration, the final prospectus or prospectus supplement for such offering. Subject to Section 2.2.2, the Company shall cause such Registrable Securities to be included in such Piggyback Registration and, if applicable, shall use its commercially reasonable efforts to cause the managing Underwriter or Underwriters of such Piggyback Registration to permit the Registrable Securities requested by the Applicable Holders pursuant to this Section 2.2.1 to be included therein on the same terms and conditions as any similar securities of the Company included in such registered offering and to permit the sale or other disposition of such Registrable Securities in accordance with the intended method(s) of distribution thereof. The inclusion of any Holder's Registrable Securities in a Piggyback Registration shall be subject to such Holder agreement to enter into an underwriting agreement in customary form with the Underwriter(s) selected for such Underwritten Offering by the Company.

2.2.2 Reduction of Piggyback Registration. If the total amount of securities, including Registrable Securities, requested by holders of Registrable Securities to be included in such offering exceeds the amount of securities sold other than by the Company that the underwriters determine in their sole discretion is compatible with the success of the offering, then the Company shall be required to include in the offering only that number of such securities, including Registrable Securities, which the underwriters determine in their sole discretion will not jeopardize the success of the offering (the securities so included to be apportioned pro rata among the selling security holders according to the total amount of securities entitled to be included therein owned by each selling security holder or in such other proportions as shall mutually be agreed to by such selling security holders). For purposes of the preceding parenthetical concerning apportionment, for any selling security holder which is a holder of Registrable Securities and which is a partnership or corporation, the partners, retired partners and holders of capital stock of such holder, or the estates and family members of any such partners and retired partners and any trusts for the benefit of any of the foregoing persons shall be deemed to be a single "selling security holder," and any pro-rata reduction with respect to such "selling security holder" shall be based upon the aggregate amount of shares carrying registration rights owned by all entities and individuals included in such "selling security holder," as defined in this sentence.

2.2.3 Piggyback Registration Withdrawal. Any Holder of Registrable Securities (other than a Demanding Holder, whose right to withdraw from an Underwritten Shelf Takedown, and related obligations, shall be governed by Section 2.1.6) shall have the right to withdraw from a Piggyback Registration for any or no reason whatsoever upon written notification to the Company and the Underwriter or Underwriters (if any) of his, her or its intention to withdraw from such Piggyback Registration prior to the effectiveness of the Registration Statement filed with the Commission with respect to such Piggyback Registration or, in the case of a Piggyback Registration pursuant to a Shelf Registration, the filing of the applicable "red herring" prospectus or prospectus supplement with respect to such Piggyback Registration used for marketing such transaction. The Company (whether on its own good faith determination or as the result of a request for withdrawal by persons or entities pursuant to separate written contractual obligations) may withdraw a Registration Statement filed with the Commission in connection with a Piggyback Registration (which, in no circumstance, shall include a Shelf) at any time prior to the effectiveness of such Registration Statement. Notwithstanding anything to the contrary in this Agreement (other than Section 2.1.6), the Company shall be responsible for the Registration Expenses incurred in connection with the Piggyback Registration prior to its withdrawal under this Section 2.2.3.

2.2.4 Unlimited Piggyback Registration Rights. For purposes of clarity, subject to Section 2.1.6, any Piggyback Registration effected pursuant to Section 2.2 hereof shall not be counted as a demand for an Underwritten Shelf Takedown under Section 2.1.4 hereof.

2.3 Market Stand-off. In connection with any Underwritten Offering of equity securities of the Company (other than a Block Trade or Other Coordinated Offering), if requested by the managing Underwriters, each Holder that is an executive officer, director or Holder in excess of five percent (5%) of the outstanding Common Stock (and for which it is customary for such a Holder to agree to a lock-up) agrees that it shall not Transfer any shares of Common Stock or other equity securities of the Company (other than those included in such offering pursuant to this Agreement), without the prior written consent of the Company, during the ninety (90)-day period (or such shorter time agreed to by the managing Underwriters) beginning on the date of pricing of such offering, except to a Related Holder (as defined in Section 7.12 of the Bylaws) or as expressly otherwise permitted by such lock-up agreement or in the event the managing Underwriters otherwise agree by written consent. Each such Holder agrees to execute a customary lock-up agreement in favor of the Underwriters to such effect (in each case on substantially the same terms and conditions as all such Holders).

2.4 Block Trades; Other Coordinated Offerings.

2.4.1 Notwithstanding any other provision of this Article II, but subject to Section 3.4, at any time and from time to time when an effective Shelf is on file with the Commission, if a Demanding Holder wishes to engage in (a) an underwritten block trade or similar transaction or other transaction with a two (2)-day or less marketing period (a "***Block Trade***") or (b) an "at the market" or similar registered offering through a broker, sales agent or distribution agent, whether as agent or principal, (an "***Other Coordinated Offering***"), in each case, with an anticipated aggregate offering price of, either (x) at least $50 million or (y) all remaining Registrable Securities held by the Demanding Holder, then such Demanding Holder only needs to notify the Company of the Block Trade or Other Coordinated Offering at least five (5) business days prior to the day such offering is to commence and the Company shall as expeditiously as possible use its commercially reasonable efforts to facilitate such Block Trade or Other Coordinated Offering; provided that the Demanding Holders representing a majority of the Registrable Securities wishing to engage in the Block Trade or Other Coordinated Offering shall use commercially reasonable efforts to work with the Company and any Underwriters, brokers, sales agents or placement agents prior to making such request in order to facilitate preparation of the registration statement, prospectus and other offering documentation related to the Block Trade or Other Coordinated Offering.

2.4.2 Prior to the filing of the applicable "red herring" prospectus or prospectus supplement used in connection with a Block Trade or Other Coordinated Offering, a majority-in-interest of the Demanding Holders initiating such Block Trade or Other Coordinated Offering shall have the right to submit a Withdrawal Notice to the Company, the Underwriter or Underwriters (if any) and any brokers, sale agents or placement agents (if any) of their intention to withdraw from such Block Trade or Other Coordinated Offering. Notwithstanding anything to the contrary in this Agreement, the Company shall be responsible for the Registration Expenses incurred in connection with a Block Trade or Other Coordinated Offering prior to its withdrawal under this Section 2.4.2.

2.4.3 Notwithstanding anything to the contrary in this Agreement, Section 2.2 shall not apply to a Block Trade or Other Coordinated Offering initiated by a Demanding Holder pursuant to this Agreement.

2.4.4 The Demanding Holder in a Block Trade or Other Coordinated Offering shall have the right to select the Underwriters and any brokers, sale agents or placement agents (if any) for such Block Trade or Other Coordinated Offering (in each case, which shall consist of one or more reputable nationally recognized investment banks).

2.4.5 A Holder in the aggregate may demand no more than two (2) Block Trades or Other Coordinated Offerings pursuant to this Section 2.4 in any twelve (12) month period. For the avoidance of doubt, any Block Trade or Other Coordinated Offering effected pursuant to this Section 2.4 shall not be counted as a demand for an Underwritten Shelf Takedown pursuant to Section 2.1.4 hereof.

ARTICLE III
COMPANY PROCEDURES

3.1 General Procedures. In connection with any Shelf and/or Shelf Takedown, the Company shall use its commercially reasonable efforts to effect such Registration to permit the sale of such Registrable Securities in accordance with the intended plan of distribution thereof (and including all manners of distribution in such Registration Statement as Holders may reasonably request in connection with the filing of such Registration Statement and as permitted by law, including distribution of Registrable Securities to a Holder's members, securityholders or partners), and pursuant thereto the Company shall:

3.1.1 prepare and file with the Commission a Registration Statement with respect to such Registrable Securities and use its commercially reasonable efforts to cause such Registration Statement to become effective and remain effective until all Registrable Securities covered by such Registration Statement have ceased to be Registrable Securities;

3.1.2 prepare and file with the Commission such amendments and post-effective amendments to the Registration Statement, and such supplements to the Prospectus, as may be reasonably requested by any Holder that holds at least five percent (5%) of the Registrable Securities registered on such Registration Statement (including warrants on an as-exercised basis) or any Underwriter of Registrable Securities or as may be required by the rules, regulations or instructions applicable to the registration form used by the Company or by the Securities Act or rules and regulations thereunder to keep the Registration Statement effective until all Registrable Securities covered by such Registration Statement are sold in accordance with the intended plan of distribution set forth in such Registration Statement or supplement to the Prospectus;

3.1.3 prior to filing a Registration Statement or Prospectus, or any amendment or supplement thereto, furnish without charge to the Underwriters, if any, and the Holders of Registrable Securities included in such Registration, and such Holders' legal counsel, copies of such Registration Statement as proposed to be filed, each amendment and supplement to such Registration Statement (in each case including all exhibits thereto and documents incorporated by reference therein), the Prospectus included in such Registration Statement (including each preliminary Prospectus), and such other documents as the Underwriters and the Holders of Registrable Securities included in such Registration or the legal counsel for any such Holders may request in order to facilitate the disposition of the Registrable Securities owned by such Holders;

3.1.4 prior to any public offering of Registrable Securities, use its commercially reasonable efforts to (i) register or qualify the Registrable Securities covered by the Registration Statement under such securities or "blue sky" laws of such jurisdictions in the United States as any Holder of Registrable Securities included in such Registration Statement (in light of their intended plan of distribution) may reasonably request (or provide evidence that the Registrable Securities are exempt from such registration or qualification) and (ii) take such action necessary to cause such Registrable Securities covered by the Registration Statement to be registered with or approved by such other governmental authorities as may be necessary by virtue of the business and operations of the Company and do any and all other acts and things that may be reasonably necessary or advisable to enable the Holders of Registrable Securities included in such Registration Statement to consummate the disposition of such Registrable Securities in such jurisdictions; provided, however, that the Company shall not be required to qualify generally to do business in any jurisdiction where it would not otherwise be required to qualify or take any action to which it would be subject to general service of process or taxation in any such jurisdiction where it is not then otherwise so subject;

3.1.5 take all actions necessary to cause all such Registrable Securities to be listed on each national securities exchange on which similar securities issued by the Company are then listed;

3.1.6 provide a transfer agent or warrant agent, as applicable, and registrar for all such Registrable Securities no later than the effective date of such Registration Statement;

3.1.7 advise each seller of such Registrable Securities, promptly after it shall receive notice or obtain knowledge thereof, of the issuance of any stop order by the Commission suspending the effectiveness of such Registration Statement or the initiation or threatening of any proceeding for such purpose and promptly use its commercially reasonable efforts to prevent the issuance of any stop order or to obtain its withdrawal if such stop order should be issued;

3.1.8 at least five (5) days prior to the filing of any Registration Statement or Prospectus or any amendment or supplement to such Registration Statement or Prospectus (or such shorter period of time as may be (a) necessary in order to comply with the Securities Act, the Exchange Act, and the rules and regulations promulgated under the Securities Act or Exchange Act, as applicable or (b) advisable in order to reduce the number of days that sales are suspended pursuant to Section 3.4), furnish a copy thereof to each seller of such Registrable Securities or its counsel (excluding any exhibits thereto and any filing made under the Exchange Act that is to be incorporated by reference therein);

3.1.9 notify the Holders at any time when a Prospectus relating to such Registration Statement is required to be delivered under the Securities Act, of the happening of any event as a result of which the Prospectus included in such Registration Statement, as then in effect, includes a Misstatement, and then to correct such Misstatement as set forth in Section 3.4;

3.1.10 in the event of an Underwritten Offering, a Block Trade, an Other Coordinated Offering or sale by a broker, placement agent or sales agent pursuant to such Registration, permit a representative of the Holders, the Underwriters or other financial institutions facilitating such Underwritten Offering, Block Trade, Other Coordinated Offering or other sale pursuant to such Registration, if any, and any attorney, consultant or accountant retained by such Holders or Underwriter to participate, at each such person's or entity's own expense, in the preparation of the Registration Statement, and cause the Company's officers, directors and employees to supply all information reasonably requested by any such representative, Underwriter, financial institution, attorney, consultant or accountant in connection with the Registration; provided, however, that such representatives, Underwriters or financial institutions agree to confidentiality arrangements in form and substance reasonably satisfactory to the Company, prior to the release or disclosure of any such information;

3.1.11 obtain a “cold comfort” letter from the Company’s independent registered public accountants in the event of an Underwritten Offering, a Block Trade, an Other Coordinated Offering or sale by a broker, placement agent or sales agent pursuant to such Registration (subject to such broker, placement agent or sales agent providing such certification or representation reasonably requested by the Company’s independent registered public accountants and the Company’s counsel) in customary form and covering such matters of the type customarily covered by “cold comfort” letters as the managing Underwriter may reasonably request, and reasonably satisfactory to a majority-in-interest of the participating Holders;

3.1.12 in the event of an Underwritten Offering, a Block Trade, an Other Coordinated Offering or sale by a broker, placement agent or sales agent pursuant to such Registration, on the date the Registrable Securities are delivered for sale pursuant to such Registration, obtain an opinion, dated such date, of counsel representing the Company for the purposes of such Registration, addressed to the participating Holders, the broker, placement agents or sales agent, if any and the Underwriters, if any, covering such legal matters with respect to the Registration in respect of which such opinion is being given as the participating Holders, broker, placement agent, sales agent or Underwriter may reasonably request and as are customarily included in such opinions and negative assurance letters;

3.1.13 in the event of any Underwritten Offering, a Block Trade, an Other Coordinated Offering or sale by a broker, placement agent or sales agent pursuant to such Registration, enter into and perform its obligations under an underwriting or other purchase or sales agreement, in usual and customary form, with the managing Underwriter or the broker, placement agent or sales agent of such offering or sale;

3.1.14 make available to its security holders, as soon as reasonably practicable, an earnings statement covering the period of at least twelve (12) months beginning with the first day of the Company’s first full calendar quarter after the effective date of the Registration Statement which satisfies the provisions of Section 11(a) of the Securities Act and Rule 158 thereunder (or any successor rule then in effect), and which requirement will be deemed to be satisfied if the Company timely files the information required by Forms 10-Q, 10-K and 8-K under the Exchange Act and otherwise complies with Rule 158 under the Securities Act;

3.1.15 with respect to an Underwritten Offering pursuant to Section 2.1.4, use its commercially reasonable efforts to make available senior executives of the Company to participate in customary “road show” presentations that may be reasonably requested by the Underwriter in such Underwritten Offering; and

3.1.16 otherwise, in good faith, cooperate reasonably with, and take such customary actions as may reasonably be requested by the participating Holders, consistent with the terms of this Agreement, in connection with such Registration.

Notwithstanding the foregoing, the Company shall not be required to provide any documents or information to an Underwriter or broker, sales agent or placement agent if such Underwriter or broker, sales agent or placement agent has not then been named with respect to the applicable Underwritten Offering or other offering involving a registration as an Underwriter or broker, sales agent or placement agent, as applicable.

3.2 Registration Expenses. The Registration Expenses of all Registrations shall be borne by the Company. It is acknowledged by the Holders that the Holders shall bear all incremental selling expenses relating to the sale of Registrable Securities, such as Underwriters' commissions and discounts, brokerage fees, Underwriter marketing costs and, other than as set forth in the definition of "Registration Expenses," all fees and expenses of any legal counsel representing the Holders.

3.3 Requirements for Participation in Underwritten Offerings. Notwithstanding anything in this Agreement to the contrary, if any Holder does not timely provide the Company with its requested Holder Information, the Company may exclude such Holder's Registrable Securities from the applicable Registration Statement or Prospectus if the Company determines, based on the advice of counsel, that such information is necessary to effect the registration and such Holder continues thereafter to withhold such information. No person or entity party to this Agreement may participate in any Underwritten Offering or other offering for equity securities of the Company pursuant to a Registration initiated by the Company hereunder unless such person or entity (i) agrees to sell such person's or entity's securities on the basis provided in any underwriting, sales, distribution or placement arrangements approved by the Company and (ii) timely completes and executes all customary questionnaires, powers of attorney, indemnities, lock-up agreements, underwriting or other agreements and other customary documents as may be reasonably required under the terms of such underwriting, sales, distribution or placement arrangements. The exclusion of a Holder's Registrable Securities as a result of this Section 3.3 shall not affect the registration of the other Registrable Securities to be included in such Registration.

3.4 Suspension of Sales; Adverse Disclosure; Restrictions on Registration Rights.

3.4.1 Upon receipt of written notice from the Company that a Registration Statement or Prospectus contains a Misstatement, each of the Holders shall forthwith discontinue disposition of Registrable Securities until he, she or it has received copies of a supplemented or amended Prospectus correcting the Misstatement (it being understood that the Company hereby covenants to prepare and file such supplement or amendment as soon as practicable after the time of such notice), or until he, she or it is advised in writing by the Company that the use of the Prospectus may be resumed.

3.4.2 If the filing, initial effectiveness or continued use of a Registration Statement in respect of any Registration at any time would (a) require the Company to make an Adverse Disclosure or (b) require the inclusion in such Registration Statement of financial statements that are unavailable to the Company for reasons beyond the Company's control, the Company shall have the right, upon giving prompt written notice of such action to the Holders (which notice shall not specify the nature of the event giving rise to such delay or suspension), delay the filing or initial effectiveness of, or suspend use of, such Registration Statement for the shortest period of time determined in good faith by the Company to be necessary for such purpose; *provided*, *however*, that the Company may not delay or suspend the Registration Statement on more than three occasions or for more than ninety (90) consecutive calendar days, or more than ninety (90) total calendar days, in each case during any twelve-month period. In the event the Company exercises its rights under this Section 3.4.2, the Holders agree to suspend, immediately upon their receipt of the notice referred to above, their use of the Prospectus relating to any Registration in connection with any sale or offer to sell Registrable Securities until such Holder receives written notice from the Company that such sales or offers of Registrable Securities may be resumed, and in each case maintain the confidentiality of such notice and its contents.

3.4.3 During the period starting with the date sixty (60) days prior to the Company's good faith estimate of the date of the filing of, and ending on a date ninety (90) days after the effective date of, a Company-initiated Registration and provided that the Company continues to actively employ, in good faith, all commercially reasonable efforts to maintain the effectiveness of the applicable Shelf Registration Statement, or (b) if, pursuant to Section 2.1.4, Holders have requested an Underwritten Shelf Takedown and the Company and Holders are unable to obtain the commitment of underwriters to firmly underwrite such offering, the Company may, upon giving prompt written notice of such action to the Holders, delay any other registered offering pursuant to Section 2.1.4 or 2.4 for not more than ninety (90) consecutive calendar days or more than one hundred twenty (120) total calendar days in each case during any twelve (12)-month period.

3.5 Reporting Obligations. As long as any Holder shall own Registrable Securities, the Company, at all times while it shall be a reporting company under the Exchange Act, covenants to use commercially reasonable efforts to file timely (or obtain extensions in respect thereof and file within the applicable grace period) all reports required to be filed by the Company after the date hereof pursuant to Sections 13(a) or 15(d) of the Exchange Act and to promptly furnish the Holders with true and complete copies of all such filings; provided that any documents publicly filed or furnished with the Commission pursuant to the Electronic Data Gathering, Analysis and Retrieval System shall be deemed to have been furnished or delivered to the Holders pursuant to this Section 3.5. The Company further covenants that it shall take such further action as any Holder may reasonably request, all to the extent required from time to time to enable such Holder to sell Registrable Securities held by such Holder without registration under the Securities Act within the limitation of the exemptions provided by Rule 144 promulgated under the Securities Act (or any successor rule then in effect). Upon the request of any Holder, the Company shall deliver to such Holder a written certification of a duly authorized officer as to whether it has complied with such requirements.

ARTICLE IV
INDEMNIFICATION AND CONTRIBUTION

4.1 Indemnification.

4.1.1 The Company agrees to indemnify, to the extent permitted by law, each Holder of Registrable Securities, its officers, directors and agents and each person or entity who controls such Holder (within the meaning of the Securities Act), against all losses, claims, damages, liabilities and reasonable out-of-pocket expenses (including, without limitation, reasonable outside attorneys' fees) caused by, resulting from, arising out of or based upon any untrue or alleged untrue statement of material fact contained in or incorporated by reference in any Registration Statement, Prospectus or preliminary Prospectus or any amendment thereof or supplement thereto or any omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein not misleading, except insofar as the same are caused by or contained in any information or affidavit so furnished in writing to the Company by such Holder expressly for use therein. The Company shall indemnify the Underwriters, their officers and directors and each person or entity who controls such Underwriters (within the meaning of the Securities Act) to the same extent as provided in the foregoing with respect to the indemnification of the Holder, subject to customary exclusions.

4.1.2 In connection with any Registration Statement in which a Holder of Registrable Securities is participating, such Holder shall furnish (or cause to be furnished) to the Company in writing such information and affidavits as the Company reasonably requests for use in connection with any such Registration Statement or Prospectus (the "***Holder Information***") and, to the extent permitted by law, shall indemnify the Company, its directors, officers and agents and each person or entity who controls the Company (within the meaning of the Securities Act) against all losses, claims, damages, liabilities and reasonable out-of-pocket expenses (including, without limitation, reasonable outside attorneys' fees) caused by any untrue or alleged untrue statement of material fact contained in or incorporated by reference in any Registration Statement, Prospectus or preliminary Prospectus or any amendment thereof or supplement thereto or any omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein not misleading, but only to the extent that such untrue statement is contained in (or not contained in, in the case of an omission) any information or affidavit so furnished in writing by or on behalf of such Holder expressly for use therein; provided, however, that the obligation to indemnify shall be several, not joint and several, among such Holders of Registrable Securities, and the liability of each such Holder of Registrable Securities shall be in proportion to and limited to the net proceeds received by such Holder from the sale of Registrable Securities pursuant to such Registration Statement. The Holders of Registrable Securities shall indemnify the Underwriters, their officers, directors and each person or entity who controls such Underwriters (within the meaning of the Securities Act) to the same extent as provided in the foregoing with respect to indemnification of the Company.

4.1.3 Any person or entity entitled to indemnification herein shall (i) give prompt written notice to the indemnifying party of any claim with respect to which it seeks indemnification (provided that the failure to give prompt notice shall not impair any person's or entity's right to indemnification hereunder to the extent such failure has not materially prejudiced the indemnifying party) and (ii) unless in such indemnified party's reasonable judgment a conflict of interest between such indemnified and indemnifying parties may exist with respect to such claim, permit such indemnifying party to assume the defense of such claim with counsel reasonably satisfactory to the indemnified party. If such defense is assumed, the indemnifying party shall not be subject to any liability for any settlement made by the indemnified party without its consent (but such consent shall not be unreasonably withheld). An indemnifying party who is not entitled to, or elects not to, assume the defense of a claim shall not be obligated to pay the fees and expenses of more than one counsel for all parties indemnified by such indemnifying party with respect to such claim, unless in the reasonable judgment of any indemnified party a conflict of interest may exist between such indemnified party and any other of such indemnified parties with respect to such claim. No indemnifying party shall, without the consent of the indemnified party, consent to the entry of any judgment or enter into any settlement which cannot be settled in all respects by the payment of money (and such money is so paid by the indemnifying party pursuant to the terms of such settlement) or which settlement includes a statement or admission of fault and culpability on the part of such indemnified party or which settlement does not include as an unconditional term thereof the giving by the claimant or plaintiff to such indemnified party of a release from all liability in respect to such claim or litigation.

4.1.4 The indemnification provided for under this Agreement shall remain in full force and effect regardless of any investigation made by or on behalf of the indemnified party or any officer, director or controlling person or entity of such indemnified party and shall survive the transfer of securities. The Company and each Holder of Registrable Securities participating in an offering also agrees to make such provisions as are reasonably requested by any indemnified party for contribution to such party in the event the Company's or such Holder's indemnification is unavailable for any reason.

4.1.5 If the indemnification provided under Section 4.1 from the indemnifying party is unavailable or insufficient to hold harmless an indemnified party in respect of any losses, claims, damages, liabilities and out-of-pocket expenses referred to herein, then the indemnifying party, in lieu of indemnifying the indemnified party, shall contribute to the amount paid or payable by the indemnified party as a result of such losses, claims, damages, liabilities and out-of-pocket expenses in such proportion as is appropriate to reflect the relative fault of the indemnifying party and the indemnified party, as well as any other relevant equitable considerations. The relative fault of the indemnifying party and indemnified party shall be determined by reference to, among other things, whether any action in question, including any untrue or alleged untrue statement of a material fact or omission or alleged omission to state a material fact, was made by (or not made by, in the case of an omission), or relates to information supplied by (or not supplied by in the case of an omission), such indemnifying party or indemnified party, and the indemnifying party's and indemnified party's relative intent, knowledge, access to information and opportunity to correct or prevent such action; provided, however, that the liability of any Holder under this Section 4.1.5 shall be limited to the amount of the net proceeds received by such Holder in such offering giving rise to such liability. The amount paid or payable by a party as a result of the losses or other liabilities referred to above shall be deemed to include, subject to the limitations set forth in Sections 4.1.1, 4.1.2 and 4.1.3 above, any legal or other fees, charges or out-of-pocket expenses reasonably incurred by such party in connection with any investigation or proceeding. The parties hereto agree that it would not be just and equitable if contribution pursuant to this Section 4.1.5 were determined by pro rata allocation or by any other method of allocation, which does not take account of the equitable considerations referred to in this Section 4.1.5. No person or entity guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution pursuant to this Section 4.1.5 from any person or entity who was not guilty of such fraudulent misrepresentation.

ARTICLE V
MISCELLANEOUS

5.1 Notices. Any notice or communication under this Agreement must be in writing and given by (i) deposit in the United States mail, addressed to the party to be notified, postage prepaid and registered or certified with return receipt requested, (ii) delivery in person or by courier service providing evidence of delivery, or (iii) transmission by hand delivery, electronic mail or facsimile. Each notice or communication that is mailed, delivered, or transmitted in the manner described above shall be deemed sufficiently given, served, sent, and received, in the case of mailed notices, on the third business day following the date on which it is mailed and, in the case of notices delivered by courier service, hand delivery, electronic mail or facsimile, at such time as it is delivered to the addressee (with the delivery receipt of the intended recipient or the affidavit of messenger) or at such time as delivery is refused by the addressee upon presentation. Any notice or communication under this Agreement must be addressed, if to the Company, to: 424 Townsend Street, San Francisco, CA 94107, Attention: Sid Venkatesan, Email: sid@embarktrucks.com, and, if to any Holder, at such Holder's address, electronic mail address or facsimile number as set forth in the Company's books and records. Any party may change its address for notice at any time and from time to time by written notice to the other parties hereto, and such change of address shall become effective ten (10) days after delivery of such notice as provided in this Section 5.1.

5.2 Assignment; No Third Party Beneficiaries.

5.2.1 This Agreement and the rights, duties and obligations of the Company hereunder may not be assigned or delegated by the Company in whole or in part.

5.2.2 Subject to Section 5.2.4 and Section 5.2.5, this Agreement and the rights, duties and obligations of a Holder hereunder may be assigned in whole or in part to such Holder's Permitted Transferees; provided, that, with respect to the Embark Holders and the Founders, the rights hereunder that are personal to such Holders may not be assigned or delegated in whole or in part, except that (x) each of the Embark Holders (other than the Founders) shall be permitted to transfer its rights hereunder as the Embark Holders to one or more affiliates or any direct or indirect partners, members or equity holders of such Embark Holder (it being understood that no such transfer shall reduce any rights of such Embark Holder or such transferees) and (y) each Founder may transfer, in his sole discretion, all or any portion of his rights under this Agreement to any Permitted Transferee of such Founder.

5.2.3 This Agreement and the provisions hereof shall be binding upon and shall inure to the benefit of each of the parties and its successors and the permitted assigns of the Holders, which shall include Permitted Transferees.

5.2.4 This Agreement shall not confer any rights or benefits on any persons or entities that are not parties hereto, other than as expressly set forth in this Agreement and Section 5.2.

5.2.5 No assignment by any party hereto of such party's rights, duties and obligations hereunder shall be binding upon or obligate the Company unless and until the Company shall have received (i) written notice of such assignment as provided in Section 5.1 hereof and (ii) the written agreement of the assignee, in a form reasonably satisfactory to the Company, to be bound by the terms and provisions of this Agreement (which may be accomplished by an addendum or certificate of joinder to this Agreement). Any transfer or assignment made other than as provided in this Section 5.2 shall be null and void.

5.3 Counterparts. This Agreement may be executed in multiple counterparts (including facsimile or PDF counterparts), each of which shall be deemed an original, and all of which together shall constitute the same instrument, but only one of which need be produced.

5.4 Governing Law; Venue. NOTWITHSTANDING THE PLACE WHERE THIS AGREEMENT MAY BE EXECUTED BY ANY OF THE PARTIES HERETO, THE PARTIES EXPRESSLY AGREE THAT (1) THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED UNDER THE LAWS OF THE STATE OF NEW YORK AND (2) THE VENUE FOR ANY ACTION TAKEN WITH RESPECT TO THIS AGREEMENT SHALL BE EXCLUSIVELY IN THE SUPREME COURT OF THE STATE OF NEW YORK, NEW YORK COUNTY, AND ANY STATE APPELLATE COURT THEREFROM WITHIN THE STATE OF NEW YORK, NEW YORK COUNTY, OR IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK.

5.5 **TRIAL BY JURY. EACH PARTY HERETO ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND, THEREFORE, EACH SUCH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT SUCH PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT TO ANY ACTION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT.**

5.6 Amendments and Modifications. Upon the written consent of (a) the Company and (b) the Holders of at least a majority on the basis of voting power of the then outstanding Registrable Securities (including warrants on an as-exercised basis), compliance with any of the provisions, covenants and conditions set forth in this Agreement may be waived, or any of such provisions, covenants or conditions may be amended or modified; provided, however, that notwithstanding the foregoing, any amendment hereto or waiver hereof shall also require the written consent of the Sponsor so long as the Sponsor and its affiliates hold, in the aggregate, at least fifty percent (50%) of the outstanding shares of Common Stock of the Company owned by the Sponsor and its affiliates as of the Closing; provided, further, that notwithstanding the foregoing, any amendment hereto or waiver hereof shall also require the written consent of each Embark Holder, so long as such Embark Holder and its affiliates hold, in the aggregate, at least five percent (5%) of the outstanding shares of Common Stock of the Company owned by such Holder and its affiliates as of the Closing; and provided, further, that any amendment or supplement hereto or waiver hereof that affects any Holder, solely in its capacity as a holder of securities of the Company, in a manner that is adverse as compared to and materially different from other Holders (in such capacity) shall require the consent of the Holder(s) so adversely affected. No course of dealing between any Holder or the Company and any other party hereto or any failure or delay on the part of a Holder or the Company in exercising any rights or remedies under this Agreement shall operate as a waiver of any rights or remedies of any Holder or the Company. No single or partial exercise of any rights or remedies under this Agreement by a party shall operate as a waiver or preclude the exercise of any other rights or remedies hereunder or thereunder by such party.

5.7 Other Registration Rights. Other than (i) the Third Party Investor Stockholders who have registration rights with respect to their Investor Securities (and shares of common stock issuable upon exercise of the warrants constituting Investor Securities) pursuant to their respective Subscription Agreements and (ii) as provided in the Warrant Agreement, dated as of January 12, 2021, between the Company and Continental Stock Transfer & Trust Company, the Company represents and warrants that no person or entity, other than a Holder of Registrable Securities, has any right to require the Company to register any securities of the Company for sale or to include such securities of the Company in any Registration Statement filed by the Company for the sale of securities for its own account or for the account of any other person or entity. For so long as any Holder, together with its affiliates, holds, in the aggregate, at least five percent (5%) of the outstanding shares of Common Stock of the Company, the Company hereby agrees and covenants that it will not grant rights to register any Common Stock (or securities convertible into or exchangeable for Common Stock) pursuant to the Securities Act that are more favorable, pari passu or senior to those granted to the Holders hereunder, without the prior written consent of such Holder (such rights "***Competing Registration Rights***"). Further, the Company represents and warrants that, except as provided in the first sentence of this Section 5.7, this Agreement supersedes any other registration rights agreement or agreement with similar terms and conditions, and in the event of a conflict between any such agreement or agreements and this Agreement, the terms of this Agreement shall prevail.

5.8 Term. This Agreement shall terminate on the earlier of (a) the fifth anniversary of the date of this Agreement or (b) with respect to any Holder, on the date that such Holder no longer holds any Registrable Securities. The provisions of Section 3.5 and Article IV shall survive any termination.

5.9 Holder Information. Each Holder agrees, if requested in writing, to represent to the Company the total number of Registrable Securities held by such Holder in order for the Company to make determinations hereunder.

5.10 Additional Holders; Joinder. In addition to persons or entities who may become Holders pursuant to Section 5.2 hereof, subject to the prior written consent of each Holder that, together with its affiliates, then holds, in the aggregate, at least five percent (5%) of the outstanding shares of Common Stock of the Company, the Company may make any person or entity who acquires Common Stock or rights to acquire Common Stock after the date hereof a party to this Agreement (each such person or entity, an "***Additional Holder***") by obtaining an executed joinder to this Agreement from such Additional Holder in the form of Exhibit A attached hereto (a "***Joinder***"). Such Joinder shall specify the rights and obligations of the applicable Additional Holder under this Agreement; provided that any rights granted to any such Additional Holder to demand Underwritten Shelf Takedowns shall be separate from and in addition to the rights of the Sponsor Holders and Embark Holders under Section 2.1.4. Upon the execution and delivery and subject to the terms of a Joinder by such Additional Holder, the Common Stock of the Company then owned, or underlying any rights then owned, by such Additional Holder (the "***Additional Holder Common Stock***") shall be Registrable Securities to the extent provided herein and therein and such Additional Holder shall be a Holder under this Agreement with respect to such Additional Holder Common Stock.

5.11 Severability. It is the desire and intent of the parties that the provisions of this Agreement be enforced to the fullest extent permissible under the laws and public policies applied in each jurisdiction in which enforcement is sought. Accordingly, if any particular provision of this Agreement shall be adjudicated by a court of competent jurisdiction to be invalid, prohibited or unenforceable for any reason, such provision, as to such jurisdiction, shall be ineffective, without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction. Notwithstanding the foregoing, if such provision could be more narrowly drawn so as not to be invalid, prohibited or unenforceable in such jurisdiction, it shall, as to such jurisdiction, be so narrowly drawn, without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

5.12 Removal of NG Capital. NG Capital hereby acknowledges and agrees that (a) NG Capital was a party to the Original RRA solely as a representative of certain Persons who had the right to subsequently elect to purchase certain shares of Common Stock and warrants to purchase shares of Common Stock, pursuant to (and by execution of a joinder to) that certain Amended and Restated Forward Purchase Agreement between the Company and NG Capital, dated as of April 21, 2021; (b) each of the Persons that made such an election has on the date hereof, as a Third Party Investor Stockholder, directly purchased such shares of Common Stock and warrants, as Investor Securities, pursuant to such Forward Purchase Agreement and has been directly granted registration rights pursuant hereto with respect to its Investor Securities (and shares of Common Stock issuable upon exercise of the warrants constituting Investor Securities); (c) NG Capital hereby consents to the amendment and restatement of the Original RRA effectuated by this Agreement; and (d) NG Capital and the Company hereby agree agrees that, except for this Section 5.12 (which, notwithstanding any other provision of this Agreement, is for the express benefit of the Company and NG Capital and cannot be amended without the prior written consent of each), NG Capital shall not be deemed to be a party to this Agreement and shall have no rights or obligations under the Original RRA or this Agreement.

5.13 Entire Agreement; Restatement. This Agreement constitutes the full and entire agreement and understanding between the parties with respect to the subject matter hereof and supersedes all prior agreements and understandings relating to such subject matter, including the Original RRA, which hereafter shall no longer be of any force or effect.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed as of the date first written above.

COMPANY:

EMBARK TECHNOLOGY, INC.

By: /s/Alex Rodrigues
Name: Alex Rodrigues
Title: Chief Executive Officer

[*Signature Page to Registration Rights Agreement*]

HOLDERS:

NORTHERN GENESIS SPONSOR II LLC

By: /s/ Ian Robertson
Name: Ian Robertson
Title: Managing Member

NG CAPITAL:

NORTHERN GENESIS CAPITAL II LLC

By: Northern Genesis Holdings, Inc.,
its Managing Member

By: /s/Ian Robertson
Name: Ian Robertson
Title: President

[*Signature Page to Registration Rights Agreement*]

ALEX RODRIGUES LIVING TRUST

By: /s/ Alex Rodrigues
Name: Alex Rodrigues
Title: Trustee

By: /s/ Alex Rodrigues
Name: Alex Rodrigues

[*Signature Page to Registration Rights Agreement*]

BRANDON MOAK LIVING TRUST

By: /s/ Brandon Moak
Name: Brandon Moak
Title: Trustee

By: /s/ Brandon Moak
Name: Brandon Moak

[*Signature Page to Registration Rights Agreement*]

DATA COLLECTIVE IV, L.P.

By: Data Collective IV GP, LLC
Its: General Partner

By: /s/Matthew Ocko
Name: Matthew Ocko
Title: Managing Member of the Managing Member

[*Signature Page to Registration Rights Agreement*]

SEQUOIA CAPITAL U.S. VENTURE FUND XV, L.P.,
SEQUOIA CAPITAL U.S. VENTURE XV PRINCIPALS FUND, L.P.,
SEQUOIA CAPITAL U.S. VENTURE PARTNERS FUND XV, L.P.,
SEQUOIA CAPITAL U.S. VENTURE PARTNERS FUND VX (Q), L.P.,
all Cayman Islands exempted limited partnerships

By: SC U.S. VENTURE XV MANAGEMENT, L.P.,
a Cayman Islands exempted limited partnership, General Partner of Each

By: SC US (TTGP), LTD.,
a Cayman Islands exempted company, its General Partner

By: /s/Pat Grady
Name: Pat Grady
Title: Authorized Signatory

SEQUOIA CAPITAL U.S. GROWTH FUND VII, L.P.
SEQUOIA CAPITAL U.S. GROWTH VII PRINCIPALS FUND, L.P.
Each a Cayman Islands exempted limited partnership

By: SC U.S. GROWTH VII MANAGEMENT, L.P.,
A Cayman Islands exempted company, its General Partner

By: SC US (TTGP), LTD.,
a Cayman Islands exempted company, its General Partner

By: /s/Pat Grady
Name: Pat Grady
Title: Authorized Signatory

SEQUOIA GROVE II, LLC

By: Sequoia Grove Manager, LLC
Its: Manager (Non-Member)

By: /s/Pat Grady
Name: Pat Grady
Title: Authorized Signatory

SEQUOIA GROVE UK, L.P.

By: Sequoia Grove Manager, LLC
Its: General Partner

By: /s/Pat Grady
Name: Pat Grady
Title: Authorized Signatory

[*Signature Page to Registration Rights Agreement*]

TIGER GLOBAL PRIVATE
INVESTMENT PARTNERS XI, L.P.

By: /s/Steven Boyd
Name: Steven Boyd
Title: General Counsel

[*Signature Page to Registration Rights Agreement*]

Y COMBINATOR INVESTMENTS, LLC SERIES W16

By: Y COMBINATOR MANAGEMENT, LLC
Its: Managing Member

By: /s/Jonathan Levy
Name: Jonathan Levy
Title: Authorized Signatory

Y COMBINATOR CONTINUITY HOLDINGS I, LLC

By: /s/Jonathan Levy
Name: Jonathan Levy
Title: Authorized Signatory

YC HOLDINGS II, LLC

By: /s/Jonathan Levy
Name: Jonathan Levy
Title: Authorized Signatory

YCVC FUND I, L.P.

By: YCVC Fund GP, LLC
Its: Managing Member

By: /s/Jonathan Levy
Name: Jonathan Levy
Title: Authorized Signatory

Exhibit A

REGISTRATION RIGHTS AGREEMENT JOINDER

The undersigned is executing and delivering this joinder (this "***Joinder***") pursuant to the Amended and Restated Registration Rights Agreement, dated as of [•], 2021 (as the same may hereafter be amended, the "***Registration Rights Agreement***"), among [_____], a Delaware corporation (the "***Company***"), and the other persons or entities named as parties therein. Capitalized terms used but not otherwise defined herein shall have the meanings provided in the Registration Rights Agreement.

By executing and delivering this Joinder to the Company, and upon acceptance hereof by the Company upon the execution of a counterpart hereof, the undersigned hereby agrees to become a party to, to be bound by, and to comply with the Registration Rights Agreement as a Holder of Registrable Securities in the same manner as if the undersigned were an original signatory to the Registration Rights Agreement, and the undersigned's shares of Common Stock shall be included as Registrable Securities under the Registration Rights Agreement to the extent provided therein; provided, however, that the undersigned and its permitted assigns (if any) shall not have any rights as Holders, and the undersigned's (and its transferees') shares of Common Stock shall not be included as Registrable Securities, for purposes of the Excluded Sections.

For purposes of this Joinder, "***Excluded Sections***" shall mean [ ].

Accordingly, the undersigned has executed and delivered this Joinder as of the _____ day of _____, 20__.

_____
Signature of Stockholder

_____
Print Name of Stockholder
Its:

Address:

_____

_____

Agreed and Accepted as of
_____, 20__
[_____]

By: _____
Name:
Its:

Exhibit 10.21

Execution Version

PROXY VOTING AGREEMENT

This PROXY VOTING AGREEMENT (this "Agreement") is entered into as of November 10, 2021 by and among Brandon Moak (collectively with his Permitted Transferee (as defined in the Charter (as defined below) listed on the signature page attached hereto), the "Stockholder"), Alex Rodrigues (the "Proxyholder") and, solely for purposes of Sections 1.4, 2.3, 2.7, 4.1 and 4.2 and Article V of this Agreement, Embark Trucks Inc., a Delaware corporation (the "Company"). The Permitted Transferees listed on the signature page attached hereto have also executed this Agreement and acknowledge and agree to the terms set forth herein.

IN CONSIDERATION OF $100.00 in cash from the Proxyholder to the Stockholder and the mutual promises, representations, warranties, covenants and agreements contained herein, the parties hereto, intending to be legally bound, hereby agree as follows:

ARTICLE I
VOTING

Section 1.1 Voting Arrangements. Stockholder hereby agrees that Proxyholder shall vote all shares of Class B Common Stock (as defined in the Charter) of the Company, which Stockholder now holds, directly or indirectly, or hereafter acquires or as to which Stockholder otherwise exercises voting or dispositive authority (together, all such shares referred to in this sentence, the "Shares"), in Proxyholder's sole discretion, on all matters submitted to a vote of stockholders of the Company at an annual or special meeting of stockholders or through the solicitation of a written consent of stockholders (whether of any individual class of stock or of multiple classes of stock voting together) other than with respect to the following matters (together, the "Excepted Matters"): (a) any amendment, restatement, alteration, repeal or waiver of any provision of the Company's Second Amended and Restated Certificate of Incorporation, as such may be amended from time to time (the "Charter") or the Bylaws of the Company, as such may be amended from time to time (the "Bylaws"), if such action would disproportionately and adversely impact Stockholder, as compared to other holders of the same class(es) of capital stock of the Company and (b) any other matter the outcome of the vote on which would disproportionately and adversely impact Stockholder, as compared to other holders of the same class(es) of capital stock of the Company. With respect to the Excepted Matters, Stockholder shall have the right to (x) instruct Proxyholder in writing as to the manner in which the Shares shall be voted or (y) vote the Shares in person or by action by written consent, as applicable, in which case Stockholder shall notify Proxyholder in writing that Stockholder intends to so vote. In addition, Proxyholder shall not have any right to waive notice by the Company to Stockholder. Such instruction or notice shall be provided to Proxyholder at least five (5) days prior to the date of any meeting of stockholders at which such matter is to be voted upon or as promptly as reasonably practicable upon Stockholder becoming aware that such matter is to be acted upon by written consent. In the event that Stockholder does not so instruct Proxyholder or notify Proxyholder of Stockholder's intention to so vote or act by written consent, Proxyholder shall abstain from voting the Shares in respect of such Excepted Matters. Except as expressly set forth in this Agreement, Stockholder shall retain all rights as a stockholder of the Company under the General Corporation Law of the State of Delaware, including, without limitation, with respect to any appraisal rights (to the extent applicable and not otherwise waived or subsumed by a matter over which Proxyholder is otherwise entitled to exercise pursuant to this Agreement).

Section 1.2 Grant of Irrevocable Proxy. To secure the Stockholder's obligations under this Agreement and to secure Proxyholder's right to vote the Stockholder's Shares in accordance with this Agreement, the Stockholder hereby appoints Proxyholder as its proxy, with full power of substitution and re-substitution, until the termination of this Agreement in accordance with Section 4.1 hereof, as the Stockholder's true and lawful attorney-in-fact, for and in the Stockholder's name, place and stead, solely to vote Stockholder's Shares at any annual, special or other meeting of the stockholders of the Company called to vote, and at any adjournment or postponement thereof, and in connection with any action of the stockholders of the Company taken by written consent. Proxyholder shall, promptly upon any exercise of the proxy granted hereby, provide Stockholder with copies of all documents related to or executed in connection with such exercise by Proxyholder. The proxy and power granted by the Stockholder pursuant to this Section 1.2 are coupled with an interest and are given to secure the performance of such party's duties under this Agreement. The proxy and power will be irrevocable for the term hereof.

Section 1.3 Illustrative Examples. Except to the extent constituting an Excepted Matter, the matters on which Proxyholder shall be entitled to vote or act pursuant to Section 1.1 include, but are not limited to, the following, which are presented here solely by way of example:

(a) Election, replacement or removal of members of the Board of Directors of the Company;

(b) Amendments to the Charter or Bylaws;

(c) Mergers involving the Company or any sale or other disposition of all or substantially all of the Company's assets; *provided*, that any distribution to the Company stockholders of the proceeds of such sale or disposition are made in accordance with the Charter;

(d) Acquisitions by the Company or its subsidiaries; and

(e) Adoption by the Company of a rights plan or similar takeover defensive arrangements, or amendments thereof

Section 1.4 Reciprocal Voting Rights.

(a) Notwithstanding anything in this Agreement to the contrary, to the extent that Stockholder holds a number of Shares representing a greater percentage of voting power in the Company than Proxyholder (including, for the purposes of this Section 1.4, any of Proxyholder's Permitted Transferees) at any time while this Agreement is in effect, then, until such time that Stockholder no longer holds a number Shares representing a greater percentage of voting power in the Company than Proxyholder (such period, the "Reciprocal Voting Rights Period"), Proxyholder acknowledges and agrees that: (a) Proxyholder shall cease having any voting rights with respect to Stockholder's Shares, including, without limitation, any proxy power pursuant to Section 1.2, (b) Stockholder shall have all the same voting rights and privileges with respect to Proxyholder's Shares that Proxyholder holds in connection with Stockholder's Shares pursuant to this Agreement (such rights of Stockholder, the "Reciprocal Voting Rights") and (c) Proxyholder shall be deemed to have made any acknowledgement or agreement required to be made Stockholder pursuant to this Agreement, which shall be deemed made on the triggering of the Reciprocal Voting Rights. Furthermore, during any Reciprocal Voting Rights Period, this Agreement shall be interpreted in such a way to give effect to the Reciprocal Voting Rights, including, without limitation, that all references to "Stockholder" shall refer to Alex Rodrigues (and any Permitted Transferee of Alex Rodrigues) and all references to "Proxyholder" shall refer to Brandon Moak.

(b) The Company may be notified (by delivery to the secretary of the Company) by either the Proxyholder or the Stockholder of Reciprocal Voting Rights becoming effective, provided that the notifying party deliver simultaneously to the non-notifying party the notice delivered to the Company in accordance with Section 5.3. The Company shall be entitled to rely upon such notice if the non-notifying party does not provide a written objection to both the Company and the notifying party within seven (7) days of receipt by the Company and non-notifying party stating that it does not believe the Reciprocal Voting Rights are then in effect. During such seven (7) day period, the Reciprocal Voting Rights shall not apply. If such an objection is provided, then the Reciprocal Voting Rights shall only be recognized by the Company upon (x) written notice executed by both the Stockholder and Proxyholder (or their estates or duly appointed representative in the event of such parties death) and delivered to the secretary of the Company or (y) a final judicial determination that such provision is then in effect. For the avoidance of doubt, the Company shall be entitled to rely on this Agreement as currently contemplated until such time as it is notified pursuant to this Section 1.4(b) that the Reciprocal Voting Rights are then in effect.

(c) Upon the effectiveness of the Reciprocal Voting Rights, Proxyholder specifically acknowledges and agrees that the provisions of Section 1.2 shall apply to the Proxyholder at such time.

ARTICLE II
ADDITIONAL AGREEMENTS

Section 2.1 Stock Splits, Dividends, Etc. In the event of any issuance of shares of the Company's voting securities hereafter to Stockholder (including, without limitation, in connection with any stock split, stock dividend, recapitalization, reorganization, or the like), in relation to its Shares, such additional shares shall automatically become subject to this Agreement.

Section 2.2 Specific Enforcement. It is agreed and understood that monetary damages would not adequately compensate an injured party for the breach of this Agreement by any party, that this Agreement shall be specifically enforceable, and that any breach or threatened breach of this Agreement shall be the proper subject of a temporary or permanent injunction or restraining order. Further, each party hereto waives any claim or defense that there is an adequate remedy at law for such breach or threatened breach.

Section 2.3 Securities Rules & Regulations. The Stockholder and Proxyholder agree and understand that the Stockholder and/or Proxyholder may become subject to the registration and/or reporting requirements, rules and regulations of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), the Securities Act of 1933, as amended, and/or any state and federal securities laws or regulations with respect to the Shares (collectively, the "Securities Laws"). The Stockholder and Proxyholder agree to use their respective commercially reasonable best efforts to comply with the Securities Laws and to reasonably assist each other in complying with the Securities Laws in a timely and prompt manner. Such compliance may include, by way of example and without limiting the foregoing, Section 16 filings and the filing, updating and maintaining of Schedule 13G and/or Schedule 13D filings, in each case, under the Exchange Act. The Company acknowledges and agrees to (a) assist in making Section 16 filings for the Stockholder and the Proxyholder in the same manner as it provides for the Company's other Section 16 filers and (b) reasonably provide any additional information requested by the Stockholder and the Proxyholder to otherwise comply with the Securities Laws.

Section 2.4 Proxyholder Liability. The Proxyholder shall not be liable for any error of judgment nor for any act done or omitted, nor for any mistake of fact or law nor for anything which the Proxyholder may do or refrain from doing in good faith, nor shall the Proxyholder have any accountability hereunder, except for his own bad faith, gross negligence or willful misconduct. Furthermore, upon any judicial or other inquiry or investigation of or concerning the Proxyholder's acts pursuant to his rights and powers as Proxyholder, such acts shall be deemed reasonable and in the best interests of the Stockholders unless proved to the contrary by clear and convincing evidence.

Section 2.5 Consideration. In connection with this Agreement and as partial consideration for the obligations of Stockholder hereunder, Proxyholder shall pay (by check, cash or other valid consideration) to Stockholder the sum of $100.00.

Section 2.6 Not In Connection With Employment. Stockholder and the Proxyholder agree, acknowledge and reiterate that: (a) this Agreement is not being entered into as a condition of or in connection with Stockholder's employment or consulting relationship with the Company; (b) this Agreement is being entered into at the request of the Proxyholder in his individual capacity as a stockholder of the Company, and is not being entered into at the request of the Company or the Company's Chief Executive Officer or any member of its Board of Directors; and (c) Stockholder is entering into this Agreement with the express understanding that Stockholder is not being required to enter into this Agreement and that, if Stockholder had declined to enter into this Agreement, Stockholder would not suffer any negative employment or consulting relationship consequences.

Section 2.7 Legends. The Company shall cause each certificate or book entry representing the Shares held by the Stockholder and the Proxyholder, and their respective Permitted Transferees listed on the signature page attached hereto, or any permitted assignee of the Stockholder or Proxyholder to bear the following legend or notation:

"THE SHARES EVIDENCED HEREBY ARE SUBJECT TO A VOTING AGREEMENT BY AND BETWEEN CERTAIN STOCKHOLDERS OF THE COMPANY (A COPY OF WHICH MAY BE OBTAINED FROM THE COMPANY) WHICH INCLUDES PROVISIONS POTENTIALLY RESTRICTING THE STOCKHOLDER'S RIGHT TO VOTE OR TRANSFER HIS OR ITS ENTIRE INTEREST IN THE SHARES EVIDENCED HEREBY, AND BY ACCEPTING ANY INTEREST IN SUCH SHARES THE PERSON ACCEPTING SUCH INTEREST SHALL BE DEEMED TO AGREE TO AND SHALL BECOME BOUND BY ALL THE PROVISIONS OF SAID VOTING AGREEMENT."

ARTICLE III
TRANSFER OF SHARES

Section 3.1 Transfer. "Transfer" shall have the meaning set forth in the Charter, but shall apply to all Shares and not only Class B Common Stock (as defined in the Charter).

Section 3.2 Transfer Requirements. In the event of any Transfer by the Stockholder, (a) the Stockholder shall inform the Company and the Proxyholder of such Transfer and (b) in the case of a Permitted Transfer (as defined in the Charter) of Class B Common Stock in accordance with the terms of the Charter, the transferee shall furnish the Proxyholder and the Company with a written agreement to be bound by the provisions of this Agreement. Such Permitted Transfer shall not be valid unless and until the Company and the Proxyholder receive such written agreement. In the event of any Transfer by the Stockholder, the Stockholder shall inform the Company and the Proxyholder of such Transfer no less than two (2) business days prior to such Transfer. In the case of a Permitted Transfer, the transferee shall be treated as a "Stockholder" for purposes of this Agreement. In no event shall a transferee be required to sign a joinder or other written agreement other than in connection with a Permitted Transfer. For avoidance of doubt, the Company shall not permit the transfer of any of the Shares to a Permitted Transferred on its books or issue new certificates representing any such Shares unless and until the transferee to whom such Shares are to be transferred shall have executed the written agreement referred to in this Article III.

Section 3.3 Transfer of Voting Rights. Stockholder shall not deposit (or permit the deposit of) any of its Shares in a voting trust or grant any proxy or enter into any voting agreement or similar agreement in contravention of the obligations of Stockholder under this Agreement.

ARTICLE IV
TERMINATION

Section 4.1 Termination.

(a) This Agreement shall terminate in its entirety, and neither the Proxyholder nor the Stockholder shall have any further rights or obligations hereunder, upon the earliest to occur of (i) the consummation of a Change of Control Transaction (as defined in the Charter), (ii) the express written consent of the Proxyholder, (iii) the Sunset Date (as defined in the Charter) with regard to the Proxyholder (but excluding as a result of Proxyholder's death or Disability (as defined below) or termination of Proxyholder's employment with the Company for any reason, including as a result of death or Disability), (iv) the death or Disability of Proxyholder, (v) Proxyholder's breach of this Agreement, including, without limitation, any attempt by Proxyholder to vote on an Excepted Matter, (vi) the date that is nine months following the last date on which the Proxyholder provided services to the Company (or any of its subsidiaries) following the termination of Proxyholder's employment with the Company for any reason, other than as a result of Proxyholder's death or Disability, and (vii) the date that is nine months following the last date on which Stockholder provided services to the Company (or any of its subsidiaries) following the termination of Stockholder's employment by the Company without "cause" or the resignation by Stockholder for "good reason" (as such terms are defined in Stockholder's employment agreement with the Company). For clarity, Article I shall continue to be applicable to any Shares that have been the subject of a Permitted Transfer until this Agreement terminates in accordance with this Section 4.1. For purposes of this Agreement, "Disability" shall mean the permanent and total disability of Proxyholder such that Proxyholder is unable to engage in any substantial gainful activity (including, without limitation, performing Proxyholder's duties to the Company or obligations under this Agreement) by reason of any medically determinable physical or mental impairment which would reasonably be expected to result in death within twelve (12) months or which has lasted or would reasonably be expected to last for a continuous period of not less than three (3) months as determined by a licensed medical practitioner; *provided*, *however*, that Proxyholder shall be deemed Disabled immediately upon Proxyholder been adjudicated by a court of competent jurisdiction to be incompetent to manage Proxyholder's own affairs.

(b) The Company may be notified (by delivery to the secretary of the Company) of the termination of this Agreement by either the Proxyholder or the Stockholder, provided that the notifying party deliver simultaneously to the non-notifying party the notice delivered to the Company in accordance with Section 5.3. The Company shall be entitled to rely upon such notice if the non-notifying party does not provide a written objection to both the Company and the notifying party within seven (7) days of receipt by the Company and non-notifying party stating that it does not believe this Agreement has been terminated. During such seven (7) day period, the Company shall not deem the Agreement to be terminated. If such an objection is provided, then the termination of this Agreement shall only be recognized by the Company upon (x) written notice executed by both the Stockholder and Proxyholder (or their estates or duly appointed representative in the event of such parties death) and delivered to the secretary of the Company or (y) a final judicial determination that such provision is then in effect. For the avoidance of doubt, the Company shall be entitled to rely on this Agreement as currently contemplated until such time as it is notified pursuant to this Section 4.1(b) that the Agreement has been terminated.

Section 4.2 Removal of Legend. Upon the earlier of (a) the termination of this Agreement in accordance with Section 4.1 and (b) a Transfer (other than a Permitted Transfer) or other sale or disposition of any of the Shares in accordance with this Agreement, the legend or notation set forth in Section 2.7 shall be removed and the Company shall or shall cause its transfer agent to issue a stock certificate (either in physical certificated form or by electronic delivery at the applicable balance account at the Depository Trust Company) free from the legend or notation required by Section 2.7, to the holder of the Shares subject to such legend (or notation), promptly, but in any event no later than three (3) business days following the delivery by such holder to the Company and its transfer agent of reasonable assurances and evidence that such Transfer or other sale or disposition of such Shares is in accordance with this Agreement. Upon the delivery of such reasonable assurances and evidence to the Company, the Company shall provide its transfer agent with such documentation as required by the transfer agent for it to effect the removal of such legend or notation and the issuance of such Shares. The Company agrees to cooperate with the parties hereto, and with its transfer agent, in order to facilitate the orderly and efficient removal of the legend or notation upon a Transfer of Shares in compliance with this Agreement.

Section 4.3 Termination upon Transfer of Shares Other than a Permitted Transfer. This Agreement shall cease to apply to any Shares that are Transferred (other than a Permitted Transfer) by Stockholder.

ARTICLE V
MISCELLANEOUS

Section 5.1 No Ownership Interest. Except as provided for in this Agreement, nothing contained in this Agreement shall be deemed to vest in any party other than Stockholder any direct or indirect ownership or incidence of ownership of or with respect to any of the Shares held by Stockholder and all rights, ownership and economic benefits of and relating to such Shares shall remain vested in and belong to Stockholder.

Section 5.2 Expenses. Following the effectiveness of this Agreement, the Company shall be responsible for all costs, fees and other expenses in connection with the Stockholder's and the Proxyholder's Section 13 and Section 16 filings contemplated in Section 2.3, but the Proxyholder and the Stockholder shall otherwise bear their own expenses for any matters related to this Agreement; provided, however, that each of Stockholder's and Proxyholder's right to reimbursement from the Company for costs, fees and other expenses associated with their respective Section 13 filings shall not exceed $25,000 in any calendar year.

Section 5.3 Notices. All notices and other communications given or made pursuant hereto shall be in writing and shall be deemed effectively given upon the earlier to occur of actual receipt or: (a) upon personal delivery to the party to be notified, (b) when sent by confirmed electronic mail or facsimile if sent during normal business hours of the recipient; or if not, then on the next business day, (c) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (d) one (1) day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. All communications shall be sent to the parties at the addresses set forth on the signature page attached hereto (or at such other addresses as shall be specified by notice given in accordance with this Section 5.3).

Section 5.4 Interpretation. The words "hereof," "herein" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement, and Section references are to this Agreement unless otherwise specified. Whenever the words "include," "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation." No provision of this Agreement shall be construed to require Stockholder or Proxyholder or any of their respective subsidiaries or affiliates to take any action that would violate any applicable law.

Section 5.5 Severability. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any applicable law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party.

Section 5.6 Amendments and Waivers. Any term hereof may be amended and the observance of any term hereof may be waived (either generally or in a particular instance and either retroactively or prospectively) only with the prior written consent of (a) the Stockholder and (b) the Proxyholder. Any amendment or waiver so effected shall be binding upon all the parties hereto; *provided*, *further*, that any amendment to Sections 2.3, 2.7 and 4.2 and Article V shall require the consent of the Company.

Section 5.7 Entire Agreement. This Agreement, together with the other documents and instruments referred to herein or attached thereto, constitute the entire agreement of the parties and supersedes all prior agreements and undertakings, both written and oral, between the parties, or any of them, with respect to the voting of the Shares.

Section 5.8 Parties in Interest; Assignability. This Agreement shall be binding upon and inure solely to the benefit of each party hereto and their respective successors and assigns, and nothing in this Agreement, express or implied, is intended to or shall confer upon any other person any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement. This Agreement shall not be assignable by any party hereto without the express written consent of the other parties hereto, and any attempt to make any such assignment without such consent shall be null and void *ab initio*.

Section 5.9 Governing Law; Jurisdiction; Venue. This Agreement and the transactions contemplated hereby, and all disputes between the parties under or related to the Agreement or the facts and circumstances leading to its execution, whether in contract, tort or otherwise, shall be governed by and construed in accordance with the laws of the State of Delaware, without regard to the application of Delaware principles of conflicts of laws. In addition, each of the parties hereto (a) consents to submit itself to the exclusive jurisdiction of the Court of Chancery or other courts of the State of Delaware in the event any dispute arises out of this Agreement or any of the transactions contemplated by this Agreement, (b) agrees that it will not attempt to deny or defeat such jurisdiction by motion or other request for leave from such court, (c) agrees that it will not bring any action relating to this Agreement or any of the transactions contemplated by this Agreement in any court other than the Court of Chancery or other courts of the State of Delaware, and (d) waives, and agrees not to assert, by way of motion, as a defense, or otherwise, in any such suit, action or proceeding, any claim that it is not subject to the jurisdiction of the above-named courts, that its property is exempt or immune from attachment or execution, that the suit, action or proceeding is brought in an inconvenient forum, that the venue of the suit, action or proceeding is improper or that this Agreement or the subject matter hereof may not be enforced in or by such court.

Section 5.10 Counterparts. This Agreement may be executed and delivered by facsimile or electronic signature and in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Counterparts may be delivered via facsimile, electronic mail (including pdf or any electronic signature complying with the U.S. federal ESIGN Act of 2000, *e.g.*, www.docusign.com) or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

(*Signature Page Follows)*

IN WITNESS WHEREOF, the parties hereto have caused this Proxy Voting Agreement to be duly executed as of the date first above written.

COMPANY*
EMBARK TRUCKS INC.

/s/Siddhartha Venkatesan
SIDDHARTHA VENKATESAN, CLO
*Solely for purposes of Sections 1.4, 2.3, 2.7, 4.1 and 4.2 and Article V.

PROXYHOLDER

/s/Alex Rodrigues
ALEX RODRIGUES

Address: 1029 Noe St
San Francisco, CA
94114

STOCKHOLDER

/s/Brandon Moak
BRANDON MOAK

Address: 1029 Noe St
San Francisco, CA
94114

PROXYHOLDER PERMITTED TRANSFEREE:
ALEX RODRIGUES LIVING TRUST

By: /s/Alex Rodrigues
Name: Alex Rodrigues
Title: Trustee

STOCKHOLDER PERMITTED TRANSFEREE:
BRANDON MOAK LIVING TRUST

By: /s/Brandon Moak
Name: Brandon Moak
Title: Trustee

EXHIBIT 16.1

November 17, 2021

Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Commissioners:

We have read the statements made by Embark Technology, Inc. (formerly Northern Genesis Acquisition Corp. II) under Item 4.01 of Form 8-K dated November 17, 2021. We agree with the statements concerning our firm in such Form 8-K; we are not in a position to agree or disagree with other statements of Embark Technology, Inc. contained therein.

Very truly yours,

/s/ Marcum LLP

Marcum LLP

Exhibit 99.1

Embark Trucks Inc.

Financial Statements

September 30, 2021, and December 31, 2020

Embark Trucks, Inc.
Balance Sheets
(In thousands, except share and per share data)

	September 30, 2021 (Unaudited)	December 31, 2020
Assets		
Current assets:		
Cash and cash equivalents	$ 47,886	$ 11,055
Restricted cash, short-term	65	65
Short-term investments	5,005	53,553
Prepaid expenses and other current assets	6,733	1,367
Total current assets	59,689	66,040
Restricted cash, long-term	340	340
Property, equipment and software, net	8,529	6,526
Other assets	3,307	78
Total assets	$ 71,865	$ 72,984
Liabilities and stockholders' deficit		
Current liabilities:		
Accounts payable	$ 3,166	$ 399
Accrued expenses and other current liabilities	6,414	892
Convertible Note	20,572	—
Derivative liability	13,946	—
Short-term notes payable	282	246
Total current liabilities	44,380	1,537
Long-term notes payable	549	512
Other long-term liability	50	
Long-term deferred rent	167	130
Total liabilities	45,146	2,179
Commitments and contingencies (Note 9)		
Stockholders' deficit:		
Preferred stock, $0.00001 par value. 87,355,585 shares authorized; 87,355,585 shares issued and outstanding as of September 30, 2021, and 87,355,585 shares as of December 31, 2020	1	1
Founders Preferred stock, $0.00001 par value. 1,124,856 shares authorized; 162,558 shares issued and outstanding as of September 30, 2021, and 162,558 shares as of December 31, 2020	—	—
Common stock, $0.00001 par value. 150,000,000 shares authorized; 47,895,715 shares issued and outstanding as of September 30, 2021, and 47,340,305 shares issued and outstanding as of December 31, 2020	—	—
Additional paid-in capital	133,233	129,449
Accumulated other comprehensive loss	—	45
Accumulated deficit	(106,515)	(58,690)
Total stockholders' equity	26,719	70,805
Total liabilities and stockholders' equity	$ 71,865	$ 72,984

The accompanying notes are an integral part of these financial statements

Embark Trucks, Inc.
Statements of Operations
(In thousands, except share and per share data)

	Nine Months Ended September 30,	
	2021	**2020**
	(unaudited)	**(unaudited)**
Operating expenses:		
Research and development	26,823	13,236
General and administrative	11,585	2,509
Total operating expenses	38,408	15,745
Loss from operations	(38,408)	(15,745)
Other income (expense):		
Change in fair value of derivative liability	(5,783)	—
Other income	18	93
Interest income	83	712
Interest expense	(3,735)	(48)
Loss before provision for income taxes	(47,825)	(14,988)
Provision for income taxes	—	—
Net loss	$ (47,825)	$ (14,988)
Net loss attributable to common stockholders, basic and diluted	$ (47,825)	$ (14,988)
Net loss per share attributable to common stockholders:	$ (1.00)	$ (0.32)
Weighted-average shares used in computing net loss per share attributable to common stockholders:	47,667,440	46,603,282

The accompanying notes are an integral part of these financial statements

Embark Trucks, Inc.
Statements of Comprehensive Loss
(In thousands)

	Nine Months Ended September 30,	
	2021	**2020**
	(unaudited)	**(unaudited)**
Net loss	$ (47,825)	$ (14,988)
Other comprehensive loss (net of tax):		
Unrealized (losses) gains on available-for-sale securities, net	(45)	42
Comprehensive loss	$ (47,870)	$ (14,946)

The accompanying notes are an integral part of these financial statements

Embark Trucks, Inc.
Statements of Stockholders' Equity
(In thousands, except number of shares)

	Preferred Stock		Founders Preferred Stock		Common Stock		Additional Paid-in	Accumulated	Accumulated Other Comprehensive	Total Stockholders'
	Shares	Amount	Shares	Amount	Shares	Amount	Capital	Deficit	Income (Loss)	Equity
Balance at December 31, 2019	**87,355,585**	**1**	**162,558**	**0**	**47,000,134**	**0**	**128,297**	**(37,159)**	**69**	**91,208**
Shares issued upon exercise of stock options	—	—	—	—	195,917	—	95	—	—	95
Shares repurchased	—	—	—	—	(254,973)	—	(52)			(52)
Vesting of early exercised options	—	—	—	—	—	—	45	—	—	45
Stock-based compensation	—	—	—	—	—	—	655	—	—	655
Other comprehensive loss	—	—	—	—	—	—	—	—	42	42
Net loss	—	—	—	—	—	—	—	(14,988)	—	(14,988)
Balance at September 30, 2020	**87,355,585**	**1**	**162,558**	**$ 0**	**46,941,078**	**$ 0**	**$ 129,040**	**$ (52,147)**	**$ 111**	**$ 77,005**
Shares issued upon exercise of stock options	—	—	—	—	452,459	—	90	—	—	90
Shares repurchased	—	—	—	—	(53,232)	—	(12)	—	—	(12)
Vesting of early exercised options	—	—	—	—	—	—	16	—	—	16
Stock-based compensation	—	—	—	—	—	—	316	—	—	316
Other comprehensive loss	—	—	—	—	—	—	—	—	(66)	(66)
Net loss	—	—	—	—	—	—	—	(6,543)	—	(6,543)
Balance at December 31, 2020	**87,355,585**	**1**	**162,558**	**$ 0**	**47,340,305**	**$ 0**	**$ 129,449**	**$ (58,690)**	**$ 45**	**$ 70,805**
Shares issued upon exercise of stock options	—	—	—	—	556,535	—	149	—	—	149
Shares repurchased	—	—	—	—	(1,125)	—	—	—	—	—
Vesting of early exercised options	—	—	—	—	—	—	39	—	—	39
Stock-based compensation	—	—	—	—	—	—	1,821	—	—	1,821
Issuance of common stock warrants	—	—	—	—	—	—	1,775	—	—	1,775
Other comprehensive loss	—	—	—	—	—	—	—	—	(45)	(45)
Net loss	—	—	—	—	—	—	—	(47,825)	—	(47,825)
Balance at September 30, 2021	**87,355,585**	**1**	**162,558**	**$ —**	**47,895,715**	**$ 0**	**$ 133,233**	**$ (106,515)**	**$ —**	**$ 26,719**

The accompanying notes are an integral part of these financial statements

Embark Trucks, Inc.
Statement of Cash Flows
(In thousands, except number of shares)

	Nine Months Ended September 30,	
	2021	**2020**
	(unaudited)	**(unaudited)**
Cash flows from operating activities		
Net loss	$ (47,825)	$ (14,988)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	756	560
Stock-based compensation, net of amounts capitalized	1,661	570
Issuance of warrants for services	1,775	—
Net amortization of premiums and accretion of discounts on investments	265	145
Amortization of debt discount	3,735	—
Change in fair value of derivative liability	5,783	—
Changes in operating assets and liabilities:		
Prepaid expenses and other current assets	(911)	890
Other assets	(3,229)	—
Accounts payable	2,759	82
Accrued expenses and other current liabilities	2,374	437
Net cash used in operating activities	(32,858)	(12,304)
Cash flows from investing activities		
Purchase of investments	—	(42,264)
Maturities of investments	48,239	59,707
Purchase of property, equipment and software	(2,380)	(1,459)
Deposit for purchase of trucks	(400)	—
Refund of deposit for trucks	47	—
Net cash provided by investing activities	45,506	15,984
Cash flows from financing activities		
Cash proceeds received from convertible note payable	25,001	—
Payment towards notes payable	(140)	(214)
Proceeds from exercise of stock options	149	43
Deferred offering costs	(827)	—
Net cash provided by (used in) financing activities	24,183	(171)
Net increase in cash, cash equivalents and restricted cash	36,831	3,510
Cash, cash equivalents and restricted cash at beginning of period	11,460	10,328
Cash, cash equivalents and restricted cash at end of period	$ 48,291	$ 13,838
Supplemental disclosures of cash flow information:		
Cash paid during the year for interest	$ —	$ 33
Supplemental schedule of noncash investing and financing activities		
Acquisition of property, equipment and software in accounts payable	$ 71	$ 47
Acquisition of trucks by assuming note payable	278	—
Deferred offering costs in accrued liability	3,275	—
Stock-based compensation capitalized into internally developed software	160	102
Vesting of early exercised stock options	39	45

The accompanying notes are an integral part of these financial statements

1. DESCRIPTION OF BUSINESS AND BASIS OF PRESENTATION

The principal activities of Embark Trucks, Inc. (“Embark” or the “Company”) include design and development of autonomous driving software for the truck freight industry. The Company is headquartered in San Francisco, California and was incorporated in the State of Delaware in 2016. The Company has no subsidiaries as of September 30, 2021 (unaudited), and December 31, 2020.

The Company has devoted substantially all of its resources to develop its autonomous truck technology, to enable and expand its route models — transfer point and direct-to-customer, to expand its partnerships with shippers and carriers, to raising capital, and providing general and administrative support for these operations. The Company has not generated revenues from its principal operations through September 30, 2021.

Basis of Presentation

The accompanying financial statements have been prepared in accordance with U.S. generally accepted accounting principles (“GAAP”) and pursuant to the regulations of the U.S. Securities and Exchange Commission (“SEC”).

Liquidity and Capital Resources

The Company has incurred losses from operations since inception. The Company incurred net losses of $47.8 million and $15.0million, for the nine months ended September 30, 2021, and 2020 (unaudited), respectively, and Accumulated deficit amounts to $106.5 million and $58.7 million as of September 30, 2021 (unaudited) and December 31, 2020, respectively. Net cash used in operating activities was $32.9 million and $12.3 million for the nine months ended September 30, 2021, and 2020 (unaudited), respectively.

The Company’s liquidity is based on its ability to enhance its operating cash flow position, obtain capital financing from equity interest investors and borrow funds to fund its general operations, research and development activities and capital expenditures. As of September 30, 2021 (unaudited) and December 31, 2020, the Company’s balance of cash and cash equivalents was $47.9 million and $11.1 million, respectively. As of September 30, 2021 (unaudited) and December 31, 2020, the Company’s balance of available-for-sale investments was $5.0 million and $53.6 million, respectively.

Based on cash flow projections from operating and financing activities and existing balance of cash and cash equivalents, management is of the opinion that the Company has sufficient funds for sustainable operations, and it will be able to meet its payment obligations from operations and debt related commitments for at least one year from the issuance date of these financial statements. Based on the above considerations, the Company’s financial statements have been prepared on a going concern basis, which contemplates the realization of assets and liquidation of liabilities during the normal course of operations.

The Company’s ability to continue as a going concern is dependent on management’s ability to control operating costs and demonstrate progress against its technical roadmap. This involves developing new capabilities for the Embark Driver software and improving the reliability and performance of the software on public roads. Demonstrating ongoing technical progress will enable the Company to obtain funds from outside sources of financing, including financing from equity interest investors and borrow funds to fund its general operations, research and development activities and capital expenditures.

On August 25, 2021 and August 27, 2021, Embark entered into a commitment letters (collectively, the “Commitment Letters”) with certain investors (collectively, the “Investors”) pursuant to which such Investors each provided a commitment to invest, upon Embark's election, up to $5 million in Embark in the form of Series C Preferred Stock of Embark in the event that the Merger Agreement is terminated and the Business Combination is not consummated. As the Business Combination is consummated on November 10, 2021, each of the Investor's obligations under the applicable Commitment Letter is terminated.

In connection with the Business Combination, Embark raised $244 million of net proceeds from the contribution of $414 million of proceeds from cash held in Northern Genesis's trust account from the Northern Genesis IPO, $160 million of proceeds from the PIPE investment, and offset by redemption of Northern Genesis's Class A common stock held by Northern Genesis's public stockholders of $299.9 million. Direct and incremental transaction costs in connection with the Business Combination were incurred prior to, or concurrent with the Closing by Northern Genesis and Embark, including the PIPE investment and the deferred underwriting fees related to the Northern Genesis IPO of $69 million. Embark believes cash and other components of working capital will be sufficient to meet Embark's needs for at least the next 12 months.

Fiscal Periods

The Company's fiscal year begins on January 1 and ends of December 31. The Company refers to the fiscal years as "fiscal year 2021" and "fiscal year 2020".

Emerging Growth Company

The Company is an "emerging growth company," as defined in Section 2(a) of the Securities Act, as modified by the Jumpstart Our Business Startups Act of 2012 (the "JOBS Act"), and it may take advantage of certain exemptions from various reporting requirements that are applicable to other public companies that are not emerging growth companies including, but not limited to, not being required to comply with the independent registered public accounting firm attestation requirements of Section 404 of the Sarbanes- Oxley Act, reduced disclosure obligations regarding executive compensation in its periodic reports and proxy statements, and exemptions from the requirements of holding a nonbinding advisory vote on executive compensation and shareholder approval of any golden parachute payments not previously approved.

Further, Section 102(b)(1) of the JOBS Act exempts emerging growth companies from being required to comply with new or revised financial accounting standards until private companies (that is, those that have not had a Securities Act registration statement declared effective or do not have a class of securities registered under the Exchange Act) are required to comply with the new or revised financial accounting standards. The JOBS Act provides that a company can elect to opt out of the extended transition period and comply with the requirements that apply to non-emerging growth companies, but any such election to opt out is irrevocable. The Company has elected not to opt out of such extended transition period which means that when a standard is issued or revised and it has different application dates for public or private companies, the Company, as an emerging growth company, can adopt the new or revised standard at the time private companies adopt the new or revised standard. This may make comparison of the Company's financial statements with another public company which is neither an emerging growth company nor an emerging growth company which has opted out of using the extended transition period difficult or impossible because of the potential differences in accounting standards used.

Unaudited Interim Financial Information

The accompanying interim balance sheet as of September 30, 2021, the interim Statements of Operations, comprehensive loss, and cash flows for the nine months ended September 30, 2021, and 2020, and the interim statement of stockholders' equity for the nine months ended September 30, 2021, are unaudited. These unaudited interim financial statements are presented in accordance with the rules and regulations of the U.S. Securities and Exchange Commission ("SEC") and do not include all disclosures normally required in annual financial statements prepared in accordance with GAAP. In management's opinion, the unaudited interim financial statements have been prepared on the same basis as the annual financial statements and include all adjustments, which include only normal recurring adjustments, necessary for the fair presentation of the Company's financial position as of September 30, 2021, and the Company's results of operations and cash flows for the nine months ended September 30, 2021, and 2020. The results of operations for the nine months ended September 30, 2021, are not necessarily indicative of the results to be expected for the full fiscal year or any other future interim or annual periods.

Segment Information

Under Accounting Standards Codification ("ASC 280"), Segment Reporting, operating segments are defined as components of an enterprise where discrete financial information is available that is evaluated regularly by the chief operating decision-maker ("CODM"), in deciding how to allocate resources and in assessing performance. The Company operates in one segment, the truck business unit, which is focused on enhancing self-driving truck software technology. Therefore, the Company's chief executive officer, who is also the CODM, makes decisions and manages the Company's operations as a single operating segment for purposes of allocating resources and evaluating financial performance. All long-lived assets are maintained in, and all losses are attributable to, the United States of America.

Concentration of Risks

Our financial instruments that are exposed to concentrations of credit risk consist primarily of cash and cash equivalents, restricted cash, marketable securities and long-term investments. We maintain our cash and cash equivalents, restricted cash and investments with high-quality financial institutions with investment-grade ratings. A majority of the cash balances are with U.S. banks and are insured to the extent defined by the Federal Deposit Insurance Corporation.

Impact of COVID-19

The outbreak of the novel coronavirus COVID-19, which was declared a global pandemic by the World Health Organization on March 11, 2020, has led to adverse impacts on the U.S. and global economies and has impacted and continues to impact the Company's supply chain, and operations. Even though the Company has taken measures to adapt to operating in this challenging environment, the pandemic could further affect the Company's operations and the operations of suppliers and vendors due to additional shelter- in-place and other governmental orders, facility closures, travel and logistics restrictions, or other factors as circumstances continue to evolve. In response to this pandemic, many jurisdictions in which the Company operates issued stay-at-home orders and other measures aimed at slowing the spread of the virus. While the Company remains open in accordance with guidance from local authorities, the Company experienced a temporary pause in testing of its research and development truck fleet and operations in response to the stay- at-home orders in calendar year 2020. The impacts from stay-at-home orders and other updated local government indoor operation measures are no longer impacting the Company's operations in the first half of 2021, however, there remains uncertainty around the potential disruptions the pandemic could cause looking forward. The Company has instituted policies across its offices to ensure compliance with these updated guidelines. At current, these changes have not impacted the Company's operations. In response to the Delta variant, local governments updated their guidelines for indoor operations. Therefore, the related financial impact and duration cannot be reasonably estimated at this time.

2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Use of Estimates

The preparation of financial statements in conformity with GAAP requires management to make certain estimates and assumptions. These estimates and assumptions affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities as of the balance sheet date, as well as reported amounts of expenses during the reporting period.

The Company's most significant estimates and judgments involve the useful lives of long-lived assets, the recoverability of long-lived assets, the capitalization of software development costs, the valuation of the Company's stock-based compensation, including the fair value of common stock and the valuation of warrants to purchase the Company's stock, the valuation of derivative liabilities, and the valuation allowance for income taxes. Management bases its estimates on historical experience and on various other assumptions believed to be reasonable, the results of which form the basis for making judgments about the carrying values of assets and liabilities. Actual results could differ from those estimates.

Cash, Cash Equivalents and Restricted Cash

The Company considers all highly liquid investments purchased with original maturities of three months or less to be cash equivalents. As of September 30, 2021 (unaudited) and December 31, 2020, the Company had $47.9 million and $11.1 million, of cash and cash equivalents, which included cash equivalents of $26.3 million and $7.6 million in highly liquid investments as of September 30, 2021 (unaudited) and December 31, 2020, respectively.

The Company maintains a letter of credit to secure a lease of the Company's headquarters. A portion of the Company's cash is collateralized in conjunction with the letter of credit and is classified as restricted cash on the Company's balance sheets. As of September 30, 2021 (unaudited) and December 31, 2020, the Company had $0.4 million and $0.4 million in restricted cash. At the end of each year of the lease, the face amount of the letter of credit is reduced by a fixed amount of approximately $0.1 million and reclassified into cash and cash equivalents on the Company's balance sheets. The balances to be reclassified to cash in the next twelve months are classified as restricted cash, short-term with the remaining balance classified as restricted cash, long-term on the balance sheets.

The reconciliation of cash and cash equivalents and restricted cash and cash equivalents to amounts presented in the statements of cash flows are as follows (in thousands):

	September 30, 2021 (unaudited)	December 31, 2020
Cash and cash equivalents	$ 47,886	$ 11,055
Restricted cash, short-term	65	65
Restricted cash, long-term	340	340
Cash, cash equivalents and restricted cash	$ 49,291	$ 11,460

Investments

The Company's primary objectives of its investment activities are to preserve principal, provide liquidity, and maximize income without significantly increasing risk. The Company's investments are made in United States ("U.S.") treasury securities, U.S. government money market funds or other direct securities issued by the U.S. Government or its agencies. The Company classifies its investments as available-for-sale at the time of purchase since it is intended that these investments are available for current operations. Investments not considered cash equivalents and with maturities of one year or less from the balance sheet dates are classified as marketable securities investments. Investments with maturities greater than one year from the balance sheet dates are classified as long-term investments.

Investments are reported at fair value and are subject to periodic impairment review. Unrealized gains and losses related to changes in the fair value of these securities are recognized in accumulated other comprehensive income (loss), net of tax, unless they are determined to be other-than-temporary impairments. The ultimate value realized on these securities is subject to market price volatility until they are sold.

There were no other-than-temporary impairments as of September 30, 2021 (unaudited) and December 31,2020.

Fair Value of Financial Instruments

The Company's financial instruments consist of cash and cash equivalents, restricted cash, marketable securities investments, long-term investments, prepaid expenses and other current assets, accounts payable and accrued expenses, short-term and long-term notes payable and other current liabilities. The assets and liabilities that were measured at fair value on a recurring basis are cash equivalents, marketable securities and long-term investments. The Company believes that the carrying values of the remaining financial instruments approximate their fair values. The Company applies fair value accounting in accordance with ASC 820, *Fair Value Measurements* for valuation of financial instruments. ASC 820 provides a framework for measuring fair value under GAAP that expands disclosures about fair value measurements, establishes a fair value hierarchy, and requires an entity to maximize the use of observable inputs and minimize the use of unobservable inputs when measuring fair value. The three levels of the fair value hierarchy are summarized as follows:

Level 1— Fair value is based on observable inputs such as quoted prices for identical assets or liabilities in active markets.

Level 2— Fair value is determined using quoted prices for similar assets or liabilities in active markets or quoted prices for identical or similar assets or liabilities in markets that are not active or are directly or indirectly observable.

Level 3— Fair value is determined using one or more significant inputs that are unobservable in active markets at the measurement date, such as an option pricing model, discounted cash flow, or similar technique.

The carrying value and fair value of the Company's financial instruments as of September 30, 2021 (unaudited) and December 31, 2020, respectively, are as follows:

	As of September 30, 2021 (In thousands)			
	Level 1	Level 2	Level 3	Total
Assets				
Cash equivalents:				
United States money market funds	$ 26,318	—	—	$ 26,318
Short-term investments				
United States treasury securities	—	5,005	—	5,005
Long-term investments				
Liabilities				
Derivative liability	$ —	—	13,946	$ 13,946

	As of December 31, 2020 (In thousands)			
	Level 1	Level 2	Level 3	Total
Assets				
Cash equivalents:				
United States money market funds	$ 7,586	—	—	$ 7,586
Marketable securities				
United States treasury securities	—	53,553	—	53,553
Long-term investments				
United States treasury securities	$ —	—	—	$ —

Convertible Notes and Derivatives

The Company accounts for convertible notes, net using an amortized cost model pursuant to ASC 835, Interest. Convertible notes are classified as liabilities measured at amortized cost, net of debt discounts from debt issuance costs, lender fees, and the initial fair value of bifurcated derivatives, which reduce the initial carrying amount of the notes. The carrying value is accreted to the stated principal amount at contractual maturity using the effective-interest method with a corresponding charge to interest expense pursuant to ASC 835. Debt discounts are presented on the balance sheet as a direct deduction from the carrying amount of the related debt.

The Company accounts for its derivatives in accordance with, ASC 815-10, Derivatives and Hedging, or ASC 815-15, Embedded Derivatives, depending on the nature of the derivative instrument. ASC 815 requires each contract that is not a derivative in its entirety be assessed to determine whether it contains embedded derivatives that are required to be bifurcated and accounted for as a derivative financial instrument. The embedded derivative is bifurcated from the host contract and accounted for as a freestanding derivative if the combined instrument is not accounted for in its entirety at fair value with changes in fair value recorded in earnings, the terms of the embedded derivative are not clearly and closely related to the economic characteristics of the host contract, and a separate instrument with the same terms as the embedded derivative would qualify as a derivative instrument. Embedded derivatives are measured at fair value and re-measured at each subsequent reporting period, and recorded within convertible notes, net on the accompanying consolidated Balance Sheets and changes in fair value recorded in other income (expense) within the Statements of Operations and Comprehensive Income (Loss).

Property, Equipment and Software

Property, equipment and software is stated at cost less accumulated depreciation. Repair and maintenance costs are expensed as incurred. Depreciation and amortization are recorded on a straight-line basis over each asset's estimated useful life.

Property, Equipment and Software	Useful life (years)
Machinery and equipment	5 years
Electronic equipment	3 years
Vehicles and vehicle hardware	3 — 7 years
Leasehold improvements	Shorter of useful life or lease term
Developed software	2 — 4 years

Leases

The Company accounts for leases under Accounting Standards Codification Topic 840 ("ASC 840"). We categorize leases at their inception as either operating or capital leases based on whether the terms of the lease agreement effectively transfers ownership of the underlying asset to the company. The criteria for evaluation of capital leases include an evaluation of whether title transfers at the end of the lease term, whether the lease includes a bargain purchase option, whether the lease term is for a majority of the underlying assets useful life, or the contractual lease payments equal a majority of the fair value of the underlying asset. Our outstanding leases are primarily operating leases. For operating leases, we recognize lease costs on a straight-line basis upon the earlier of the inception date per rent agreement or the date on which control of the space is achieved, without regard to deferred payment terms such as rent holidays considered at inception of lease that defer the commencement date of required payments. Additionally, incentives received are treated as a reduction of costs over the term of the agreement. We categorized our deferred rent as part of the accrued expenses and other current liabilities, and the long-term deferred rent financial statement line items.

Impairment of Long-Lived Assets

The Company reviews its long-lived assets for impairment annually, or whenever events or circumstances indicate that the carrying amount of an asset may not be fully recoverable. The Company assesses the recoverability of these assets by comparing the carrying amount of such assets or asset group to the future undiscounted cash flows it expects the assets or asset group to generate. The Company recognizes an impairment loss if the sum of the expected long-term undiscounted cash flows that the long-lived asset is expected to generate is less than the carrying amount of the long-lived asset being evaluated.

Deferred Transaction Costs

Deferred transaction costs, which consist of direct incremental legal, consulting, and accounting fees relating to the merger transaction, as discussed in Note 11 — Subsequent Events, are capitalized and will be recorded against proceeds upon the consummation of the transaction. In the event the merger transaction is terminated, deferred transaction costs will be expensed. As of December 31, 2020, the Company had not incurred such costs, but as of September 30, 2021 (unaudited) the Company has deferred such costs of $4.1 million within the Prepaid expenses and other current assets.

Income Taxes

The Company accounts for income taxes using the asset and liability method, under which deferred tax assets and liabilities are recognized for the expected future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases.

A valuation allowance is provided when it is more likely than not that some portion or all of a deferred tax asset will not be realized. Due to the Company's lack of earnings history, the net deferred tax assets have been fully offset by a valuation allowance as of September 30, 2021 (unaudited) and December 31, 2020. Uncertain tax positions taken or expected to be taken in a tax return are accounted for using the more likely than not threshold for financial statement recognition and measurement.

Stock-based Compensation

Stock-based compensation expense related to stock option awards and restricted stock units ("RSUs") granted to employees, directors and non-employees is based on estimated grant-date fair values. For stock option awards, the Company uses the straight-line method to allocate compensation expense to reporting periods over each optionee's requisite service period, which is generally the vesting period, and estimates the fair value of share-based awards to employees and directors using the Black-Scholes option- pricing model. The Black-Scholes model requires the input of subjective assumptions, including expected volatility, expected dividend yield, expected term, risk-free rate of return and the estimated fair value of the underlying ordinary shares on the date of grant. The fair value of each RSU is based on the fair value of the Company's common stock on the date of grant. The related stock-based compensation is recognized on a graded vesting basis as the RSU awards are associated with a performance condition. The Company accounts for the effect of forfeitures as they occur.

Internal Use Software

The Company capitalizes certain costs associated with creating and enhancing internally developed software related to the Company's technology infrastructure and such costs are recorded within property, equipment and software, net. These costs include personnel and related employee benefit expenses for employees who are directly associated with and who devote time to software development projects. Software development costs that do not qualify for capitalization are expensed as incurred and recorded in research and development expense in the Statements of Operations and comprehensive income (loss).

Software development activities typically consist of three stages: (1) the planning phase; (2) the application and infrastructure development stage; and (3) the post implementation stage. Costs incurred in the planning and post implementation phases, including costs associated with training and repairs and maintenance of the developed technologies, are expensed as incurred. The Company capitalizes costs associated with software developed when the preliminary project stage is completed, management implicitly or explicitly authorizes and commits to funding the project and it is probable that the project will be completed and perform as intended. Costs incurred in the application and infrastructure development phases, including significant enhancements and upgrades, are capitalized. Capitalization ends once a project is substantially complete, and the software is ready for its intended purpose. Software development costs are depreciated using a straight-line method over the estimated useful life, commencing when the software is ready for its intended use. The straight-line recognition method approximates the manner in which the expected benefit will be derived. Internal use software is tested for impairment in accordance with our long- lived assets impairment policy.

Research and Development Expense

Research and development expense consist of outsourced engineering services, allocated facilities costs, depreciation, internal engineering and development expenses, materials, labor and stock-based compensation related to development of the Company's products and services. Research and development costs are expensed as incurred except for amounts capitalized to internal-use software.

General, and Administrative Expenses

General, and administrative expense consist of personnel costs, allocated facilities expenses, depreciation and amortization, travel, and business development costs.

Other Income

As part of our research and development activities, we contract with shippers and freight carriers to transfer freight between the Company's transfer hubs in return for cash consideration. Transferring freight with the Company's research and development truck fleet are not and will not be considered an output of the Company's ordinary activities. Consideration received from such arrangements is presented as other income in the Company's unaudited Statement of Operations.

Interest Income

Interest income primarily consists of investment and interest income from marketable securities, long- term investments and our cash and cash equivalents.

Net Loss Per Share

Basic and diluted net loss per share attributable to common stockholders is presented in conformity with the two-class method required for participating securities. The Company considers all series of its redeemable convertible preferred stock to be participating securities. Net loss is attributed to common stockholders and participating securities based on their participation rights. Net loss attributable to common stockholders is not allocated to the redeemable convertible preferred stock as the holders of the redeemable convertible preferred stock do not have a contractual obligation to share in any losses.

Under the two-class method, basic net loss per share attributable to common stockholders is computed by dividing the net loss attributable to common stockholders by the weighted-average number of shares of common stock outstanding during the period.

Diluted earnings per share attributable to common stockholders adjusts basic earnings per share for the potentially dilutive impact of redeemable convertible preferred stock, stock options, and warrants. As the Company has reported losses for all periods presented, all potentially dilutive securities including preferred stock, stock options, and warrants, are antidilutive and accordingly, basic net loss per share equals diluted net loss per share.

Comprehensive Income (Loss)

Comprehensive income (loss) is defined as the total change in shareholders' equity during the period other than from transactions with shareholders. Comprehensive income (loss) consists of net income (loss) and other comprehensive income (loss). Other comprehensive income (loss) is comprised of unrealized gains or losses on investments classified as available-for-sale.

Recently Adopted Accounting Pronouncements

In August 2018, the FASB issued ASU No. 2018-13, *Fair Value Measurement (Topic 820*): Disclosure Framework — Changes to the Disclosure Requirements for Fair Value Measurement ("ASU 2018-13"), to improve the effectiveness of disclosures in the note to the financial statements by facilitating clear communication of the information required by generally accepted accounting principles. The adoption of ASU 2018-13 is effective for the Company beginning January 1, 2020. The adoption of this standard did not have a material impact to the Company's results of operations for the year ended December 31, 2020.

Recently Issued Accounting Pronouncements

As an emerging growth company ("EGC"), the Jumpstart Our Business Startups Act ("JOBS Act") allows the Company to delay adoption of new or revised accounting pronouncements applicable to public companies until such pronouncements are applicable to private companies. The Company has elected to use this extended transition period under the JOBS Act until such time the Company is no longer considered to be an EGC. The adoption dates discussed below reflect this election.

In February 2016, the FASB issued ASU No. 2016-02, *Leases ("Topic 842")*, which supersedes the guidance in former ASC 840, Leases. This standard requires lessees to apply a dual approach, classifying leases as either finance or operating leases based on the principle of whether or not the lease is effectively a financed purchase by the lessee. This classification will determine whether lease expense is recognized based on an effective interest method or on a straight-line basis over the term of the lease. A lessee is also required to record a right-of-use asset and a lease liability for all leases with a term of greater than 12 months regardless of their classification. Leases with a term of 12 months or less may be accounted for similar to existing guidance for operating leases under ASC 840. In May 2020, the FASB issued ASU No. 2020-05, *Revenue from Contracts with Customers (Topic 606) and Leases (Topic 842):* Effective Dates for Certain Entities, which deferred the effective dates for non-public entities. Therefore, this standard is effective for annual reporting periods, and interim periods within those years, for public entities beginning after December 15, 2018, and for private entities beginning after December 15, 2021. Originally, a modified retrospective transition approach was required for leases existing at, or entered into after, the beginning of the earliest comparative period presented in the financial statements. In July 2018, the FASB issued guidance to permit an alternative transition method for Topic 842, which allows transition to the new lease standard by recognizing a cumulative-effect adjustment to the opening balance of retained earnings in the period of adoption. Entities may elect to apply either approach. There are also a number of optional practical expedients that entities may elect to apply. The Company is currently assessing the impact of this standard on its financial statements. The Company expects to record a material right-of-use asset and lease liability in connection with adopting this standard as of January 1, 2022.

In June 2016, the FASB issued ASU 2016-13, *Financial Instruments — Credit Losses (Topic 326):* Measurement of Credit Losses of Financial Instruments, which, together with subsequent amendments, amends the requirement on the measurement and recognition of expected credit losses for financial assets held. ASU 2016-13 is effective for the Company beginning January 1, 2023, with early adoption permitted. The Company is currently in the process of evaluating the effects of this pronouncement on the Company's financial statements and does not expect it to have a material impact on the financial statements.

In December 2019, the FASB issued ASU 2019-12, *Income Taxes (Topic 740): Simplifying the Accounting for Income Taxes*, which is intended to simplify various aspects related to accounting for income taxes. The pronouncement is effective for fiscal years, and for interim periods within those fiscal years, beginning after December 15, 2020, with early adoption permitted. ASU 2019-12 is effective for the Company beginning January 1, 2022, with early adoption permitted. The Company is currently in the process of evaluating the effects of this pronouncement on the Company's financial statements and does not expect it to have a material impact on the financial statements.

In August 2020, the FASB issued 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): Accounting for convertible instruments and contracts in an entity's own equity.* The ASU simplifies accounting for convertible instruments by removing certain separation models required under current U.S. GAAP. The ASU also removes certain settlement conditions that are required for equity contracts to qualify for the derivative scope exception, and it revises the guidance in ASC 260, Earnings Per Share, to require entities to calculate diluted earnings per share for convertible instruments by using the if-converted method. The amendments are effective for the Company beginning January 1, 2024, including interim periods within those fiscal years. Early adoption is permitted, but no earlier than fiscal years beginning after December 15, 2020, including interim periods within those fiscal years. The Company is currently assessing the impact of this standard on its financial statements.

In January 2021, the FASB issued ASU 2021-01, *Reference Rate Reform (Topic 848):* Scope. ASU 2021-01 clarifies that certain optional expedients and exceptions in ASC 848, for contract modifications and hedge accounting apply to derivatives that are affected by the discounting transition. ASU 2021-01 also amends the expedients and exceptions in ASC 848 to capture the incremental consequences of the scope clarification and to tailor the existing guidance to derivative instruments affected by the discounting transition. Because the guidance is intended to assist stakeholders during the global market-wide reference rate transition period, it is in effect for a limited time, from March 12, 2020, through December 31, 2022. The Company is currently evaluating the impact of adopting ASU 2021-01 on its consolidated financial statements.

In May 2021, the FASB issued ASU 2021-04. ASU 2021-04 provides clarification and reduces diversity in an issuer's accounting for certain modifications or exchanges of freestanding equity-classified written call options, such as warrants, that remain equity classified after modification or exchange. This guidance will be effective for us on January 1, 2022, with early adoption permitted and will be applied prospectively. We are currently evaluating the impact of this guidance on our consolidated financial statements.

In July 2021, the FASB issued ASU 2021-05-Leases *(Topic 842): Lessors-Certain Leases with Variable Lease Payments*, which amends the lease classification requirements for lessors. Lessors should classify and account for a lease with variable lease payments that do not depend on a reference index or a rate as an operating lease if the lease would have been classified as a sales-type lease or a direct financing lease and the lessor would have otherwise recognized a day-one loss. The pronouncement is effective for fiscal years, and for interim periods within those fiscal years, beginning after December 15, 2021, with early adoption permitted. The Company is currently evaluating the impact of adopting ASU 2021-05 on its consolidated financial statements.

3. BALANCE SHEET COMPONENTS

Marketable Securities

Marketable securities as of September 30, 2021 (unaudited) and December 31, 2020, consist of the following (in thousands):

As of September 30, 2021	Cost or Amortized Cost	Unrealized Gains	Fair Value
U.S government securities	$ 5,005	$ 0	$ 5,005
	$ 5,005	$ 0	$ 5,005

As of December 31, 2020	Cost or Amortized Cost	Unrealized Gains	Fair Value
U.S government securities	$ 53,508	$ 45	$ 53,553
	$ 53,508	$ 45	$ 53,553

Long-term Investments

The Company did not have long-term investments as of September 30, 2021 (unaudited) and December 31, 2020.

Prepaid Expenses and Other Current Assets

Prepaid expenses and other current assets consisted of the following as of September 30, 2021 (unaudited), and December 31, 2020, respectively (in thousands):

	September 30, 2021 (unaudited)	December 31, 2020
Prepaid Insurance	$ 211	$ 138
Accrued interest and dividends	26	201
Prepaid Software	876	279
Prepaid Hardware	53	-
Income tax receivable	494	494
Short-term deposits	423	55
Other prepaid expenses	512	176
Deferred transaction costs	4,102	-
Other current assets	36	24
Total prepaid expenses and other current assets	$ 6,733	$ 1,367

Property, Equipment and Software

Property, equipment and software consist of the following as of September 30, 2021 (unaudited) and December 31, 2020, respectively (in thousands):

	As of September 30, 2021 (unaudited)	As of December 31, 2020
Machinery and equipment	$ 340	$ 207
Electronic equipment	331	130
Vehicles and vehicle hardware	5,295	4,144
Leasehold improvements	119	119
Developed software	4,955	3,709
Other	27	0
Property, equipment and software, gross	11,067	8,309
Less: accumulated depreciation and amortization	(2,238)	(1,783)
Total property, equipment and software, net	$ 8,529	$ 6,526

Depreciation and amortization expense for the nine months ended September 30, 2021 (unaudited), and the year ended December 31, 2020, was $0.7 million and $0.8 million, respectively.

Other Assets

Other assets consist of the following as of September 30, 2021 (unaudited) and December 31, 2020, respectively (in thousands):

	September 30, 2021 (unaudited)	December 31, 2020
Intangibles Assets	$ 3	$ 3
Long-term deposits	3,304	75
Total Other Assets	$ 3,307	$ 78

Accrued Expenses and Other Current Liabilities

Accrued expenses and other current liabilities consisted of the following as of September 30, 2021 (unaudited) and December 31, 2020, respectively (in thousands):

	As of September 30, 2021 (unaudited)	As of December 31, 2020
Accrued credit card liability	$ 276	157
Accrued payroll expenses	1,111	259
Accrued general expenses	116	367
Accrued legal expenses	2,700	-
Accrued software expenses	1,505	-
Accrued consultant expenses	593	-
Short-term deferred rent	(17)	51
Early Exercise Liability	81	11
Income Tax Payable	47	47
Other	2	-
Total accrued expenses and other current liabilities	$ 6,414	892

4. STOCKHOLDERS' EQUITY

Shares Authorized and Outstanding

As of September 30, 2021 (unaudited) and December 31, 2020, the Company had authorized a total of 238,480,441 shares for issuance with 150,000,000 shares designated as common stock, 1,124,856 shares designated as founders preferred stock and 87,355,585 shares designated as preferred stock.

Preferred and Founders Preferred Stock

As of September 30, 2021 (unaudited) and December 31, 2020, the Company has authorized 87,355,585 shares of preferred stock and 1,124,856 founders preferred stock, designated in series, with the rights and preferences of each designated series to be determined by the Board of Directors.

The following table is a summary of the preferred stock and founders preferred stock as of September 30, 2021 (unaudited) and December 31, 2020 (in thousands, except for share data):

	Shares Authorized	Shares Issued and Outstanding	Cash Raised	Issue Price per Share	Per Share Liquidation Preference
Founders Preferred Stock	1,124,856	162,558	$ —	$ 0.00	$ 0.00
Series A—1 Preferred Stock	3,654,873	3,654,873	375	0.10	0.10
Series A—2 Preferred Stock	5,372,703	5,372,703	735	0.14	0.14
Series A—3 Preferred Stock	2,485,296	2,485,296	425	0.17	0.17
Series A—4 Preferred Stock	590,688	590,688	100	0.17	0.17
Series A—5 Preferred Stock	2,680,236	2,680,236	550	0.21	0.21
Series A—6 Preferred Stock	3,647,817	3,647,817	2,390	0.66	0.66
Series A—7 Preferred Stock	15,139,917	15,139,917	12,399	0.82	0.82
Series B Preferred Stock	32,834,601	32,834,601	30,000	0.91(1)	0.93
Series C Preferred Stock	20,949,454	20,949,454	70,001	3.34(1)	3.50
Total	88,480,441	87,518,143	$ 116,975		

(1) As part of our series B and C financing round, certain founders of the Company sold 0.7 and 1.0 million shares of founders preferred stock respectively, on a post-split basis, to an investor. Immediately after the sale, the founders preferred stock was converted into series B and C preferred stock. The original issuance price for the series B and C financing round was $0.93 and $3.50 respectively. The share price of $0.91 and $3.34 presented in the table above represents the average share price of shares issued and outstanding after the founder preferred stock was converted into series B and C shares.

The Company incurred $0.1 million, $0.1 million, $0.1 million of issuance costs related to series A, series B, and series C respectively.

The significant rights, privileges and preferences of preferred stock are as follows:

Liquidation Preference

In the event of any liquidation transaction, the holders of preferred stock shall be entitled to receive, prior and in preference to any distribution of any of the assets of the Corporation to the holders of founders preferred stock and common stock, an amount per share equal to the applicable original issue price as defined in the table above.

Dividends

Preferred stockholders are entitled to a dividend only when and if declared by the Company’s board of directors. The Company shall not declare, pay, or set aside any dividends on any other class or series of capital stock unless the outstanding preferred shares first receive, or simultaneously receive, a dividend on each outstanding preferred share. No dividends have been declared to date as of September 30, 2021.

Voting

The holders of preferred stock shall be entitled to the same voting rights as the holders of the common stock and to notice of any stockholder's meeting in accordance with the Company's bylaws and the holders of the preferred stock and common stock shall vote together as a single class on all matters. Each holder of preferred stock shall be entitled to the number of votes equal to the number of shares of common stock into which the preferred stock converts into. With respect to voting for the board of directors, the holders of preferred series A voting as one class are entitled to elect one board member, the holders of preferred series B voting as one class are entitled to elect one board member, and the holders of common stock and founders preferred stock voting together as a separate class are entitled to elect three board members.

Conversion

Each share of preferred stock is convertible, at the option of the holder, into the number of ordinary shares, which results from dividing the applicable original issue price per share for each series by the applicable conversion price per share for such series. The initial conversion price per share of all series of preferred stock shares is equal to the original issue price of each series, and therefore, the conversion ratio is 1:1.

Each share of preferred stock shall be automatically converted into ordinary shares at the then — applicable conversion price in the event of a firm commitment underwritten public offering and listing by the Company of its ordinary shares with aggregate proceeds of no less than $80.0 million (prior to deduction of underwriting discounts and registration expenses).

Redemption

The Company's preferred stock does not contain any mandatory redemption features, nor are they redeemable at the option of the holder. The Company's preferred stock contain a redemption feature that is contingent upon the occurrence of a deemed liquidation event or a change in control, as defined in the Company's Certificate of Incorporation. As a deemed liquidation event or change in control event is within the control of the Company, preferred stock is presented as a component of the Company's permanent equity on the balance sheets.

Transactions Related to Founders Preferred Stock

Founders preferred stock is substantively the same as common stock, as they share identical rights and features. The founders preferred stock can be converted into common stock on a one-to-one basis at any time. The founders preferred stock is presented as a component of the Company's permanent equity.

In 2016, 1,788,375 shares of founders preferred stock were issued. The Company repurchased and retired 582,400 shares of founders preferred stock and subsequently enacted a reverse stock split of 6:1 which reduced the founder shares outstanding to 200,995.

During fiscal year 2018, certain founders sold 76,010 shares of their founders preferred stock to an investor of series B preferred stock and such shares automatically converted into shares of series B preferred stock pursuant to the terms of the Company's Certificate of Incorporation. Subsequently in 2018, the Company enacted a forward split of 1:9 which increased the number of shares outstanding to 1,124,856.

During the fiscal year 2019, certain founders sold 962,298 shares to an investor of series C preferred stock and such shares automatically converted into shares of series C preferred stock pursuant to the terms of the Company's Certificate of Incorporation.

As of September 30, 2021, and December 31, 2020, there was 162,558 shares of founders preferred stock outstanding.

Transactions Related to Preferred Stock

All share and per share information has been retroactively adjusted to reflect any stock splits.

In August 2019, the Company issued 20,949,454 share of series C preferred stock at a purchase price of $3.50 per share and received $70.0 million in proceeds.

In June 2018, the Company performed a forward split for all types of units (common stock, founders preferred stock, and preferred stock). All three types of units were split into 9 shares of the respective unit with a pay value of $0.00001. The Company was then authorized to issue 206,815,077 shares, with 138,600,000 assigned for common stock, 1,808,946 assigned to founders preferred stock, and 6,406,131 for preferred stock.

In May 2018, the Company issued 32,834,601 shares of series B preferred stock on a post-split basis, at a post-split purchase price of $0.93, for total proceeds of $30.0 million.

In May 2017, the Company issued 33,571,530 shares of series A preferred stock on a post-split basis, for total proceeds of $17.0 million. The Company was authorized to issue series A preferred stock with various purchase prices for the respective series A issuances. Preferred series A-1 through A-6 were issued as part of the conversion of Simple Agreements for Future Equity ("SAFE") agreements, while series A-7 was issued on non-SAFE investors. During 2016, the Company issued SAFEs to various investors and raised $4.6 million in cash. The SAFE instruments converted into series A-1 through A-6 upon the issuance of series A.

Warrants

As of September 30, 2021 (unaudited), the following warrants were issued and outstanding:

Issue Date	Underlying Security	Reason for Grant	Warrants Outstanding	Exercise Price per Share	Expiration
March 12, 2021	Common Stock	Services	285,714	$ 3.50	March 12, 2026
March 15, 2021	Common Stock	Services	571,428	$ 3.50	March 15, 2026

The Company determined the warrants to be classified as equity and estimated the fair value of warrants exercisable for common stock measured on the issuance date using the Black-Scholes option valuation model. Inputs to the Black-Scholes valuation model included the estimated fair value of the underlying common stock at the valuation measurement date, the remaining contractual term of the warrant, the risk-free interest rates, the expected dividends, and the expected volatility of the price of the underlying stock using guideline companies for reference.

The fair value of the common stock warrants was determined using the Black-Scholes option valuation model using the following assumptions for values as of the issuance date:

Risk—free interest rate	0.84 — 0.85 %
Expected term (in years)	5.00
Expected dividend yield	0 %
Expected volatility	38.02 – 38.14 %

The fair value of the warrants granted based on the above inputs is $6.3 million. The warrants vest over a period of three to four years and vesting is dependent on continued provision of services to the Company. The vested portion of the warrants are presented as a component of stockholders' equity on the Company's balance sheet as of September 30, 2021. The weighted average remaining service period of the unvested warrants is 3.32 years. The Company did not issue any warrants as of September 30, 2021.

5. STOCK-BASED COMPENSATION EXPENSE

Stock Option Plan

The Company adopted the 2016 Stock Plan in October 2016 (the "Plan"). The 2016 Plan authorized the grant of incentive stock options, non-statutory stock options, and restricted stock awards to employees, directors, and consultants. The 2016 Plan also initially reserved 993,542 shares of common stock (8,941,878 shares post-split in June 2018) for issuance and designated forfeited option shares to be returned to the option reserve. Options may be early exercised and are exercisable for a term of 10 years from the date of grant.

As of September 30, 2021 (unaudited), the Company's board of directors had authorized 33,959,633 shares to be reserved for options grants under the 2016 Plan. The Company had 18,081,476 and 7,314,116 shares available for issuance as of September 30, 2021 (unaudited) and September 30, 2020 (unaudited) respectively.

Stock Option Valuation

The Company utilizes the Black-Scholes option pricing model for estimating the fair value of options granted, which requires the input of highly subjective assumptions.

The Company calculates the fair value of each option grant on the grant date using the following assumptions:

Expected Term — The Company uses the simplified method when calculating expected term due to insufficient historical exercise data.

Expected Volatility — As the Company's shares are not actively traded, the volatility is based on a benchmark of comparable companies within the automotive and energy storage industries.

Expected Dividend Yield — The dividend rate used is zero as the Company does not have a history of paying dividends on its common stock and does not anticipate doing so in the foreseeable future.

Risk-Free Interest Rate — The interest rates used are based on the implied yield available on U.S. Treasury zero-coupon issues with an equivalent remaining term equal to the expected life of the award.

	Nine months ended September 30,	
	2021	2020
	(unaudited)	
Fair value of ordinary shares	$ 5.47 - 6.07	$0.74 - $1.28
Risk-free interest rate	0.55 - 1.09%	0.29% - 1.63%
Expected term (in years)	5.47 - 6.07	5.82 - 6.05
Expected dividend yield	0%	0%
Expected volatility	36.88 - 51.52 %	31.29% - 36.38%

The following table presents the impact of stock-based compensation expense on the unaudited Statements of Operations for the periods ending September 30, 2021, and September 30, 2020, respectively (in thousands):

	Nine months ended September 30,	
	2021	2020
	(unaudited)	
Research and development	$ 1,126	$ 614
General, and administrative	695	57
Total stock-based compensation expense	$ 1,821	$ 671

Total stock-based compensation that was capitalized into internally developed software asset was $0.2 and $0.1 during the nine months ended September 30, 2021, and 2020 (unaudited) respectively. The unrecognized compensation cost of stock options as of September 30, 2021, and 2020 (unaudited) was $6.7 million and 2.2 million, which is expected to be recognized over the weighted average remaining service period of 2.4 and 2.3 respectively.

Option Activity

Changes in stock options are as follows:

	Number of Options Outstanding	Weighted Average Exercise Price Per Share	Weighted Average Remaining Contractual Term (years)	Aggregate Intrinsic Value (in thousands)
Outstanding at December 31, 2019	7,774,441	$ 0.20	8.29	$ 9,469
Granted	2,275,328	0.85		
Exercised	648,376	0.22		1,226
Cancelled	880,670	0.29		
Outstanding at December 31, 2020	8,520,723	$ 0.37	7.68	$ 15,194
Granted	1,056,750	2.34		
Exercised	556,535	0.43		5,079
Cancelled	465,116	0.64		
Outstanding at September 30, 2021	8,555,822	$ 0.59	7.15	$ 208,320
Vested and exercisable as of September 30, 2021	5,614,819	$ 0.27	6.32	$ 138,515

The weighted-average grant date fair value of stock options issued for the quarter ended September 30, 2020, was $1.27, there were no stock options issued in the quarter ended September 30, 2021. There were 122,827 and 133,708 stock options exercised during the quarter ended September 30, 2021, and 2020 and the total intrinsic value of stock options exercised is $3.00 million and $0.2 million respectively. The fair value of awards vested in YTD September 2021 and YTD September 2020 was $1.4 million and $0.75 million, respectively.

Restricted Stock Units

During the period ended September 30, 2021, the Company granted RSUs to its employees. The RSUs are subject to performance and service-based vesting conditions satisfied over four years with one-fourth of the award vesting after the first-year anniversary and one-forty eighth of the award vesting monthly thereafter. The related stock-based compensation is recognized based on a graded attribution method. For the period ended September 30, 2021, the Company did not recognize stock-based compensation associated with such RSUs as the performance condition had not been satisfied as of September 30, 2021.

A summary of the Company's RSU activities and related information is as follows:

	RSUs Outstanding	
	Number of RSUs	Weighted Average Grant date Fair Value Per Share
	(In thousands)	
Balance as of December 31, 2021	—	—
RSUs granted	2,842	$ 24.94
RSUs vested	—	—
RSUs forfeited	—	—
Balance as of September 30, 2021	2,842	$ 24.94

As of September 30, 2021, there was $70.9 million unrecognized stock-based compensation expense related to outstanding RSUs granted to employees.

Performance Awards

In July 2020, the Compensation Committee of our Board of Directors granted 13.5 million performance awards to our employees, which upon vesting will generally be paid in shares of our common stock.

The Company noted that the PRSUs granted had the following market and performance conditions as set forth below:

The PRSUs are split into six different tranches based on certain market capitalization targets using the volume-weighted average price ("VWAP") calculated over a 90-calendar day period. The market capitalization targets for each tranche are as follows:

- Tranche 1 PSUs will vest once the market capitalization based on a 90-calendar day VWAP exceeds $8.5 billion2 (~$20.00 per share);
- Tranche 2 PSUs will vest once the market capitalization based on a 90-calendar day VWAP exceeds $14.9 billion (~$35.00 per share);
- Tranche 3 PSUs will vest once the market capitalization based on a 90-calendar day VWAP exceeds $21.3 billion (~$50.00 per share);
- Tranche 4 PSUs will vest once the market capitalization based on a 90-calendar day VWAP exceeds $27.6 billion (~$65.00 per share);
- Tranche 5 PSUs will vest once the market capitalization based on a 90-calendar day VWAP exceeds $34.0 billion (~$80.00 per share); and
- Tranche 6 PSUs will vest once the market capitalization based on a 90-calendar day VWAP exceeds $42.5 billion (~$100.00 per share).

The market condition can only be met through market capitalization of Embark Technology derived by publicly traded prices of Embark Technology's Class A Common Stock, therefore there is an implicit performance condition of Embark achieving a liquidity event and becoming a publicly traded company.

The PRSUs cannot vest prior to the first anniversary of the consummation of a business combination with a special purpose acquisition company (i.e., an implied service condition of one year). Whether any performance awards vest, and the amount that does vest, is also tied to the completion of service periods that range from 6.29 years to 9.62 years at inception and the achievement of our common stock trading at certain pre-determined prices. The weighted-average fair value of the performance awards granted was $5.87, calculated using the weighted-average fair market value for each award, using a Monte Carlo simulation. There was no share-based compensation expense recorded as of September 30, 2021, related to these performance awards due to the liquidity event not occurring as of September 30, 2021. There was approximately $79.5 million of unrecognized compensation cost related to these non-vested performance awards expected to be expensed over the weighted-average period of 9.62 years as of September 30, 2021.

6. RETIREMENT SAVINGS PLAN

The Company sponsored a savings plan available to all eligible employees, which qualifies under Section 401(k) of the Internal Revenue Code. Employees may contribute to the plan amounts of their pre- tax salary subject to statutory limitations. The Company does not currently offer a match and has not provided a match for the nine months ended September 30, 2021, and 2020 (unaudited).

7. CONVERTIBLE DEBT AND NOTES PAYABLE

On April 16, 2021, the Company entered into a $25 million note payable that the Company utilizes for operations and research and development. The note has an interest rate of 10%, with the unpaid principal and accrued interest being due on 4/16/2022. The note does not contain voluntary prepayment clause unless consented by the note holder, as defined in the agreement. The Company recorded $8.1 million of debt issuance cost related to embedded derivatives on April 16, 2021 and accreted $3.7 million during the period related to interest expense. As of September 30, 2021, the outstanding note balance, including truck financing, amounted to $20.5 million.

On February 18, 2021, and January 5, 2021, the Company entered into financing agreement to finance the purchase of trucks that the Company utilizes for research and development. The financing agreements consisted of a loan of $0.1 million and $0.1 million at an interest rate equal to 6.99% and 7.50% per annum, with a maturity date of April 1, 2026, and January 19, 2027, respectively. The Company makes equal monthly installment payments over the term of each financing arrangement which are allocated between interest and principal.

On February 19, 2018, January 28, 2019, and May 23, 2019, the Company entered into financing agreement to finance the purchase of trucks that the Company utilizes for research and development. The financing agreements consisted of a loan of $0.3 million, $0.4 million, and $0.5 million at an interest rate equal to 8.25% per annum, with a maturity date of March 5th, 2023, February 14, 2024, and June 12,

2024, respectively. The Company makes equal monthly installment payments over the term of each financing arrangement which are allocated between interest and principal.

The Company entered into financing agreement on August 2, 2016, to finance the purchase of trucks that the Company utilizes for research and development. The financing agreements consisted of a loan of $0.1 million at an interest rate equal to 12.5% per annum, with a maturity date of August 9, 2020. The Company makes equal monthly installment payments over the term of each financing arrangement which are allocated between interest and principal.

The following table presents future payments of principal as of September 30, 2021 (unaudited) (in thousands):

Fiscal year

Remaining three months of 2021	$	70
2022		25,282
2023		237
2024		113
2025 and thereafter		128
Total future payments	$	25,830

8. DERIVATIVE LIABILITIES

The Company classified certain conversion and redemption features, mentioned below, in the convertible note issued on April 16, 2021, as embedded derivative instruments due to the variable conversion price feature and potential adjustments to conversion prices due to events of a qualified financing, IPO, or a change of control.

Feature 1: Automatic conversion into shares of the Company's next equity financings upon qualified financing adjusted for the discount rate.

Feature 2: Automatic conversion upon IPO or merger with a Special Purpose Acquisition Company ("SPAC") into the shares of the Company's common stock.

Feature 3: Optional redemption upon a change of control.

These features are bundled into a single unit and are recorded as derivative liabilities at fair value in the consolidated financial statements. These fair value estimates were measured using inputs classified as Level 3 of the fair value hierarchy. To arrive at the fair value of the embedded unit the Company relies upon a with-and-without analysis. This methodology compares the calculated value of the convertible note and the indicated value of the debt component. In order to compute the fair value of the convertible note, the Company utilizes the discounted cash flow analysis, where the discounted rate was calculated by utilizing a risk-free rate, an option-adjusted spread, and a risk premium.

The Company used four exit scenarios namely SPAC – Fast, SPAC – Slow, Financing, and Maturity. The following table presents the inputs and assumptions used in the valuation of the fair value of the debt component.

	30-Sept-21 (unaudited)
Term in years	0.08 - 0.54
Risk premium	56.89%
Option adjusted spread	6.54%
Risk free rate	0.07% - 0.05%

The difference between the indicated fair value of the debt component and the fair value of the instruments results in the indicated value of the embedded feature. The following table presents the fair value of the different components using the discounted cash flow and the with-and-without analysis to determine the fair value of the derivative liabilities as of September 30, 2021 (in thousands):

	30-Sept-21 (unaudited)
Fair value of instrument	$ 35,010
Fair value of straight debt component	21,064
Fair value of embedded unit	13,946

The following table provides a roll-forward of the fair values of the Company's derivative liabilities for the period ended September 30, 2021 (in thousands):

	30-Sept-21 (unaudited)
Balance – December 31, 2020	$ -
Add: Derivative liability on date of issuance of convertible note	8,163
Change in fair market value of derivative liabilities	5,783
Balance – September 30, 2021	13,946

The change in fair value of the derivative liability, which is bifurcated from the host instrument, is initially measured at its issue-date fair value, and the subsequent change in fair value of $5.8 million is recognized as other income or expense.

9. COMMITMENTS AND CONTINGENCIES

Legal Proceedings

The Company is subject to legal and regulatory actions that arise from time to time in the ordinary course of business. The assessment as to whether a loss is probable or reasonably possible, and as to whether such loss or a range of such loss is estimable, often involves significant judgment about future events. In the opinion of management, all such matters are not expected to have a material effect on the financial position, results of operations or cash flows of the Company. However, the outcome of litigation is inherently uncertain. There is no material pending or threatened litigation against the Company that remains outstanding as of September 30, 2021 (unaudited) and December 31, 2020.

Lease Agreement

The Company leases office facilities in the United States that expire at various dates through December 2024. All lease arrangements entered into are classified as operating leases. Certain leases contain scheduled increases in rental payments resulting in uneven cash flows over the life of the lease. The difference between the required lease payment and the recognition of lease expense on a straight-line basis is recorded as a deferred rent liability on the balance sheet. Rent expense during the nine months ended September 30, 2021, and 2020 (unaudited) was $0.4 million, $1.42 million, respectively.

Total future minimum lease payments over the term of the lease as of September 30, 2021 (unaudited), are as follows (in thousands):

	Lease Payments
Remaining three months of 2021	$ 275
2022	875
2023	901
2024	928
Total	**$ 2,979**

The Company’s headquarter lease in San Francisco, CA contains an option to renew the lease for a period of three years upon expiration of the initial lease term in December 2024 for which the base rent shall be the then fair market value rent at the time of exercise.

10. NET LOSS PER SHARE

The following table sets forth the computation of the basic and diluted net loss per share attributable to common stockholders for the nine months ended September 30, 2021, and 2020 (unaudited) (in thousands, except share and per share data).

	Nine Months Ended September 30,	
	2021	2020
	(unaudited)	
Numerator:		
Net loss	$ (47,825)	$ (14,988)
Net loss attributable to ordinary shareholders	$ (47,825)	$ (14,988)
Denominator:		
Weighted-average ordinary shares outstanding	47,677,440	46,603,282
Net loss per share attributable to ordinary shareholders, basic and diluted	$ (1.00)	$ (0.32)

Since the Company was in a loss position for all periods presented, basic net loss per share is the same as diluted net loss per share for all periods as the inclusion of all potential common shares outstanding would have been anti-dilutive.

The following weighted-average outstanding common stock equivalents were excluded from the computation of diluted net loss per share attributable to common stockholders for the periods presented because including them would have been anti-dilutive.

	September 30, 2021	September 30, 2020
	(unaudited)	
Founders Preferred shares	162,558	162,558
Series A-1 convertible preferred shares	3,654,873	3,654,873
Series A-2 convertible preferred shares	5,372,703	5,372,703
Series A-3 convertible preferred shares	2,485,296	2,485,296
Series A-4 convertible preferred shares	590,688	590,688
Series A-5 convertible preferred shares	2,680,236	2,680,236
Series A-6 convertible preferred shares	3,647,817	3,647,817
Series A-7 convertible preferred shares	15,139,917	15,139,917
Series B convertible preferred shares	32,834,601	32,834,601
Series C convertible preferred shares	20,949,454	20,949,454
Options issued and outstanding	11,397,560	8,129,294
Warrants issued and outstanding	857,142	—
Total	99,772,845	95,647,437

11. SUBSEQUENT EVENTS

For the interim financial statements relating to the nine months ended September 30, 2021, subsequent events were evaluated through November 17, 2021, the date on which the unaudited interim financial statements were issued.

On August 25, 2021 and August 27, 2021, Embark entered into a commitment letters (collectively, the "Commitment Letters") with certain investors (collectively, the "Investors") pursuant to which such Investors each provided a commitment to invest, upon Embark's election, up to $5 million in Embark in the form of Series C Preferred Stock of Embark in the event that the Merger Agreement is terminated and the Business Combination is not consummated. As the Business Combination is consummated, each of the Investor's obligations under the applicable Commitment Letter is terminated.

In connection with the Business Combination, Embark raised $244 million of net proceeds from the contribution of $414 million of proceeds from cash held in Northern Genesis's trust account from the Northern Genesis IPO, $160 million of proceeds from the PIPE investment, and offset by redemption of Northern Genesis's Class A common stock held by Northern Genesis's public stockholders of $299 million. Direct and incremental transaction costs in connection with the Business Combination were incurred prior to, or concurrent with the Closing by Northern Genesis and Embark, including the PIPE investment and the deferred underwriting fees related to the Northern Genesis IPO of $69 million. Embark believes cash and other components of working capital will be sufficient to meet Embark's needs for at least the next 12 months.

Exhibit 99.2

UNAUDITED PRO FORMA CONDENSED COMBINED FINANCIAL STATEMENTS

Introduction

Embark Technology, Inc, ("New Embark" or "Embark Technology") is providing the following unaudited pro forma condensed combined financial information to aid you in your analysis of the financial aspects of Embark Trucks Inc. ("Old Embark" or "Embark") becoming a wholly-owned subsidiary of New Embark as a result of the Business Combination. Following the Closing, the Embark Equityholders hold a majority of the New Embark Common Stock. The following unaudited pro forma condensed combined financial information has been prepared in accordance with Article 11 of Regulation S-X as amended by the final rule, Release No. 33-10786 “Amendments to Financial Disclosures about Acquired and Disposed Businesses” and presents New Embark on a pro forma basis.

The historical financial information of NGA was derived from the unaudited financial statements of NGA as of and for the nine months ended September 30, 2021, and for the period from September 25, 2020 (inception) through December 31, 2020, included elsewhere in this proxy statement/prospectus. The historical financial information of Embark was derived from the audited financial statements of Embark as of and for the year ended December 31, 2020, and from the unaudited financial statements of Embark as of and for the nine months ended September 30, 2021, either included in the final prospectus and definitive statement (the “Proxy”) relating to Embark's business combination with NGA, dated November 10, 2021 and filed with the Securities and Exchange Commission (the "SEC"), or attached to this Current Report on Form 8-K as exhibit 99.1. This information should be read together with NGA’s and Embark’s unaudited and audited financial statements and related notes, the sections titled “NGA’s Management’s Discussion and Analysis of Financial Condition and Results of Operations,” and “Embark’s Management’s Discussion and Analysis of Financial Condition and Results of Operations” and other financial information either included in the Proxy relating to Embark's business combination with NGA, dated November 10, 2021 and filed with the SEC, or attached to this Current Report on Form 8-K as exhibit 99.1.

The unaudited Pro Forma Condensed Combined Financial Statements do not necessarily reflect what the Post-Combination Company’s financial condition or results of operations would have been had the Business Combination occurred on the dates indicated. The unaudited Pro Forma Condensed Combined Financial Information also may not be useful in predicting the future financial condition and results of operations of the Post-Combination Company. The actual financial position and results of operations may differ significantly from the pro forma amounts reflected herein due to a variety of factors.

The following unaudited Pro Forma Condensed Combined Balance Sheet as of September 30, 2021, and the unaudited Pro Forma Condensed Combined Statement of Operations for the nine months ended September 30, 2021, and year ended December 31, 2020, are based on the historical financial statements of NGA and Old Embark. The unaudited pro forma adjustments are based on information currently available. The assumptions and estimates underlying the unaudited pro forma adjustments are described in the accompanying notes. Actual results may differ materially from the assumptions used to present the accompanying unaudited Pro Forma Condensed Combined Financial Information.

The unaudited pro forma condensed combined financial information has been prepared considering actual redemptions of 29.99 million shares of Class A common stock, 0.3 million of forfeited sponsor shares of Class A common stock, and 0.2 million of sponsor shares of Class A common stock transferred to other NGA public shareholders.

Unaudited Pro Forma Condensed Combined Balance Sheet
as of September 30, 2021
(in thousands, except per share data)

	Northern Genesis Acquisition Corp (Historical)	Embark Trucks Inc. (Historical)	Transactions Accounting Adjustments		Pro Forma Combined Balance
ASSETS					
Current Assets:					
Cash and cash equivalents	$ 35	$ 47,886	$ 244,345	A	$ 292,266
Restricted cash, short-term	–	65	–		65
Short-term investments	–	5,005	–		5,005
Prepaid expenses and other current assets	117	6,733	–		6,850
Total current assets	**152**	**59,689**	**244,345**		**304,186**
Restricted cash, long-term	–	340	–		340
Marketable securities held in Trust Account	414,029	–	(414,029)	B	–
Property, equipment, and software, net	–	8,529	–		8,529
Long-term investments	–	–	–		–
Other assets	–	3,307	–		3,307
Total Assets	**$ 414,181**	**$ 71,865**	**$ (169,684)**		**$ 316,362**
LIABILITIES AND STOCKHOLDERS' EQUITY (DEFICIT)					
Current liabilities:					
Accounts payable	$ –	$ 3,166	$ –		$ 3,166
Accrued expenses and other current liabilities	1,092	6,414	–		7,506
Convertible Note	–	20,572	(20,572)	C	–
Derivative liability	–	13,946	(13,946)	D	–
Promissory Note	750	–	(750)	C	–
Short-term notes payable	–	282	–		282
Total current liabilities	**1,842**	**44,380**	**(35,268)**		**10,954**
Long-term notes payable	–	549	–		549
Other long-term liability	–	50	–		50
Long-term deferred rent	–	167	–		167
Deferred underwriting fee payable	14,490	–	(14,490)	E	–
FPA liability	713	–	–		713
Warrant liability	22,255	–	1,080	F	23,335
Total liabilities	**39,300**	**45,146**	**(48,678)**		**35,768**
Commitments and contingencies					
Common Stock subject to possible redemption	414,000	–	(414,000)	G	–
Stockholders' equity:					
Embark Trucks Inc Preferred stock - par value	–	1	(1)	H	–
Embark Trucks Inc Founders Preferred Stock - par value	–	–	–		–
Embark Trucks Inc Common Stock	–	–	–		–
Northern Genesis Corp Class A Common Stock	1	–	(1)	I	–
New Embark Class A Common Stock	–	–	34	I	37
New Embark Class B Common Stock	–	–	9	I	9
Additional paid-in capital	–	133,233	286,480	J	419,713
Accumulated other comprehensive loss	–	–	–		–
Accumulated deficit	(39,121)	(106,515)	6,471	K	(139,165)
Total stockholders' equity (deficit)	(39,121)	26,719	292,995		280,594
Total liabilities and stockholders' equity (deficit)	**$ 414,181**	**$ 71,865**	**$ (169,684)**		**$ 316,362**

Unaudited Pro Forma Condensed Combined Statement of Operations
for the nine months ended September 30, 2021
(in thousands, except per share data)

	Northern Genesis Acquisition Corp (Adjusted)	Embark Trucks, Inc. (Historical)	Transactions Accounting Adjustments		Pro Forma Combined Balance
Operating Expenses					
Research and development	$ –	$ 26,823	$ 4,381	AA	$ 31,204
General and administrative	3,017	11,585	17,801	AA, AC	32,403
Total operating expenses	3,017	38,408	22,182		63,607
Loss from operations	(3,017)	(38,408)	(22,182)		(63,607)
Other Income	–	18	–		18
Change in fair value of warrant liability	8,328	–	–		8,328
Interest income	29	83	(29)	AB	83
Change in fair value of derivative liability	–	(5,782)	5,782	AE	–
Interest expense	–	(3,735)	3,735	AF	–
Change in fair value of FPA liability	253	–	–		253
Loss on initial issuance of private warrants	(267)	–	–		(267)
Offering costs allocated to warrant and FPA liabilities	(1,148)	–	–		(1,148)
Loss before income taxes	4,178	(47,824)	(12,694)		(56,339)
Provision for income taxes	–	–	–		–
Net income (loss)	$ 4,178	$ (47,824)	$ (12,694)		$ (56,339)
Other Comprehensive gain (loss)	–	(45)	–		(45)
Total comprehensive loss	$ 4,178	$ (47,869)	$ (12,694)		$ (56,384)
Common Stock Earnings per Share:					
Basic and Diluted weighted average shares outstanding	**48,906,593**	**47,677,440**			
Earnings per share	**$ 0.09**	**$ (1.00)**			
Class A Earnings per Share:					
Allocated Earnings					$ (45,389)
Basic and Diluted weighted average shares outstanding					360,968,507
Earnings per share					$ (0.13)
Class B Earnings per Share:					
Allocated Earnings					$ (10,950)
Basic and Diluted weighted average shares outstanding					87,078,982
Earnings per share					$ (0.13)

Unaudited Pro Forma Condensed Combined Statement of Operations
for the year ended December 31, 2020
(in thousands, except per share data)

	Northern Genesis Acquisition Corp (Adjusted)	Embark Trucks, Inc. (Historical)	Transactions Accounting Adjustments		Pro Forma Combined Balance
Operating Expenses					
Research and development	$ –	$ 18,831	$ 14,915	AA	$ 33,746
General and administrative	1	3,595	76,290	AA, AC, AD, J	79,886
Total operating expenses	1	22,426	91,205		113,632
Loss from operations	(1)	(22,426)	(91,205)		(113,632)
Other Income	–	107	–		107
Interest income	–	788	–		788
Interest expense	–	–	–		–
Loss before income taxes	(1)	(21,531)	(91,205)		(112,737)
Provision for income taxes	–	–	–		–
Net income (loss)	$ (1)	$ (21,531)	$ (91,205)		$ (112,737)
Other Comprehensive gain (loss)	–	(24)	–		(24)
Total comprehensive loss	$ (1)	$ (21,555)	$ (91,205)		$ (112,761)
Common Stock Earnings per Share:					
Basic and Diluted weighted average shares outstanding		46,743,539			
Earnings per share		$ (0.46)			
Class A Earnings per Share:					
Allocated Earnings					$ (92,201)
Basic and Diluted weighted average shares outstanding					360,968,507
Earnings per share					$ (0.26)
Class B Earnings per Share:					
Allocated Earnings					$ (20,536)
Basic and Diluted weighted average shares outstanding					87,078,982
Earnings per share					$ (0.24)

NOTES TO UNAUDITED PRO FORMA CONDENSED COMBINED FINANCIAL INFORMATION

1. Description of the Business Combination

On June 22, 2021, NGA, Merger Sub, a wholly owned subsidiary of NGA, and Embark entered into the Merger Agreement. The Merger Agreement provided for, among other things, the merger of Merger Sub with and into Embark (the "Merger") with New Embark surviving the Merger as a wholly owned subsidiary of Embark Technology (formerly NGA) and New Embark equity holders holding the majority of the Embark Technology Common Stock. The Business Combination was consummated on November 10th, 2021.

Pursuant to the Merger Agreement, the aggregate stock consideration issued by the Post-Combination Company in the Business Combination will be $4.9 billion consisting of 485,638,573 newly issued shares, factoring a decrease of approximately 29.9 million of New Embark Class A Common Stock as a result of NGA Stockholders who elected to participate in the Embark Pre-Closing Redemption for aggregate proceeds of approximately $299.9 million. Additionally, the stock consideration is decreased by the forfeiture of approximately 0.3 million of New Embark Class A Common Stock as a result of NGA Sponsors Stockholders who forfeited shares in accordance with the terms of the Forward Purchase Agreement. Based on an assumed Post-Combination Company value of $10.00 per share, New Embark will receive $4.4 billion in the form of 444,188,975 reclassified shares of the Post-Combination Company. NGA public stockholders will receive $115.6 million in the form of 11,564,865 newly issued shares considering 29.9 million shares of redemptions, the PIPE and Forward Purchase Agreement Subscribers (the "Subscriber(s)") will receive $200.0 million in the form of 20,000,000 newly issued shares, and the Sponsor will receive $98.8 million in the form of 9,884,733 reclassified shares in exchange for NGA's existing Common Stock. The following represents the consideration at closing of the Business Combination:

(in millions)	
Share issuance to Embark shareholders(1)	4,441.9
Share issuance to NGA shareholders	115.6
Share issuance to Subscriber(s)	200.0
Share issuance to Sponsor	98.8
Share Consideration—at Closing	**4,856.4**

(1) The share consideration to be transferred to Embark shareholders include (i) $4,039.0 million to holders of issued and outstanding Embark Common Stock, (ii) $35.7 million for the conversion of the then outstanding Convertible Note ; (iii) $6.4 million for the conversion of Embark Common Stock warrants; (iv) $361.3 million to holders of vested and unvested stock options and RSUs of Embark Common Stock.

The value of share consideration issued at the Closing is determined by application of the Exchange Ratio of 2.98, which is based on the implied $10.00 per share prior to the Business Combination. The unaudited Pro Forma Condensed Combined Balance Sheet has been prepared to give effect to the Business Combination and related transactions summarized below as if they had been consummated on September 30, 2021. The unaudited Pro Forma Condensed Combined Statement of Operations for the nine months ended September 30, 2021, and the year ended December 31, 2020, gives effect to the Business Combination and related transactions summarized below as if they had been consummated on January 1, 2020:

- The merger of Merger Sub, the wholly owned subsidiary of NGA, with and into Old Embark, with Old Embark as the surviving company.
- the issuance and sale of 16,000,000 Embark Technology Class A Common Stock, for a purchase price of $10.00 per share and an aggregate purchase price of $160,000,000 in the PIPE Financing;
- the issuance and sale of 4,000,000 Forward Purchase Units at $10.00 per unit with each unit consisting of 4,000,000 shares of New Embark Technology Class A Common Stock and 666,667 redeemable warrants to purchase shares of New Embark Technology Class A Common Stock;

- immediately prior to the Effective Time, the issuance of performance-based stock units to the Founders of New Embark which are subject to performance-based and market-based vesting conditions;

- immediately prior to the Effective Time, the issuance of restricted stock units to certain employees of Embark immediately prior to the Effective Time;

- all convertible promissory notes issued, immediately prior to the Effective Time, were converted into New Embark Technology Class A Common Stock in accordance with the Convertible Note terms;

- Immediately prior to the Effective Time, the vested portion of all Old Embark warrants net exercised into shares of Old Embark Common Stock and then converted to New Embark Technology Class A Common Stock, and the unvested portion of all Old Embark warrants net exercised into Old Embark Restricted Stock and then converted to New Embark Technology Restricted Stock, in accordance with the warrants' terms;

- the completion of the Embark Pre-Closing Reorganization, which included the conversion of Old Embark preferred stock into New Embark Common Stock, and whereby eighty percent (80%) of Old Embark Common Stock held by the Founders converted into shares of New Embark Technology Class B Common Stock, twenty percent (20%) of Embark Common Stock held in trust converted into shares of New Embark Technology Class A Common Stock, and all other holders of Embark Common Stock converted into shares of New Embark Technology Class A Common Stock using a conversion ratio of 2.98 calculated in accordance with the terms of the Merger Agreement;

- all Old Embark stock options issued, immediately prior to the Effective Time, converted into stock options to receive New Embark Technology Class A Common Stock with substantially the same terms and conditions as were applicable to such stock option immediately prior to the Effective Time;

- all Old Embark restricted stock units and performance stock units issued, immediately prior to the Effective Time, converted to the right to receive New Embark Technology Class A Common Stock with substantially the same terms and conditions as were applicable to such award immediately prior to the Effective Time;

- immediately prior to the Effective Time, by virtue of the effectiveness of NGA's Second A&R Charter, each share of NGA pre-transaction Common Stock was reclassified into shares of New Embark Technology Class A Common Stock; and

- the cancellation and transfer of Sponsor Shares in connection with the Business Combination and in accordance with the terms of the Sponsor Support Agreement and the Merger Agreement.

Basis of Presentation

The Business Combination will be accounted for as a reverse recapitalization, with no goodwill or other intangible assets recorded, in accordance with accounting principles generally accepted in the United States of America. Under this method of accounting, NGA will be treated as the acquired company for financial reporting purposes. Accordingly, for accounting purposes, the Business Combination will be treated as the equivalent of New Embark issuing shares for the net assets of NGA, accompanied by a recapitalization. The net assets of NGA will be recognized at fair value (which is expected to be consistent with carrying value), with no goodwill or other intangible assets recorded.

Embark has been determined to be the accounting acquirer based on evaluation of the following facts and circumstances:

- Old Embark's shareholders will have majority of the voting power ;

- Old Embark will appoint the majority of the board of directors of the Post-Combination Company;

- Old Embark's existing management will comprise the management of the Post-Combination Company;

- New Embark will comprise the ongoing operations of the Post-Combination Company;

- Old Embark is the larger entity based on historical business operations;

- The Post-Combination Company will assume Embark's name.

The unaudited Pro Forma Condensed Combined Balance Sheet as of September 30, 2021, assumes that the Business Combination occurred on September 30, 2021. The unaudited Pro Forma Condensed Combined Statement of Operations for the nine months ended September 30, 2021, and year ended December 31, 2020, presents the pro forma effect of the Business Combination as if it had been completed on January 1, 2020. These periods are presented on the basis of Embark as the accounting acquirer.

The unaudited Pro Forma Condensed Combined Balance Sheet as of September 30, 2021, has been prepared using, and should be read in conjunction with, the following:

- NGA's unaudited Condensed Balance Sheet as of September 30, 2021, and the related notes for the period ended September 30, 2021, in NGA's Quarterly Report on Form 10-Q for the quarterly period ended September 30, 2021, and filed with the SEC on November 10, 2021; and

- Old Embark's unaudited Balance Sheet as of September 30, 2021, and the related notes for the period ended September 30, 2021, attached to this Current Report on Form 8-K as exhibit 99.1.

The unaudited Pro Forma Condensed Combined Statement of Operations for the nine months ended September 30, 2021, and year ended December 31, 2020, has been prepared using, and should be read in conjunction, with the following:

- NGA's unaudited Condensed Statement of Operations for the nine months ended September 30, 2021, and audited Statement of Operations for the period from September 25, 2020 (inception) through December 31, 2020, and the related notes, either included in the Proxy relating to Embark's business combination with NGA, dated November 10, 2021 and filed with the SEC, or in NGA's Quarterly Report on Form 10-Q for the quarterly period ended September 30, 2021, and filed with the SEC on November 10, 2021; and

- Embark's unaudited Statement of Operations and Comprehensive Loss for the nine months ended September 30, 2021, and audited Statement of Operations and Comprehensive Loss for the year ended December 31, 2020, and the related notes, either included in the Proxy relating to Embark's business combination with NGA, dated November 10, 2021 and filed with the SEC, or attached to this Current Report on Form 8-K as exhibit 99.1.

Management has made significant estimates and assumptions in its determination of the pro forma adjustments ("Transaction Accounting Adjustments"). The related transaction accounting adjustments are based on currently available information that management believes is, under the circumstances and given the information available at this time, reasonable, and reflective of adjustments necessary to report Embark's financial condition and results of operations as if the Business Combination was completed on the dates mentioned above.

Therefore, it is likely that the actual adjustments will differ from the pro forma adjustments, and it is possible the difference may be material. NGA believes that its assumptions and methodologies provide a reasonable basis for presenting all of the significant effects of the Business Combination and related transactions contemplated based on information available to management at the time and that the pro forma adjustments give appropriate effect to those assumptions and are properly applied in the unaudited Pro Forma Condensed Combined Financial Information.

The unaudited Pro Forma Condensed Combined Financial Information does not give effect to any anticipated synergies, operating efficiencies, tax savings, or cost savings that may be associated with the Business Combination ("Management Adjustments"). Management has elected not to present Management's Adjustments and will only be presenting Transaction Accounting Adjustments in the unaudited Pro Forma Condensed Combined Financial Information.

The unaudited Pro Forma Condensed Combined Financial Information is not necessarily indicative of what the actual results of operations and financial position would have been had the Business Combination taken place on the dates indicated, nor are they indicative of the future consolidated results of operations or financial position of the Post-Combination Company. They should be read in conjunction with the audited financial statements and notes thereto of each of NGA and Old Embark either included in the Proxy relating to Embark's business combination with NGA, dated November 10, 2021 and filed with the SEC, or attached to this Current Report on Form 8-K as exhibit 99.1.

The following summarizes the pro forma Post-Combination Company shares outstanding:

	Number of outstanding Shares	Percentage of outstanding shares	
Post-Combination Company shares issued to Embark stockholders (2)	406,597,891	90.7%	
Post-Combination Company shares issued to NGA public stockholders	41,400,000		
Less: shares redeemed, net of sponsor transfers (1)	(29,835,135)		
Total NGA shares	11,564,865	2.6%	%
Total Subscriber shares	20,000,000	4.5%	%
Total Sponsor (3)	9,884,733	2.2%	%
Pro Forma Shares Outstanding	**448,047,490**	**100.0%**	**%**

(1) Considers NGA stockholders holding 29.9 million Public Shares having exercised their redemption rights at a value of $10.00 per share for $299.9 million of funds in the Trust Account. Additionally considering the transfer of 0.2 million Sponsor shares by NGA Sponsors to NGA Public stockholders.

(2) Includes 3.6 million shares expected to be issued to Convertible note holders at the Effective Time of the Merger for outstanding notes payable and 0.6 million shares expected to be issued to warrant holders at the Effective Time of the Merger for vested warrants, and excludes 1.7 million shares expected to be issued to holders of early exercised shares, which are not considered as outstanding from an accounting standpoint as they are not vested.

(3) Reflects the forfeiture of 0.3 million Sponsor shares by NGA Sponsors, and the transfer of 0.2 million Sponsor shares by NGA Sponsors to NGA Public stockholders.

2. Accounting Policies

Upon consummation of the Business Combination, management will perform a comprehensive review of the two entities' accounting policies.. As a result of the review, management may identify differences between the accounting policies of the two entities which, when conformed, could have a material impact on the financial statements of the Post-Combination Company.

3. Adjustments to Unaudited Pro Forma Condensed Combined Financial Information

The unaudited Pro Forma Condensed Combined Financial Information has been prepared to illustrate the effect of the Business Combination and has been prepared for informational purposes only.

The historical financial statements have been adjusted in the unaudited Pro Forma Condensed Combined Financial Information to give pro forma effect to events that directly reflect the accounting for the transaction. Embark and NGA have not had any historical relationship prior to the Business Combination. Accordingly, no pro forma adjustments were required to eliminate activities between the companies.

The unaudited pro forma condensed combined provision for income taxes does not necessarily reflect the amounts that would have resulted had the Post-Combination Company filed consolidated income tax returns during the periods presented.

The pro forma basic and diluted earnings per share amounts presented in the unaudited Pro Forma Condensed Combined Statement of Operations are based upon the number of the Post-Combination Company's shares outstanding, assuming the Business Combination occurred on January 1, 2020.

Adjustments to Unaudited Pro Forma Condensed Combined Balance Sheet

The adjustments included in the unaudited Pro Forma Condensed Combined Balance Sheet as of September 30, 2021, are as follows:

(A) Reflects pro forma adjustments to cash related to the following:

Release of cash from Trust Account	$	414,029	(i)
Proceeds from Forward Purchase Agreements		40,000	(ii)
Proceeds from PIPE		160,000	(iii)
Payment of transaction expenses		(54,559)	(iv)
Payment of NGA's deferred underwriting fee		(14,490)	(v)
Release of cash for redemption of shares		(299,885)	(vi)
Release of payment of promissory note		(750)	(vii)
Net pro forma cash flow	**$**	**244,345**	

(i) — Represents the reclassification of cash equivalents held in the trust account and to reflect that the cash equivalents are available to effectuate the transaction or to pay redeeming NGA public stockholders.

(ii) — Represents the proceeds received from the sale of 4.0 million forward purchase units pursuant to the Forward Purchase Agreement at $10.00 per unit for total proceeds of $40.0 million.

(iii) — Represents proceeds received from the issuance of 16.0 million Embark Technology Class A Common Stock, in a private placement to be consummated concurrently with the closing of the Business Combination, at $10.00 per share pursuant to the PIPE Financing Subscription Agreement. The unaudited Pro Forma Condensed Combined Balance Sheet reflects the issuance of these shares with a corresponding increase of $160.0 million to additional paid in-capital and an increase of less than $0.1 million to Embark Technology Class A common stock.

(iv) — Represents preliminary estimated transaction costs incurred by Embark of approximately $39.9 million for legal, financial advisory and other professional fees incurred in consummating the Business Combination. Additionally, this includes transaction costs incurred by NGA in the amount of $14.6 million. The unaudited pro forma condensed combined balance sheet reflects payment of these costs as a reduction of cash, with a corresponding increase in accumulated deficit, as these costs are expensed as incurred.

(v) — Represents the payment of $14.5 million of deferred underwriter fees incurred during NGA's initial public offering due upon completion of the Business Combination.

(vi) — Represents the payment of cash of $299.9 million paid for the redeeming Parent public stockholders.

(vii) — Represents the payment of cash of $0.8 million for the repayment of NGA promissory notes.

(B) Reflects the reclassification of cash and cash equivalents held in NGA's trust account that becomes available in connection with the Business Combination, assuming no redemption.

(C) Reflects the derecognition of the amortized cost of the Convertible Note of $20.6 million pursuant to the conversion of the Convertible Notes. Pursuant to the Convertible Note agreement, the Convertible Note automatically converted into shares of Embark Technology Class A Common Stock at a discount rate determined by the pre-money valuation of Embark. The discount resulted in a recognition of a derivative liability of $13.9 million (see note D below), along with the accretion of the remaining debt discount of $4.4 million as an adjustment to accumulated deficit which upon conversion of the Convertible Note into shares of Embark Technology Class A Common Stock, was recognized to additional paid in capital for a total adjustment of $38.9 million. Additionally reflects the repayment of $0.8 million of NGA promissory notes in accordance with the terms of the consummation of the agreement.

(D) Reflects the derecognition of the derivative liability pursuant to the conversion of the convertible notes. The adjustment reflects an excess of the fair value of the liability in order to represent the maximum value the note holder will receive upon such conversion.

(E) Reflects the settlement of deferred underwriters' fees incurred during the NGA IPO due upon completion of the Business Combination. The unaudited Pro Forma Condensed Combined Balance Sheet reflects payment of these costs as a reduction of cash and cash equivalents, with a corresponding decrease in deferred underwriting fee payable.

(F) Represents the allocation of proceeds received from the sale of 4.0 million forward purchase units pursuant to the Forward Purchase Agreement at $10.00 per unit. Each forward purchase unit consists of one share of NGA Common Stock and one-sixth of one public warrant. Each whole public warrant entitles the holder to purchase one share of NGA Common Stock. The public warrants are liability classified warrants with an estimated issuance date fair value of $0.9 million as part of the forward purchase agreement. The $40.0 million proceeds received were allocated between each NGA Common Stock and each whole warrant at $39.1 million and $0.9 million, respectively. The NGA Common Stock was then recapitalized into Embark Technology Class A Common Stock and the public warrants were exchanged for warrants to purchase Embark Technology Class A Common Stock.

(G) Reflects the reclassification of $114.1 million of NGA public shares, from mezzanine equity to permanent equity. The unaudited pro forma balance sheet reflects the reclassification with a corresponding increase of $114.0 million to additional paid in-capital and an increase of less than $0.1 million to New Embark Class A Common Stock. Further reflects the redemption of $299.9 million of NGA Common Stock.

(H) Represents the conversion of Embark Preferred Stock into Embark Common Stock pursuant to Section 4 of Article IV of Embark's Amended and Restated Articles of Incorporation prior to the closing of the Business Combination, as stipulated by the Merger Agreement. The unaudited Pro Forma Condensed Combined Balance Sheet reflects the conversion with a corresponding increase of $1,000 to Embark Technology Class A Common Stock.

(I) Represents recapitalization of Embark's equity and issuance of 316,963,447 shares of New Embark Class A common stock and 87,078,982 shares of New Embark Class B common stock to Embark's equity holders as consideration for the reverse recapitalization. Additionally, this amount reflects the issuance of Embark Technology Class A Common Stock and Embark Technology Class B Common stock pursuant to the following:

	(In thousands)
Par value - Old NGA Common Stock	$ 1
Par value - Forward Purchase Agreement Shares	0
Par value – NGA redeemable shares reclassified to permanent equity	1
Par value - PIPE Shares	2
Par value - Issuance to note holder	0
Par value - Shares issued to Embark shareholders (recapitalization)	33
Total Class A issuance	$ 37
Total Class B issuance	$ 9

(J) Reflects the following transactions that increase or decrease additional paid in capital. The unaudited Pro Forma Condensed Combined Balance Sheet reflects the corresponding total decrease of $286.5 million to additional paid in-capital.

	(In thousands)	
Acquisition related transaction expenses incurred by Embark	(39,942)	(A)(iv)
Issuance of New Embark Class A Common Stock from Forward Purchase Agreement	38,920	(F)
Reclassification of NGA redeemable Common Stock into permanent equity	71,652	(E)
Issuance of New Embark Class A Common Stock from PIPE Financing	159,998	(A)(iii)
Conversion of $25 million convertible notes at a discount into New Embark Class A Common Stock	38,945	(C)
Reclassification of NGA's historical retained earnings balance into additional paid in capital	(39,121)	(i)
Recapitalization of Embark preferred and Common Stock to New Embark Class A and Class B Common Stock	(40)	(ii)
Additional paid in capital associated with exchange of Founders' Embark Common Stock for New Embark Class B Common Stock	13,606	(iii)
Total	286,480	

(i) — Represents $39.1 million reclassification of NGA's historical accumulated deficit to additional paid in capital as part of the reverse recapitalization.

(ii) — Represents the conversion of Embark preferred stock into Embark Common Stock and the recapitalization of Embark Common Stock into Embark Technology Class A and Class B Common Stock.

(iii) — The Founders of the Company transferred 20% of their shares into family trusts. As a result, the remaining 80% of the Founder's Embark Common Stock was exchanged for Embark Technology Class B Common Stock with the amounts held in trust converting into Embark Technology Class A Common Stock. The Embark Technology Class B Common Stock have the same economic rights as Embark Technology Class A Common Stock; however, the Embark Technology Class B Common Stock carry 10 votes per share whereas Embark Technology Class A Common Stock carry one vote per share. The Embark Technology Class B Common Stock was determined to have incremental fair value over the Embark Common Stock that was exchanged. Accordingly, the incremental fair value associated with high voting shares of $13.6 million is reflected at the time of the exchange and included as an adjustment to additional paid in capital as of September 30, 2020, and to the general and administrative expense for the year ended December 31, 2020 .

(K) Represents adjustments of $6.5 million to retained earnings due to the impact of estimated transaction costs, discounted shares from the conversion of the Convertible Note, elimination of NGA's historical retained earnings, and incremental value of high voting shares.

	(In thousands)	
Estimated Transaction Costs incurred by NGA	(14,616)	(A) (iv)
Recognition of Discount on Convertible Note upon conversion to New Embark Class A Common Stock	(4,428)	(D)
Elimination of historical NGA retained earnings	39,121	(J)(i)
Recognition of compensation cost related to the exchange of Embark Common Stock for high voting stock of New Embark Class B Common Stock	(13,606)	(J)(iii)
Total	6,471	

Adjustments to Unaudited Pro Forma Condensed Combined Statements of Operations

The pro forma adjustments included in the unaudited Pro Forma Condensed Combined Statement of Operations for the nine months ended September 30, 2021, and year ended December 31, 2020, are as follows:

(AA) Represents stock compensation expense recorded to research and development of $4.4 million for the nine months ended September 30, 2021, and $14.9 million for the year ended December 31, 2020 and stock compensation expense recorded to general and administrative expense of $10.7 million for the nine months ended September 30, 2021, and $38.5 million for the year ended December 31, 2020 from restricted stock units ("RSUs") that were granted to certain employees of the Company in connection with the Business Combination. The grant occurred after the balance sheet date, but before the closing of the Business Combination. Accordingly, the RSU grant included within the pro forma Statement of Operations and assumed to have been granted simultaneously with the Business Combination on January 1, 2020. The RSUs contain service-based vesting conditions that vest over a period of four years as well as a performance condition requiring the Company to be a public company by December 31, 2021. Both conditions must be met to vest.

(AB) Represents pro forma adjustment to eliminate interest income related to the amount held in NGA's trust.

(AC) Represents stock compensation expense of $7.1 million for the nine months ended September 30, 2021, and $9.7 million for the year ended December 31, 2020, from performance restricted stock units ("PRSUs") that were granted to founders of the Company in connection with the Business Combination. The grant occurred after the balance sheet date, but before the closing of the Business Combination. Accordingly, the PRSU grant is included within the unaudited Pro Forma Condensed Combined Statement of Operations as a separate material transaction and assumed to have been granted simultaneously with the Business Combination on January 1, 2020. The PRSUs contain a performance- based vesting condition ("performance condition") and six market-based vesting conditions ("market conditions"). The performance condition requires that Embark becomes a publicly traded company and the market conditions requires that Embark Technology's market capitalization meets or exceeds six different valuation multiples multiplied by the valuation of Embark Technology at the time of the Business Combination. Each of the market conditions will be met once a valuation multiple as defined above is achieved. The grant date fair value of the PRSU's is attributed using a graded vesting schedule and compensation expense is recognized over the derived service period of each market condition tranche.

(AD) Reflects $14.6 million of transaction costs that are not direct or incremental to the Business Combination expected to be incurred by NGA. This is a non-recurring transaction accounting adjustment.

(AE) Reflects the elimination of $5.8 million change in the fair value of the derivative liability associated with the convertible note, due to expected conversion of notes payable, resulting in settlement of the derivative liability.

(AF) Reflects the elimination of $3.7 million charge to interest expense for the accretion of the debt discount associated with the issuance of the convertible note, due to expected conversion of notes payable.

4. Earnings per Share

Represents the net earnings per share calculated using the historical weighted average shares outstanding, and the issuance of additional shares in connection with the Business Combination, assuming the shares were outstanding since January 1, 2020. As the Business Combination, including related proposed equity purchases, is being reflected as if it had occurred at the beginning of the period presented, the calculation of weighted average shares outstanding for basic and diluted net loss per share assumes that the shares issuable in connection with the Business Combination have been outstanding for the entire period presented. If the maximum number of shares of Common Stock of NGA are redeemed, this calculation is retroactively adjusted to eliminate such shares for the entire periods. connection with the Business Combination have been outstanding for the entire period presented. If the maximum number of shares of Common Stock of NGA are redeemed, this calculation is retroactively adjusted to eliminate such shares for the entire periods.

The unaudited Pro Forma Condensed Combined Financial Information has been prepared as follows:

(Net loss presented in thousands of dollars)	Nine months Ended September 30, 2021	Twelve months Ended December 31, 2020
Class A Pro Forma Basic and Diluted Loss Per Share		
Pro Forma net loss attributable to Class A shareholders	$ (45,389)	$ (90,826)
Weighted average shares outstanding, basic and diluted	360,968,507	360,968,507
Basic and diluted net loss per Class A share	$ (0.13)	$ (0.25)
Class A Pro Forma Weighted Average Shares—Basic and Diluted		
Class A shares issued to Embark stockholders	315,304,904	315,304,904
Class A shares issued to holder of Convertible Note	3,571,428	3,571,428
Class A shares issued to current NGA public shareholders	11,411,502	11,411,502
Class A shares issued to warrant holders	642,577	642,577
Class A shares issued to Subscribers	20,000,000	20,000,000
Class A shares issued to the Sponsor	10,038,096	10,038,096
New Embark Class A Pro Forma Weighted Average Shares—Basic and Diluted	**360,968,507**	**360,968,507**
New Embark Class B Pro Forma Basic and Diluted Loss Per Share		
Pro Forma net loss attributable to Class B shareholders	$ (10,950)	$ (21,911)
Weighted average shares outstanding, basic and diluted	87,078,982	87,078,982
Basic and diluted net loss per Class B share	$ (0.13)	$ (0.25)
New Embark Class B Pro Forma Weighted Average Shares—Basic and Diluted		
Class B shares issued to Embark Founders	87,078,982	87,078,982
New Embark Class B Pro Forma Weighted Average Shares—Basic and Diluted	**87,078,982**	**87,078,982**

As a result of the pro forma net loss, the earnings per share amounts exclude the anti-dilutive impact from the following securities:

- The 13,800,000 public warrants sold during the NGA IPO that will be converted in the Merger into warrants to purchase up to a total of 13,800,000 New Embark Class A shares, which are exercisable at $11.50 per share;
- The 6,686,667 Private Placement Warrants that will be exercisable for one share of NGA's common stock at an exercise price of $11.50 per share.
- The 35,048,720 New Embark stock options outstanding as of the close of the Business Combination;
- The 642,578 shares of restricted New Embark's Class A Common Stock subject to forfeiture.

EMBARK'S MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The following discussion and analysis of Embark's financial condition and results of operations should be read in conjunction with the consolidated financial statements and related notes thereto either included in the final prospectus and definitive statement (the "Proxy") relating to Embark's business combination with Northern Genesis Acquisition Corp. II., dated November 10, 2021 and filed with the Securities and Exchange Commission, or attached to this Current Report on Form 8-K as exhibit 99.1. This discussion contains forward-looking statements that reflect our plans, estimates and beliefs that involve risks and uncertainties. As a result of many factors, such as those set forth under "Risk Factors" and "Cautionary Note Regarding Forward-Looking Statements" sections in the Proxy, our actual results may differ materially from those anticipated in these forward-looking statements.

Overview

Embark develops technologically advanced autonomous driving software for the truck freight industry and offers a carefully constructed business model that is expected to provide the industry with the most attractive path to adopting autonomous driving. Specifically, Embark has developed a Software as a Service ("SaaS") platform designed to interoperate with a broad range of truck OEM platforms, forgoing complicated and logistically challenging truck building or hardware manufacturing operations in favor of focusing on a superior driving technology. At scale, domestic shippers and carriers will be able to access Embark technology via a subscription software license selected as an option at the time they specify the build of new semi-trucks.

Headquartered in San Francisco, California and backed by leading Silicon Valley venture capital firms, Embark's history as the industry's longest running autonomous truck driving program is replete with technological firsts that include, but are not limited to:

- the first coast-to-coast autonomous truck drive,
- the first to reach 100,000 autonomous miles on public roads,
- the first to successfully open autonomous transfer points for human- autonomous vehicle ("AV") handoff.

Embark's founding team includes roboticists and its broader team includes numerous computer scientists, many with advanced degrees and experience at other leading robotics and autonomous vehicle companies and academic programs. Through this business combination, Embark intends to rapidly scale its engineering team to build on its industry-leading technology position.

Embark has also spent considerable time and effort refining its business model. Embark is initially deploying its technology in a very focused manner, targeting freight highway miles between transfer points located next to metropolitan areas in the lower "Sunbelt" region of the United States (the "U.S."), leaving the "last mile" of driving to and from the transfer points to the industry's highly skilled human drivers. Embark's strategy is distinct from other industry players which seek to provide more complicated "end to end" autonomous driving that would entirely displace human drivers and potentially place these companies in competition with the industry's carriers. Unlike those competitors, Embark anticipates working with the industry's existing players to help them bring autonomous driving technology to market on their own terms. In addition, Embark believes its solution will be the safest and most reliable in the industry because of its disciplined geographic focus and emphasis on software development, which stands in contrast to Embark's competitors that focus on multiple domestic markets simultaneously, manufacturing autonomous trucks and/or competing directly with semi-truck OEMs or legacy carriers.

Embark's business model focus does not come at any significant commercial expense for Embark's stockholders because the serviceable market Embark is targeting is significant. Embark currently targets the rapidly growing $700 billion U.S. truck freight market, and its initial commercial phase targets 236 billion serviceable miles within this market. The industry has had to face significant pressures from the growth of e-commerce and the well-documented shortage of skilled drivers, and therefore has powerful incentives to adopt autonomous driving solutions to both improve capacity and reduce costs. In addition, Embark's cooperative model has already had traction with many of the industry's leading shippers and carriers.

In short, Embark believes the freight truck market is poised for a dramatic sea change that will result in an industry that is more profitable, less polluting and provides a more humane lifestyle for its skilled drivers thanks to autonomous driving technology. Embark is the best positioned company in the industry to lead this transformation.

Recent Developments Affecting Comparability

COVID-19 Impact

In March 2020, the World Health Organization declared the 2019 novel coronavirus ("COVID-19") a global pandemic. In the United States, as part of government-imposed restrictions, Embark was forced to temporarily pause fleet testing and operations in 2020. Embark also implemented a work-from-home policy for most of its non-operations team. However, a select group of workers remained on-site to continue advancing testing work for its test fleet. Since then, Embark has resumed its fleet testing and operations and has increased headcount to match its research and development requirements.

The future impact of the COVID-19 pandemic on Embark's operational and financial performance will depend on certain developments, including the duration and end of the pandemic, impact on Embark's research and development efforts, and effect on Embark's suppliers, all of which are uncertain and cannot be predicted. Public and private sector policies and initiatives to reduce the transmission of COVID-19 and disruptions to Embark's operations and the operations of Embark's third-party suppliers, along with the related global slowdown in economic activity, may result in increased costs. It is possible that the COVID-19 pandemic, the measures that have been taken or that may be taken by the federal, state, local authorities and businesses affected by government-mandated business closures, and the resulting economic impact may materially and adversely affect Embark's business, results of operations, cash flows and financial positions.

See "Risk Factors — *Pandemics and epidemics, including the ongoing COVID-19 pandemic, natural disasters, terrorist activities, political unrest, and other outbreaks could have a material adverse impact on Embark's business, results of operations, financial condition, cash flows or liquidity, and the extent to which Embark will be impacted will depend on future developments, which cannot be predicted*." for further discussion of the possible impact of COVID-19 on Embark's business.

Key Factors Affecting Embark's Operating Performance

Embark's financial condition, results of operations, and future success depend on several factors that present significant opportunities for us but also pose risks and challenges, including those set forth in the section entitled "Risk Factors" in this proxy statement/ prospectus and the following:

Embark's Ability to Achieve Key Technical Milestones and Deliver a Commercial Product

Embark's growth will depend on the introduction of Embark Driver and Embark Guardian, products which will drive demand from potential customers. Embark has developed a platform agnostic interface, Embark Universal Interface, which will serve as the foundation to utilize Embark Driver and Guardian products in trucks manufactured by a broad range of OEMs. Embark's ability to introduce its products will be driven by a variety of factors including Embark's research and development fleet size, the number of autonomous miles driven (measured as the number of miles driven by Embark's research & development fleet as well as partner fleet autonomous miles), and the ability to provide a safe and sustainable solution based on information gathered from the operation of Embark's research and development fleet. Embark develops most key technologies in-house to achieve a rapid pace of innovation and tests it extensively through operating Embark's fleet. Embark expects an increase in research and development fleet size in the foreseeable future to allow Embark to strategically focus on innovations, which it believes will help solidify Embark's overall solution to customers and partners. To date, Embark, has not generated any revenue and until Embark's products reach commercialization, autonomous miles driven will be comprised solely of autonomous miles driven by Embark's research and development fleet. Embark believes that as the number of autonomous miles driven increases, the data will continually feed improvements to the platform, leading to Embark's ability to innovate and introduce new products to the market and increase adoption of Embark's products in the future.

Embark's Ability to Expand its Coverage Map Across the United States

Embark's long-term growth potential will benefit from strategic network expansion across the United States. Network breadth is measured by the number of transfer points on Embark's coverage map, the number of cities in which the Embark Driver can support, and the number of direct-to-customer freight lanes in operation. Embark expects to achieve significant network growth by partnering with key real-estate partners which will enable Embark to quickly bring their truck stops into its coverage map. Additionally, Embark will partner with shippers who already move a significant amount of freight on Embark's network to establish direct-to-customer freight lanes. Embark believes that expanding its network will enable Embark to create a significant and sustainable competitive advantage. Embark believes that the continued growth of Embark's partnerships will improve user experience and drive more users to Embark's platform, which it believes will allow Embark to further densify its coverage map and reinforce rapid network growth. Embark will apply a highly scalable model nationally, with a tailored approach to each state, driven by the regulatory environment and local market dynamics. Embark believes that this will allow Embark to expand rapidly and efficiently across different geographies, while maintaining a high level of control over the specific strategy within each state.

Embark's Ability to Expand its Partner Network

The growth of Embark's business model is focused on driving the adoption of its technical products and maximizing their use across Embark's partners' operations. This is achieved by enabling pilot testing of Embark's products throughout customers' operations. Most recently, Embark formally announced the Embark Partner Development Program, which serves as the basis of its partnership network. The PDP comprises shippers and carriers from across the freight ecosystem working with Embark to refine and scale Embark's offerings.

Embark estimates that its existing partners have significant enough fleet operations to comprise approximately 90% of the trucks required to meet Embark's 2024 revenue targets assuming they adopt Embark's technology at scale. Specifically, Embark estimates that these existing partners operate approximately 32,000 trucks and purchase approximately 8,000 trucks annually. Embark believes that its current carriers reflect a small fraction of the overall demand for its technology and is in discussions with other carriers representing 40% of the top 100 carriers measured by truck count, which represent a dramatically larger addressable market. Embark plans to increase PDP membership by providing network assessments for prospective members and constructing business cases to support Embark's product integration into their operations. Over time, it is expected that these partners will convert into long-term Embark customers.

Adoption and Support of Autonomous Technology in the Freight Industry

Embark's business model is supported by a large addressable market that Embark believes will benefit from the introduction of autonomous trucking technology. The freight industry is currently facing significant challenges, notably driver shortages and utilization limitations, which Embark believes it will address through its product offerings. Embark has identified participants from across the freight ecosystem who have expressed support for Embark's offerings and the potential solutions they provide to the challenges they are facing.

While Embark has confirmed general market support, the long-term success of its business model is dependent on broad scale adoption and support of autonomous trucking technology. Embark has engaged with notable partners in the freight industry who Embark believes will lead the industry in adopting autonomous vehicle technology. As Embark onboards more partners, it will increase miles driven by partners, which Embark believes will serve to validate its product offerings and generate interest and confidence from other partners. Embark believes customers will be motivated to integrate Embark's technology to be price competitive with other freight participants who have achieved efficiencies with Embark.

Key Components of Embark's Results of Operations

The following discussion describes certain line items in Embark's statements of operations.

Operating Expenses

Operating expenses consist of research and development expenses and general and administrative expenses. Personnel-related costs are the most significant component of Embark's operating expenses and include salaries, benefits, and stock-based compensation expenses.

Embark's full-time employee headcount in research and development has grown from 92 as of December 31, 2020 to 153 as of September 30, 2021, and Embark expects to continue to hire new employees to support Embark's growth. Embark's full-time employee headcount in general and administrative functions has grown from 19 as of December 31, 2019 to 48 as of December 31, 2020 to 21 as of September 30, 2021, and Embark expects to continue to hire new employees to support Embark's growth. The timing of these additional hires could materially affect Embark's operating expenses in any particular period.

Embark expects to continue to invest substantial resources to support Embark's growth and anticipates that each of the following categories of operating expenses will increase in absolute dollar amounts for the foreseeable future.

Research and Development Expenses

Research and development expenses consist primarily of salaries, employee benefits, stock-based compensation expenses and travel expenses related to Embark's engineers performing research and development activities to originate, develop and enhance Embark's products. Additional expenses include consulting charges, component purchases, and other costs for performing research and development on Embark's software products.

General and Administrative Expenses

General and administrative expenses consist primarily of salaries, employee benefits, stock-based compensation expenses, and travel expenses related to Embark's executives, finance team, and the administrative employees. It also consists of legal, consulting, and professional fees, rent and lease expenses pertaining to Embark's offices, business insurance costs and other costs. Embark expects that after completion of the Business Combination, Embark will incur additional audit, tax, accounting, legal and other costs related to compliance with applicable securities and other regulations, as well as additional insurance, investor relations and other costs associated with being a public company.

Non-Operating Expenses and Other Items

Change in fair value of derivative liabilities

Change in fair value of derivative liabilities represents the increase / decrease in the fair value of the embedded conversion and redemption features, which are presented as derivative liability, related to the convertible note payable. For each reporting period, the Company will determine the fair value of the derivative liability and record a corresponding non-cash benefit or non-cash charge, due to a decrease or increase, respectively, in the calculated derivative liability.

Other Income

Other income consists of income generated from transporting freight on behalf of counterparties using Embark's own research and development truck fleet equipped with its self-driving systems through various Transportation Service Agreements ("TSAs"). The primary purpose of TSAs is to support Embark's research and development and proof of concept efforts. Accordingly, income generated from such TSA arrangements is not expected to be the primary revenue generating activity of Embark. Looking forward, Embark expects to generate revenues through subscription software licensing of its automated driving platform.

Interest Income

Interest income consists of interest earned on Embark's investments classified as available for sale securities as well as cash equivalents. Embark invests in highly liquid securities such as money market funds, as well as treasury bills.

Interest Expense

Interest expense primarily consists of non-cash interest incurred on Embark's convertible note. The interest expense is related to the accretion of the debt discount offered upon the issuance of the convertible note.

Results of Operations

The results of operations presented below should be reviewed in conjunction with the financial statements and notes included elsewhere in this proxy statement/ prospectus. The following table sets forth Embark's results of operations data for the periods presented (in thousands):

Comparisons for the nine months ended September 30, 2021 and 2020:

The following table sets forth Embark's statement of operations for nine months ended September 30, 2021 and 2020 and the dollar and percentage change between the two periods:

	Nine Months Ended September 30,		$	%
	2021	2020	Change	Change
	(unaudited)			
Operating expenses:				
Research and development	$ 26,823	$ 13,236	$ 13,587	102.7%
General and administrative	11,585	2,509	9,076	361.7
Total operating expenses	38,408	15,745	22,663	143.9
Loss from operations	(38,408)	(15,745)	(22,663)	143.9
Other income (expense):				
Change in fair value of derivative liability	(5,783)	—	(5,783)	100%
Other income	18	93	(75)	(80.6)
Interest income	83	712	(629)	(88.3)
Interest expense	(3,735)	(48)	(3,687)	7,681.3
Loss before provision for income taxes	(47,825)	(14,988)	(32,837)	219.1
Provision for income taxes	—	—	—	N.M.
Net loss	$ (47,825)	$ (14,988)	$ (32,837)	219.1%

N.M. – Percentage change not meaningful

Research and Development Expenses

Research and development expense increased by $13.6 million in the nine months ended September 30, 2021, compared to the nine months ended September 30, 2020. The increase was primarily due to $7.1 million higher headcount expenses related to an increase in headcount, $0.7 million increase in cloud computing and simulation infrastructure expense, $0.4 million increase in prototype truck hardware expense, $2.1 million increase in general R&D costs primarily driven by engineering software & subscription costs, and $1.0 million driven by administrative costs related to contractors and other professional services.

General and Administrative Expense

General and administrative expense increased by $9.1 million in the nine months ended September 30, 2021 compared to the nine months ended September 30, 2020 primarily due to an increase in other professional services expense of $3.5 million, headcount expense of $3.8 million related to an increase in headcount and increased recruiting expenses of $0.3 million.

Change in fair value of derivative liabilities

For the period ended September 30, 2021, we realized a change in fair value derivative liabilities as compared to the prior period of approximately $5.8 million. The originating underlying instrument is a convertible note originated in April 2021 containing conversion and redemption features, which gave rise to a derivative liability. For each reporting period, the Company will determine the fair value of the derivative liability and recorded a corresponding non-cash benefit or non-cash charge, due to a decrease or increase, respectively, in the calculated derivative liability.

Other Income

Other income decreased by $0.1 million in the nine months ended September 30, 2021 compared to the nine months ended September 30, 2020. The decrease was driven by a decrease in pilot freight revenue.

Interest Income

Interest income decreased by $0.6 million in nine months ended September 30, 2021, compared to the nine months ended September 30, 2020. The decrease in interest income is driven by a decrease in the average investment balance as well as a lower interest environment during the nine months ended September 30, 2021 compared to the nine months ended September 30, 2020.

Interest Expense

Interest expense increased by $3.7 million in nine months ended September 30, 2021, compared to the nine months ended September 30, 2020. The increase in interest expense is driven by an increase in the accretion of the debt discount being recognized over the term of the convertible note.

Liquidity and Capital Resources

Since Embark's inception, Embark has financed Embark's operations primarily through sales of shares of common stock and preferred stock. During the nine months ended September 30, 2021 and the years ended December 31, 2020 and December 31, 2019, Embark issued 555,410, 340,171 and 1,725,256 shares of common stock for an aggregate amount of $0.1 million, $0.1 million and $0.1 million, respectively. In August 2019, Embark closed transactions with a group of investors to issue 20,949,454 shares of Series C convertible preferred stock and received $69.9 million in proceeds, net of issuance cost. The proceeds are available for working capital and other corporate purposes.

As of September 30, 2021, Embark had outstanding debt of $21.4 million from financing of freight trucks that Embark utilizes for research and development. Embark makes monthly installment payments on truck financing and the debt has varying maturities between March 2023 and June 2027. Embark's principal uses of cash in recent periods have been to fund Embark's operations, invest in research and development, repay borrowings, and make investments in accordance with Embark's investments policy.

On August 25, 2021 and August 27, 2021, Embark entered into a commitment letters (collectively, the "Commitment Letters") with certain investors (collectively, the "Investors") pursuant to which such Investors each provided a commitment to invest, upon Embark's election, up to $5 million in Embark in the form of Series C Preferred Stock of Embark in the event that the Merger Agreement is terminated and the Business Combination is not consummated. As the Business Combination is consummated, each of the Investor's obligations under the applicable Commitment Letter is terminated.

In connection with the Business Combination, Embark raised $244 million of net proceeds from the contribution of $414 million of proceeds from cash held in Northern Genesis's trust account from the Northern Genesis IPO, $160 million of proceeds from the PIPE investment, and offset by redemption of Northern Genesis's Class A common stock held by Northern Genesis's public stockholders of $299 million. Direct and incremental transaction costs in connection with the Business Combination were incurred prior to, or concurrent with the Closing by Northern Genesis and Embark, including the PIPE investment and the deferred underwriting fees related to the Northern Genesis IPO of $69 million. Embark believes cash and other components of working capital will be sufficient to meet Embark's needs for at least the next 12 months.

Embark currently transports shipments using its research and development truck fleet, demonstrating proof of concept and paving the way for commercialization and revenue generating operations in the future. However, Embark has not earned any revenue to date. To the extent Embark is unable to commercialize its technology as expected, its liquidity may be negatively impacted. Embark's ability to continue as a going concern is dependent on management's ability to control operating costs and demonstrate progress against its technical roadmap. This involves developing new capabilities for the Embark Driver software and improving the reliability and performance of the software on public roads. Demonstrating ongoing technical progress will enable the Company to obtain funds from outside sources of financing, including financing from equity interest investors and borrow funds to fund its general operations, research and development activities and capital expenditures.

The following table shows Embark's cash flows from operating activities, investing activities and financing activities for the stated periods:

	Nine months Ended September 30,	
	2021	**2020**
	(unaudited)	
Net cash used in operating activities	$ (32,858)	$ (12,304)
Net cash provided by (used in) investing activities	45,506	15,984
Net cash provided by (used in) financing activities	24,183	(171)

Operating Activities

Net cash used in operating activities for the nine months ended September 30, 2021 was $32.9 million, an increase of $20.6 million from $12.3 million for the nine months ended September 30, 2020. The increase was primarily due to an increase of $32.8 million net loss for the nine months ended September 30, 2021 compared to nine months ended September 30, 2020, excluding the impact of depreciation and stock-based compensation and other non-cash items. This was partially offset by $12.7 million of non-cash adjustments to net include including depreciation and amortization as well as stock-based compensation, and $0.4 net cash provided by changes in Embark's operating assets and liabilities, which was primarily attributable to accounts payable, accrued expenses and other current liabilities.

Net cash used in operating activities for the year ended December 31, 2020 was $19.1 million, an increase of $4.9 million from $14.2 million for the year ended December 31, 2019. The increase was primarily due to an increase of $6.2 million net loss for the twelve months ended December 31, 2020 compared to the twelve months ended December 31, 2019, excluding the impact of depreciation and stock-based compensation and other non-cash items. This was partially offset by $0.7 million of non-cash adjustments to net include including depreciation and amortization as well as stock-based compensation, and $0.6 net cash provided by changes in Embark's operating assets and liabilities, which was primarily attributable to prepaid expenses, other assets, and accrued expenses and other current liabilities.

Investing Activities

Net cash provided by investing activities for the nine months ended September 30, 2021 was $45.5 million, a decrease of $29.5 million from $16.0 million for the nine months ended September 30, 2020 . The decrease was primarily due $42.2 million purchase of marketable securities, offset by a $11.5 million increase in proceeds received maturities of investments, increase in purchase of property, equipment, and software of $0.9 million, and an increase of $0.4 million in deposits for trucks.

Net cash provided by investing activities for the year ended December 31, 2020 was $20.4 million compared to $77.7 million of net cash used in investing activities for the year ended December 31, 2019. The increase was primarily due to a $70.3 million increase in the proceeds received from maturities of marketable securities, a $27.1 million decrease in purchase of marketable securities, and a $0.8 million refund on truck deposits.

Financing Activities

Net cash provided by financing activities for the nine months ended September 30, 2021 was $24.2 million compared to $0.2 million of net cash used in investing the nine months ended September 30, 2020. The increase of $24.0 million was primarily due to proceeds received from Embark's convertible notes payable of $25 million, net of deferred offering cost and payment towards notes payable of $0.83 million and $0.1 million respectively.

Net cash used in financing activities for the year ended December 31, 2020 was $0.2 million primarily from repayment towards Embark's outstanding notes payable which was partially offset by proceeds received from issuance of common stock from the exercise of employee stock options. Net cash provided by financing activities for the year ended December 31, 2019 was $69.8 million, which was primarily due to the issuance of Embark's Series C convertible preferred stock and proceeds received from issuance of common stock from the exercise of employee stock options. The increase in cash from financing activities was partially offset by the partial repayment of outstanding notes payable.

Financing Arrangements

Convertible note

On April 16, 2021, we issued a convertible note with a principal amount of $25.0 million resulting in net proceeds of $16.8 million, after $8.2 million of debt discount attributable to the conversion and redemption features. The note has a stated interest rate of 10% with the unpaid principal and accrued interest being due upon maturity at April 2022. The note does not contain any voluntary prepayment clause unless consented by the note holder, as defined in the agreement. The outstanding balance, after accreting $3.7 million the debt for the period, of the convertible note was approximately $20.6 million as of September 30, 2021.

Notes Payable for Equipment Purchases

On February 18, 2021 and January 5, 2021, Embark entered into financing agreements to finance the purchase of trucks that Embark utilizes for research and development. The financing agreements consisted of a loan of $0.1 million and $0.1 million at an interest rate equal to 6.99% and 7.50% per annum, with a maturity date of April 1, 2026 and January 19, 2027, respectively. Embark makes equal monthly installment payments over the term of each financing arrangement which are allocated between interest and principal.

Embark entered into financing agreements on February 19, 2018, January 28, 2019, and May 23, 2019 to finance the purchase of trucks that Embark utilizes for research and development. The financing agreements consisted of loans of $0.3 million, $0.4 million, and $0.5 million at an interest rate equal to 8.25% per annum, with a maturity date of March 5th, 2023, February 14, 2024, and June 12, 2024, respectively. Embark makes equal monthly installment payments over the term of each financing arrangement which are allocated between interest and principal.

On August 2, 2016, Embark entered into a financing agreement consisting of a loan of $0.1 million at an interest rate equal to 12.5% per annum, which matured on August 9, 2020. Embark made equal monthly installment payments over the term which was allocated between interest and principal.

Critical Accounting Policies and Significant Management Estimates

Embark prepares its financial statements in accordance with GAAP. The preparation of financial statements also requires Embark to make estimates and assumptions that affect the reported amounts of assets, liabilities, revenue, costs and expenses and related disclosures. Embark bases Embark's estimates on historical experience and on various other assumptions that Embark believes to be reasonable under the circumstances. Actual results could differ significantly from the estimates made by Embark's management. To the extent that there are differences between Embark's estimates and actual results, Embark's future financial statement presentation, financial condition, results of operations and cash flows will be affected. Embark believes that the accounting policies discussed below are critical to understanding Embark's historical and future performance, as these policies relate to the more significant areas involving Embark management's judgments and estimates. Critical accounting policies and estimates are those that Embark considers the most important to the portrayal of Embark's financial condition and results of operations because they require Embark's most difficult, subjective or complex judgments, often as a result of the need to make estimates about the effects of matters that are inherently uncertain.

Embark believes that the accounting policies described below involve a significant degree of judgment and complexity. Accordingly, Embark believes these are the most critical to aid in fully understanding and evaluating Embark's financial condition and results of operations. For further information, see Note 2 to Embark's financial statements included elsewhere in this proxy statement/ prospectus.

Internal Control Over Financial Reporting

With the oversight of senior management, Embark initiated a remediation plan in 2021 and engaged external advisors and consultants that assisted with the implementation of the remediation plan. The Company's remediation efforts are focused on (i) hiring of personnel with technical accounting and financial reporting experience; (ii) implementation of improved accounting and financial reporting processes; and (iii) implementation of systems to improve the completeness, timeliness and accuracy of the Company's financial reporting.

Embark believes the measures described above should remediate the material weakness identified and strengthen our internal control over financial reporting. The remediation initiatives outlined above are estimated to take place over the next 12 to 18 months. While Embark continues the challenging and costly process to implement our plan to remediate the material weakness, we cannot predict the success of such plan or the outcome of our assessment of this plan until the remediation initiatives have been completed and have been operating effectively for a sufficient period of time. We can give no assurance that this implementation will remediate these deficiencies in internal control or that additional material weaknesses or significant deficiencies in our internal control over financial reporting will not be identified in the future. Embark is committed to evolving and improving our processes and internal control necessary to satisfy the accounting and financial reporting requirements as a public company.

Stock-Based Compensation Expense

Stock Options

Embark estimates the fair value of stock options granted to employees and directors using the Black-Scholes option-pricing model. The grant date fair value of stock options is recognized as compensation expense on a straight-line basis over the requisite service period. Forfeitures are accounted for when they occur.

The Black-Scholes model considers several variables and assumptions in estimating the fair value of stock-based awards. These variables include:

- *Fair value of common stock:* Because Embark's common stock was not publicly traded prior to the closing of the Business Combination, Embark estimated the fair value of Embark's common stock in 2019, 2020, and 2021. Embark's board of directors considers numerous objective and subjective factors to determine the fair value of Embark's common stock as discussed in "— *Common Stock Valuations*" below.

- *Expected Term:* The expected term represents the period that Embark's stock-based awards are expected to be outstanding and was calculated as the average of the option vesting and contractual terms, based on the simplified method. The simplified method deems the term to be the average of the time-to-vesting and the contractual life of the options.

- *Expected Volatility:* Since Embark does not have a trading history of Embark's common stock, the expected volatility was derived from the average historical stock volatilities of several public companies within Embark's industry that Embark considers to be comparable to Embark's business over a period equivalent to the expected term of the stock option grants.

- *Risk-Free Interest Rate:* The risk-free interest rate is based on the implied yield available on U.S. Treasury zero-coupon issues with the remaining term equivalent to the expected term.

- *Expected Dividend:* Embark has not issued any dividends in Embark's history and does not expect to issue dividends over the life of the options and, therefore, have estimated the dividend yield to be zero.

Common Stock Valuations

Prior to the closing of the Business Combination, given the absence of a public trading market for Embark's common stock and in accordance with the American Institute of Certified Public Accountants Accounting and Valuation Guide, Valuation of Privately Held Company Equity Securities Issued as Compensation, Embark's board of directors determined the best estimate of fair value of Embark's common stock exercising reasonable judgment and considering numerous objective and subjective factors. These factors include:

- contemporaneous third-party valuations of Embark's common stock;

- the prices at which Embark or other holders sold Embark's common stock to outside investors in arms-length transactions;

- Embark's financial condition, results of operations and capital resources;

- the industry outlook;

- the fact that option awards involve rights in illiquid securities in a private company;

- the valuation of comparable companies;

- the lack of marketability of Embark's common stock;

- the likelihood of achieving a liquidity event, such as an initial public offering or a sale of Embark given prevailing market conditions;

- the history and nature of Embark's business, industry trends and competitive environment; and

- general economic outlook including economic growth, inflation, unemployment, interest rate environment and global economic trends.

Embark's board of directors determined the fair value of Embark's common stock by first determining enterprise value of Embark's business, and then using that to derive a per share value of Embark's common stock.

The enterprise value of Embark's business was estimated by considering several factors, including estimates using the cost approach, market approach and the income approach. The cost approach estimates the fair market value of an organization by utilizing the balance sheet to take the total fair market value of assets minus the fair market value of liabilities. The market approach was estimated based on the projected value of comparable public companies in a similar line of business that are publicly traded. The income approach estimates the enterprise value of the business based on the cash flows that it expects to generate over its remaining life. These future cash flows are discounted to their present values using a rate of return appropriate for the risk of achieving the business' projected cash flows. The present value of the estimated cash flows is then added to the present value equivalent of the residual value of the business at the end of the projected period to calculate the business enterprise value. In addition to the three approaches described above, Embark factors in recent arms-length transactions such as the closest round of equity financing preceding the date of valuation.

After determining Embark's enterprise value, an allocation of enterprise value is made to Embark's various classes of equity to determine the value of common stock. In allocating the enterprise value of Embark's business to common stock through October 2020, Embark used the option pricing method ("OPM"), whereas after October 2020, Embark used a combination of OPM and probability weighted expected return method ("PWERM"). PWERM involves a forward-looking analysis of the possible future outcomes of the enterprise. This method is particularly useful when discrete future outcomes can be predicted at a relatively high level of confidence with a probability distribution. Discrete future outcomes considered under PWERM include an acquisition by a Special Purpose Acquisition Company ("SPAC") of Embark's common stock, as well as other market-based outcomes. Determining the fair value of the enterprise using PWERM requires Embark to develop assumptions and estimates for both the probability of a liquidity event and stay private outcomes, as well as the values Embark expects those outcomes could yield.

A discount for lack of marketability ("DLOM") is applied to arrive at a fair value of Embark's common stock. A DLOM is meant to account for the lack of marketability of a stock that is not traded on public exchanges. In making the final determination of common stock value, consideration is also given to recent sales of common stock.

Application of these approaches involves the use of estimates, judgments and assumptions that are highly complex and subjective, such as those regarding Embark's expected future revenue, expenses and future cash flows, discount rates, market multiples, the selection of comparable companies and the probability of possible future events. Changes in any or all of these estimates and assumptions, or the relationships between those assumptions, impact Embark's valuations as of each valuation date and may have a material impact on the valuation of Embark's common stock.

For valuations after the completion of the Business Combination, Embark's board of directors will determine the fair value of each share of underlying common stock based on the closing price of Embark's common stock as reported on the date of grant.

Warrants

Warrants to purchase shares of common stock are freestanding financial instruments classified as equity in Embark's balance sheet as the underlying shares of common stock are not considered to be mandatorily redeemable, do not include an obligation of Embark to repurchase its equity shares or to issue a variable number of equity shares. The warrants are measured at fair value on the issuance date. The fair value of the underlying common stock is measured using a Black-Scholes ("BSM") option-pricing model. The following assumptions and inputs were utilized within the BSM option-pricing model: exercise price, fair value of the underlying common stock, risk-free interest rate, expected term, expected dividend yield and expected volatility, which are all determined in the same manner with Embark's stock options as detailed in the above *"Stock-Based Compensation Expense"* section. Pursuant to the original terms of the warrant agreement, immediately prior to, and conditioned upon the completion of the Merger, all outstanding warrants will be exercised for common stock. The common stock will be subject to the same vesting conditions existing under the warrant agreement such that unvested common stock would be subject to forfeiture if the holder terminates its services to Embark prior to vesting.

Capitalization of Internally Developed Software

Embark capitalizes certain internal use software development costs associated with creating and enhancing internal use software related to Embark's product suite and technology infrastructure. These costs include personnel and related employee benefits expenses for employees who are directly associated with and who devote time to software projects. Embark expenses software development costs that do not meet the criteria for capitalization as incurred and records them in research and development expenses in Embark's statements of operations.

Software development activities generally consist of three stages: (i) the planning stage; (ii) the application and infrastructure development stage; and (iii) the post implementation stage. Costs incurred in the planning and post implementation stages of software development, including costs associated with the post configuration training and repairs and maintenance of the developed technologies, are expensed as incurred. Embark capitalizes costs associated with software developed for internal use when both the preliminary project stage is completed and management has authorized further funding for the completion of the project. Embark capitalizes costs incurred in the application and infrastructure development stages, including significant enhancements and upgrades. Capitalization ends once a project is substantially complete and the software and technologies are ready for their intended purpose. Embark will amortize internal use software development costs using a straight-line method over their estimated useful life commencing when the software is ready for its intended use. Embark estimates a useful life of three years for technology infrastructure related software. As Embark's product suite is not yet ready for its intended use, amortization has not yet begun.

All capitalized software requires the ongoing assessment for recoverability which requires judgment by management with respect to certain external factors including, but not limited to, anticipated future gross revenues, estimated economic useful life, and changes in competing software technologies.

New Accounting Pronouncements

See Note 2, Summary of Significant Accounting Policies, to Embark Trucks' financial statements included elsewhere in this proxy statement/proxy statement/ prospectus.

JOBS Act Accounting Election

Embark is an emerging growth company, as defined in the JOBS Act. Under the JOBS Act, emerging growth companies can delay adopting new or revised accounting standards until such time as those standards apply to private companies. Embark intends to elect to adopt new or revised accounting standards under private company adoption timelines. Accordingly, the timing of Embark's adoption of new or revised accounting standards will not be the same as other public companies that are not emerging growth companies or that have opted out of using such extended transition period. [See "*Emerging Growth Company*" for further discussion.]

Quantitative and Qualitative Disclosures about Market Risk

Embark is exposed to certain market risks as part of Embark's ongoing business operations.

Credit Risk

Embark is exposed to credit risk on Embark's investment portfolio. Investments that potentially subject Embark to credit risk consist principally of cash and investments in debt securities. Embark places cash and cash equivalents with financial institutions with high credit standing and excess cash in marketable investment grade debt securities.

Interest Rate Risk

Embark is exposed to interest rate risk on Embark's investment portfolio. Investments that potentially subject Embark to interest rate risk consist principally of cash and investments in debt securities. As of September 30, 2021, Embark has cash, cash equivalents, and investments of $53.0 million, consisting of U.S. Treasury securities and interest-bearing money market accounts for which the fair market value would be affected by changes in the general level of U.S. interest rates. However, due to the short-term maturities and the low-risk profile of Embark's investments, an immediate 10% change in interest rates would not have a material effect on the fair market value of Embark's cash, cash equivalents, and investments.