

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

Form 10-Q

(Mark One)

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

For the quarterly period ended September 30, 2021

or

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

For the transition period from _____ to _____

Commission File Number: 001-15957

Capstone Green Energy Corporation

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

16640 Stagg Street
Van Nuys, California
(Address of principal executive offices)

95-4180883
(I.R.S. Employer
Identification No.)

91406
(Zip Code)

818-734-5300

(Registrant's telephone number, including area code)

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

Title of each class	Trading Symbol(s)	Name of exchange on which registered
Common Stock, par value \$.001 per share Series B Junior Participating Preferred Stock Purchase Rights	CGRN	NASDAQ Capital Market

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

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

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

Large accelerated filer Accelerated filer Non-accelerated filer Smaller reporting company
Emerging growth company

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

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

The number of shares outstanding of the registrant's common stock as of November 9, 2021 was 15,228,151.

**CAPSTONE GREEN ENERGY CORPORATION
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PART I — FINANCIAL INFORMATION

Item 1. Financial Statements

CAPSTONE GREEN ENERGY CORPORATION AND SUBSIDIARIES
CONDENSED CONSOLIDATED BALANCE SHEETS
(In thousands, except share amounts)
(Unaudited)

	September 30, 2021	March 31, 2021
Assets		
Current Assets:		
Cash and cash equivalents	\$ 38,267	\$ 49,533
Accounts receivable, net of allowances of \$348 at September 30, 2021 and \$314 at March 31, 2021	25,360	20,593
Inventories, net	18,023	11,829
Prepaid expenses and other current assets	4,310	4,953
Total current assets	<u>85,960</u>	<u>86,908</u>
Property, plant, equipment and rental assets, net	11,687	9,630
Non-current portion of inventories	1,752	1,845
Other assets	8,958	7,639
Total assets	<u>\$ 108,357</u>	<u>\$ 106,022</u>
Liabilities and Stockholders' Equity		
Current Liabilities:		
Accounts payable and accrued expenses	\$ 24,754	\$ 19,767
Accrued salaries and wages	1,351	1,889
Accrued warranty reserve	1,864	5,850
Deferred revenue	4,965	6,374
Current portion of notes payable and lease obligations	860	576
Total current liabilities	<u>33,794</u>	<u>34,456</u>
Deferred revenue - non-current	700	765
Term note payable, net	50,932	52,865
Long-term portion of notes payable and lease obligations	6,155	4,762
Total liabilities	<u>91,581</u>	<u>92,848</u>
Commitments and contingencies (Note 14)		
Stockholders' Equity:		
Preferred stock, \$.001 par value; 1,000,000 shares authorized; none issued	—	—
Common stock, \$.001 par value; 51,500,000 shares authorized, 15,325,464 shares issued and 15,228,151 shares outstanding at September 30, 2021; 12,898,144 shares issued and 12,824,190 shares outstanding at March 31, 2021	15	13
Additional paid-in capital	946,278	934,381
Accumulated deficit	(927,447)	(919,271)
Treasury stock, at cost; 97,313 shares at September 30, 2021 and 73,954 shares at March 31, 2021	(2,070)	(1,949)
Total stockholders' equity	<u>16,776</u>	<u>13,174</u>
Total liabilities and stockholders' equity	<u>\$ 108,357</u>	<u>\$ 106,022</u>

See accompanying notes to condensed consolidated financial statements

CAPSTONE GREEN ENERGY CORPORATION AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS
(In thousands, except per share data)
(Unaudited)

	Three Months Ended September 30,		Six Months Ended September 30,	
	2021	2020	2021	2020
Revenue:				
Product and accessories	\$ 8,465	\$ 7,206	\$ 16,854	\$ 13,812
Parts and service	8,731	7,700	16,424	15,287
Total revenue	<u>17,196</u>	<u>14,906</u>	<u>33,278</u>	<u>29,099</u>
Cost of goods sold:				
Product and accessories	8,797	7,347	17,790	14,147
Parts and service	5,689	4,997	10,130	9,017
Total cost of goods sold	<u>14,486</u>	<u>12,344</u>	<u>27,920</u>	<u>23,164</u>
Gross margin	<u>2,710</u>	<u>2,562</u>	<u>5,358</u>	<u>5,935</u>
Operating expenses:				
Research and development	987	599	1,870	969
Selling, general and administrative	6,438	4,872	11,762	8,418
Total operating expenses	<u>7,425</u>	<u>5,471</u>	<u>13,632</u>	<u>9,387</u>
Loss from operations	(4,715)	(2,909)	(8,274)	(3,452)
Other income	(5)	11	660	15
Interest income	6	8	11	16
Interest expense	(1,278)	(1,313)	(2,513)	(2,604)
Gain on debt extinguishment	—	—	1,950	—
Loss before provision for income taxes	<u>(5,992)</u>	<u>(4,203)</u>	<u>(8,166)</u>	<u>(6,025)</u>
Provision for income taxes	2	9	10	10
Net loss	<u>(5,994)</u>	<u>(4,212)</u>	<u>(8,176)</u>	<u>(6,035)</u>
Less: Deemed dividend on purchase warrant for common shares	—	15	—	15
Net loss attributable to common stockholders	<u>\$ (5,994)</u>	<u>\$ (4,227)</u>	<u>\$ (8,176)</u>	<u>\$ (6,050)</u>
Net loss per common share attributable to common stockholders—basic and diluted	<u>\$ (0.40)</u>	<u>\$ (0.38)</u>	<u>\$ (0.58)</u>	<u>\$ (0.56)</u>
Weighted average shares used to calculate basic and diluted net loss per common share attributable to common stockholders	<u>15,167</u>	<u>11,040</u>	<u>14,202</u>	<u>10,862</u>

See accompanying notes to condensed consolidated financial statements

CAPSTONE GREEN ENERGY CORPORATION AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY
(In thousands, except per share data)
(Unaudited)

	Common Stock		Additional	Accumulated	Treasury Stock		Total
	Shares	Amount	Paid-in Capital	Deficit	Shares	Amount	Stockholders' Equity
Balance, March 31, 2021	12,898,144	\$ 13	\$ 934,381	\$ (919,271)	73,954	\$ (1,949)	\$ 13,174
Purchase of treasury stock	—	—	—	—	3,353	(29)	(29)
Vested restricted stock awards	19,096	—	29	—	—	—	29
Stock-based compensation	—	—	305	—	—	—	305
Issuance of common stock, net of issuance costs	2,289,651	2	11,203	—	—	—	11,205
Net loss	—	—	—	(2,182)	—	—	(2,182)
Balance, June 30, 2021	15,206,891	15	945,918	(921,453)	77,307	(1,978)	22,502
Purchase of treasury stock	—	—	—	—	20,006	(92)	(92)
Vested restricted stock awards	48,313	—	53	—	—	—	53
Stock-based compensation	—	—	333	—	—	—	333
Stock awards to Board of Directors	70,260	—	—	—	—	—	—
Issuance of common stock, net of issuance costs	—	—	(26)	—	—	—	(26)
Net loss	—	—	—	(5,994)	—	—	(5,994)
Balance, September 30, 2021	15,325,464	\$ 15	\$ 946,278	\$ (927,447)	97,313	\$ (2,070)	\$ 16,776

	Common Stock		Additional	Accumulated	Treasury Stock		Total
	Shares	Amount	Paid-in Capital	Deficit	Shares	Amount	Stockholders' Equity
Balance, March 31, 2020	10,286,366	\$ 10	\$ 915,755	\$ (900,869)	57,577	\$ (1,875)	\$ 13,021
Purchase of treasury stock	—	—	—	—	3,442	(4)	(4)
Vested restricted stock awards	16,126	—	4	—	—	—	4
Stock-based compensation	—	—	210	—	—	—	210
Issuance of common stock, net of issuance costs	782,448	1	1,371	—	—	—	1,372
Change in warrants valuation	—	—	99	—	—	—	99
Net loss	—	—	—	(1,823)	—	—	(1,823)
Balance, June 30, 2020	11,084,940	11	917,439	(902,692)	61,019	(1,879)	12,879
Purchase of treasury stock	—	—	—	—	9,403	(39)	(39)
Vested restricted stock awards	1,670	—	39	—	—	—	39
Stock-based compensation	—	—	219	—	—	—	219
Stock awards to Board of Directors	57,098	—	(38)	—	—	—	(38)
Deemed dividend on purchase warrant for common shares	—	—	15	(15)	—	—	—
Net loss	—	—	—	(4,212)	—	—	(4,212)
Balance, September 30, 2020	11,143,708	\$ 11	\$ 917,674	\$ (906,919)	70,422	\$ (1,918)	\$ 8,848

See accompanying notes to condensed consolidated financial statements

CAPSTONE GREEN ENERGY CORPORATION AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(In thousands)
(Unaudited)

	Six Months Ended	
	September 30,	
	2021	2020
Cash Flows from Operating Activities:		
Net loss	\$ (8,176)	\$ (6,035)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	844	703
Amortization of financing costs and discounts	17	605
Amortization of right-of-use assets	449	192
Gain on debt extinguishment	(1,950)	—
Reduction in accounts receivable allowances	—	(48)
Inventory provision	287	78
Provision for warranty expenses	143	179
Gain on disposal of equipment	—	(1)
Stock-based compensation	638	429
Changes in operating assets and liabilities:		
Accounts receivable	(4,767)	2,807
Inventories	(6,388)	7,079
Prepaid expenses, other current assets and other assets	1,327	946
Accounts payable and accrued expenses	4,363	(4,442)
Accrued salaries and wages and long term liabilities	(539)	(303)
Accrued warranty reserve	(4,129)	(686)
Deferred revenue	(1,474)	(1,523)
Net cash used in operating activities	<u>(19,355)</u>	<u>(20)</u>
Cash Flows from Investing Activities:		
Expenditures for property, plant, equipment and rental assets	(2,623)	(1,116)
Net cash used in investing activities	<u>(2,623)</u>	<u>(1,116)</u>
Cash Flows from Financing Activities:		
Net proceeds from term note payable	—	1,935
Repayment of notes payable and lease obligations	(353)	(434)
Cash used in employee stock-based transactions	(121)	(43)
Net proceeds from issuance of common stock and warrants	11,186	1,392
Net cash provided by financing activities	<u>10,712</u>	<u>2,850</u>
Net increase (decrease) in Cash and Cash Equivalents	(11,266)	1,714
Cash and Cash Equivalents, Beginning of Year	49,533	15,068
Cash and Cash Equivalents, End of Year	<u>\$ 38,267</u>	<u>\$ 16,782</u>
Supplemental Disclosures of Cash Flow Information:		
Cash paid during the period for:		
Interest	\$ 2,567	\$ 2,038
Income taxes	\$ 17	\$ 14
Supplemental Disclosures of Non-Cash Information:		
Acquisition of property and equipment through accounts payable	\$ 210	\$ 127
Renewal of insurance contracts financed by notes payable	\$ 567	\$ 593
Issuance of common stock for services to be received	\$ 75	\$ —
Deemed dividend	\$ —	\$ 15

See accompanying notes to condensed consolidated financial statements

CAPSTONE GREEN ENERGY CORPORATION AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(Unaudited)

1. Business and Organization

Capstone Green Energy Corporation (“Capstone”, or the “Company”) is a provider of customized microgrid solutions and on-site energy technology systems focused on helping customers around the globe meet their environmental, energy savings, and resiliency goals. These solutions include stationary distributed power generation applications and distribution networks, including cogeneration (combined heat and power (“CHP”), integrated combined heat and power (“ICHP”), and combined cooling, heat and power (“CCHP”), renewable energy, natural resources, and critical power supply. In April 2021, the Company added additional products to its portfolio and shifted its focus to four key business lines. The Energy Conversion Products business line is driven by the Company’s industry-leading, highly efficient, low-emission, resilient microturbine energy systems, which offer scalable solutions in addition to a broad range of customer-tailored solutions, including hybrid energy systems and larger frame industrial turbines. Through the Energy as a Service business line, the Company offers rental solutions utilizing its microturbine energy systems and battery storage systems, comprehensive factory protection plan service contracts that guarantee life-cycle costs, as well as aftermarket spare parts. The Company’s two emerging business lines are Energy Storage Products and Hydrogen Energy Solutions. The Energy Storage Products business line is driven by the design and installation of microgrid storage systems creating customized solutions using a combination of battery technologies and monitoring software. Through the Company’s Hydrogen Energy Solutions business line, it offers customers a variety of hydrogen products, including the Company’s microturbine energy systems. Because these are new offerings, Energy Storage Products and Hydrogen Energy Solutions revenue has been immaterial to date. The Company was organized in 1988 and has been commercially producing its microturbine generators since 1998.

2. Basis of Presentation and Significant Accounting Policies

The accompanying unaudited condensed consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America (“generally accepted accounting principles” or “GAAP”) for interim financial information and the instructions to Form 10-Q and Regulation S-X promulgated under the Securities Exchange Act of 1934, as amended (the “Exchange Act”). They do not include all of the information and footnotes required by generally accepted accounting principles for complete financial statements. The condensed consolidated balance sheet at March 31, 2021 was derived from audited consolidated financial statements included in the Company’s Annual Report on Form 10-K for the Fiscal year ended March 31, 2021. Certain information and footnote disclosures normally included in financial statements prepared in accordance with GAAP have been condensed or omitted pursuant to such rules and regulations. In the opinion of management, the interim condensed consolidated financial statements include all adjustments (including normal recurring adjustments) necessary for a fair presentation of the financial condition, results of operations and cash flows for such periods. Results of operations for any interim period are not necessarily indicative of results for any other interim period or for the full year. These condensed consolidated financial statements should be read in conjunction with the consolidated financial statements and notes thereto included in the Company’s Annual Report on Form 10-K for the Fiscal Year 2021 filed with the SEC on June 14, 2021. This Quarterly Report on Form 10-Q (this “Form 10-Q”) refers to the Company’s fiscal years ending March 31 as its “Fiscal” years.

Certain reclassifications have been made to the prior year’s financial statements to enhance comparability with the current year’s financial statements. As a result, certain line items have been amended in the Condensed Consolidated Statements of Operations and the related notes to the consolidated financial statements. Comparative figures have been adjusted to conform to the current year’s presentation. The items were reclassified as follows (in thousands):

	Previously Reported			After Reclassification	
	Three Months Ended September 30, 2020	Six Months Ended September 30, 2020		Three Months Ended September 30, 2020	Six Months Ended September 30, 2020
Product, accessories and parts	\$ 9,344	\$ 18,280	Product and accessories	\$ 7,206	\$ 13,812
Service	5,562	10,819	Parts and service	7,700	15,287
Total revenue	<u>\$ 14,906</u>	<u>\$ 29,099</u>	Total revenue	<u>\$ 14,906</u>	<u>\$ 29,099</u>

Significant Accounting Policies There have been no changes to the Company's significant accounting policies described in the Annual Report on Form 10-K for Fiscal Year 2021 filed with the SEC on June 14, 2021, that have had a material impact on the Company's condensed consolidated financial statements and related notes.

Evaluation of Ability to Maintain Current Level of Operations In connection with the preparation of these condensed consolidated financial statements for the three and six months ended September 30, 2021, management evaluated whether there were conditions and events, considered in the aggregate, that raised substantial doubt about the Company's ability to meet its obligations as they became due over the next twelve months from the date of issuance of the Company's second quarter of Fiscal 2022 interim condensed consolidated financial statements. Management assessed that there were such conditions and events, including a history of recurring operating losses, negative cash flows from operating activities, the continued impact of the COVID-19 pandemic, volatility of the global oil and gas markets, a strong U.S. dollar in certain markets making its products more expensive in such markets. The Company incurred a net loss of \$8.2 million and used net cash in operating activities of \$19.4 million for the six months ended September 30, 2021. Cash used for working capital requirements for the quarter was primarily for increases in inventory, which was primarily due to the Company's efforts to grow its long-term rental fleet from 10.6 MW to 21.1 MW during Fiscal 2022, as well as the delayed timing of accounts receivable collections due to the COVID-19 pandemic. Additionally, the Company used cash to replace parts under its reliability repair program established during the fourth quarter of Fiscal 2021. As of September 30, 2021, the Company had cash and cash equivalents of \$38.3 million, and outstanding debt of \$50.9 million at fair value (see Note 10 – *Term Note Payable* for further discussion of the outstanding debt).

Management evaluated these conditions in relation to the Company's ability to meet its obligations as they become due over the next twelve months from the date of issuance of these condensed consolidated financial statements. The Company's ability to continue current operations and to execute on management's plans is dependent on its ability to generate sufficient cash flows from operations. While no assurances can be provided, management believes that the Company will continue to make progress on its path to profitability by continuing to maintain low operating expenses and further developing its geographical and vertical markets. The Company may seek to raise funds by selling additional securities (through at-the-market offerings or otherwise). There is no assurance that the Company will be able to obtain additional funds on commercially favorable terms or at all. If the Company raises additional funds by issuing additional equity, the fully diluted ownership percentages of existing stockholders will be reduced. In addition, any equity that the Company would issue may include rights, preferences or privileges senior to those of the holders of its Common Stock.

Based on the Company's current operating plan, management anticipates that, given current working capital levels, current financial projections and funds received under debt agreements as further described in Note 10 – *Term Note Payable*, and funds received under offerings of Common Stock as further described in Note 8 – *Offerings of Common Stock and Warrants*, the Company will be able to meet its financial obligations as they become due over the next twelve months from the date of issuance of the Company's second quarter of Fiscal 2022 interim condensed consolidated financial statements.

Company Response to COVID-19

In March 2020, the Company began to monitor the global effects of COVID-19, the worldwide spread of which led the World Health Organization ("WHO") to characterize it as a pandemic on March 11, 2020. Thereafter, most U.S. states imposed "stay-at-home" orders on their populations to stem the spread of COVID-19. Of specific interest to the Company, stay-at-home orders were imposed in the state of California on March 20, 2020.

On March 23, 2020 the Company enacted a Business Continuity Plan in response to COVID-19. Beginning March 30, 2020, the Company furloughed 52 employees, leaving behind only staff deemed essential for day-to-day administrative operations for a minimum period of 45 days. The Company's Leadership Team volunteered to take a 25% temporary salary cut. In addition, 25 other top Company managers volunteered to take a similar 15% reduction in salary. Several employees returned to work June 1, 2020, most with the 15% voluntary salary cuts, with others returning in a staggered manner through the end of September 2020. Additionally, in March 2020, the Board voted to take a temporary 25% reduction in base cash retainer in support of the Company's Business Continuity Plan. As a result of the continued global economic slowdown due to COVID-19 and the associated decline in global crude oil prices, the Company eliminated 26 positions on June 1, 2020. During the period of March 30, 2020 to June 1, 2020, the Company had limited production capability of new microturbine products, but had pre-built approximately 5.9 MW of microturbine finished goods during March 2020 for shipment during this period of suspended production. On September 28, 2020 salaries were returned to 100% and remaining furloughed employees returned to work. The Company's vendor supply chain has also been impacted

by the pandemic; however, the Company has been able to maintain sufficient supply flow to continue operations as of the date hereof.

On March 27, 2020, President Trump signed the Coronavirus Aid, Relief and Economic Security (the “CARES Act”), which, among other things, outlines the provisions of the Paycheck Protection Program (the “PPP”). The Company determined that it met the criteria to be eligible to obtain a loan under the PPP because, among other reasons, in light of the COVID-19 outbreak and the uncertainty of economic conditions related thereto, the loan was necessary to support the Company’s ongoing operations. Under the PPP, the Company could obtain a U.S. Small Business Administration loan in an amount equal to the average of the Company’s monthly payroll costs (as defined under the PPP) for calendar 2019 multiplied by 2.5 (approximately 10 weeks of payroll costs). Section 1106 of the CARES Act contains provisions for the forgiveness of all or a portion of a PPP loan, subject to the satisfaction of certain requirements. The amount eligible for forgiveness is, subject to certain limitations, the sum of the Company’s payroll costs, rent and utilities paid by the Company during the eight-week period beginning on the funding date of the PPP loan.

On April 24, 2020, the Company closed on a PPP loan in the amount of \$2,610,200, which was transferred by the Company into an account dedicated to allowable uses of the PPP loan proceeds. On May 13, 2020, the Company repaid \$660,200 of the loan in accordance with the Fourth Amendment to the Note Purchase Agreement between the Company and Goldman Sachs Specialty Lending Group, L.P. In February 2021, the Company applied for forgiveness in full of the original balance of the PPP loan and the loan was forgiven in full on June 30, 2021. The Company received a refund of \$660,200 and recorded these amounts within other income on the Company’s Condensed Consolidated Statements of Operations.

Basis for Consolidation These condensed consolidated financial statements include the accounts of the Company, Capstone Turbine International, Inc., its wholly owned subsidiary that was formed in June 2004 and Capstone Turbine Financial Services, LLC, its wholly owned subsidiary that was formed in October 2015, after elimination of inter-company transactions.

3. Recently Issued Accounting Pronouncements

Adopted

In December 2019, the Financial Accounting Standards Board (“FASB”) issued Accounting Standards Update 2019-12, Income Taxes (Topic 740), Simplifying the Accounting for Income Taxes. The new guidance removes certain exceptions to the general principles of Accounting Standards Codification (“ASC”) 740 in order to simplify the complexities of its application. These changes include eliminations to the exceptions for intraperiod tax allocation, recognizing deferred tax liabilities related to outside basis differences, and year-to-date losses in interim periods, among others. The effective date of this guidance for public companies is for fiscal years, and interim periods within those fiscal years, beginning after December 15, 2020. The Company adopted ASU 2019-12 on April 1, 2021 and it did not have a material impact on the Company’s condensed consolidated financial statements and related disclosures.

Not yet adopted

In August 2020, the FASB issued ASU No. 2020-06, Debt-Debt with Conversion and Other Options (Subtopic 470-20) and Derivatives and Hedging - Contracts in Entity’s own Equity (Subtopic 815-40): Accounting for Convertible Instruments and Contracts in an Entity’s Own Equity. The amendments in this ASU reduce the number of accounting models for convertible debt instruments and convertible preferred stock in order to simplify the accounting for convertible instruments and reduce complexity. In addition, it amends the guidance for scope exception surrounding derivatives for contracts in an entity’s own equity. In each case, the related guidance surrounding EPS has also been amended. The amendments in this ASU are effective for fiscal years, and interim periods within those fiscal years, beginning after December 15, 2023. The Company is currently evaluating the impact of ASU 2020-06 on its condensed consolidated financial statements and related disclosures.

In June 2016, the FASB issued ASU No. 2016-13, Financial Instruments—Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments. The amendments in this ASU provide guidance for estimating credit losses on certain types of financial instruments, including trade receivables, by introducing an approach based on expected losses. The expected loss approach will require entities to incorporate considerations of historical information, current information and reasonable forecasts. With certain exceptions, transition to the new guidance will be through a cumulative effect adjustment to opening accumulated deficit as of the beginning of the first reporting period in which the

guidance is adopted. In November 2019, the FASB issued ASU 2019-10, Financial Instruments - Credit Losses (Topic 326), Derivatives and Hedging (Topic 815), and Leases (Topic 842) (“ASU 2019-10”), which defers the adoption of ASU 2016-13 for Smaller Reporting Companies (“SRCs”) as defined by the SEC for fiscal years beginning after December 15, 2022, including interim periods within those fiscal years. The Company is currently evaluating the impact of ASU 2016-13 on its condensed consolidated financial statements and related disclosures.

Other standards issued but not yet effective, which are not discussed, are not considered material to the Company.

4. Customer Concentrations and Accounts Receivable

E-Finity Distributed Generation, LLC (“E-Finity”), one of the Company’s domestic distributors, and Optimal Group Australia Pty Ltd (“Optimal”), one of the Company’s international distributors, accounted for 23% and 11% of revenue for the three months ended September 30, 2021, respectively. Sales to E-Quad Power Systems GmbH (“E-Quad”), one of the Company’s international distributors, accounted for 10% of revenue for the three months ended September 30, 2020. E-Finity and Optimal accounted for 17% and 10% of revenue for the six months ended September 30, 2021, respectively. E-Finity and Cal Microturbine, one of the Company’s domestic distributors, each accounted for 10% of revenue for the six months ended September 30, 2020.

Additionally, E-Finity accounted for 20% and 13% of net accounts receivable as of September 30, 2021 and March 31, 2021, respectively. The Company recorded a net bad debt expense of zero during three and six months ended September 30, 2021. The Company recorded a net bad debt recovery of approximately \$0.1 million during the three and six months ended September 30, 2020.

5. Inventories

Inventories are valued at the lower of cost (determined on a first in first out (“FIFO”) basis) or net realizable value and consisted of the following (in thousands):

	September 30, 2021	March 31, 2021
Raw materials	\$ 21,454	\$ 15,755
Work in process	—	(30)
Finished goods	342	—
Total	21,796	15,725
Less: inventory reserve	(2,021)	(2,051)
Less: non-current portion	(1,752)	(1,845)
Total inventory, net-current portion	<u>\$ 18,023</u>	<u>\$ 11,829</u>

The non-current portion of inventories represent the portion of inventories in excess of amounts expected to be sold or used in the next twelve months and primarily comprise of repair parts for older generation products still in operation but not technologically compatible with current configurations. The weighted average age of the non-current portion of inventories on hand as of September 30, 2021 is 1.1 years. The Company expects to use the non-current portion of the inventories on hand as of September 30, 2021 over the periods presented in the following table (in thousands):

Expected Period of Use	Non-current Inventory Balance Expected to be Used
13 to 24 months	\$ 794
25 to 36 months	958
Total	<u>\$ 1,752</u>

6. Property, Plant, Equipment and Rental Assets

Property, plant, equipment and rental assets consisted of the following (in thousands):

	September 30, 2021	March 31, 2021
Machinery, equipment, automobiles and furniture	\$ 15,611	\$ 15,523
Leasehold improvements	8,548	8,069
Molds and tooling	3,336	3,192
Rental assets	10,493	8,378
	<u>37,988</u>	<u>35,162</u>
Less: accumulated depreciation	(26,301)	(25,532)
Total property, plant, equipment and rental assets, net	<u>\$ 11,687</u>	<u>\$ 9,630</u>

During the six months ended September 30, 2021, the Company deployed an additional 2.5 megawatts of its C1000 Signature Series systems with a book value of approximately \$2.1 million under its long-term rental program, bringing the total rental fleet to 13.1 MWs.

The Company regularly assesses the useful lives of property and equipment and retires assets no longer in service. Depreciation expense for property, plant, equipment and rental assets was \$0.4 million and \$0.3 million for the three months ended September 30, 2021 and 2020, respectively. Depreciation expense for property, plant, equipment and rental assets was \$0.8 million and \$0.6 million for the six months ended September 30, 2021 and 2020, respectively.

7. Stock-Based Compensation

The following table summarizes, by condensed consolidated statements of operations line item, stock-based compensation expense (in thousands):

	Three Months Ended		Six Months Ended	
	September 30,		September 30,	
	2021	2020	2021	2020
Cost of goods sold	\$ 30	\$ 20	\$ 57	\$ 37
Research and development	18	6	35	18
Selling, general and administrative	285	193	546	374
Stock-based compensation expense	<u>\$ 333</u>	<u>\$ 219</u>	<u>\$ 638</u>	<u>\$ 429</u>

Stock Plans

2000 Equity Incentive Plan and 2017 Equity Incentive Plan

In June 2017, the Company's Board adopted the Capstone Green Energy Corporation 2017 Equity Incentive Plan (the "2017 Plan"), which was approved by the stockholders at the Company's 2017 annual meeting of stockholders on August 31, 2017 (the "2017 Annual Meeting"). The 2017 Plan provides for awards of up to 300,000 shares of Common Stock. The 2017 Plan is administered by the Compensation and Human Capital Committee designated by the Board (the "Compensation Committee"). The Compensation Committee's authority includes determining the number of incentive awards and vesting provisions. On June 5, 2018, the Company's Board of Directors adopted an amendment of the 2017 Plan to increase the aggregate number of shares of Common Stock authorized for issuance under the 2017 Plan by 300,000 shares of Common Stock. The amendment of the 2017 Plan was approved by the Company's stockholders at the 2018 annual meeting of stockholders on August 30, 2018. Since this time, the Company's stockholders have approved amendments to increase the aggregate number of shares authorized for issuance under the 2017 Plan by an additional 1,300,000 shares of Common Stock. Most recently, on June 2, 2021, the Company's Board of Directors adopted Amendment No. 4 (the "Plan Amendment") of the 2017 Plan to increase the aggregate number of shares of Common Stock authorized for issuance under the 2017 Plan by 500,000 shares of Common Stock. The Plan amendment was approved by the Company's stockholders at the 2021 annual meeting of stockholders on August 27, 2021.

As of September 30, 2021, there were 867,423 shares available for future grants under the 2017 Plan.

Restricted Stock Units and Performance Restricted Stock Units

The Company issued restricted stock units under the Company’s 2000 Equity Incentive Plan, as well as issued (and may in the future issue) restricted stock units under the 2017 Plan to employees, non-employee directors and consultants. The restricted stock units are valued based on the closing price of the Company’s Common Stock on the date of issuance, and compensation cost is recorded on a straight-line basis over the vesting period. The restricted stock units issued to employees vest over a period of two, three or four years. For restricted stock units with two year vesting, 100% vests on the second year anniversary. For restricted stock units with three year vesting, one-third vest annually beginning one year after the issuance date. For restricted stock units with four year vesting, one-fourth vest annually beginning one year after the issuance date. The restricted stock units issued to non-employee directors vest one year after the issuance date. The following table summarizes restricted stock unit and performance restricted stock unit (“PRSU”) activity during the six months ended September 30, 2021:

Restricted Stock Units and Performance Restricted Stock Units	Shares	Weighted Average Grant Date Fair Value
Non-vested restricted stock units outstanding at March 31, 2021	497,281	\$ 5.65
Granted	243,014	5.69
Vested and issued	(137,670)	4.75
Forfeited	(6,760)	6.25
Non-vested restricted stock units outstanding at September 30, 2021	<u>595,865</u>	<u>5.86</u>
Restricted stock units expected to vest beyond September 30, 2021	<u>595,865</u>	<u>\$ 5.86</u>

The following table provides additional information on restricted stock units and performance restricted stock units:

	Three Months Ended September 30,		Six Months Ended September 30,	
	2021	2020	2021	2020
Restricted stock compensation expense (in thousands)	\$ 333	\$ 219	\$ 638	\$ 429
Aggregate fair value of restricted stock units vested and issued (in thousands)	\$ 543	\$ 243	\$ 704	\$ 265
Weighted average grant date fair value of restricted stock units granted during the period	\$ 4.53	\$ 4.27	\$ 5.69	\$ 4.27

As of September 30, 2021, there was approximately \$2.5 million of total compensation cost related to unvested restricted stock units that is expected to be recognized as expense over a weighted average period of 2.3 years.

The Company’s PRSU activity is included in the above restricted stock units tables. The PRSU program has a three-year performance measurement period. The performance measurement period begins on April 1 of the first fiscal year and ends on March 31 of the third fiscal year after the grant date. The program is intended to have overlapping performance measurement periods (e.g., a new three-year cycle begins each year on April 1), subject to Compensation Committee approval. At the end of each performance measurement period, the Compensation Committee will determine the achievement against the performance objectives.

During the six months ended September 30, 2021, the Company granted 35,986 PRSUs with a three-year performance measurement period. The target PRSU awards for each participant, will be paid upon achievement of the target level of performance for aftermarket sales absorption and payoff or refinancing of its debt with a reduced rate, taking into account the applicable weighting for the individual metric. Achievement of a performance goal at the threshold level will result in a payment that is 50% of the target PRSU award. Achievement of a performance goal at the maximum level will result in a payment that is 150% of the target PRSU award. The Compensation Committee will use an interpolation table that weights performance between levels for determining the portion of the Target PRSU that is earned. There were no PRSUs granted during the six months ended September 30, 2020.

The weighted average per share grant date fair value of PRSUs granted during the six months ended September 30, 2021 was \$8.39. Based on the Company’s assessment as of September 30, 2021, the Company does not expect to meet the threshold of the performance measurements for the Fiscal 2022 and Fiscal 2020 PRSUs, and as a result, no compensation expense was recorded during the six months ended September 30, 2021. Compensation expense is recognized over the corresponding requisite service period and will be adjusted in subsequent reporting periods if the

Company's assessment of the probable level of achievement of the performance goals change. The Company will continue to assess the likelihood of the PRSU threshold being met until the end of the applicable performance period.

Stockholder Rights Plan

On May 6, 2019, the Board declared a dividend of one right (a "New Right") for each of the Company's issued and outstanding shares of Common Stock. The dividend was paid to the stockholders of record at the close of business on May 16, 2019 (the "Record Date"). Each New Right entitles the registered holder, subject to the terms of the NOL Rights Agreement (as defined below), to purchase from the Company one one-thousandth of a share of the Company's Series B Junior Participating Preferred Stock (the "Preferred Stock") at a price of \$5.22 (the "Exercise Price"), subject to certain adjustments. The description and terms of the New Rights are set forth in the Rights Agreement dated as of May 6, 2019 (the "NOL Rights Agreement") between the Company and Broadridge Financial Solutions, Inc., as Rights Agent (the "Rights Agent").

The NOL Rights Agreement replaced the Company's Rights Agreement, dated May 6, 2016, by and between the Company and Broadridge Financial Solutions, Inc., as successor-in-interest to Computershare Inc., as rights agent (the "Original Rights Agreement"). The Original Rights Agreement, and the rights thereunder to purchase fractional shares of Preferred Stock, expired at 5:00 p.m., New York City time, on May 6, 2019 and the NOL Rights Agreement was entered into immediately thereafter.

The purpose of the NOL Rights Agreement is to diminish the risk that the Company's ability to use its net operating losses and certain other tax assets (collectively, "Tax Benefits") to reduce potential future federal income tax obligations would become subject to limitations by reason of the Company's experiencing an "ownership change," as defined in Section 382 of the Internal Revenue Code of 1986, as amended (the "Tax Code"). A company generally experiences such an ownership change if the percentage of its stock owned by its "5-percent shareholders," as defined in Section 382 of the Tax Code, increases by more than 50 percentage points over a rolling three-year period. The NOL Rights Agreement is designed to reduce the likelihood that the Company will experience an ownership change under Section 382 of the Tax Code by (i) discouraging any person or group from becoming a 4.9% or greater shareholder and (ii) discouraging any existing 4.9% or greater shareholder from acquiring additional shares of the Company's stock.

The New Rights will not be exercisable until the earlier to occur of (i) the close of business on the tenth business day after a public announcement or filing that a person has, or group of affiliated or associated persons have, become an "Acquiring Person," which is defined as a person or group of affiliated or associated persons who, at any time after the date of the NOL Rights Agreement, have acquired, or obtained the right to acquire, beneficial ownership of 4.9% or more of the Company's outstanding shares of Common Stock, subject to certain exceptions or (ii) the close of business on the tenth business day after the commencement of, or announcement of an intention to commence, a tender offer or exchange offer the consummation of which would result in any person becoming an Acquiring Person (the earlier of such dates being called the "Distribution Date"). Certain synthetic interests in securities created by derivative positions, whether or not such interests are considered to be ownership of the underlying Common Stock or are reportable for purposes of Regulation 13D of the Exchange Act, are treated as beneficial ownership of the number of shares of Common Stock equivalent to the economic exposure created by the derivative position, to the extent actual shares of the Common Stock are directly or indirectly held by counterparties to the derivatives contracts.

With respect to certificates representing shares of Common Stock outstanding as of the Record Date, until the Distribution Date, the New Rights will be evidenced by such certificates for shares of Common Stock registered in the names of the holders thereof, and not by separate Rights Certificates, as described further below. With respect to book entry shares of Common Stock outstanding as of the Record Date, until the Distribution Date, the New Rights will be evidenced by the balances indicated in the book entry account system of the transfer agent for the Common Stock. Until the earlier of the Distribution Date and the Expiration Date, as described below, the transfer of any shares of Common Stock outstanding on the Record Date will also constitute the transfer of the New Rights associated with such shares of Common Stock. As soon as practicable after the Distribution Date, separate certificates evidencing the New Rights ("Right Certificates") will be mailed to holders of record of the Common Stock as of the close of business on the Distribution Date, and such Right Certificates alone will evidence the New Rights.

The New Rights, which are not exercisable until the Distribution Date, will expire prior to the earliest of (i) May 6, 2022 or such later day as may be established by the Board prior to the expiration of the New Rights, provided that the extension is submitted to the Company's stockholders for ratification at the next annual meeting of stockholders of the Company succeeding such extension; (ii) the time at which the New Rights are redeemed pursuant to the NOL Rights

Agreement; (iii) the time at which the New Rights are exchanged pursuant to the NOL Rights Agreement; (iv) the time at which the New Rights are terminated upon the occurrence of certain transactions; (v) the close of business on the first day after the Company's 2019 annual meeting of stockholders, if approval by the stockholders of the Company of the NOL Rights Agreement has not been obtained on or prior to the close of business on the first day after the Company's 2019 annual meeting of stockholders; (vi) the close of business on the effective date of the repeal of Section 382 of the Tax Code, if the Board determines that the NOL Rights Agreement is no longer necessary or desirable for the preservation of Tax Benefits; and (vii) the close of business on the first day of a taxable year of the Company to which the Board determines that no Tax Benefits are available to be carried forward, (the earliest of (i), (ii), (iii), (iv), (v), (vi) and (vii) is referred to as the "Expiration Date").

Each share of Preferred Stock will be entitled, when, as and if declared, to a preferential per share quarterly dividend payment equal to the greater of (i) \$1.00 per share or (ii) an amount equal to 1,000 times the aggregate quarterly dividend declared per share of Common Stock since the immediately preceding quarterly dividend payment date for the Common Stock (or, with respect to the first quarterly dividend payment on the Common Stock, since the first issuance of the Preferred Stock). Each share of Preferred Stock will entitle the holder thereof to 1,000 votes on all matters submitted to a vote of the stockholders of the Company. In the event of any merger, consolidation or other transaction in which shares of Common Stock are converted or exchanged, each share of Preferred Stock will be entitled to receive 1,000 times the amount received per one share of Common Stock.

8. Offerings of Common Stock and Warrants

Common Stock Offering

On June 17, 2021, the Company entered into an amended and restated underwriting agreement (the "Underwriting Agreement") with H.C. Wainwright & Co., LLC (the "Underwriter") whereby the Company agreed to sell to the Underwriter, and the Underwriter agreed to purchase, in a firm commitment underwritten public offering 1,904,763 shares (the "Shares") of the Company's Common Stock, \$0.001 par value per share (the "Offering"). The offering price to the public in the Offering was \$5.25 per share of Common Stock, and the Underwriter agreed to purchase the Shares from the Company pursuant to the Underwriting Agreement at a price of \$4.91 per share, representing an underwriting discount of 6.5%. Pursuant to the Underwriting Agreement, the Company also granted the Underwriter an option to purchase, for a period of 30 days from the date of the Underwriting Agreement, up to an additional 285,714 shares of Common Stock (the "Option Shares"). On June 21, 2021, the Underwriter exercised the option in full.

The Offering of the Shares was registered pursuant to a shelf registration statement (No. 333-254290) on Form S-3 filed by the Company with the Securities and Exchange Commission on March 22, 2021, and declared effective on April 14, 2021 (the "Registration Statement"), and made pursuant to a prospectus supplement, dated June 17, 2021, and accompanying prospectus that form a part of the Registration Statement relating to the Offering.

The Offering closed on June 22, 2021, and the Company received net proceeds of \$10.5 million after deducting \$1.0 million underwriting discounts, commissions and offering expenses paid by the Company.

Warrants

Series A Warrants

As of September 30, 2021, there were 217,875 Series A warrants outstanding with an exercise price of \$25.50 per share of Common Stock, which expired on October 25, 2021.

Goldman Warrant

On February 4, 2019, the Company sold to Goldman Sachs & Co. LLC (the "Holder"), a Purchase Warrant for Common Shares (the "Warrant") pursuant to which the Holder may purchase shares of the Company's Common Stock in an aggregate amount of up to 404,634 shares (the "Warrant Shares"). The Warrant was sold to the Holder at a purchase price of \$150,000, in a private placement exempt from registration under the Securities Act. The Warrant may be exercised by the Holder at any time after August 4, 2019 at an exercise price equal to \$8.86 and will expire on February 4, 2024. The Warrant contains standard adjustment provisions in the event of additional stock issuances below the exercise price of the warrant, stock splits, combinations, rights offerings and similar transactions. The value of the Warrant was \$2.3 million, and has been classified as an equity instrument in additional paid in capital in the Company's condensed

consolidated balance sheets. As of September 30, 2021, the Holder may purchase shares of the Company’s Common Stock in an aggregate amount of up to 463,067 shares.

On December 9, 2019, the Company entered into an Amendment No. 1 to the Purchase Warrant for Common Shares (the “Amendment No. 1”) with Special Situations Investing Group II, LLC (as successor in interest to Goldman Sachs & Co. LLC) (the “Warrant Holder”) that amends the Warrant. The Amendment No. 1 amended the Warrant to increase the number of Warrant Shares issuable under the Warrant (on a post-reverse split basis) and to decrease the exercise price from \$8.86 per share (on a post-reverse split basis) to \$3.80 per share (the “Per Share Warrant Exercise Price”). The Amendment No. 1 also amends the Warrant such that the Per Share Anti-Dilution Price is equal to the Per Share Warrant Exercise Price. As a result of the decrease in exercise price, the Company recorded the change in valuation of \$0.3 million as additional debt discount with a corresponding entry to additional paid-in capital in the condensed consolidated balance sheets and statements of stockholders equity.

On June 16, 2020, the Company entered into an Amendment No. 2 to the Purchase Warrant for Common Shares (“Amendment No. 2”) with the Warrant Holder to increase the number of Warrant Shares (as defined therein) issuable under the Warrant and to decrease the exercise price from \$3.80 per share to \$2.61 per share (the “Per Share Warrant Exercise Price”). The Company would receive aggregate gross proceeds of \$1,186,313 if the outstanding Warrant is exercised at the new Per Share Warrant Exercise Price.

Amendment No. 2 also amends the Warrant such that the Per Share Anti-Dilution Price (as defined therein) is equal to the Per Share Warrant Exercise Price as provided in the Amendment No. 2 to the Warrant. As a result of the decrease in exercise price, the Company recorded the change in valuation of \$0.1 million as additional debt discount with a corresponding entry to additional paid in capital in the condensed consolidated balance sheets and statements of stockholders equity. All other terms and provisions in the Warrant remain in effect.

Goldman “2020 Warrant”

On October 1, 2020, the Company entered into an Amendment No. 3 to the Purchase Warrant for Common Shares (the “Amendment No. 3”) with Special Situations Investing Group II, LLC (as successor in interest to Goldman Sachs & Co. LLC) (the “Warrant Holder”) that amends that certain Purchase Warrant for Common Shares originally issued by the Company to Goldman Sachs & Co. LLC, dated February 4, 2019, as amended (the “Original Warrant”). Amendment No. 3 amends the Original Warrant to amend Section 2.1, Section 2.2(c) and Section 18.1 of the Warrant to, among other things, make certain changes necessitated by the issuance of a second Warrant (the “2020 Warrant”) to the Warrant Holder pursuant to the Company’s entry into the Amended & Restated (“A&R”) Note Purchase Agreement (See Note 10 – *Term Note Payable*).

On October 1, 2020, and pursuant to the Company’s entry into the A&R Note Purchase Agreement, the Company sold to the Warrant Holder the 2020 Warrant to purchase up to 291,295 shares (the “2020 Warrant Shares”) of the Company’s Common Stock. The 2020 Warrant was sold to the Warrant Holder at a purchase price of \$10,000, in a private placement exempt from registration under the Securities Act. The 2020 Warrant may be exercised by the Warrant Holder at any time after October 1, 2020 at an exercise price equal to \$4.76 and will expire on February 4, 2024. The Warrant contains standard adjustment provisions in the event of additional stock issuances below the exercise price of the warrant, stock splits, combinations, rights offerings and similar transactions. The value of the Warrant was \$0.8 million, and has been classified as an equity instrument in additional paid in capital in the Company’s consolidated balance sheets. The value of the Warrant was determined using the Black-Scholes Option Pricing model using the following assumptions:

Risk-free interest rate	0.2%
Contractual term	3 years
Expected volatility	81.0%

September 2019 Pre-Funded and Series D Warrants

On September 4, 2019, the Company entered into a Securities Purchase Agreement (the “Securities Purchase Agreement”) with certain institutional and accredited investors pursuant to which the Company agreed to issue and sell in a registered direct offering (the “Registered Direct Offering”) an aggregate of 580,000 shares of Common Stock, at a negotiated purchase price of \$5.00 per share, and pre-funded warrants to purchase up to an aggregate of 440,000 shares of Common Stock at a negotiated purchase price of \$5.00 per Pre-Funded Warrant, for aggregate gross proceeds of approximately \$5.1 million (580,000 shares of Common Stock plus 440,000 pre-funded warrants at a \$5.00 per share purchase price), before deducting placement agent fees and other offering expenses. Net proceeds from the offering were

\$4.6 million. The offering closed on September 9, 2019. On October 24, 2019, a warrant holder exercised its rights to the warrant agreement to exercise on a cash basis 440,000 pre-funded warrants at an exercise price of \$0.001 per share under the warrant agreement.

In a concurrent private placement, the Company issued to the purchasers warrants to purchase 765,000 shares of Common Stock, which represent 75% of the number of shares of Common Stock and shares underlying the Pre-Funded Warrants purchased in the Registered Direct Offering, pursuant to the Securities Purchase Agreement. The Common Warrants will be exercisable for shares of Common Stock at an initial exercise price of \$6.12 per share for a period of five years, starting on April 2, 2020 and expiring on April 2, 2025. In January 2021, three warrant holders exercised their rights to the warrant agreement to exercise on a cashless basis 690,000 Series D warrants at an exercise price of \$6.12 per share under the warrant agreement. In accordance with terms of the warrant agreement, after taking into account the shares withheld to satisfy the cashless exercise option, the Company issued 352,279 shares of Common Stock. As of September 30, 2021, there were 75,000 Series D warrants outstanding.

Stock to Vendors

From time to time, the Company may enter into agreements with vendors for sponsorship, marketing or investor relation services whereby it may agree to compensate the vendor in cash and unregistered shares of Common Stock of the Company. The value of the unregistered shares of Common Stock is recorded as prepaid marketing cost and included in prepaid expenses and other current assets and stockholder's equity in the Condensed Consolidated Balance Sheets and is amortized in proportion to the terms of their respective agreements.

On February 10, 2020, the Company issued 229,886 shares of the Company's Common Stock, under a sponsorship agreement to its vendor. The prepaid marketing cost amortization associated with the Common Stock issued were \$0.8 million and \$0.9 million during the three and six months ended September 30, 2020, respectively and included in selling, general and administrative expense in the Condensed Consolidated Statements of Operations.

On February 17, 2021 and April 1, 2021, the Company issued 105,933 and 9,541 shares of the Company's Common Stock, under a sponsorship agreement and an investor relations consulting agreement, respectively to vendors. The prepaid marketing cost amortization associated with the Common Stock issued were \$0.5 million and \$1.0 million during the three and six months ended September 30, 2021, respectively and included in selling, general and administrative expense in the Condensed Consolidated Statements of Operations. As of September 30, 2021, there are no amounts remaining in prepaid marketing cost, prepaid expenses and other current assets in the Condensed Consolidated Balance Sheets related to the value of shares issued under the sponsorship agreement and investor relations consulting agreement.

9. Fair Value Measurements

The FASB has established a framework for measuring fair value using generally accepted accounting principles. That framework provides a fair value hierarchy that prioritizes the inputs to valuation techniques used to measure fair value. The hierarchy gives the highest priority to unadjusted quoted prices in active markets for identical assets or liabilities (level 1 measurements) and the lowest priority to unobservable inputs (level 3 measurements). The three levels of the fair value hierarchy are described as follows:

Level 1. Inputs to the valuation methodology are unadjusted quoted prices for identical assets or liabilities in active markets.

Level 2. Inputs to the valuation methodology include:

- Quoted prices for similar assets or liabilities in active markets
- Quoted prices for identical or similar assets or liabilities in inactive markets
- Inputs other than quoted prices that are observable for the asset or liability
- Inputs that are derived principally from or corroborated by observable market data by correlation or other means

If the asset or liability has a specified (contractual) term, the level 2 input must be observable for substantially the full term of the asset or liability.

Level 3. Inputs to the valuation methodology are unobservable and significant to the fair value measurement.

The asset or liability's fair value measurement level within the fair value hierarchy is based on the lowest level of any input that is significant to the fair value measurement. Valuation techniques used must maximize the use of observable inputs and minimize the use of unobservable inputs.

Basis for Valuation

The carrying values reported in the condensed consolidated balance sheets for cash and cash equivalents, accounts receivable and accounts payable approximate their fair values because of the immediate or short-term maturities of these financial instruments. The term note payable has been recorded net of a discount based on the fair value of the associated warrant and capitalized debt issuance costs and as of September 30, 2021 includes the Three-Year Term Note as discussed in Note 10 – *Term Note Payable*. The carrying values and estimated fair values of these obligations are as follows (in thousands):

	As of September 30, 2021		As of March 31, 2021	
	Carrying Value	Estimated Fair Value	Carrying Value	Estimated Fair Value
Term note payable	\$ 50,932	\$ 51,000	\$ 50,915	\$ 51,000
PPP loan	—	—	1,950	1,950
Total	<u>\$ 50,932</u>	<u>\$ 51,000</u>	<u>\$ 52,865</u>	<u>\$ 52,950</u>

10. Term Note Payable

Three-Year Term Note

On February 4, 2019, the Company entered into a Note Purchase Agreement (as amended, the "Note Purchase Agreement"), by and among the Company, certain subsidiaries of the Company party thereto as guarantors, Goldman Sachs Specialty Lending Holdings, Inc. and any other purchasers party thereto from time to time (collectively, the "Purchaser"). Under the Note Purchase Agreement, the Company sold to the Purchaser \$30.0 million aggregate principal amount of senior secured notes (the "Notes"), bearing interest at a rate of 13.0% per annum and payable quarterly on March 31, June 30, September 30 and December 31 of each year until maturity.

On October 1, 2020, the Company entered into an Amended & Restated Note Purchase Agreement (the "A&R Note Purchase Agreement"). The A&R Note Purchase Agreement amends and restates that certain Note Purchase Agreement, as amended, dated February 4, 2019, by and among the Company, certain of its subsidiaries as guarantors, the Collateral Agent and various purchasers party thereto. Under the A&R Note Purchase Agreement, the Company issued an additional \$20 million in Notes, increasing total borrowings to \$50 million. Following entry into the A&R Note Purchase Agreement, all outstanding Notes bear interest at the Adjusted (London Interbank Offer) LIBO Rate (as defined in the A&R Note Purchase Agreement) plus 8.75% per annum, payable on the last day of each interest period of one-, two-, three- or six-months (but, in the case of a six-month interest period, every three-months). The Notes do not amortize and the entire principal balance is due in a single payment on the maturity date, October 1, 2023. As of September 30, 2021, \$50.9 million in borrowings were outstanding under the Notes, which includes the accrual for an exit fee to be paid at maturity or upon pre-payment. Obligations under the A&R Note Purchase Agreement are secured by all of the Company's and its subsidiaries' assets, including intellectual property and general intangibles.

The A&R Note Purchase Agreement contains customary covenants, including, among others, covenants that restrict the Company's ability to incur debt, grant liens, make certain investments and acquisitions, pay dividends, repurchase equity interests, repay certain debt, amend certain contracts, enter into affiliate transactions and asset sales or make certain equity issuances (including equity issuances that would cause an ownership change within the meaning of Section 382 of the Internal Revenue Code), and covenants that require the Company to, among other things, provide annual, quarterly and monthly financial statements, together with related compliance certificates, maintain its property in good condition, maintain insurance and comply with applicable laws. The financial covenants of the A&R Note Purchase Agreement require the Company not to exceed specified levels of Adjusted EBITDA losses relative to its financial model, beginning with the fiscal quarter ending September 30, 2021. Additionally, the Company shall not permit the Company's minimum consolidated liquidity, which consists of its cash and cash equivalents, to be less than \$9.0 million. Furthermore, the covenants require the Company to expand its Rental Fleet (as defined in the A&R Note Purchase Agreement) by (i) at least 6.25 MW by the 9-month anniversary of the Closing Date, and (ii) at least 12.50 MW by the 18-month anniversary of the Closing Date.

On May 13, 2021, the Company and the collateral agent, entered into a First Amendment, dated as of May 13, 2021 (the “Amendment”), to the A&R Note Purchase Agreement. The Amendment amends certain provisions of the A&R Note Purchase Agreement, including to (a) require the Company to expand its Rental Fleet (as defined in the A&R Note Purchase Agreement) by (i) at least 2.00 MW by the 9-month anniversary of the Closing Date (instead of 6.25 MW as provided in the A&R Note Purchase Agreement prior to the Amendment), and (ii) at least 12.50 MW by the 18-month anniversary of the Closing Date (which is unchanged from the covenant set forth in the A&R Note Purchase Agreement prior to the Amendment), and (b) increase the Company’s minimum consolidated liquidity requirement from \$9 million to \$12.2 million for the period from the Amendment Date to March 31, 2022.

As of September 30, 2021, the Company was in compliance with the covenants contained in the A&R Note Purchase Agreement.

The Notes have been recorded net of a discount based on the debt issuance costs totaling \$0.1 million. Amortization of the debt discount and debt issuance costs was \$8,000 and \$17,000 for the three and six months ended September 30, 2021, respectively, based on an effective interest rate, and has been recorded as interest expense in the condensed consolidated statements of operations.

Interest expense related to the Notes payable during the three months ended September 30, 2021 and 2020 was \$0.3 million, and includes \$8,000 and \$0.3 million in amortization of debt issuance costs, respectively. Interest expense related to the Notes payable during the six months ended September 30, 2021 and 2020 was \$2.5 million and \$2.6 million, and includes \$17,000 and \$0.6 million in amortization of debt issuance costs, respectively.

Paycheck Protection Program Loan

On April 15, 2020, the Company submitted an application to its banking partner Western Alliance Bank, an Arizona corporation (“Western Alliance”) under the Small Business Administration (the “SBA”) Paycheck Protection Program (“PPP”) enabled by the Coronavirus Aid, Relief and Economic Security Act of 2020 (the “CARES Act”). Western Alliance entered into a note on April 24, 2020 with the Company and agreed to make available to the Company a loan in the amount of \$2,610,200 (the “PPP Loan”). The Company received the full amount of the PPP Loan on April 24, 2020 (the “Initial Disbursement Date”) and has used the proceeds to support fixed costs such as payroll costs, rent and utilities in accordance with the relevant terms and conditions of the CARES Act. The advance under the Loan bears interest at a rate per annum of 1%. The term of the PPP Loan is two years, ending April 24, 2022.

On May 13, 2020, the Company repaid \$660,200 of the PPP Loan in accordance with the Fourth Amendment to the Note Purchase Agreement between the Company and Goldman Sachs Specialty Lending Group, L.P.

In February 2021, the Company applied for forgiveness of the PPP Loan and the loan was forgiven in full on June 30, 2021 (See “Gain on extinguishment of debt” below).

Gain on extinguishment of debt In June 2021, the Company received notification from Western Alliance that the SBA approved forgiveness of the PPP loan in its entirety. The Company accounted for forgiveness on the PPP Loan in accordance with ASC 470 and recognized a gain on debt extinguishment of \$1.9 million debt on its Condensed Consolidated Statements of Operations and Condensed Consolidated Statements of Cash Flows during the six months ended September 30, 2021.

In June 2021, the Company also received a refund of the \$660,200 previously repaid in accordance with the Fourth Amendment to the Note Purchase Agreement between the Company and Goldman Sachs Specialty Lending Group, L.P. and recorded these amounts within other income on the Company’s Condensed Consolidated Statements of Operations.

11. Accrued Warranty Reserve

The Company provides for the estimated costs of warranties at the time revenue is recognized. The specific terms and conditions of those warranties vary depending upon the microturbine product sold and the geography of sale. The Company’s product warranties generally start from the delivery date and continue for up to twenty-four months. Factors that affect the Company’s warranty obligation include product failure rates, anticipated hours of product operations and costs of repair or replacement in correcting product failures. These factors are estimates that may change based on new information that becomes available each period. Similarly, the Company also accrues the estimated costs to address reliability repairs on products no longer in warranty when, in the Company’s judgment, and in accordance with a specific

plan developed by the Company, it is prudent to provide such repairs. The Company assesses the adequacy of recorded warranty liabilities quarterly and makes adjustments to the liability as necessary. When the Company has sufficient evidence that product changes are altering the historical failure occurrence rates, the impact of such changes is then taken into account in estimating future warranty liabilities. Changes in the accrued warranty reserve during the six months ended September 30, 2021 are as follows (in thousands):

Balance, beginning of the period	\$	5,850
Standard warranty provision		143
Accrual related to reliability repair programs		—
Deductions for warranty claims		(4,129)
Balance, end of the period	\$	<u>1,864</u>

During the fourth quarter of Fiscal 2021, the Company recorded a specific \$4.9 million accrual related to reliability repair programs to account for the replacement of remaining high risk failure parts in some of the Company's fielded units due to a supplier defect. As of September 30, 2021, the accrual related to the reliability repair program was \$0.4 million.

12. Revenue Recognition

The Company derives its revenues primarily from system sales, service contracts and professional services. Revenues are recognized when control of the systems and services is transferred to the Company's customers in an amount that reflects the consideration it expects to be entitled to in exchange for those services.

The Company determines revenue recognition through the following steps:

- Identification of the contract, or contracts, with a customer
- Identification of the performance obligations in the contract
- Determination of the transaction price
- Allocation of the transaction price to the performance obligations in the contract
- Recognition of revenue when, or as, the Company satisfies a performance obligation

The Company recognizes revenue when performance obligations identified under the terms of contracts with its customers are satisfied, which generally occurs, for systems, upon the transfer of control in accordance with the contractual terms and conditions of the sale. The majority of the Company's revenue associated with systems is recognized at a point in time when the system is shipped to the customer. Revenue from service contracts and post-shipment performance obligations is recognized when or as those obligations are satisfied. The Company primarily offers assurance-type standard warranties that do not represent separate performance obligations and will separately offer and price extended warranties that are separate performance obligations for which the associated revenue is recognized over-time based on the extended warranty period. The Company records amounts billed to customers for reimbursement of shipping and handling costs within revenue. Shipping and handling costs associated with outbound freight after control over a system has transferred to a customer are accounted for as fulfillment costs and are included in cost of goods sold. Sales taxes and other usage-based taxes are excluded from revenue.

Comprehensive Factory Protection Plan ("FPP") service contracts require payment at the beginning of the contract period. Advance payments are not considered a significant financing component as they are typically received less than one year before the related performance obligations are satisfied. These payments are treated as a contract liability and are classified in deferred revenue in the Condensed Consolidated Balance Sheets. Once control transfers to the customer and the Company meets the revenue recognition criteria, the deferred revenue is recognized in the Condensed Consolidated Statement of Operations. The deferred revenue relating to the annual maintenance service contracts is recognized in the Condensed Consolidated Statement of Operations on a straight-line basis over the expected term of the contract.

Significant Judgments - Contracts with Multiple Performance Obligations

The Company enters into contracts with its customers that often include promises to transfer multiple products, parts, accessories, FPP and services. A performance obligation is a promise in a contract with a customer to transfer

products or services that are distinct. Determining whether products and services are distinct performance obligations that should be accounted for separately or combined as one unit of accounting may require significant judgment.

Products, parts and accessories are distinct as such services are often sold separately. In determining whether FPP and service contracts are distinct, the Company considers the following factors for each FPP and services agreement: availability of the services from other vendors, the nature of the services, the timing of when the services contract was signed in comparison to the product delivery date and the contractual dependence of the product on the customer's satisfaction with the professional services work. To date, the Company has concluded that all of the FPP and services contracts included in contracts with multiple performance obligations are distinct.

The Company allocates the transaction price to each performance obligation on a relative standalone selling price ("SSP") basis. The SSP is the price at which the Company would sell a promised product or service separately to a customer. Judgment is required to determine the SSP for each distinct performance obligation.

The Company determines SSP by considering its overall pricing objectives and market conditions. Significant pricing practices taken into consideration include the Company's discounting practices, the size and volume of the Company's transactions, the customer demographic, the geographic area where systems and services are sold, price lists, its go-to-market strategy, historical sales and contract prices. The determination of SSP is made through consultation with and approval by the Company's management, taking into consideration the go-to-market strategy. As the Company's go-to-market strategies evolve, the Company may modify its pricing practices in the future, which could result in changes to SSP.

In certain cases, the Company is able to establish SSP based on observable prices of products or services sold separately in comparable circumstances to similar customers. The Company uses a single amount to estimate SSP when it has observable prices.

If SSP is not directly observable, for example when pricing is highly variable, the Company uses a range of SSP. The Company determines the SSP range using information that may include market conditions or other observable inputs. The Company typically has more than one SSP for individual products and services due to the stratification of those products and services by customer size and geography.

The following table presents disaggregated revenue by business group (in thousands):

	Six Months Ended September 30,	
	2021	2020
Microturbine Products	\$ 16,664	\$ 13,173
Accessories	190	639
Total Product and Accessories	16,854	13,812
Parts and Service	16,424	15,287
Total Revenue	<u>\$ 33,278</u>	<u>\$ 29,099</u>

The following table presents disaggregated revenue by geography based on the primary operating location of the Company's customers (in thousands):

	Six Months Ended September 30,	
	2021	2020
United States	\$ 15,174	\$ 13,597
Mexico	1,584	1,926
All other North America	447	100
Total North America	17,205	15,623
Russia	2,206	2,098
All other Europe	5,612	7,001
Total Europe	7,818	9,099
Asia	823	2,216
Australia	3,342	1,225
All other	4,090	936
Total Revenue	<u>\$ 33,278</u>	<u>\$ 29,099</u>

Contract Balances

The Company's contract liabilities consist of advance payments for systems as well as deferred revenue on service obligations and extended warranties. The current portion of deferred revenue is included in current liabilities under deferred revenue and the non-current portion of deferred revenue is included in other non-current liabilities in the Condensed Consolidated Balance Sheets.

As of September 30, 2021, the balance of deferred revenue was approximately \$5.7 million compared to \$7.1 million as of March 31, 2021. The overall decrease in the balance of deferred revenue of \$1.4 million during the six months ended September 30, 2021 was primarily comprised of decreases in deferred revenue attributable to the Distributor Support System ("DSS program") of \$0.9 million and FPP contracts of \$0.7 million. Changes in deferred revenue during the six months ended September 30, 2021 are as follows (in thousands):

FPP Balance, beginning of the period	\$	4,765
FPP Billings		8,192
FPP Revenue recognized		(8,811)
Balance attributed to FPP contracts		4,146
DSS Program		529
Deposits		990
Deferred revenue balance, end of the period	\$	5,665

Deferred revenue attributed to FPP contracts represents the unearned portion of the Company's contracts. FPP contracts are generally paid quarterly in advance with revenue recognized on a straight line basis over the contract period. As of September 30, 2021, approximately \$4.1 million of revenue is expected to be recognized from remaining performance obligations for FPP contracts. The Company expects to recognize revenue on approximately \$3.4 million of these remaining performance obligations over the next 12 months and the balance of \$0.7 million will be recognized thereafter.

The DSS program provides additional support for distributor business development activities, customer lead generation, brand awareness and tailored marketing services for each of the Company's major geography and market vertical. This program is funded by the Company's distributors and was developed to provide improved worldwide distributor training, sales efficiency, website development, company branding and provide funding for increased strategic marketing activities. DSS program revenue is generally paid quarterly with revenue recognized on a straight-line basis over a calendar year period.

Deposits are primarily non-refundable cash payments from distributors for future orders.

Unsatisfied Performance Obligations

The Company has elected the practical expedient to disclose only the value of unsatisfied performance obligations for contracts with an original expected length greater than one year. The majority of the Company's revenues resulted from sales of inventoried systems with short periods of manufacture and delivery and thus are excluded from this disclosure.

As of September 30, 2021, the FPP backlog was approximately \$75.4 million, which represents the value of the contractual agreement for FPP services that had not been earned and extends through Fiscal 2041.

Practical Expedients

The Company applies a practical expedient to expense costs as incurred for costs to obtain a contract when the amortization period would have been one year or less. These costs are recorded within sales and marketing expenses in the accompanying Condensed Consolidated Statements of Operations.

13. Other Assets

The Company was a party to a Development and License Agreement with Carrier Corporation ("Carrier") regarding the payment of royalties on the sale of each of the Company's 200 kilowatt ("C200") microturbines. In 2013, the Company reached its repayment threshold level and the fixed rate royalty was reduced by 50%. On July 25, 2018, the Company and Carrier entered into a Second Amendment to the Development and License Agreement ("Second

Amendment”) whereby the Company agreed to pay Carrier approximately \$3.0 million to conclude the Company’s current royalty obligation under the Development and License Agreement, dated as of September 4, 2007, as amended (“Development Agreement”), and release the Company from any future royalty payment obligations. The Second Amendment also removed non-compete provisions from the Development Agreement, allowing the Company to design market or sell its C200 System in conjunction with any energy system and compete with Carrier products in the CCHP market.

On September 19, 2018, the Company paid in full the negotiated royalty settlement of \$3.0 million to Carrier, and as such, there is no further royalty obligation to Carrier. The prepaid royalty of \$3.0 million has been recorded under the captions “Prepaid expenses and other current assets” and “Other assets” in the accompanying condensed consolidated balance sheets and will be amortized in the accompanying condensed consolidated statements of operations over a 15-year amortization period through September 2033 using an effective royalty rate. A 15-year amortization period is the minimum expected life cycle of the current generation of product. The effective royalty rate is calculated as the prepaid royalty settlement divided by total projected C200 System units over the 15-year amortization period. On an annual basis, the Company performs a re-forecast of C200 System unit shipments, to determine if an adjustment to the effective royalty rate is necessary. Accordingly, if the Company’s future projections change, its effective royalty rates may also change, which could affect the amount and timing of royalty expense the Company recognizes. If impairment exists, then the prepaid royalty asset would be written down to fair value. Prepaid royalties are classified as current assets to the extent that such amounts will be recognized in the Company’s condensed consolidated statements of operations within the next 12 months. The current and long-term portions of prepaid royalties, included in other current assets and other assets, respectively, consisted of (in thousands):

	September 30, 2021	March 31, 2021
Other current assets	\$ 124	\$ 124
Other assets	2,552	2,613
Royalty-related assets	<u>\$ 2,676</u>	<u>\$ 2,737</u>

14. Commitments and Contingencies

Purchase Commitments

As of September 30, 2021, the Company had firm commitments to purchase inventories of approximately \$36.5 million through Fiscal 2024. Certain inventory delivery dates and related payments are not firmly scheduled; therefore, amounts under these firm purchase commitments will be payable upon the receipt of the related inventories.

Lease Commitments

See Note 15 – *Leases*.

Other Commitments

The Company has agreements with certain of its distributors requiring that, if the Company renders parts obsolete in inventories the distributors own and hold in support of their obligations to serve fielded microturbines, then the Company is required to replace the affected stock at no cost to the distributors. While the Company has never incurred costs or obligations for these types of replacements, it is possible that future changes in the Company’s product technology could result and yield costs to the Company if significant amounts of inventory are held at distributors. As of September 30, 2021, no significant inventories of this nature were held at distributors.

Legal Matters

Capstone Turbine Corporation v. Turbine International, LLC.

On February 3, 2020, Capstone Turbine Corporation filed suit against its former distributor, Turbine International, LLC (“Turbine Intl.”), in the Superior Court of California for the County of Los Angeles under the following caption: Capstone Turbine Corporation v. Turbine International, LLC; Case No. 20STCV04372 (“Capstone-Turbine Intl. Litigation”). The Company has alleged claims against Turbine Intl. for breach of contract and for injunctive relief relating to the parties’ prior distributor relationship, which terminated at the end of March of 2018, and Turbine Intl.’s failure to satisfy its payment obligations under certain financial agreements, namely an accounts receivable agreement and

promissory note in favor of Capstone. As remedies for these claims, the Company is seeking compensatory, consequential, along with injunctive relief and attorney's fees, interest, and costs.

On March 18, 2020, Turbine Intl. filed its answer and cross-claims in the Capstone-Turbine Intl. Litigation. In its cross-claims, Turbine Intl. asserted claims against Capstone, and individually against Mr. James Crouse, Capstone's Chief Revenue Officer, for breach of contract under the distributor agreement, accounts receivable agreement and promissory note, fraud, breach of the covenant of good faith and fair dealing, unjust enrichment and constructive trust, negligent misrepresentation, violation of the California unfair practices act, violation of racketeer influenced corrupt organizations act, and conspiracy to commit fraud. As remedies for these alleged claims, Turbine Intl. are seeking compensatory, consequential, and punitive damages along with attorney's fees, interest, and costs. Capstone answered the cross-claims on May 7, 2020.

On June 29, 2020, Capstone filed a motion to file a First Amended Complaint that would add, among other things, a claim for enforcement of a guaranty signed by an entity related to Turbine Intl., Hispania Petroleum, S.A., and personal claims against the principals of Turbine Intl. and Hispania. That motion was granted on August 19, 2020, and the First Amended Complaint ("FAC") is now on file. All of the new defendants have been served and have filed answers. A trial date in the matter has been set for December 12, 2022. Discovery is ongoing. The Company has not recorded any liability as of September 30, 2021, as the matter is too early to estimate.

15. Leases

In February 2016, the FASB issued ASU 2016-02, *Leases* (Topic 842), requiring lessees to recognize most leases on the balance sheet. The ASU requires lessees to recognize a liability for lease obligations, which represents the discounted obligation to make future lease payments, and a corresponding right-of-use (ROU) asset on the balance sheet.

The Company adopted the new standard on April 1, 2019 using the modified retrospective approach. Upon adoption of the new lease standard on April 1, 2019, the Company recorded approximately \$5.5 million of right-of-use assets, adjusted for the reclassification of deferred rent and lease incentive of approximately \$0.3 million, and \$5.8 million of operating lease liabilities on the Company's Condensed Consolidated Balance Sheets upon adoption. The adoption of this standard did not have an impact on the Company's Condensed Consolidated Statements of Operations or Cash Flows and did not result in a cumulative catch-up adjustment to the opening balance of accumulated deficit. Financed leases are not material to the Company's condensed consolidated financial statements and are therefore not included in the footnote disclosures.

In June 2019, the Company entered into a new lease of approximately 9,216 square feet of warehouse space at 16701 Stagg Street in Van Nuys, California. Upon the lease commencement date in July 2019, the Company recorded \$0.5 million of right-of-use assets and operating lease liabilities.

In May 2021, the Company entered into new lease of office and warehouse spaces at Unit 800 & 810 Fareham Reach, Fareham Road, Gosport, Hampshire, United Kingdom. Upon commencement of the lease, the Company recorded \$1.9 million of right-of-use assets and operating lease liabilities.

The Company leases offices and manufacturing facilities under various non-cancelable operating leases expiring at various times through Fiscal 2037. All of the leases require the Company to pay maintenance, insurance and property taxes. The lease agreements for primary office and manufacturing facilities provide for rent escalation over the lease term and renewal options for five-year periods. Lease expense is recognized on a straight-line basis over the term of the lease.

The components of lease expense were as follows (in thousands):

	<u>Three Months Ended September 30,</u>		<u>Six Months Ended September 30,</u>	
	<u>2021</u>	<u>2020</u>	<u>2021</u>	<u>2020</u>
Operating lease cost	\$ 315	\$ 268	\$ 568	\$ 536

Supplemental balance sheet information related to the leases was as follows (dollars in thousands):

	<u>September 30, 2021</u>	<u>March 31, 2021</u>
Operating lease right-of-use assets	\$ 6,169	\$ 4,741
Total operating lease right-of-use assets	<u>\$ 6,169</u>	<u>\$ 4,741</u>
Operating lease liability, current	\$ 480	\$ 485
Operating lease liability, non-current	5,924	4,456
Total operating lease liabilities	<u>\$ 6,404</u>	<u>\$ 4,941</u>
Weighted average remaining lease life	8.71 years	6.51 years
Weighted average discount rate	12.00%	13.00%

The Company records its right-of-use assets within other assets (non-current) and its operating lease liabilities within current and long-term portion of notes payable and lease obligations.

Supplemental cash flow information related to the leases was as follows (in thousands):

	<u>Six Months Ended September 30,</u>	
	<u>2021</u>	<u>2020</u>
Cash paid for amounts included in the measurement of lease liabilities		
Operating cash flows from operating leases	\$ 527	\$ 566
Right-of-use assets obtained in exchange for lease obligations		
Operating leases	\$ 1,877	\$ —

Maturities of operating lease liabilities as of September 30, 2021 were as follows (in thousands):

<u>Year Ending March 31,</u>	<u>Operating Leases</u>
2022 (remainder of fiscal year)	\$ 579
2023	1,297
2024	1,324
2025	1,248
2026	1,243
Thereafter	4,637
Total lease payments	<u>\$ 10,328</u>
Less: imputed interest	(3,924)
Present value of operating lease liabilities	<u>\$ 6,404</u>

16. Net Loss Per Common Share

Basic loss per common share is computed using the weighted-average number of Common Shares outstanding for the period. Diluted loss per share is also computed without consideration to potentially dilutive instruments because the Company incurred losses which would make such instruments anti-dilutive. Outstanding stock options and restricted stock units at September 30, 2021 and 2020 were 0.6 million and 0.4 million, respectively. As of September 30, 2021 and 2020, the number of warrants excluded from diluted net loss per common share computations was approximately 1.0 million and 1.5 million, respectively.

17. Subsequent Events

The Company has evaluated subsequent events through the filing date of this Form 10-Q with the SEC, to ensure that this filing includes all appropriate footnote disclosure of events both recognized in the financial statements as of September 30, 2021, and events which occurred subsequently but were not recognized in the financial statements. There were no subsequent events which required recognition, adjustment to or disclosure in the financial statements.

Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations

The following Management's Discussion and Analysis of Financial Condition and Results of Operations should be read in conjunction with the condensed consolidated financial statements and notes thereto included in this Form 10-Q and in our Annual Report on Form 10-K for Fiscal 2021. All dollar amounts in this Management's Discussion and Analysis of Financial Condition and Results of Operations are approximate.

Special Note Regarding Forward-Looking Statements

This Form 10-Q includes certain forward-looking statements (as such term is defined in Section 27A of the Securities Act of 1933, as amended (the "Securities Act") and Section 21E of the Securities Exchange Act of 1934, as amended (the "Exchange Act")). These statements can be identified by the fact that they do not relate strictly to historical or current facts. Words such as "expect," "anticipate," "should," "believe," "target," "project," "goals," "estimate," "potential," "predict," "may," "will," "might," "could," "intend" and variations of these terms and similar expressions are intended to identify these forward-looking statements, although not all forward-looking statements contain these identifying words. These forward-looking statements include, among others, statements relating to our future financial performance, our business prospects and strategy, anticipated financial position, liquidity and capital needs and other similar matters. These forward-looking statements are based on management's current expectations and assumptions about future events, which are inherently subject to uncertainties, risks and changes in circumstances that are difficult to predict.

Our actual results may differ materially from those expressed in, or implied by, the forward-looking statements included in this Form 10-Q as a result of various factors, including, among others:

- the ongoing effects of the COVID-19 pandemic on our business, financial condition, results of operations and cash flows, and the fact that many of the other factors discussed below may be amplified by the COVID-19 pandemic and the restrictions that have been instituted as a result of the pandemic;
- the availability of credit and compliance with the agreements governing our indebtedness;
- risks related to our history of net losses and ability to raise additional capital and fund future operating requirements;
- the development of the market for and customer uses of our microturbines;
- our ability to develop new products and enhance existing products;
- our ability to produce products on a timely basis in a high quality manner;
- availability of sources for and costs of component parts;
- competition in the markets in which we operate;
- operational interruption by fire, earthquake and other events beyond our control;
- federal, state and local regulations of our markets and products;
- usage of our federal and state net operating loss carryforwards;
- the financial performance of the oil and natural gas industry and other general business, industry and economic conditions applicable to us; changes to trade regulation, quotas, duties or tariffs, and sanctions caused by the changing U.S. and geopolitical environments;
- security and cybersecurity risks related to our electronic processing of sensitive and confidential business and product data;
- our ability to adequately protect our intellectual property rights;
- the impact of pending or threatened litigation; and
- other risks and uncertainties discussed in "Item 1A. Risk Factors" included in our Annual Report on Form 10-K for Fiscal 2021.

Furthermore, new risks may emerge from time to time and it is not possible for us to predict all risks, nor can we assess the impact of all factors on the business or the extent to which any factor, or combination of factors, may cause

actual results, performance or achievement to differ materially from those contained in any forward-looking statements. Forward-looking statements speak only as of the date of this Form 10-Q. Except as expressly required under federal securities laws and the rules and regulations of the Securities and Exchange Commission (the "SEC"), we do not have any obligation, and do not undertake, to update any forward-looking statements to reflect events or circumstances arising after the date of this Form 10-Q, whether as a result of new information or future events or otherwise. Readers should not place undue reliance on the forward-looking statements included in this Form 10-Q or that may be made elsewhere from time to time by us, or on our behalf. All forward-looking statements attributable to us are expressly qualified by these cautionary statements.

Overview

We are the market leader in microturbines based on the number of microturbines sold. Generally, power purchased from the electric utility grid is less costly than power produced by distributed generation technologies. Utilities may also charge fees to interconnect to their power grids. However, we can provide economic benefits to end users in instances where the waste heat from our microturbine has value (CHP) and (CCHP), where fuel costs are low (renewable energy/renewable fuels), where the costs of connecting to the grid may be high or impractical (such as remote power applications), where reliability and power quality are of critical importance, or in situations where peak shaving could be economically advantageous because of highly variable electricity prices. Our microturbines can be interconnected to other distributed energy resources to form "microgrids" (also called "distribution networks") located within a specific geographic area and provide power to a group of buildings. Because our microturbines can provide a reliable source of power and can operate on multiple fuel sources, management believes they offer a level of flexibility not currently offered by other technologies such as reciprocating engines. In addition to our existing microturbine products, since September 2020, we have offered additional energy conversion products in the form of Baker Hughes 5 MW, 12 MW, and 16 MW industrial gas turbines, where we will purchase and resell their product (although there was no revenue from sales of additional energy conversion products in the form of Baker Hughes industrial gas turbines for the three and six months ended September 30, 2021 or 2020). The Company is currently exploring energy conversion options for the smaller end of the power spectrum. We intend to begin to manufacture modular hybrid energy stations and lithium-ion battery energy storage systems ("BESS") to be sold either individually or combined as part of a custom microturbine-battery storage solution. We consider our microturbines, Baker Hughes turbines, and hybrid energy stations to be a part of our Energy conversion products business line. We also added a new Energy Storage Products business line in Fiscal 2022 and there has not yet been any revenue from this business line.

Our goals for Fiscal 2022 are to:

- broaden our diverse energy products and service offerings,
- focus on growing top line revenue through our new Direct Solutions Sales team and growing the DSS subscription program, and expanding the rental fleet to 21.1 MW,
- increase aftermarket margins and escalate parts availability, and
- focus on managing working capital and inventory turns.

During the second quarter of Fiscal 2022 our net loss was \$6.0 million and our basic and diluted net loss per share was \$0.40, compared to \$4.2 million and \$0.38, respectively, in the same period of the previous fiscal year. The \$1.8 million increase in the net loss during the second quarter of Fiscal 2022 compared to the same period the previous year was primarily attributable to increases in selling, general and administrative expense driven by the impacts of the enactment of our Business Continuity Plan, which favorably impacted our operating results in the same period last year.

Our products continue to gain interest in all our major vertical markets (energy efficiency, renewable energy, natural resources, critical power supply, microgrid and transportation). In the energy efficiency market, we continue to expand our market presence in hotels, office buildings, hospitals, retail, and industrial applications globally. The renewable energy market is fueled by landfill gas, biodiesel, and biogas from sources such as food processing, agricultural waste and livestock manure. Our product sales in the oil and gas and other natural resources market is driven by our microturbines' reliability, emissions profile and ease of installation. Given the volatility of the oil and gas market, our business strategy is to ensure diversification by also targeting projects within the energy efficiency and renewable energy markets.

We continue to focus on improving our products based on customer input, building brand awareness and new channels to market by developing a diversified network of strategic distribution partners. Our focus is on products and

solutions that provide near term opportunities to drive repeatable business rather than discrete projects for niche markets. In addition, management closely monitors operating expenses and strives to improve manufacturing efficiencies while simultaneously lowering direct material costs and increasing average selling prices. The key drivers of our success are expected to be revenue growth, higher average selling prices, lower direct material costs, positive new order flow and reduced cash usage.

An overview of our direction, targets and key initiatives are as follows:

- I. Our Energy Conversion Products business line is driven by the Company’s industry-leading, highly efficient, low-emission, resilient microturbine energy systems offering scalable solutions in addition to a broad range of customer-tailored solutions. We target specific market verticals for these products.

Focus on Vertical Markets Within the distributed generation markets that we serve, we focus on vertical markets that we identify as having the greatest near-term potential. In our primary products and applications (energy efficiency, renewable energy, natural resources, critical power supply, microgrid and transportation products), we identify specific targeted vertical market segments. Within each of these segments, we identify what we believe to be the critical factors to success and base our plans on those factors. Given the volatility of the oil and gas market, we have refocused our business strategy to target projects within the energy efficiency and renewable energy markets.

The following table summarizes our percentage of product revenues by vertical markets for which we had product revenues for the periods presented:

	Three Months Ended		Six Months Ended	
	September 30,		September 30,	
	2021	2020	2021	2020
Energy efficiency	62%	68%	45%	62%
Natural resources	21%	14%	27%	20%
Renewable energy	17%	17%	28%	17%
Microgrid	—	1%	—	1%

Energy Efficiency—CHP/CCHP

Energy efficiency refers to the proper utilization of both electrical and thermal energies in the power production process. In such applications, our microturbines are able to maximize the availability of usable energy to provide a significant economic advantage to customers while reducing their onsite emissions. CHP and CCHP can improve site economics by capturing the waste heat created from a single combustion process to increase the efficiency of the total system, from approximately 30 percent to 80 percent or more. Compared with more traditional, independent generation sources, the increase in operational efficiency also reduces greenhouse gas emissions through the displacement of other separate systems, which can also reduce operating costs.

Natural Resources—Crude Oil, Natural Gas, Shale Gas & Mining

Our microturbines are installed in the natural resource market for use in both onshore and offshore applications, including oil and gas exploration, production, and at compression and transmission sites as a highly efficient and reliable source of power. In some cases, these oil and gas or mining operations have no electric utility grid and rely solely on power generated onsite. There are numerous locations, on a global scale, where the drilling, production, compression and transportation of natural resources and other extraction and production processes create fuel byproducts, which are traditionally burned or released into the atmosphere. Our microturbines can turn these fuel byproducts - flare gas, or associated gas, into a useable fuel to provide prime power to these sites.

Renewable Energy

There is a growing transition to renewable energy sources and technologies on a global scale. Our microturbines run efficiently on renewable fuels such as methane and other biogases from landfills, wastewater treatment facilities and renewable natural gas. They also run efficiently on other small biogas applications like food processing plants, livestock farms and agricultural green waste operations. Microturbines can burn these renewable fuels with minimal emissions, thereby, in some cases, avoiding the imposition of penalties incurred for pollution while simultaneously producing electricity from this “free” renewable fuel source for use at the site

or in the surrounding areas. Our microturbines have demonstrated effectiveness in these smaller applications and may outperform conventional combustion engines in some situations, including when the gas contains a high amount of sulfur, as the sulfur can contaminate combustion engines lube oil leading to equipment breakdowns and higher lifecycle costs.

Microgrid

Microgrid is a group of interconnected loads and distributed energy resources that acts as a single controllable energy entity with respect to the grid. Distributed energy resources typically include other dual-mode microturbines, reciprocating engines, solar photovoltaic (PV), wind turbine, fuel cells and battery storage. Microgrids can be connected to larger electricity grids; however, in the event of a widespread outage, the microgrid will disconnect from the main grid and continue to operate independently to maintain the electricity supply to the homes and businesses that are connected to the microgrid's electricity network. Our microturbines have the ability to meet the needs of microgrid end-users by lowering their overall cost to operate and by providing a versatile dispatchable technology that is fuel flexible and scalable enough to fit a wide variety of applications. We have seen continued development in the microgrid market segment. There was no revenue in the Microgrid market vertical for the three and six months ended September 30, 2021. There was \$0.1 million in revenue in the Microgrid market vertical for the three and six months ended September 30, 2020.

Critical Power Supply

Because of the potentially catastrophic consequences of system failure, momentary or otherwise, certain high demand power users, including high technology, health care and information systems facilities require higher levels of reliability in their power generation service. To meet these customer requirements, traditional solutions utilize Uninterruptible Power Supplies ("UPS") to protect critical loads from power disturbances along with back-up diesel generators for extended outages. We offer an alternative solution that can both meet customer reliability requirements and reduce operating costs. We have seen continued development in the critical market segment as it relates to health care facilities. There was no revenue in the Critical Power Supply market vertical for the three and six months ended September 30, 2021 and 2020.

Transportation

Our technology can also be used in Hybrid Electric Vehicle ("HEV") applications. Our customers have applied our products in HEV applications such as transit buses and Class 7 and 8 work trucks. In these applications, the microturbine acts as an onboard battery charger to recharge the battery system as needed. The benefits of microturbine-powered HEV hybrids include extended range, fuel economy gains, quieter operation, reduced emissions, and higher reliability when compared with traditional internal combustion engines.

Additionally, our technology has been used in marine applications. Our customers have applied our products in the commercial vessel and luxury yacht market segments. The application for our marine products is for use as a ship auxiliary engine. In this application, the microturbines provide power to the vessel's electrical loads and, in some cases, the vessel can utilize the exhaust energy to increase the overall efficiency of the application, thereby reducing overall fuel consumption and emissions. Another feasible application is similar to our HEV application where the vessel is driven by an electric propulsion system and the microturbine serves as an on board range extender. Transportation is a developing market segment for us. In Fiscal 2020 and Fiscal 2021, transportation products were only for customer demonstrations. We have experienced continued development in these vertical markets and remain focused on the development of these applications. There was no revenue in the Transportation market vertical for the three and six months ended September 30, 2021 and 2020.

Backlog

Net product orders were approximately \$8.2 million and \$6.4 million for the three months ended September 30, 2021 and 2020, respectively. Ending backlog was approximately \$27.6 million at September 30, 2021 compared to \$29.4 million at March 31, 2021. The gross book-to-bill ratio was 1.3:1 and 1.4:1 for the three months ended September 30, 2021 and 2020, respectively. Book-to-bill ratio is the ratio of new orders we received to units shipped and billed during a period.

A portion of our backlog is concentrated in the oil and gas market which may impact the overall timing of shipments or the conversion of backlog to revenue. The timing of the backlog is based on the requirement date

indicated by our customers. However, based on historical experience, management expects that a significant portion of our backlog may not be shipped within the next 18 months. Additionally, the timing of shipments is subject to change based on several variables (including customer deposits, payments, availability of credit and customer delivery schedule changes), most of which are not in our control and can affect the timing of our revenue. As a result, management believes the book-to-bill ratio demonstrates the current demand for our products in the given period.

2. **Sales and Distribution Channels** We seek out distributors that have business experience and capabilities to support our growth plans in our targeted markets. A significant portion of our revenue is derived from sales to distributors that resell our products to end users. We have a total of 62 distributors, OEMs and national accounts. In the United States and Canada, we currently have 10 distributors, OEMs and national accounts. Outside of the United States and Canada, we currently have 52 distributors, OEMs and national accounts. We continue to refine our distribution channels to address our specific targeted markets.

Our Distributor Support System (“DSS program”) provides additional support for distributor business development activities, customer lead generation, brand awareness and tailored marketing services for each of our major geography and market vertical. This program is funded by our distributors and was developed to provide improved worldwide distributor training, sales efficiency, website development, company branding and provide funding for increased strategic marketing activities. See Note 12 – *Revenue Recognition* for additional discussion of revenue recognition for this program.

3. **Service** As part of our Energy as a Service business line, we provide service primarily through our global distribution network. Together with our global distribution network we offer a comprehensive factory protection plan for a fixed fee to perform regularly scheduled and unscheduled maintenance as needed. We provide factory and on-site training to certify all personnel that are allowed to perform service on our microturbines. Factory protection plans are generally paid quarterly in advance.

Our FPP backlog as of September 30, 2021 was approximately \$75.4 million, which represents the value of the contractual agreement for FPP services that had not been earned and extends through Fiscal 2041. Our FPP backlog as of March 31, 2021 was approximately \$75.1 million, which represents the value of the contractual agreement for FPP services that had not been earned and extends through Fiscal 2041. Additionally, we offer new and remanufactured parts through our global distribution network.

4. **Product Robustness and Life Cycle Maintenance Costs** We continue to invest in enhancements that relate to high performance and high reliability. An important element of our continued innovation and product strategy is to focus on the engineering of our product hardware and electronics to make them work together more effectively and deliver improved microturbine performance, reliability and low maintenance cost to our customers.

5. **New Product Development** Our new product development is targeted specifically to meet the needs of our selected vertical markets. We expect that our existing product platforms, the C30, C65, C200 and C1000 Series microturbines, will be our foundational product lines for the foreseeable future. Our research and development project portfolio is centered on enhancing the features of these base products.

During Fiscal 2020, we introduced and expanded our PowerSync family of controllers, easily customizable for our microturbine systems. Additionally, we delivered our first production self-cleanable severe environment air filtration system for our Signature Series line of microturbine products.

In partnership with one of our long-term EMEA distributors, we developed a marine C65 for a private yacht manufacturer and in Fiscal 2020 we delivered the product and also received certification from Lloyd’s Register EMEA for Lloyd’s Register Rules and Regulations for the Classification of Special Service Craft 2018 - Part 6.

During Fiscal 2021, we continued to expand and develop our new hydrogen products. We released our first commercially available hydrogen-based combined heat and power (CHP) product, which can safely run on a 10% hydrogen-90% natural gas mix, and we are targeting a commercial release of a product that will run on a 30% hydrogen-70% natural gas mix product by March 31, 2022. In continuing these efforts, we are testing a 100% hydrogen gas combustion system through our research and development partnership with Argonne National Laboratory.

6. **Cost and Core Competencies** We believe that the core competencies of our products are air-bearing technology, advanced combustion technology and sophisticated power electronics to form efficient and ultra-low emission electricity and cooling and heat production systems. Our core intellectual property is contained within our air-bearing technology. We continue to review avenues for cost reduction by sourcing to the best value supply chain option. In order to utilize manufacturing facilities and technology more effectively, we are focused on continuous improvements in manufacturing processes. Additionally, considerable effort is being directed to manufacturing cost reduction through process improvement, product design, advanced manufacturing technology, supply management and logistics. Management expects to be able to leverage our costs as product volumes increase.

Our manufacturing designs include the use of conventional technology, which has been proven in high- volume automotive and turbocharger production for many years. Many components used in the manufacture of our products are readily fabricated from commonly available raw materials or off the shelf items available from multiple supply sources; however, certain items are custom made to meet our specifications and require longer lead time. We believe that in most cases, adequate capacity exists at our suppliers and that alternative sources of supply are available or could be developed within a reasonable period of time; however, single source suppliers with long lead times may be more challenging to transition to another supplier. We regularly reassess the adequacy and abilities of our suppliers to meet our future needs.

We believe that effective execution in each of these key areas will be necessary to leverage Capstone's promising technology and early market leadership into achieving positive cash flow with growing market presence and improving financial performance.

We currently occupy warehouse and office space in Van Nuys, California with a production capacity of approximately 2,000 units per year, depending on product mix. We believe we will be able to support this production capacity level by adding additional shifts, which would increase working capital requirements, and by making some additional capital expenditures when necessary.

Critical Accounting Policies and Estimates

The preparation of our condensed consolidated financial statements requires management to make estimates and assumptions that affect the reported amounts of assets, liabilities, revenue and expenses. Management believes the most complex and sensitive judgments, because of their significance to the condensed consolidated financial statements, result primarily from the need to make estimates about the effects of matters that are inherently uncertain. Actual results could differ from management's estimates. Management believes the critical accounting policies listed below affect our more significant accounting judgments and estimates used in the preparation of the condensed consolidated financial statements. These policies are described in greater detail in our Annual Report on Form 10-K for Fiscal 2021 and continue to include the following areas:

- Revenue recognition;
- Inventory write-downs and classification of inventories;
- Estimates of warranty obligations;
- Accounts receivable allowances;
- Deferred tax assets and valuation allowance;
- Impairment of long-lived assets, including intangible assets with finite lives; and
- Stock-based compensation expense.

Results of Operations

Three Months Ended September 30, 2021 and 2020

The following table summarizes our revenue by geographic markets (amounts in millions):

	Three Months Ended September 30,	
	2021	2020
United States and Canada	\$ 8.2	\$ 5.7
Europe and Russia	3.8	6.0
Latin America	2.7	1.2
Asia and Australia	2.4	1.9
Middle East and Africa	0.1	0.1
Total	\$ 17.2	\$ 14.9

Revenue for the three months ended September 30, 2021 increased \$2.3 million, or 15%, to \$17.2 million from \$14.9 million for the three months ended September 30, 2020. The \$2.3 million increase was primarily driven by the \$2.5 million increase in United States and Canada, \$1.5 million increase in Latin America, and \$0.5 million increase in Asia and Australia markets, offset by a decrease of \$2.2 million in Europe and Russia. The increase in United States and Canada, Latin America, Asia and Australia is primarily due to increases in product shipments into the energy efficiency and natural resources vertical markets, as well as an increase in parts shipments, compared to the same period last year. The decrease in Europe and Russia is primarily attributable to a decrease in product shipments into the energy efficiency and natural resources vertical markets compared to the same period last year.

The following table summarizes our revenue (revenue amounts in millions):

	Three Months Ended September 30,					
	2021			2020		
	Revenue	Megawatts	Units	Revenue	Megawatts	Units
Microturbine Product	\$ 8.4	7.5	41	\$ 7.0	7.0	51
Accessories	0.1			0.2		
Total Product and Accessories	8.5			7.2		
Parts and Service	8.7			7.7		
Total	\$ 17.2			\$ 14.9		

For the three months ended September 30, 2021, revenue from microturbine products and accessories increased \$1.3 million, or 18%, to \$8.5 million from \$7.2 million for the three months ended September 30, 2020. The \$1.3 million increase was primarily the result of more megawatts shipped, at slightly higher average selling prices as well as due to the mix of products sold during the three months ended September 30, 2021 compared to the same period last year. During the three months ended September 30, 2021, we shipped a higher number of our C800 Signature Series microturbine systems compared to the same period last year. Megawatts shipped were 7.5 megawatts and 7.0 megawatts during the three months ended September 30, 2021 and 2020, respectively. Average revenue per megawatt shipped was approximately \$1.1 million and \$1.0 million during the three months ended September 30, 2021 and 2020, respectively. The timing of shipments is variable and based on several factors (including customer deposits, payments, availability of credit and delivery schedule changes), most of which are not within our control and can affect the timing of revenue recognition.

Parts and service revenue (which are part of our Energy as a Service business line and include revenue from our parts shipments, FPP contracts, rentals, Distributor Support Subscription fees, and other service revenue) increased \$1.0 million, or 13%, to \$8.7 million for three months ended September 30, 2021 from \$7.7 million for the three months ended September 30, 2020. The \$1.0 million increase was primarily driven by an increase in parts shipped during the three months ended September 30, 2021 compared to the same period last year.

Sales to E-Finity and Optimal accounted for 23% and 11%, respectively, of our revenue for the three months ended September 30, 2021. Sales to E-Quad accounted for 10% of our revenue for the three months ended September 30, 2020.

Gross Margin Cost of goods sold includes direct material costs, production and service center labor and overhead, inventory charges and provision for estimated product warranty expenses. Gross margin was \$2.7 million, or 16% of revenue, for the three months ended September 30, 2021 compared to a gross margin of \$2.6 million, or 17% of revenue, for the three months ended September 30, 2020. The increase of \$0.1 million was primarily because of an increase in our direct material costs margin of \$0.8 million and lower inventory charges of \$0.1 million, partially offset by an increase in our production and service center labor and overhead expense of \$0.7 million and higher warranty expense of \$0.1 million.

Warranty expense is a combination of a standard warranty provision recorded at the time revenue is recognized and changes, if any, in estimates for reliability repair programs. Reliability repair programs are based upon estimates that are recorded in the period that new information becomes available, including design changes, cost of repair and product enhancements, which can include both in-warranty and out-of-warranty systems. The increase in warranty expense of \$0.1 million reflects warranty accommodations and timing of warranty claims in the current period. During the three months ended September 30, 2021, the Company shipped approximately \$2.0 million of parts to replace high risk failure parts in some of our fielded units due to a previously identified supplier defect and recorded it against the \$4.9 million reserve established during the three months ended March 31, 2021.

Production and service center labor and overhead expense increased \$0.7 million primarily because of increases of approximately \$0.4 million in facilities costs, \$0.2 million in labor costs, \$0.2 million in supplies expense and \$0.1 million in subcontract labor expense, partially offset by \$0.2 million in overhead allocated to finished goods inventory primarily as a result of lower costs from actions taken in our Business Continuity Plan in the same period last year.

The following table summarizes our gross margin (in millions except percentages):

	Three Months Ended September 30,	
	2021	2020
Gross Margin		
Product and accessories	\$ (0.3)	\$ (0.1)
As a percentage of product and accessories revenue	(4)%	(3)%
Parts and service	\$ 3.0	\$ 2.7
As a percentage of parts and service revenue	35 %	35 %
Total Gross Margin	<u>\$ 2.7</u>	<u>\$ 2.6</u>
As a percentage of total revenue	16 %	17 %

The decrease in product and accessories gross margin was primarily the result of lower overhead costs in the three months ended September 30, 2020 due to cost savings from the Business Continuity Plan. Parts and service gross margin improved \$0.3 million primarily because of a higher volume of parts shipments.

Product and accessories gross margin as a percentage of product and accessories revenue decreased to (4)% during the three months ended September 30, 2021, from (3)% during the three months ended September 30, 2020, primarily driven by lower overhead costs in the three months ended September 30, 2020 due to enactment of the Business Continuity Plan. Parts and service gross margin as a percentage of parts and service revenue was 35% during the three months ended September 30, 2021 and 2020.

Research and Development (“R&D”) Expenses increased \$0.4 million, or 67%, to \$1.0 million from \$0.6 million as a result of lower costs from actions taken in our Business Continuity Plan in the same period last year.

Selling, General, and Administrative (“SG&A”) Expenses increased \$1.5 million, or 31%, to \$6.4 million from \$4.9 million primarily as a result of a \$0.6 million increase in labor expense, \$0.6 million increase in legal expense, \$0.2 million increase in business travel expense and \$0.1 million in consulting expense. These increases were primarily due to lower costs in the three months ended September 30, 2020 due to cost savings from the enactment of the Business Continuity Plan and \$0.8 million legal settlements for employment matters in the three months ended September 30, 2021.

Interest Expense for the three months ended September 30, 2021 and 2020 were each \$1.3 million. See Liquidity and Capital Resources below for additional discussion on our interest expense.

Six Months Ended September 30, 2021 and 2020

The following table summarizes our revenue by geographic markets (amounts in millions):

	Six Months Ended September 30,	
	2021	2020
United States and Canada	\$ 15.6	\$ 13.7
Europe and Russia	7.8	9.1
Latin America	5.1	2.4
Asia and Australia	4.2	3.4
Middle East and Africa	0.6	0.5
Total	<u>\$ 33.3</u>	<u>\$ 29.1</u>

Revenue for the six months ended September 30, 2021 increased \$4.2 million, or 14%, to \$33.3 million from \$29.1 million for the six months ended September 30, 2020. The \$4.2 million increase was primarily driven by the \$2.7 million increase in Latin America, \$1.9 million increase in United States and Canada, \$0.8 million increase in Asia and Australia, and \$0.1 million increase in Middle East and Africa, offset by a decrease of \$1.3 million in Europe and Russia. The increase in Latin America, United States and Canada, Asia and Australia is primarily due to increases in product shipments into the natural resources and renewable energy vertical markets compared to the same period last year. The decrease in Europe and Russia is primarily attributable to a decrease in product shipments into the energy efficiency and natural resources vertical markets compared to the same period last year.

The following table summarizes our revenue (revenue amounts in millions):

	Six Months Ended September 30,					
	2021			2020		
	Revenue	Megawatts	Units	Revenue	Megawatts	Units
Microturbine Product	\$ 16.7	14.9	89	\$ 13.2	12.6	109
Accessories	0.2			0.6		
Total Product and Accessories	<u>16.9</u>			<u>13.8</u>		
Parts and Service	16.4			15.3		
Total	<u>\$ 33.3</u>			<u>\$ 29.1</u>		

For the six months ended September 30, 2021, revenue from microturbine products and accessories increased \$3.1 million, or 22%, to \$16.9 million from \$13.8 million for the six months ended September 30, 2020. The \$3.1 million increase was primarily driven by an increase in megawatts shipped, specifically our C800 and C1000 Signature Series microturbine systems during the six months ended September 30, 2021 compared to the same period last year. Megawatts shipped were 14.9 megawatts and 12.6 megawatts during the six months ended September 30, 2021 and 2020, respectively. Average revenue per megawatt shipped was approximately \$1.1 million and \$1.0 million during the six months ended September 30, 2021 and 2020, respectively.

Parts and service revenue increased \$1.1 million, or 7%, to \$16.4 million for six months ended September 30, 2021 from \$15.3 million for the six months ended September 30, 2020. The \$1.1 million increase was primarily driven by an increase in parts shipped during the six months ended September 30, 2021 compared to the same period last year.

Sales to E-Finity and Optimal accounted for 17% and 10% respectively, of our revenue for the six months ended September 30, 2021. Sales to E-Finity and Cal Microturbine each accounted for 10% of our revenue for the six months ended September 30, 2020.

Gross Margin was approximately \$5.4 million, or 16% of revenue, for the six months ended September 30, 2021 compared to a gross margin of \$5.9 million, or 20% of revenue, for the six months ended September 30, 2020. The decrease in gross margin was primarily due to higher production and service labor and overhead expenses in the six months ended September 30, 2021 due to the implementation of the Business Continuity Plan in six months ended September 30, 2020, as well as inventory charges, which were partially offset by an increase in direct material costs margin.

Direct material costs margin increased \$0.9 million during the six months ended September 30, 2021 compared to the six months ended September 30, 2020 primarily due to an increase in the volume of product and parts shipments.

Production and service center labor and overhead expense increased \$1.2 million in the six months ended September 30, 2021 compared to the six months ended September 30, 2020 primarily due to an increase of approximately \$0.7 million in facilities costs, \$0.5 million in labor costs, \$0.3 million in supplies expense and \$0.1 million in consulting expense, offset by \$0.4 million in overhead allocated to finished goods inventory primarily as a result of lower costs from actions taken in our Business Continuity Plan during the six months ended September 30, 2020.

Inventory charges increased \$0.3 million primarily as the result of an increase in the provision for excess and obsolete inventory.

The following table summarizes our gross margin (in millions except percentages):

	<u>Six Months Ended September 30,</u>	
	<u>2021</u>	<u>2020</u>
Gross Margin		
Product and accessories	\$ (0.9)	\$ (0.4)
As a percentage of product and accessories revenue	(6)%	(3)%
Parts and service	\$ 6.3	\$ 6.3
As a percentage of parts and service revenue	38 %	41 %
Total Gross Margin	<u>\$ 5.4</u>	<u>\$ 5.9</u>
As a percentage of total revenue	16 %	20 %

The \$0.5 million decrease in product and accessories gross margin was primarily due to lower overhead costs in the six months ended September 30, 2020 due to cost savings from the enactment of the Business Continuity Plan.

Product and accessories gross margin as a percentage of product and accessories revenue decreased to (6)% during the six months ended September 30, 2021, from (3)% during the six months ended September 30, 2020, primarily driven by lower overhead costs in the six months ended September 30, 2020 due to the enactment of the Business Continuity Plan. Parts and service gross margin as a percentage of parts and service revenue decreased to 38% during the six months ended September 30, 2021, compared to 41% during the six months ended September 30, 2020, primarily due to lower FPP costs in the six months ended September 30, 2020 driven by the timing of shipments.

Research and Development (“R&D”) Expenses increased \$0.9 million, or 90%, to \$1.9 million from \$1.0 million as a result of lower costs from actions taken in our Business Continuity Plan during the six months ended September 30, 2020.

Selling, General, and Administrative (“SG&A”) Expenses increased \$3.4 million, or 40%, to \$11.8 million from \$8.4 million primarily as a result of increases of approximately \$1.6 million labor costs, \$0.7 million in marketing related costs, \$0.4 million in legal expense, \$0.3 million in consulting expense, \$0.3 million in business travel expense and \$0.1 million in facilities costs primarily due to actions taken in our Business Continuity Plan in the six months ended September 30, 2020, and legal settlements for employment matters in the six months ended September 30, 2021.

Interest Expense for the six months ended September 30, 2021 and 2020 was \$2.5 million and \$2.6 million, respectively. See Liquidity and Capital Resources below for additional discussion on our interest expense.

Gain on Extinguishment of Debt of approximately \$1.9 million during the six months ended September 30, 2021 was the result of the forgiveness of the PPP Loan. See Note 10 – *Term Note Payable*.

Other Income includes the payment to the Company of \$0.6 million of PPP Loan proceeds previously repaid in accordance with the Fourth Amendment to the Note Purchase Agreement between the Company and Goldman Sachs Specialty Lending Group, L.P. See Note 10 – *Term Note Payable*.

Liquidity and Capital Resources**Cash Flows**

Our cash requirements depend on many factors, including the execution of our business strategy and plan. We have invested our cash in institutional funds that invest in high quality short-term money market instruments to provide liquidity for operations and for capital preservation. Our cash and cash equivalents balances decreased \$11.2 million during the six months ended September 30, 2021, compared to an increase of \$1.7 million during the six months ended September 30, 2020. This \$11.2 million decrease in cash during the six months ended September 30, 2021 was primarily the result of an increase in cash used in operating activities (as the same period in the prior year was impacted by cost savings from the enactment of the Company's Business Continuity Plan), as well as delays in accounts receivable collections primarily related to the COVID-19 pandemic in the current period, an increase in inventory for the rental fleet, partially offset by increasing revenue and delays in accounts payable payments. Cash used in investing activities was primarily to continue the expansion of the rental fleet, which was partially offset by cash provided by financing activities from the issuance of Common Stock through the June 2021 Common Stock offering and our at-the-market offering program.

Operating Activities During the six months ended September 30, 2021, we used \$19.4 million in cash in our operating activities, which consisted of a net loss for the period of \$8.2 million, cash used for working capital of \$11.6 million and non-cash adjustments (primarily gain on extinguishment of debt, warranty provision, depreciation and amortization, stock based compensation and inventory provision) of \$0.4 million. During the six months ended September 30, 2020, we used \$20,000 in cash in our operating activities, which consisted of a net loss for the period of \$6.0 million, partially offset by cash provided from working capital of \$3.9 million and non-cash adjustments (primarily warranty provision, accounts receivable allowance, depreciation and amortization, stock based compensation and inventory provision) of \$2.1 million.

The following is a summary of the significant sources (uses) of cash from operating activities (amounts in thousands):

	Six Months Ended September 30,	
	2021	2020
Net loss	\$ (8,176)	\$ (6,035)
Non-cash operating activities(1)	428	2,137
Changes in operating assets and liabilities:		
Accounts receivable	(4,767)	2,807
Inventories	(6,388)	7,079
Accounts payable and accrued expenses	4,363	(4,442)
Prepaid expenses, other current assets and other assets	1,327	946
Other changes in operating assets and liabilities	(6,142)	(2,512)
Net cash used in operating activities	\$ (19,355)	\$ (20)

- (1) Represents change in gain on extinguishment of debt, warranty provision, depreciation and amortization, stock-based compensation expense, inventory provision and accounts receivable allowances.

The change in non-cash operating activities during the six months ended September 30, 2021 compared to the same period the previous year was primarily driven by the gain on extinguishment of debt resulting from the forgiveness of the PPP Loan during the first quarter of Fiscal 2022. The change in accounts receivable was primarily the result of the timing of collections, as well as lower revenues in the six months ended September 30, 2020. The change in inventory was primarily the result of an increase in raw materials during the six months ended September 30, 2021 compared to the six months ended September 30, 2020. The change in accounts payable and accrued expenses was primarily the result of the level of inventory receipts and timing of payments made by us during the six months ended September 30, 2021 compared to the same period the previous fiscal year. The change in other operating assets and liabilities during the six months ended September 30, 2021 compared to the same period in the previous fiscal year, was primarily the result of decrease in our accrued warranty reserve as we had additional spend for the reliability repair program.

Investing Activities Net cash used in investing activities of \$2.6 million and \$1.1 million during the six months ended September 30, 2021 and 2020, respectively, related primarily to the additions of our rental fleet of approximately \$2.1 million and \$0.8 million, respectively. The remaining amounts were primarily for sustaining our production and facilities.

Financing Activities During the six months ended September 30, 2021, we generated cash of approximately \$10.7 million from financing activities compared to cash generated during the six months ended September 30, 2020 of approximately \$2.9 million. The funds generated from financing activities during the six months ended September 30, 2021 were primarily the result of net proceeds from the June 2021 Common Stock offering and proceeds from the at-the-market offering program described below. The funds generated from financing activities during the six months ended September 30, 2020 were primarily the result of net borrowings under the PPP Loan, as well as proceeds from the at-the-market offering program described below.

At-the-market offerings

On June 7, 2018, the Company entered into a sales agreement with H.C. Wainwright & Co., LLC (the “Sales Agreement”) with respect to an at-the-market offering program (the “ATM Program”) pursuant to which the Company may offer and sell, from time to time at its sole discretion, shares of its Common Stock, having an aggregate offering price of up to \$25.0 million. The Company will set the parameters for sales of the shares, including the number to be sold, the time period during which sales are requested to be made, any limitation on the number that may be sold in one trading day and any minimum price below which sales may not be made. On July 15, 2020, we entered into an amendment to the Sales Agreement, which modified the Sales Agreement to, among other things, amend the termination provisions of the Agreement and amend the maximum amount of shares of our Common Stock that we may offer and sell through or to H.C. Wainwright & Co., LLC from time to time under the ATM Program. On March 19, 2021, we entered into a second amendment to the Sales Agreement, which modified the Sales Agreement to, among other things, reflect the Company’s filing of a new Registration Statement on Form S-3 with the SEC on March 22, 2021 and set the maximum amount of shares of our Common Stock that we may offer and sell through or to H.C. Wainwright at \$50 million, subject to certain limitations set forth in the amendment. During the six months ended September 30, 2021, the Company issued 89,633 shares of the Company’s Common Stock under the at-the-market offering program and the net proceeds to the Company from the sale of the Company’s Common Stock were approximately \$0.7 million after deducting commissions paid of approximately \$23,000. As of September 30, 2021, approximately \$49.3 million remained available for issuance with respect to this ATM Program.

Common Stock Offering

On June 17, 2021, the Company entered into an amended and restated underwriting agreement (the “Underwriting Agreement”) with H.C. Wainwright & Co., LLC (the “Underwriter”) whereby the Company agreed to sell to the Underwriter, and the Underwriter agreed to purchase, in a firm commitment underwritten public offering 1,904,763 shares (the “Shares”) of the Company’s common stock, \$0.001 par value per share (the “Offering”). The offering price to the public in the Offering was \$5.25 per share of Common Stock, and the Underwriter agreed to purchase the Shares from the Company pursuant to the Underwriting Agreement at a price of \$4.91 per share, representing an underwriting discount of 6.5%. Pursuant to the Underwriting Agreement, the Company also granted the Underwriter an option to purchase, for a period of 30 days from the date of the Underwriting Agreement, up to an additional 285,714 shares of Common Stock (the “Option Shares”). On June 21, 2021, the Underwriter exercised the option in full. The Offering closed on June 22, 2021, and the Company received net proceeds of \$10.5 million after deducting \$1.0 million underwriting discounts, commissions and offering expenses paid by the Company.

Warrants

Series A Warrants

As of September 30, 2021, there were 217,875 Series A warrants outstanding with an exercise price of \$25.50 per share of Common Stock, which expired on October 25, 2021.

Goldman Warrant

On February 4, 2019, we sold to Goldman Sachs & Co. LLC (the “Holder”), a Purchase Warrant for shares of our Common Stock (the “Warrant”) pursuant to which the Holder may purchase shares of the Company’s Common Stock in an aggregate amount of up to 404,634 shares (the “Warrant Shares”). Our Common Stock and warrant transactions during Fiscal 2021 triggered certain anti-dilution provisions in the warrants outstanding. As of September 30, 2021, the Holder may purchase shares of the Company’s Common Stock in an aggregate amount of up to 463,067 shares at an exercise price of \$2.61.

Goldman “2020 Warrant”

On October 1, 2020, the Company entered into an Amendment No. 3 to the Purchase Warrant for shares of our Common Stock (the “Amendment No. 3”) with Special Situations Investing Group II, LLC (as successor in interest to Goldman Sachs & Co. LLC) (the “Warrant Holder”) that amended that certain Purchase Warrant for shares of our Common Stock originally issued by the Company to Goldman Sachs & Co. LLC, dated February 4, 2019, as amended (the “Original Warrant”). As of September 30, 2021, the holder may purchase shares of the Company’s Common Stock in an aggregate amount of up to 291,295 shares at an exercise price of \$4.76.

September 2019 Pre-Funded and Series D Warrants

On September 4, 2019, we entered into a Securities Purchase Agreement (the “Securities Purchase Agreement”) with certain institutional and accredited investors pursuant to which we agreed to issue and sell in a registered direct offering (the “Registered Direct Offering”) an aggregate of 580,000 shares of our Common Stock at a negotiated purchase price of \$5.00 per share, and pre-funded warrants to purchase up to an aggregate of 440,000 shares of our Common Stock at a negotiated purchase price of \$5.00 per Pre-Funded Warrant, for aggregate gross proceeds of approximately \$5.1 million (580,000 shares of common stock plus 440,000 pre-funded warrants at a \$5.00 per share purchase price), before deducting placement agent fees and other offering expenses.

In a concurrent private placement, we agreed to issue to the purchasers warrants to purchase 765,000 shares of Common Stock, which represent 75% of the number of shares of Common Stock and shares underlying the Pre-Funded Warrants purchased in the Registered Direct Offering, pursuant to the Securities Purchase Agreement. The Common Warrants are exercisable for shares of Common Stock at an initial exercise price of \$6.12 per share for a period of five years, starting on April 2, 2020 and expiring on April 2, 2025. In January 2021, three warrant holders exercised their rights to the warrant agreement to exercise on a cashless basis 690,000 Series D warrants at an exercise price of \$6.12 per share under the warrant agreement. In accordance with terms of the warrant agreement, after taking into account the shares withheld to satisfy the cashless exercise option, we issued 352,279 shares of Common Stock. As of September 30, 2021, there were 75,000 Series D warrants outstanding at an exercise price of \$6.12.

There were no stock options exercised during the six months ended September 30, 2021 and 2020. Repurchases of shares of our Common Stock for employee taxes due on vesting of restricted stock units, net of employee stock purchases, resulted in approximately \$0.1 million and \$43,000 of net cash used during the six months ended September 30, 2021 and 2020, respectively.

Three-year Term Note On February 4, 2019, we entered into a Note Purchase Agreement, by and among us, certain subsidiaries of us as guarantors, Goldman Sachs Specialty Lending Holdings, Inc., as collateral agent and any other Purchasers party thereto from time to time, in connection with the sale of our senior secured notes in a private placement exempt from registration under the Securities Act of 1933, as amended. Under the Note Purchase Agreement, we sold to the Purchaser \$30.0 million aggregate principal amount of senior secured notes (the “Notes”). The first interest payment on the Notes was on March 31, 2019. On October 1, 2020, pursuant to A&R Note Purchase Agreement, the Company issued an additional \$20 million in Notes, increasing total borrowings to \$50.0 million. Following entry into the A&R Note Purchase Agreement, all outstanding Notes bear interest at the Adjusted (London Interbank Offer) LIBO Rate (as defined in the A&R Note Purchase Agreement) plus 8.75% per annum. The Notes do not amortize and the entire principal balance is due in a single payment on the maturity date. As of September 30, 2021, \$50.9 million in borrowings were outstanding under the Notes, which includes the accrual for an exit fee to be paid at maturity or upon pre-payment. Pursuant to the First Amendment to the A&R Note Purchase dated as of May 13, 2021, the minimum consolidated liquidity requirement increased from \$9.0 million to \$12.0 million. As of September 30, 2021, we were in compliance with the covenants contained in the A&R Note Purchase Agreement.

Paycheck Protection Program Loan On April 15, 2020, we applied for an unsecured PPP Loan in the principal amount of \$2,610,200 under the Small Business Administration Paycheck Protection Program enabled by the Coronavirus Aid, Relief and Economic Security Act of 2020. On April 24, 2020, we entered into a promissory note with Western Alliance Bank. The Company received the full amount of the PPP Loan on April 24, 2020. In accordance with the requirements of the CARES Act, we used the proceeds from the PPP Loan to support fixed costs such as payroll costs, rent and utilities. On May 13, 2020, we repaid \$660,200 of the PPP Loan in accordance with the Fourth Amendment to the Note Purchase Agreement between the Company and Goldman Sachs Specialty Lending Group, L.P.

In February 2021, the Company applied for forgiveness of the PPP Loan. In June 2021, the Company received notification that its request for forgiveness of the PPP Loan was approved in full. In June 2021, the Company also received a refund of the \$660,200 previously repaid in accordance with the Fourth Amendment to the Note Purchase Agreement between the Company and Goldman Sachs Specialty Group, L.P.

Working Capital and Other Operating Assets and Liabilities Cash used for working capital was \$11.6 million during the six months ended September 30, 2021, an increase of \$15.5 million from the cash provided from working capital of \$3.9 million during the six months ended September 30, 2020. These increases in cash used for working capital and other operating assets and liabilities were primarily due to increases in inventory and accounts receivable, partially offset by changes in accounts payable and accrued expenses.

Evaluation of Ability to Maintain Current Level of Operations In connection with the preparation of these condensed consolidated financial statements for the six months ended September 30, 2021, management evaluated whether there were conditions and events, considered in the aggregate, that raised substantial doubt about our ability to meet obligations as they became due over the next twelve months from the date of issuance of our second quarter of Fiscal 2022 interim condensed consolidated financial statements. Management assessed that there were such conditions and events, including a history of recurring operating losses, negative cash flows from operating activities, the continued impact of the COVID-19 pandemic, volatility of the global oil and gas markets, a strong U.S. dollar in certain markets making its products more expensive in such markets and ongoing global geopolitical tensions. We incurred a net loss of \$8.2 million and used net cash in operating activities of \$19.4 million for the six months ended September 30, 2021. Our net loss expanded during the six months ended September 30, 2021 compared to the six months ended September 30, 2020 primarily due to increases in selling, general and administrative expense driven by the impacts of the enactment of our Business Continuity Plan in the same period last year, partially offset by the gain on extinguishment of debt as a result of forgiveness of the Paycheck Protection Program (“PPP”) loan (see Note 10 – *Term Note Payable* for further discussion of the PPP loan). Cash used for working capital requirements for the quarter was primarily for increases in inventory, which was primarily due to our intent to grow our long-term rental fleet from 10.6 MW to 21.1 MW during Fiscal 2022, as well as the delayed timing of accounts receivable collections due to the COVID-19 pandemic. Additionally, we used cash to replace parts under our reliability repair program established during the fourth quarter for Fiscal 2021. As of September 30, 2021, we had cash and cash equivalents of \$38.3 million, and outstanding debt of \$50.9 million at fair value (see Note 10 – *Term Note Payable* for further discussion of the outstanding debt).

Depending on the timing of our future sales and collection of related receivables, managing inventory costs and the timing of inventory purchases and deliveries required to fulfill the backlog, our future capital requirements may vary materially from those now planned. The amount of capital that we will need in the future will require us to achieve significantly increased sales volume which is dependent on many factors, including:

- the continuing impact of the COVID-19 pandemic on the global economy and specifically on oil and gas markets;
- the market acceptance of our products and services;
- our business, product and capital expenditure plans;
- capital improvements to new and existing facilities;
- our competitors’ response to our products and services;
- our relationships with customers, distributors, dealers and project resellers; and
- our customers’ ability to afford and/or finance our products.

Our accounts receivable balance, net of allowances, was \$25.4 million and \$20.6 million as of September 30, 2021 and March 31, 2021, respectively. Days sales outstanding in accounts receivable (“DSO”) increased by 24 days to 135 days as of September 30, 2021 compared to 111 days as of March 31, 2021, primarily due to delays in accounts receivable collections related to the COVID-19 pandemic. In the Energy Efficiency market vertical we sell to end users that have been significantly, economically impacted by the pandemic, such as in the Hospitality and Health Care industries. Additionally, the COVID-19 Pandemic heavily impacted our natural resources market vertical, where we primarily sell to Oil & Gas end users. While oil prices have rebounded above \$80 per barrel, we have not yet seen a corresponding rebound in capital expenditures or spending activity.

No assurance can be given that future bad debt expense will not increase above current operating levels. Increased bad debt expense or delays in collecting accounts receivable could have a material adverse effect on cash flows and results of operations. In addition, our ability to access the capital markets may be severely restricted or made very expensive at a time when we need, or would like, to do so, which could have a material adverse impact on our liquidity and financial resources. Certain industries in which our customers do business and certain geographic areas have been and could continue to be adversely affected by the previously referenced economic and geopolitical considerations.

Based on the Company's current operating plan, management anticipates that, given current working capital levels, current financial projections and funds received under debt agreements as further described in Note 10 of the financial statements, and funds received under offerings of Common Stock as further described in Note 8 of the financial statements, the Company will be able to meet its financial obligations as they become due over the twelve months from September 30, 2021.

New Accounting Pronouncements

Refer to Note 3 – *Recently Issued Accounting Pronouncements* in the Notes to Condensed Consolidated Financial Statements (Part I, Item 1 of this Form 10-Q) for information regarding new accounting standards.

Off-Balance Sheet Arrangements

We do not have any material off-balance sheet arrangements.

Item 3. *Quantitative and Qualitative Disclosures About Market Risk*

We are a smaller reporting company as defined by Rule 12b-2 of the Exchange Act and are not required to provide the information required under this Item.

Item 4. *Controls and Procedures*

Evaluation of Disclosure Controls and Procedures

Under the supervision and with the participation of our management, including the Chief Executive Officer and Chief Financial Officer, we evaluated the effectiveness of the design and operation of our disclosure controls and procedures, as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act, as of the end of the period covered by this report. Based upon that evaluation, our Chief Executive Officer and our Chief Financial Officer concluded that, as of the end of the period covered by this report, our disclosure controls and procedures were effective as of September 30, 2021. The term "disclosure controls and procedures" means controls and other procedures of ours that are designed to ensure that information required to be disclosed by us in the reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported within required time periods. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by us in the reports that we file or submit under the Exchange Act is accumulated and communicated to management, including our Chief Executive Officer and Chief Financial Officer, as appropriate, to allow timely decisions regarding required disclosure.

Changes in Internal Control Over Financial Reporting

There was no change in our internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) during our most recently completed fiscal quarter that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

Inherent limitations of the Effectiveness of Internal Control

A control system, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the internal control system are met. Because of the inherent limitations of any internal control system, no evaluation of controls can provide absolute assurance that all control issues, if any, within a company have been detected.

PART II — OTHER INFORMATION

Item 1. *Legal Proceedings*

Refer to Note 14 – *Commitments and Contingencies — Legal Matters*, in the Notes to Condensed Consolidated Financial Statements (Part I, Item 1 of this Form 10-Q) for information regarding legal proceedings in which we are involved. From time-to-time, the Company is involved in other pending and threatened litigation in the normal course of business in which claims for monetary damages are asserted. In the opinion of management, the ultimate liability, if any, arising from such pending or threatened litigation is not expected to have a material effect on our results of operations, liquidity, or financial position.

Item 1A. *Risk Factors*

There have been no material changes to the risk factors disclosed in our Annual Report on Form 10-K for Fiscal 2021.

Item 6. Exhibits

Exhibit Number	Description
3.1	Conformed Copy of Second Amended and Restated Certificate of Incorporation of Capstone Green Energy Corporation, as amended through April 22, 2021 (b)
3.2	Conformed Copy of Fifth Amended and Restated Bylaws of Capstone Green Energy Corporation effective as of April 22, 2021, as amended through August 26, 2021 (a)
4.1	Amended and Restated Note Purchase Agreement, dated as of October 1, 2020, by and among Capstone Turbine Corporation, certain subsidiaries of the Company and Goldman Sachs Specialty Lending Group, L.P. (as successor in interest to Goldman Sachs Specialty Lending Holdings, Inc.) (c)
4.2	First Amendment to the Amended and Restated Note Purchase Agreement, dated as of May 13, 2021 by and among Capstone Green Energy Corporation, certain subsidiaries of the Company and Goldman Sachs Specialty Lending Group, L.P. (d)
4.3	Capstone Green Energy Corporation 2017 Equity Incentive Plan, as amended through August 27, 2021 (a)
31.1	Certification of Chief Executive Officer pursuant to Exchange Act Rules 13a-14(a) and 15d-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
31.2	Certification of Chief Financial Officer pursuant to Exchange Act Rules 13a-14(a) and 15d-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
32	Certification of Chief Executive Officer and Chief Financial Officer 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
101.INS	XBRL Instance Document – the instance document does not appear in the Interactive Data File because its XBRL tags are embedded within the inline XBRL document
101.SCH	XBRL Schema Document
101.CAL	XBRL Calculation Linkbase Document
101.LAB	XBRL Label Linkbase Document
101.PRE	XBRL Presentation Linkbase Document
101.DEF	XBRL Definition Linkbase Document
104	The cover page from Capstone Green Energy Corporation’s Quarterly Report on Form 10-Q for the quarter ended September 30, 2021, formatted in Inline XBRL and contained in Exhibit 101

(a) Filed herewith

(b) Incorporated by reference to Capstone Green Energy Corporation’s Quarterly report on Form 10-Q, filed on August 11, 2021 (File No. 001-15957)

(c) Incorporated by reference to Capstone Turbine Corporation’s Current Report on Form 8-K, filed on October 5, 2020 (File No. 001-15957)

(d) Incorporated by reference to Capstone Turbine Corporation’s Current Report on Form 8-K, filed on May 14, 2021 (File No. 001-15957)

FIFTH AMENDED AND RESTATED BYLAWS OF

CAPSTONE GREEN ENERGY CORPORATION

(Conformed copy incorporating all amendments through August 26, 2021)

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FIFTH AMENDED AND RESTATED BYLAWS

OF

CAPSTONE GREEN ENERGY CORPORATION

(Conformed copy incorporating all amendments through August 26, 2021)

- OFFICES

Section 1. Registered Office. The registered office of Capstone Green Energy Corporation (hereinafter, called the “corporation”) shall be in the City of Dover, County of Kent, State of Delaware. *Section 2. Other Offices.* The corporation may also have offices at such other places both within and without the State of Delaware as the Board of Directors may from time to time determine or the business of the corporation may require.

- STOCKHOLDERS

Section 1. Place of Meetings.(A) Meetings of stockholders shall be held at any place within or outside the State of Delaware designated by the board of directors. In the absence of any such designation, stockholders’ meetings shall be held at the principal executive office of the corporation.

(B) Notwithstanding the foregoing, the board of directors may, in its sole discretion, determine that stockholder meetings shall not be held at any place, but may instead be held solely by means of remote communication in accordance with Section 211 of the Delaware General Corporation Law (the “DGCL”). If authorized by the board of directors in its sole discretion, and subject to such guidelines and procedures as the board of directors may adopt, stockholders and proxy holders not physically present at a meeting of stockholders may, by means of remote communication (1) participate in a meeting of stockholders; and (2) be deemed present in person and vote at a meeting of stockholders whether such meeting is to be held at a designated place or solely by means of remote communication, provided that (a) the corporation shall implement reasonable measures to verify that each person deemed present and permitted to vote at the meeting by means of remote communication is a stockholder or proxy holder; (b) the corporation shall implement reasonable measures to provide such stockholders and proxy holders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the stockholders, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with such proceedings; and (iii) if any stockholder or proxy holder votes or takes other action at the meeting by means of remote communication, a record of such vote or other action shall be maintained by the corporation.

Section 2. Annual Meetings of Stockholders. The annual meeting of stockholders shall be held each year on a date and time designated by the board of directors. Any previously scheduled annual meeting of the stockholders may be postponed by resolution of the board of directors upon public notice given prior to the date previously scheduled for such annual meeting of the stockholders. *Section 3. Special Meetings.* A special meeting of the stockholders may be called at any time by the chairman of the board of directors, or by a majority of the directors or by a committee of the board of directors which has been duly designated by the board of directors and whose powers and authority, as provided in a resolution of the board of directors, include the power to call such meetings, but such special meetings may not be called by any other person or persons. Any previously scheduled special meeting of the stockholders may be postponed by resolution of the board of directors upon public notice given prior to the date previously scheduled for such special meeting of the stockholders. *Section 4. Notice of Stockholders’ Meetings.* All notices of meetings of stockholders shall be sent or otherwise given in accordance with Section 5 of this Article II not less than ten (10) nor more than sixty (60) days before the date of the meeting being noticed. The notice shall specify the place, if any, date and hour of the meeting, 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 meeting, and in the case of a special meeting, the general nature of the business to be transacted. *Section 5. Manner of Giving Notice; Affidavit of Notice.* Notice of any meeting of stockholders shall be deemed to have been given(A) when deposited in the mail, postage prepaid, directed to the stockholder at his address appearing on the books of the corporation or given by the stockholder to the corporation for the purpose of notice; or

(B) if electronically transmitted as provided in Article VIII, Section 1 of these bylaws.

An affidavit of the mailing, electronic transmission or other means of giving any notice of any stockholders' meeting shall be executed by the secretary, assistant secretary or any transfer agent of the corporation giving such notice, and shall be filed and maintained in the minute book of the corporation.

Section 6. Quorum. The presence in person or by proxy of the holders of a majority of the shares entitled to vote at any meeting of stockholders shall constitute a quorum for the transaction of business. The stockholders present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough stockholders to leave less than a quorum, if any action taken (other than adjournment) is approved by at least a majority of the shares

Section

required to constitute a quorum.⁷ *Adjourned Meeting and Notice Thereof.* Any stockholders' meeting, annual or special, whether or not a quorum is present, may be adjourned from time to time by the chairman of the meeting, but in the absence of a quorum, no other business may be transacted at such meeting, except as provided in Section 6 of this Article II. When any meeting of stockholders, either annual or special, is adjourned to another time or place, notice need not be given of the adjourned meeting if the time and place 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 a meeting at which the adjournment is taken, unless a new record date for the adjourned meeting is fixed, or unless the adjournment is for more than thirty (30) days from the date set for the original meeting. Notice of any such adjourned meeting, if required, shall be given to each stockholder of record entitled to vote at the adjourned meeting in accordance with the provisions of Sections 4 and 5 of this Article II. At any adjourned meeting the corporation may transact any business which might have been transacted at the original meeting.

Section 8. Voting. The stockholders entitled to vote at any meeting of stockholders shall be determined in accordance with the provisions of Section 11 of this Article II. Such vote may be by voice vote or by ballot, at the discretion of the chairman of the meeting. Any stockholder entitled to vote on any matter (other than the election of directors) may vote part of the shares in favor of the proposal and refrain from voting the remaining shares or vote them against the proposal; but, if the stockholder fails to specify the number of shares such stockholder is voting affirmatively, it will be conclusively presumed that the stockholder's approving vote is with respect to all shares such stockholder is entitled to vote. If a quorum is present, the affirmative vote of the majority of the shares represented at the meeting and entitled to vote on any matter shall be the act of the stockholders, unless the vote of a greater number or voting by classes is required by the DGCL or the certificate of incorporation or the certificate of determination of preferences as to any preferred stock. At a stockholders' meeting involving the election of directors, no stockholder shall be entitled to cumulate (i.e., cast for any one or more candidates a number of votes greater than the number of the stockholders shares). The candidates receiving the highest number of votes, up to the number of directors to be elected, shall be elected.

Section 9. Waiver of Notice or Consent by Absent Stockholders. The transactions of any meeting of stockholders, either annual or special, however called and noticed, and wherever held, shall be as valid as though had at a meeting duly held after regular call and notice, if a quorum be present either in person or by proxy, and if, either before or after the meeting, each person entitled to vote, not present in person or by proxy, delivers a written waiver signed by such person (or a waiver by electronic transmission by such person) of notice or a consent (manually signed or submitted by electronic transmission) to the holding of the meeting, or an approval of the minutes thereof. The waiver of notice or consent need not specify either the business to be transacted or the purpose of any annual or special meeting of stockholders. All such waivers, consents or approvals shall be filed with the corporate records or made part of the minutes of the meeting. Attendance of a person at a meeting shall also constitute a waiver of notice of such meeting, except when the person objects, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened, and except that attendance at a meeting is not a waiver of any right to object to the consideration of matters not included in the notice of the meeting if such objection is expressly made at the meeting.

Section 10. No Stockholder Action by Written Consent Without a Meeting. Stockholders may take action only at a regular or special meeting of stockholders. *Section 11. Record Date for Stockholder Notice and Voting.* For purposes of determining the holders entitled to notice of any meeting or to vote, the board of directors may fix, in advance, a record date, which shall not be more than sixty (60) days nor less than ten (10) days prior to the date of any such meeting, and in such case only stockholders of record on the date so fixed are entitled to notice and to vote, notwithstanding any transfer of any shares on the books of the corporation after the record date fixed as aforesaid, except as otherwise provided in the Delaware General Corporation Law. If the board of directors does not so fix a

record date, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the business day next preceding the day on which notice is given or, if notice is waived, at the close of business on the business day next preceding the day on which the meeting is held.

Section 12. Proxies. Every person entitled to vote for directors or on any other matter shall have the right to do so either in person or by one or more agents authorized (a) by a written proxy signed by the person and filed with the secretary of the corporation or (b) by an electronic transmission permitted by law filed in accordance with the procedure established for the meeting. A validly executed proxy which does not state that it is irrevocable shall continue in full force and effect unless (i) revoked by the person executing it, prior to the vote pursuant thereto, by a writing delivered to the corporation (whether manually signed or electronically transmitted) stating that the proxy is revoked or by a subsequent proxy executed or electronically transmitted by, or attendance at the meeting and voting in person by, the person executing or electronically transmitting the proxy, or (ii) written notice of the death or incapacity of the maker of such proxy is received by the corporation before the vote pursuant thereto is counted; provided, however, that no such proxy shall be valid after the expiration of one (1) year from the date of such proxy, unless otherwise provided in the proxy. *Section 13. Inspectors of Election; Opening and Closing the Polls.* The board of directors by resolution shall appoint one or more inspectors, which inspector or inspectors may include individuals who serve the corporation in other capacities, including, without limitation, as officers, employees, agents or representatives, to act at the meetings of stockholders and make a written report thereof. One or more persons may be designated as alternate inspectors to replace any inspector who fails to act. If no inspector or alternate has been appointed to act or is able to act at a meeting of stockholders, the chairman of the meeting shall appoint one or more inspectors to act at the meeting. Each inspector, before discharging his or her duties, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of his or her ability. The inspectors shall have the duties prescribed by law. The chairman of the meeting shall fix and announce at the meeting 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.

Section 14. Nomination and Stockholder Business Bylaw(A) Annual Meetings of Stockholders.

(1) Nominations of persons for election to the board of directors of the corporation and the proposal of business to be considered by the stockholders may be made at an annual meeting of stockholders (a) pursuant to the corporation's notice of meeting, (b) by or at the direction of the board of directors or (c) by any stockholder of the corporation who (i) was a stockholder of record at the time of giving of notice provided for in this bylaw and at the time of the annual meeting, (ii) is entitled to vote and present in person at the meeting at the meeting and (iii) complies with the notice procedures set forth in this bylaw as to such business or nomination. The foregoing clause (c) shall be the exclusive means for a stockholder to make nominations or submit other business (other than matters properly brought under Rule 14a-8 under the Securities Exchange Act of 1934, as amended (the "Exchange Act") and included in the corporation's notice of meeting) before an annual meeting of stockholders.

(2) Without qualification, for nominations or any other business to be properly brought before an annual meeting by a stockholder pursuant to clause (c) of paragraph (A)(1) of this bylaw, the stockholder must have given timely notice thereof in writing to the secretary of the corporation and such other business must otherwise be a proper matter for stockholder action. To be timely, a stockholder's notice shall be delivered to the secretary at the principal executive offices of the corporation not earlier than the close of business on the 150th calendar day and not later than the close of business on the 120th calendar prior to the first anniversary of the date of the corporation's proxy statement released to security holders in connection with the preceding year's annual meeting; provided, however, that if no annual meeting was held in the previous year or the date of the annual meeting has been changed by more than thirty (30) calendar days from the date contemplated at the time of the previous year's proxy statement, a proposal shall be received by the corporation no later than the close of business on the tenth day following the day on which notice of the date of the meeting was mailed or public announcement of the date of the meeting was made, whichever comes first. In no event shall the public announcement of an adjournment of an annual meeting commence a new time period for the giving of a stockholder's notice as described above.

To be in proper form, a stockholder's notice (whether given pursuant to this paragraph (A)(2) or paragraph (B) of this Section 14) to the secretary must:

(a) disclose, as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination or proposal is made or any person acting in concert therewith (each a “party”) (i) the name and address of each such party, (ii) (A) the class or series and number of shares of the corporation which are, directly or indirectly, owned beneficially and of record by each such party, (B) any option, warrant, convertible security, stock appreciation right, or similar right with an exercise or conversion privilege or a settlement payment or mechanism at a price related to any class or series of shares of the corporation or with a value derived in whole or in part from the value of any class or series of shares of the corporation, whether or not such instrument or right shall be subject to settlement in the underlying class or series of capital stock of the corporation or otherwise (a “Derivative Instrument”) directly or indirectly owned beneficially by each such party and any other direct or indirect opportunity to profit or share in any profit derived from any increase or decrease in the value of shares of the corporation, (C) any proxy, contract, arrangement, understanding, or relationship pursuant to which each such party has a right to vote or transfer any shares of any security of the corporation, or pursuant to which any shares held directly or indirectly by each such party may be voted or transferred by another party, (D) any short interest in any security of the corporation (for purposes of this bylaw a person shall be deemed to have a short interest in a security if such person directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, has the opportunity to profit or share in any profit derived from any decrease in the value of the subject security), (E) any rights to dividends on the shares of the corporation owned beneficially by each such party that are separated or separable from the underlying shares of the corporation, (F) any proportionate interest in shares of the corporation or Derivative Instruments held, directly or indirectly, by a general or limited partnership in which such party is a general partner or, directly or indirectly, beneficially owns an interest in a general partner, (G) any performance-related fees (other than an asset-based fee) that such stockholder is or may be entitled to based on any increase or decrease in the value of shares of the corporation or Derivative Instruments, if any, as of the date of such notice, including without limitation any such interests held by members of such party’s immediate family sharing the same household (which information shall be supplemented by such stockholder and beneficial owner, if any, not later than ten (10) days after the record date for the meeting to disclose such ownership as of the record date) and (H) any direct or indirect equity interest, short interest, or Derivative Instrument, or any material contract or agreement of such party in or with any principal competitor of the corporation, (iii) any other information relating to such party that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for, as applicable, the proposal and/or for the election of directors in a contested election pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder (whether or not such party intends to deliver a proxy statement or conduct its own proxy solicitation), (iv) a statement as to whether or not each such party will deliver a proxy statement and form of proxy to holders of, in the case of a proposal, at least the percentage of voting power of all of the shares of the capital stock of the corporation required under applicable law to carry the proposal, or, in the case of a nomination or nominations for election of directors, at least the percentage of voting power of all of the shares of capital stock of the corporation reasonably believed by the such stockholder of record or beneficial owner or owners, as the case may be, to be sufficient to elect the persons proposed to be nominated by the stockholder of record; (v) the written consent of each such party to the public disclosure of information provided pursuant to this bylaw; (vi) the investment strategy or objective, if any, of the stockholder and each such party; and (vii) an undertaking that each such stockholder agrees to indemnify and hold harmless the corporation against any liability, loss or damages incurred as a result of false or misleading information submitted by the stockholder pursuant to this Section 14;

(b) if the notice relates to any business other than a nomination of a director or directors that the stockholder proposes to bring before the meeting, set forth (i) a brief description of the business desired to be brought before the meeting, the reasons for conducting such business at the meeting and any material interest of such stockholder and beneficial owner, if any, or other persons on whose behalf the proposal is made or persons that are acting in concert therewith with respect to such business and (ii) a description of all agreements, arrangements and understandings between such stockholder and beneficial owner, if any, and any other person or persons (including their names) in connection with the proposal of such business by such stockholder;

(c) set forth, as to each person, if any, whom the stockholder proposes to nominate for election or reelection to the board of directors (i) all information relating to such person that would be 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 of the Exchange Act and the rules and regulations promulgated thereunder (including such person’s written consent to being named in the proxy statement as a nominee and to serving as a director if elected) and (ii) a description of all direct and indirect compensation and other material monetary agreements, arrangements and understandings during the past three years, and any other material relationships,

between or among such stockholder and beneficial owner, if any, and their respective affiliates and associates, or others acting in concert therewith, on the one hand, and each proposed nominee, and his or her respective affiliates and associates, or others acting in concert therewith, on the other hand, including, without limitation all information that would be required to be disclosed pursuant to Rule 404 promulgated under Regulation S-K if the stockholder making the nomination and any beneficial owner on whose behalf the nomination is made, if any, or any affiliate or associate thereof or person acting in concert therewith, were the “registrant” for purposes of such rule and the nominee were a director or executive officer of such registrant; and

(d) with respect to each nominee for election or reelection to the board of directors, include a completed and signed questionnaire, representation and agreement required by paragraph (D) of this Section 14.

The corporation may require any proposed nominee to furnish such other information as may reasonably be required by the corporation to determine the eligibility of such proposed nominee to serve as an independent director of the corporation or that could be material to a reasonable stockholder’s understanding of the independence, or lack thereof, of such nominee.

Further, a stockholder of record providing notice of a nomination of director(s) or other business proposed to be brought before 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 bylaw shall be true and correct as of the record date for the meeting and as of the date that is ten (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 (5) business days after the record date for the meeting (in the case of the update and supplement required to be made as of the record date), and not later than five (5) business days prior to the date of the meeting, if practicable (or, if not practicable, on the first practicable date prior to) any adjournment or postponement thereof (in the case of the update and supplement required to be made as of ten (10) business days prior to the meeting or any adjournment or postponement thereof).

For purposes of this bylaw, a person shall be deemed to be “acting in concert” with another person if such person knowingly acts (whether or not pursuant to an express agreement) in concert with, or towards a common goal relating to the corporation in parallel with, such other person where at least one of the following factors suggests that such persons intend to act in concert or in parallel: exchanging information (whether publicly or privately), attending meetings, conducting discussions or making or soliciting invitations to act in concert or in parallel; provided, that a person shall not be deemed to be acting in concert with any other person solely as a result of the solicitation of proxies after the filing of an effective Schedule 14A under Section 14(a) of the Exchange Act. A person acting in concert with another person shall be deemed to be acting in concert with any third party who is also acting in concert with such other person.

(3) Notwithstanding anything in the second sentence of paragraph (A)(2) of this Section 14 to the contrary, in the event that the number of directors to be elected to the board of directors of the corporation is increased and there is no public announcement by the corporation naming all of the nominees for director or specifying the size of the increased board of directors at least 70 days prior to the first anniversary of the date of the preceding year’s annual meeting, a stockholders notice required by this bylaw shall also be considered timely, but only with respect to nominees for any new positions created by such increase, if it shall be delivered to the secretary at the principal executive offices of the corporation not later than the close of business on the tenth (10th) day following the day on which such public announcement is first made by the corporation.

(B) *Special Meetings of Stockholders.* Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting pursuant to the corporation’s notice of meeting. Nominations of persons for election to the board of directors shall only be permitted to be made at a special meeting of stockholders at which directors are to be elected pursuant to the corporation’s notice of meeting (a) by or at the direction of the board of directors or (b) provided that the board of directors has determined that directors shall be elected at such meeting, by any stockholder of the corporation who (i) is a stockholder of record at the time of giving of notice provided for in this bylaw and at the time of the special meeting, (ii) is entitled to vote and present in person at the meeting, and (iii) complies with the notice procedures set forth in this bylaw as to such nomination. In the event the corporation calls a special meeting of stockholders for the purpose of electing one or more directors to the board of directors, any such stockholder may nominate a person or persons (as the case may be) for election to such position(s) as specified

in the corporation's notice of meeting, if the stockholder's notice in the form required by paragraph (A)(2) of this Section 14 with respect to any nomination (including the completed and signed questionnaire, representation and agreement required by paragraph (D) of this Section 14) shall be delivered to the secretary at the principal executive offices of the corporation not earlier than the close of business on the 150th calendar day prior to the date of such special meeting and not later than the close of business on the later of the 120th calendar day prior to the date of such special meeting or, if the first public announcement of the date of such special meeting is less than one hundred (100) days prior to the date of such special meeting, the tenth (10th) day following the day on which public announcement is first made of the date of the special meeting and of the nominees proposed by the board of directors to be elected at such meeting. In no event shall any adjournment or postponement of a special meeting or the announcement thereof commence a new time period for the giving of a stockholder's notice as described above.

(C) *General.*

(1) Only persons who are nominated in accordance with the procedures set forth in this bylaw shall be eligible to serve as directors and only such business shall be conducted at a meeting of stockholders as shall have been brought before the meeting in accordance with the procedures set forth in this bylaw.

(2) For purposes of this bylaw, "public announcement" shall mean disclosure in a press release reported by a national news service or in a document publicly filed by the corporation with the Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the Exchange Act and the rules promulgated thereunder.

(3) Notwithstanding the foregoing provisions of this bylaw, a stockholder shall also comply with all applicable requirements of the Exchange Act and the rules and regulations thereunder with respect to the matters set forth in this bylaw; provided, however, that any references in these bylaws to the Exchange Act or the rules promulgated thereunder are not intended to and shall not limit the requirements applicable to nominations or proposals as to any other business to be considered pursuant to paragraph (A)(1)(c) or paragraph (B) of this Section 14. Nothing in this bylaw shall be deemed to affect any rights (i) of stockholders to request inclusion of proposals in the corporation's proxy statement pursuant to Rule 14a-8 under the Exchange Act or (ii) of the holders of any series of preferred stock, if any, to elect directors under certain circumstances if and to the extent provided for under law, the certificate of incorporation or these bylaws.

(4) Notwithstanding the foregoing provisions of this bylaw, if a stockholder (or a qualified representative of the stockholder) is not present at the meeting of stockholders to make a nomination or propose other business, such nomination shall be disregarded and such proposed business shall not be transacted, notwithstanding that proxies in respect of such vote have been received by the corporation. "Present in person" shall mean that the stockholder proposing that the business be brought before the meeting of the corporation, or, if the proposing stockholder is not an individual, a qualified representative of such stockholder, appears at such meeting; provided, however if the board of directors authorizes pursuant to Section 1 of Article II of these bylaws a meeting solely by means of remote communication, the board of directors shall adopt, in its sole discretion, such guidelines and procedures for stockholders to be deemed present in person at such virtual meeting. A "qualified representative" of such proposing stockholder shall be, if such proposing stockholder is (x) a general or limited partnership, any general partner or person who functions as a general partner of the general or limited partnership or who controls the general or limited partnership, (y) a corporation or a limited liability company, any officer or person who functions as an officer of the corporation or limited liability company or any officer, director, general partner or person who functions as an officer, director or general partner of any entity ultimately in control of the corporation or limited liability company or (z) a trust, any trustee of such trust.

(D) *Submission of Questionnaire, Representation and Agreement.* To be eligible to be a nominee for election [or reelection] as a director of the corporation, a person must deliver (in accordance with the time periods prescribed for delivery of notice under Section 14 of this Article II) to the secretary at the principal executive offices of the corporation a written questionnaire with respect to the background and qualification of such person and the background of any other person or entity on whose behalf the nomination is being made (which questionnaire shall be provided by the secretary upon written request) and a written representation and agreement (in the form provided by the secretary upon written request) that such person (1) is not and will not become a party to (i) any agreement, arrangement or understanding with, and has not given any commitment or assurance to, any person or entity as to how such person, if elected as a director of the corporation, will act or vote on any issue or question (a "Voting

Commitment”) that has not been disclosed to the secretary of the corporation or (ii) any Voting Commitment that could limit or interfere with such person’s ability to comply, if elected as a director of the corporation, with such person’s fiduciary duties under applicable law, (2) 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, reimbursement or indemnification in connection with service or action as a director that has not been disclosed in such questionnaire or representation, and (3) in such person’s individual capacity and on behalf of any person or entity on whose behalf the nomination is being made, would be in compliance, if elected as a director of the corporation, and will comply with all applicable publicly disclosed corporate governance, conflict of interest, confidentiality and stock ownership and trading policies and guidelines of the corporation.

Section 15. Conduct of Business.(A) *Duties of Chair of Meeting.* Except as otherwise provided by law, the certificate of incorporation or these bylaws, the chair of any meeting of the stockholders shall have the power and authority to determine the order of business and the procedure at the meeting, including, without limitation, the duty to determine whether a nomination or any other business proposed to be brought before the meeting was made or proposed, as the case may be, in accordance with the procedures set forth in these bylaws and, if any proposed nomination or business is not in compliance with these bylaws, to declare that such defective proposal or nomination shall be disregarded, and the manner of voting and the conduct of discussion as seem to him or her in order. The chair shall also have the power to adjourn the meeting to another place, if any, date and time. The date and time of the opening and closing of the polls for each matter upon which the stockholders will vote at the meeting shall be announced at the meeting. No ballots, proxies or votes, nor any revocations thereof or changes thereto, shall be accepted by the inspectors or the chair of the meeting after the closing of the polls unless the Delaware Court of Chancery upon application by a stockholder shall determine otherwise.

(B) *Chair of Meeting.* The Chairman of the Board or, in his or her absence, the Chief Executive Officer of the corporation or, in his or her absence, such person as may be chosen by the board of directors, or if there are not remaining directors serving, such person as may be chosen by the holders of a majority of the voting power of the shares entitled to vote who are present, in person or by proxy, at such meeting shall call to order any meeting of the stockholders and act as chair of the meeting. In the absence of the secretary of the corporation, the secretary of the meeting shall be such person as the chair of the meeting or the board of directors appoints.

ARTICLE III. - DIRECTORS

Section 1. Powers. Subject to the provisions of the Delaware General Corporation Law and any limitations in the certificate of incorporation and these bylaws relating to action required to be approved by the stockholders or by the outstanding shares, the business and affairs of the corporation shall be managed and all corporate powers shall be exercised by or under the direction of the board of directors. *Section 2. Number and Qualification of Directors.* Until otherwise determined by resolution of the Board of Directors, the number of directors of the corporation shall be seven (7). *Section 3. Election and Term of Office of Directors.*

Directors shall be elected at the annual meeting of the stockholders. Each director, including a director elected to fill a vacancy, shall serve for a term ending on the next annual meeting following the annual meeting at which such director was elected and until a successor has been elected and qualified or the earlier of his resignation or removal. *Section 4. Vacancies.* Vacancies in the board of directors may be filled by a majority of the remaining directors, though less than a quorum, or by a sole remaining director.

Each director elected to fill a vacancy shall hold office for the remainder of the term of the person whom he succeeds, and until a successor has been elected and qualified. A vacancy or vacancies in the board of directors shall be deemed to exist in the case of the death, retirement, resignation or removal of any director, or if the board of directors by resolution declares vacant the office of a director who has been declared of unsound mind by an order of court or convicted of a felony, or if the authorized number of directors be increased, or if the stockholders fail at any meeting of stockholders at which any director or directors are elected, to elect the full authorized number of directors to be voted for at that meeting.

Any director may resign or voluntarily retire upon giving notice in writing or by electronic transmission to the chairman of the board, the president, the secretary or the board of directors. Such retirement or resignation shall be effective upon the giving of the notice, unless the notice specifies a later time for its effectiveness. If such retirement or resignation is effective at a future time, the board of directors may elect a successor to take office when the retirement or resignation becomes effective.

No reduction of the authorized number of directors shall have the effect of removing any director prior to the expiration of his term of office.

Section 5. Place of Meetings and Telephonic Meetings. Regular meetings of the board of directors may be held at any place within or without the State of Delaware that has been designated from time to time by resolution of the board. In the absence of such designation, regular meetings shall be held at the principal executive office of the corporation. Special meetings of the board shall be held at any place within or without the State of Delaware that has been designated in the notice of the meeting or, if not stated in the notice or there is no notice, at the principal executive office of the corporation. Any meeting, regular or special, may be held by conference telephone or similar communication equipment, so long as all directors participating in such meeting can hear one another, and all such directors shall be deemed to be present in person at such meeting. *Section 6. Annual Meetings.* Immediately following each annual meeting of stockholders, the board of directors shall hold a regular meeting for the purpose of organization, any desired election of officers and transaction of other business. Notice of this meeting shall not be required. *Section 7. Other Regular Meetings.* Other regular meetings of the board of directors shall be held at such time as shall from time to time be determined by the board of directors. Such regular meetings may be held without notice provided that notice of any change in the determination of time of such meeting shall be sent to all of the directors. Notice of a change in the determination of the time shall be given to each director in the same manner as for special meetings of the board of directors. *Section 8. Special Meetings.* Special meetings of the board of directors for any purpose or purposes may be called at any time by the chairman of the board or the president or any vice president or the secretary or any two directors. Notice of the time and place of special meetings shall be delivered personally or by telephone to each director, sent by facsimile, first class mail or telegram, charges prepaid, addressed to each director at his or her address as it is shown upon the records of the corporation, or sent by electronic mail addressed to each director at his or her electronic mail address as it is shown upon the records of the corporation. In case such notice is mailed, it shall be deposited in the United States mail at least four (4) days prior to the time of the holding of the meeting. In case such notice is delivered personally, by telephone, facsimile, telegram or electronic mail, it shall be delivered personally, or by telephone, by facsimile, to the telegraph company or by electronic mail at least twenty four (24) hours prior to the time of the holding of the meeting. Any oral notice given personally or by telephone may be communicated to either the director or to a person at the office of the director who the person giving the notice has reason to believe will promptly communicate it to the director. The notice need not specify the purpose of the meeting nor the place if the meeting is to be held at the principal executive office of the corporation.

Section 9. Quorum. A majority of the authorized number of directors shall constitute a quorum for the transaction of business, except to adjourn as hereinafter provided. Every act or decision done or made by a majority of the directors present at a meeting duly held at which a quorum is present shall be regarded as the act of the board of directors. A meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for such meeting. *Section 10. Waiver of Notice.* The transactions of any meeting of the board of directors, however called and noticed or wherever held, shall be as valid as though had at a meeting duly held after regular call and notice if a quorum be present and if, either before or after the meeting, each of the directors not present delivers a written waiver signed by such director (or a waiver by electronic transmission by such director) of notice or a consent (manually signed or submitted by electronic transmission) to the holding of the meeting, or an approval of the minutes thereof. The waiver of notice or consent need not specify the purpose of the meeting. All such waivers, consents and approvals shall be filed with the corporate records or made a part of the minutes of the meeting. Notice of a meeting shall also be deemed given to any director who attends the meeting without protesting, prior thereto or at its commencement, the lack of notice to such director. *Section 11. Adjournment.* A majority of the directors present, whether or not constituting a quorum, may adjourn any meeting to another time and place. *Section 12. Notice of Adjournment.* Notice of the time and place of an adjourned meeting need not be given, unless the meeting is adjourned for more than twenty four (24) hours, in which case notice of such time and place shall be given prior to the time of the adjourned meeting, in the manner specified in Section 8 of this Article III, to the directors who were not present at the time of the adjournment. *Section 13. Action Without Meeting.* Any action required or permitted to be taken by the board of directors may be taken without a meeting, if all members of the board shall individually or collectively consent in writing or by electronic transmission to such action. Such action by written consent or electronic transmission shall have the same force and effect as a unanimous vote of the board of directors. Such written consent or consents or electronic transmission or transmissions shall be filed with the minutes of the proceedings of the board. *Section 14. Fees and Compensation of Directors.* Directors and members of committees may receive such compensation, if any, for their services and such reimbursement of expenses, as may be fixed or determined by

resolution of the board of directors. Nothing herein contained shall be construed to preclude any director from serving the corporation in any other capacity as an officer, agent, employee, or otherwise, and receiving compensation for such services.

- COMMITTEES

Section 1. Committees of Directors. The board of directors may, by resolution adopted by a majority of the authorized number of directors, designate one or more committees, including an executive committee, each consisting of two or more directors, to serve at the pleasure of the board. The board may designate one or more directors as alternate members of any committee, who may replace any absent member at any meeting of the committee. Any such committee, to the extent provided in the resolution of the board, shall have all the authority of the board, except with respect to:

the approval of any action which, under the General Corporation Law of Delaware, also requires the approval of the full board of directors, or the stockholders of the outstanding shares;

- (b) the filling of vacancies on the board of directors or in any committee;
- (c) the fixing of compensation of the directors for serving on the board or on any committee;
- (d) the amendment or repeal of bylaws or the adoption of new bylaws;
- (e) the amendment or repeal of any resolution of the board of directors which by its express terms is not so amendable or repealable;
- (f) a distribution to the stockholders of the corporation, except at a rate or in a periodic amount or within a price range determined by the board of directors; or
- (g) the appointment of any other committees of the board of directors or the members thereof.

Section 2. Meetings and Action of Committees. Meetings and action of committees shall be governed by, and held and taken in accordance with, the provisions of Article III of these bylaws, Sections 5 (place of meetings), 7 (regular meetings), 8 (special meetings and notice), 9 (quorum), 10 (waiver of notice), 11 (adjournment), 12 (notice of adjournment) and 13 (action without meetings), with such changes in the context of those bylaws as are necessary to substitute the committee and its members for the board of directors and its members, except that the time of regular meetings of committees may be determined by resolution of the board of directors as well as the committee, special meetings of committees may also be called by resolution of the board of directors, and notice of special meetings of committees shall also be given to all alternate members, who shall have the right to attend all meetings of the committee. The board of directors may adopt rules for the government of any committee not inconsistent with the provisions of these bylaws.

- OFFICERS

Section 1. Officers. The officers of the corporation shall be chosen by the board of directors and shall include a chairman of the board or president, or both, a vice president, a secretary and a chief financial officer. The corporation may also have, at the discretion of the board of directors, a president, one or more additional vice presidents, one or more assistant secretaries, one or more assistant treasurers, and such other officers as may be held by the same person. *Section 2. Election of Officers.* The officers of the corporation, except such officers as may be appointed in accordance with the provisions of Section 3 or Section 5 of this Article V, shall be chosen annually by the board of directors, and each shall hold his office until he shall resign or be removed or otherwise disqualified to serve or his successor shall be appointed in accordance with the provisions of Section 3 of this Article V. Any number of officers may be elected and qualified. *Section 3. Subordinate Officers, etc.* The board of directors may appoint, and may empower the chairman of the board to appoint, such other officers as the business of the corporation may require, each of whom shall hold office for such period, have such authority and perform such duties as are provided in the bylaws or as the board of directors may from time to time determine. *Section 4. Removal and Resignation of Officers.* Any officer may be removed, either with or without cause, by the board of directors, at any regular or special meeting thereof, or, except in case of an officer chosen by the board of directors, by any officer upon whom such power of removal may be conferred by the board of directors. Any officer may resign at any time by giving written notice to the corporation. Any such resignation shall take effect at the date of the receipt of such notice or at any later time specified therein; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 5. Vacancies in Office. A vacancy in any office because of death, resignation, removal, disqualification, or any other cause shall be filled in the manner prescribed in these bylaws for regular appointments to such office. *Section 6.*

Chairman of the Board. The chairman of the board shall preside at all meetings of the stockholders and of the board of directors. The chairman of the Board shall be responsible for the general management of the affairs of the corporation and shall perform all duties incidental to his office which may be required by law and all such other duties as are properly required of him by the board of directors. Except where by law the signature of the president is required, the chairman of the board shall possess the same power as the president to sign all certificates, contracts, and other instruments of the corporation which may be authorized by the board of directors. He shall make reports to the board of directors and the stockholders, and shall perform all such other duties as are properly required of him by the board of directors. He shall see that all orders and resolutions of the board of directors and of any committee thereof are carried into effect. *Section 7. President.* The president shall act in a general executive capacity and shall assist the chairman of the board in the administration and operation of the corporation's business and general supervision of its policies and affairs. The president shall, in the absence of or because of the inability to act of the chairman of the board, perform all duties of the chairman of the board and preside at all meetings of stockholders and of the board of directors. The president may sign, alone or with the secretary, or an assistant secretary, or any other proper officer of the corporation authorized by the board of directors, certificates, contracts, and other instruments of the corporation as authorized by the board of directors. *Section 8. Vice Presidents.* In the absence or disability of the president, a vice president designated by the board of directors shall perform all the duties of the president, and when so acting shall have all the powers of, and be subject to all the restrictions upon, the president. The vice presidents shall have such other powers and perform such other duties as from time to time may be prescribed for them respectively by the board of directors or the bylaws. *Section 9. Secretary.* The secretary shall keep or cause to be kept, at the principal executive office or such other place as the board of directors may order, a book of minutes of all meetings and actions of directors, committees of directors and stockholders, with the time and place of holding, whether regular or special, and, if special, how authorized, the notice thereof given, the names of those present at directors' and committee meetings, the number of shares present or represented at stockholders' meetings, and the proceedings thereof. The secretary shall keep, or cause to be kept, at the principal executive office or at the office of the corporation's transfer agent or registrar, as determined by resolution of the board of directors, a stock register, or a duplicate register, showing the names of all stockholders and their addresses, the number and classes of shares held by each, the number and date of certificates issued for the same, and the number and date of cancellation of every certificate surrendered for cancellation.

The secretary shall give, or cause to be given, notice of all meetings of the stockholders and of the board of directors required by the bylaws or by law to be given and shall have such other powers and perform such other duties as may be prescribed by the board of directors or by the bylaws.

Section 10. Chief Financial Officer. The chief financial officer shall keep and maintain, or cause to be kept and maintained, adequate and correct books and records of accounts of the properties and business transactions of the corporation, including accounts of its assets, liabilities, receipts, disbursements, gains, losses, capital, retained earnings and shares. The books of account shall be open at all reasonable times to inspection by any director. The chief financial officer shall deposit all monies and other valuables in the name and to the credit of the corporation with such depositories as may be designated by the board of directors. The chief financial officer shall disburse the funds of the corporation as may be ordered by the board of directors, shall render to the chairman of the board and directors, whenever they request it, an account of all of his transactions as chief financial officer and of the financial condition of the corporation, and shall have other powers and perform such other duties as may be prescribed by the board of directors or the bylaws.

Section 11. Assistant Secretaries and Assistant Treasurers. Any assistant secretary may perform any act within the power of the secretary, and any assistant treasurer may perform any act within the power of the chief financial officer, subject to any limitations which may be imposed in these bylaws or in board resolutions.

- INDEMNIFICATION OF DIRECTORS, OFFICERS, EMPLOYEES AND OTHER AGENTS

Section 1. Indemnification. The corporation shall indemnify, in the manner and to the full extent permitted by law, any person (or the estate of any person) who was or is a party to, or is threatened to be made a party to, any threatened, pending or completed action, suit or proceeding, whether or not by or in the right of the corporation, and whether civil, criminal, administrative, investigative or otherwise, by reason of the fact that such person is a director

or officer of the corporation, and at the discretion of the board of directors may indemnify any person (or the estate of any person) who is such a party or threatened to be made such a party by reason of the fact that such person is or was an employee or agent of the corporation or 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. The corporation may, to the full extent permitted by law, purchase and maintain insurance on behalf of any such person against any liability which may be asserted against him and may enter into contracts providing for the indemnification of such person to the full extent permitted by law. To the full extent permitted by law, the indemnification provided herein shall include expenses (including attorneys' fees), judgments, fines and amounts paid in settlement, and, in the manner provided by law, any such expenses may be paid by the corporation in advance of the final disposition of such action, suit or proceeding. The indemnification provided herein shall not be deemed to limit the right of the corporation to indemnify any other person for any such expenses to the full extent permitted by law, nor shall it be deemed exclusive of any other rights to which any person seeking indemnification from the corporation may be entitled under any agreement, vote of stockholders or disinterested directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office.

For the purposes of this Article VI, 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 serving at the request of such constituent corporation as a director or officer of another corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under the provisions of this Article VI with respect to the resulting or surviving corporation as he would have with respect to such constituent corporation if its separate existence had continued.

For purposes of this Article VI, references to "other enterprises" shall include employee benefit plans; 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 service as a director or officer 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 he 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 section.

ARTICLE VII. - GENERAL CORPORATE MATTERS

Section 1. Record Date for Purposes Other Than Notice and Voting. For purposes of determining the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or entitled to exercise any rights in respect of any other lawful action, the board of directors may fix, in advance, a record date, which date shall not precede the date upon which the resolution fixing the record date is adopted by the board of directors, and which shall not be more than sixty (60) nor less than ten (10) days prior to any such action, and in such case only stockholders of record on the date so fixed are entitled to receive the dividend, distribution or allotment of rights or to exercise the rights, as the case may be, notwithstanding any transfer of any shares on the books of the corporation after the record date fixed as aforesaid, except as otherwise provided in the Delaware General Corporation Law. 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 of directors may fix a new record date for the adjourned meeting. In order that the corporation may determine the stockholders entitled to consent to corporate action in writing or by electronic transmission without a meeting, the board of directors may fix a record date which shall not be more than ten days after the date upon which the resolution fixing the record date is adopted by the board of directors.

Section 2. Checks, Drafts, Evidences of Indebtedness. All checks, drafts or other orders for payment of money, notes or other evidences of indebtedness, issued in the name of or payable to the corporation shall be signed or endorsed by such person or persons and in such manner as, from time to time, shall be determined by resolution of the board of directors. *Section 3. Corporate Contracts and Instruments, How Executed.* The board of directors, except as otherwise provided in these bylaws, may authorize any officer or officers, agent or agents, to enter into any contract or execute any instrument in the name of and on behalf of the corporation, and such authority may be general or confined to specific instances; and, unless so authorized or ratified by the board of directors or within the agency power of an officer, no officer, agent or employee shall have any power or authority to bind the corporation by any

Section

contract or engagement or to pledge its credit or to render it liable for any purpose or to any amount. *4. Stock Certificates.* A certificate or certificates for shares of the capital stock of the corporation shall be issued to each stockholder when any such shares are fully paid. All certificates shall be signed in the name of the corporation by the chairman of the board or the president or vice president and by the chief financial officer, the treasurer or an assistant treasurer or the secretary or any assistant secretary, certifying the number of shares and the class or series of shares owned by the stockholder. Any or all of the signatures on the certificate may be facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the

Section

corporation with the same effect as if such person were an officer, transfer agent or registrar at the date of issue. *5. Lost Certificates.* Except as hereinafter in this Section 5 provided, no new stock certificate shall be issued in lieu of an old certificate unless the latter is surrendered to the corporation and canceled at the same time. The board of directors may in case any stock certificate or certificate for any other security is lost, stolen or destroyed, authorize the issuance of a new certificate in lieu thereof, upon such terms and conditions as the board of directors may require, including provision for indemnification of the corporation secured by a bond or other adequate security sufficient to protect the corporation against any claim that may be made against it, including any expense or liability, on account of the alleged loss, theft or destruction of such certificate or the issuance of such new

Section

certificate. *6. Representation of Stock of Other Corporations.* The chairman of the board, the president, or any vice president, or any other person authorized by resolution of the board of directors by any of the foregoing designated officers, is authorized to vote on behalf of the corporation any and all stock of any other corporation or corporations, foreign or domestic, standing in the name of the corporation. The authority herein granted to said officers to vote or represent on behalf of the corporation any and all stock by the corporation in any other corporation or corporations may be exercised by any such officer in person or by any person authorized to do so by proxy duly executed by said officer. *Section 7. Construction and Definitions.* Unless the context requires otherwise, the general provisions, rules of construction, and definitions in the Delaware General Corporation Law shall govern the construction of the bylaws. Without limiting the generality of the foregoing, the singular number includes the plural, the plural number includes the singular, and the term "person" includes both a corporation and a natural person. *Section 8. Fiscal Year.* The fiscal year of the corporation shall be fixed by resolution of the board of directors. *Section 9. Exclusive Jurisdiction of Delaware Courts.* Unless the corporation consents in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware shall be the sole and exclusive forum for any stockholder (including a beneficial owner of stock) to bring (i) any derivative action or proceeding on behalf of the corporation, (ii) any action asserting a claim of, or a claim based on, breach of a fiduciary duty owed by any current or former director, officer, employee or stockholder (including a beneficial owner of stock) of the corporation to the corporation or the corporation's stockholders (including beneficial owners of stock), (iii) any action asserting a claim against the corporation or any current or former director, officer, employee or stockholder (including a beneficial owner of stock) of the corporation arising pursuant to any provision of the DGCL or the certificate of incorporation or by-laws (as either may be amended from time to time), or (iv) any action asserting a claim against the corporation or any current or former director, officer, employee or stockholder (including a beneficial owner of stock) of the corporation governed by the internal affairs doctrine (or, if the Court of Chancery of the State of Delaware does not have jurisdiction, the federal district court for the District of Delaware). Unless the corporation consents in writing to the selection of an alternative forum, the federal district courts of the United States of America shall, to the fullest extent permitted by law, be the sole and exclusive forum for resolution of any claim arising under the Securities Act of 1933, as amended, and the rules and regulations thereunder. Any person or entity purchasing or otherwise acquiring or holding any interest in shares of capital stock of the corporation shall be deemed to have notice of and consented to the provisions of this Section 9 of Article VII.

- NOTICE BY ELECTRONIC TRANSMISSION

Section 1. Notice by Electronic Transmission. Without limiting the manner by which notice otherwise may be given effectively to stockholders pursuant to the DGCL, the certificate of incorporation or these bylaws, any notice to stockholders given by the Company 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 to the Company. Any such consent shall be deemed revoked if:

- (A) the Company is unable to deliver by electronic transmission two consecutive notices given by the Company in accordance with such consent; and
- (B) such inability becomes known to the secretary or an assistant secretary of the Company or to the transfer agent, or other person responsible for the giving of notice.

However, the inadvertent failure to treat such inability as a revocation shall not invalidate any meeting or other action.

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

- (A) if by facsimile telecommunication, when directed to a number at which the stockholder has consented to receive notice;
- (B) if by electronic mail, when directed to an electronic mail address at which the stockholder has consented to receive notice;
- (C) if by a posting on an electronic network together with separate notice to the stockholder of such specific posting, upon the later of (i) such posting and (ii) the giving of such separate notice; and
- (D) if by any other form of electronic transmission, when directed to the stockholder.

An affidavit of the secretary or an assistant secretary or of the transfer agent or other agent of the Company that the notice has been given by a form of electronic transmission shall, in the absence of fraud, be prima facie evidence of the facts stated therein.

Section 2. Definition of Electronic Transmission. An “electronic transmission” means any form of communication, not directly involving the physical transmission of paper, 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. *Section 3. Inapplicability.* Notice by a form of electronic transmission shall not apply to Sections 164, 296, 311, 312 or 324 of the DGCL.

- AMENDMENTS

Section 1. Amendment. The bylaws, or any of them, may be rescinded, altered, amended or repealed, and new bylaws may be made (i) by the board of directors, by vote of a majority of the number of directors then in office as directors, acting at any meeting of the board of directors, or (ii) by the stockholders, by the vote of the holders of sixty six and two thirds percent (66 2/3%) of the outstanding voting stock of the corporation, at any annual or special meeting of stockholders, provided that notice of such proposed amendment, modification, repeal or adoption is given in the notice of the annual or special meeting; provided, however, that the bylaws can only be amended if such amendment would not conflict with the certificate of incorporation. Any bylaw made or altered by the requisite number of stockholders may be altered or repealed by the board of directors or may be altered or repealed by the requisite number of stockholders.* * * *

CAPSTONE GREEN ENERGY CORPORATION
2017 EQUITY INCENTIVE PLAN
AS AMENDED THROUGH AUGUST 27, 2021

SECTION 1. GENERAL PURPOSE OF THE PLAN; DEFINITIONS

The name of the plan is the Capstone Green Energy Corporation 2017 Equity Incentive Plan, as amended (the “Plan”). The purpose of the Plan is to encourage and enable the officers, employees, Non-Employee Directors and Consultants of Capstone Green Energy Corporation (the “Company”) and its Subsidiaries upon whose judgment, initiative and efforts the Company largely depends for the successful conduct of its businesses to acquire a proprietary interest in the Company. It is anticipated that providing such persons with a direct stake in the Company’s welfare will assure a closer identification of their interests with those of the Company and its stockholders, thereby stimulating their efforts on the Company’s behalf and strengthening their desire to remain with the Company.

The following terms shall be defined as set forth below:

“*Act*” means the Securities Act of 1933, as amended, and the rules and regulations thereunder.

“*Administrator*” means either the Board or the Compensation and Human Capital Committee of the Board or a similar committee performing the functions of the Compensation and Human Capital Committee and which is comprised of not less than two Non-Employee Directors who are independent.

“*Award*” or “Awards,” except where referring to a particular category of grant under the Plan, shall include Incentive Stock Options, Non-Qualified Stock Options, Stock Appreciation Rights, Restricted Stock Units, Restricted Stock Awards, Unrestricted Stock Awards, Cash-Based Awards and Dividend Equivalent Rights.

“*Award Certificate*” means a written or electronic document setting forth the terms and provisions applicable to an Award granted under the Plan. Each Award Certificate is subject to the terms and conditions of the Plan.

“*Board*” means the Board of Directors of the Company.

“*Cash-Based Award*” means an Award entitling the recipient to receive a cash-denominated payment.

“Code” means the Internal Revenue Code of 1986, as amended, and any successor Code, and related rules, regulations and interpretations.

“Consultant” means any natural person that provides bona fide services to the Company, and such services are not in connection with the offer or sale of securities in a capital-raising transaction and do not directly or indirectly promote or maintain a market for the Company’s securities.

“Covered Employee” means an employee who is a “Covered Employee” within the meaning of Section 162(m) of the Code.

“Dividend Equivalent Right” means an Award entitling the grantee to receive credits based on cash dividends that would have been paid on the shares of Stock specified in the Dividend Equivalent Right (or other award to which it relates) if such shares had been issued to and held by the grantee.

“Effective Date” means the date on which the Plan becomes effective as set forth in Section 20.

“Exchange Act” means the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder.

“Fair Market Value” of the Stock on any given date means the fair market value of the Stock determined in good faith by the Administrator; provided, however, that if the Stock is admitted to quotation on the National Association of Securities Dealers Automated Quotation System (“NASDAQ”), NASDAQ Global Market or another national securities exchange, the determination shall be made by reference to market quotations. If there are no market quotations for such date, the determination shall be made by reference to the last date preceding such date for which there are market quotations.

“Incentive Stock Option” means any Stock Option designated and qualified as an “incentive stock option” as defined in Section 422 of the Code.

“Non-Employee Director” means a member of the Board who is not also an employee of the Company or any Subsidiary.

“Non-Qualified Stock Option” means any Stock Option that is not an Incentive Stock Option.

“Option” or “Stock Option” means any option to purchase shares of Stock granted pursuant to Section 5.

“*Performance-Based Award*” means any Restricted Stock Award, Restricted Stock Units or Cash-Based Award granted to a Covered Employee that is intended to qualify as “performance-based compensation” under Section 162(m) of the Code and the regulations promulgated thereunder.

“*Performance Criteria*” means the criteria that the Administrator selects for purposes of establishing the Performance Goal or Performance Goals for an individual for a Performance Cycle. The Performance Criteria (which shall be applicable to the organizational level specified by the Administrator, including, but not limited to, the Company or a unit, division, group, or Subsidiary of the Company) that will be used to establish Performance Goals are limited to the following: total shareholder return, earnings before interest, taxes, depreciation and amortization, net income (loss) (either before or after interest, taxes, depreciation and/or amortization), changes in the market price of the Stock, economic value-added, funds from operations or similar measure, sales or revenue, acquisitions or strategic transactions, operating income (loss), cash flow (including, but not limited to, operating cash flow and free cash flow), return on capital, assets, equity, or investment, return on sales, gross or net profit levels, productivity, expense, margins, operating efficiency, customer satisfaction, working capital, earnings (loss) per share of Stock, sales or market shares and number of customers, any of which may be measured either in absolute terms or as compared to any incremental increase or as compared to results of a peer group. The Administrator may appropriately adjust any evaluation performance under a Performance Criterion to exclude any of the following events that occurs during a Performance Cycle: (i) asset write-downs or impairments, (ii) litigation or claim judgments or settlements, (iii) the effect of changes in tax law, accounting principles or other such laws or provisions affecting reporting results, (iv) accruals for reorganizations and restructuring programs, and (v) any item of an unusual nature or of a type that indicates infrequency of occurrence, or both, including those described in the Financial Accounting Standards Board’s authoritative guidance and/or in management’s discussion and analysis of financial condition of operations appearing the Company’s annual report to stockholders for the applicable year.

“*Performance Cycle*” means one or more periods of time, which may be of varying and overlapping durations, as the Administrator may select, over which the attainment of one or more Performance Criteria will be measured for the purpose of determining a grantee’s right to and the payment of a Restricted Stock Award, Restricted Stock Units or Cash-Based Award, the vesting and/or payment of which is subject to the attainment of one or more Performance Goals. Each such period shall not be less than 12 months.

“*Performance Goals*” means, for a Performance Cycle, the specific goals established in writing by the Administrator for a Performance Cycle based upon the Performance Criteria.

“*Restricted Shares*” means the shares of Stock underlying a Restricted Stock Award that remain subject to a risk of forfeiture or the Company’s right of repurchase.

“*Restricted Stock Award*” means an Award of Restricted Shares subject to such restrictions and conditions as the Administrator may determine at the time of grant.

“*Restricted Stock Units*” means an Award of stock units subject to such restrictions and conditions as the Administrator may determine at the time of grant.

“*Sale Event*” shall mean (i) the sale of all or substantially all of the assets of the Company on a consolidated basis to an unrelated person or entity, (ii) a merger, reorganization or consolidation pursuant to which the holders of the Company’s outstanding voting power and outstanding stock immediately prior to such transaction do not own a majority of the outstanding voting power and outstanding stock or other equity interests of the resulting or successor entity (or its ultimate parent, if applicable) immediately upon completion of such transaction, (iii) the sale of all of the Stock of the Company to an unrelated person, entity or group thereof acting in concert, or (iv) any other transaction in which the owners of the Company’s outstanding voting power immediately prior to such transaction do not own at least a majority of the outstanding voting power of the Company or any successor entity immediately upon completion of the transaction other than as a result of the acquisition of securities directly from the Company.

“*Sale Price*” means the value as determined by the Administrator of the consideration payable, or otherwise to be received by stockholders, per share of Stock pursuant to a Sale Event.

“*Section 409A*” means Section 409A of the Code and the regulations and other guidance promulgated thereunder.

“*Stock*” means the Common Stock, par value \$0.001 per share, of the Company, subject to adjustments pursuant to Section 3.

“*Stock Appreciation Right*” means an Award entitling the recipient to receive shares of Stock having a value equal to the excess of the Fair Market Value of the Stock on the date of exercise over the exercise price of the Stock Appreciation Right multiplied by the number of shares of Stock with respect to which the Stock Appreciation Right shall have been exercised.

“*Subsidiary*” means any corporation or other entity (other than the Company) in which the Company has at least a 50 percent interest, either directly or indirectly.

“*Ten Percent Owner*” means an employee who owns or is deemed to own (by reason of the attribution rules of Section 424(d) of the Code) more than 10 percent of the

combined voting power of all classes of stock of the Company or any parent or subsidiary corporation.

“*Unrestricted Stock Award*” means an Award of shares of Stock free of any restrictions.

SECTION 2. ADMINISTRATION OF PLAN; ADMINISTRATOR AUTHORITY TO SELECT GRANTEES AND DETERMINE AWARDS

- (a) Administration of Plan. The Plan shall be administered by the Administrator.
- (b) Powers of Administrator. The Administrator shall have the power and authority to grant Awards consistent with the terms of the Plan, including the power and authority:
 - (i) to select the individuals to whom Awards may from time to time be granted;
 - (ii) to determine the time or times of grant, and the extent, if any, of Incentive Stock Options, Non-Qualified Stock Options, Stock Appreciation Rights, Restricted Stock Awards, Restricted Stock Units, Unrestricted Stock Awards, Cash-Based Awards and Dividend Equivalent Rights, or any combination of the foregoing, granted to any one or more grantees;
 - (iii) to determine the number of shares of Stock to be covered by any Award;
 - (iv) to determine and modify from time to time the terms and conditions, including restrictions, not inconsistent with the terms of the Plan, of any Award, which terms and conditions may differ among individual Awards and grantees, and to approve the forms of Award Certificates;
 - (v) to accelerate at any time the exercisability or vesting of all or any portion of any Award in circumstances involving the grantee’s death, disability, retirement or termination of employment, or a change in control (including a Sale Event);
 - (vi) subject to the provisions of Section 5(c), to extend at any time the period in which Stock Options may be exercised; and
 - (vii) at any time to adopt, alter and repeal such rules, guidelines and practices for administration of the Plan and for its own acts and proceedings as it shall deem advisable; to interpret the terms and provisions of the Plan and any Award (including related written instruments); to make all determinations it deems advisable for

the administration of the Plan; to decide all disputes arising in connection with the Plan; and to otherwise supervise the administration of the Plan.

All decisions and interpretations of the Administrator shall be binding on all persons, including the Company and Plan grantees.

(c) Delegation of Authority to Grant Awards. Subject to applicable law, the Administrator, in its discretion, may delegate to the Chief Executive Officer of the Company all or part of the Administrator's authority and duties with respect to the granting of Awards to individuals who are (i) not subject to the reporting and other provisions of Section 16 of the Exchange Act and (ii) not Covered Employees. Any such delegation by the Administrator shall include a limitation as to the amount of Stock underlying Awards that may be granted during the period of the delegation and shall contain guidelines as to the determination of the exercise price and the vesting criteria. The Administrator may revoke or amend the terms of a delegation at any time but such action shall not invalidate any prior actions of the Administrator's delegate or delegates that were consistent with the terms of the Plan.

(d) Award Certificate. Awards under the Plan shall be evidenced by Award Certificates that set forth the terms, conditions and limitations for each Award which may include, without limitation, the term of an Award and the provisions applicable in the event employment or service terminates.

(e) Indemnification. Neither the Board nor the Administrator, nor any member of either or any delegate thereof, shall be liable for any act, omission, interpretation, construction or determination made in good faith in connection with the Plan, and the members of the Board and the Administrator (and any delegate thereof) shall be entitled in all cases to indemnification and reimbursement by the Company in respect of any claim, loss, damage or expense (including, without limitation, reasonable attorneys' fees) arising or resulting therefrom to the fullest extent permitted by law and/or under the Company's articles or bylaws or any directors' and officers' liability insurance coverage which may be in effect from time to time and/or any indemnification agreement between such individual and the Company.

(f) Foreign Award Recipients. Notwithstanding any provision of the Plan to the contrary, in order to comply with the laws in other countries in which the Company and its Subsidiaries operate or have employees or other individuals eligible for Awards, the Administrator, in its sole discretion, shall have the power and authority to: (i) determine which Subsidiaries shall be covered by the Plan; (ii) determine which individuals outside the United States are eligible to participate in the Plan; (iii) modify the terms and conditions of any Award granted to individuals outside the United States to comply with applicable foreign laws; (iv) establish subplans and modify exercise procedures and other terms and procedures, to the extent the Administrator determines such actions to be necessary or advisable (and such subplans and/or modifications shall

be attached to this Plan as appendices); provided, however, that no such subplans and/or modifications shall increase the share limitations contained in Section 3(a) hereof; and (v) take any action, before or after an Award is made, that the Administrator determines to be necessary or advisable to obtain approval or comply with any local governmental regulatory exemptions or approvals. Notwithstanding the foregoing, the Administrator may not take any actions hereunder, and no Awards shall be granted, that would violate the Exchange Act or any other applicable United States securities law, the Code, or any other applicable United States governing statute or law.

SECTION 3. STOCK ISSUABLE UNDER THE PLAN; MERGERS; SUBSTITUTION

(a) Stock Issuable. The maximum number of shares of Stock reserved and available for issuance under the Plan shall be 1,900,000 shares, subject to adjustment as provided in this Section 3. For purposes of this limitation, the shares of Stock underlying any Awards that are forfeited, canceled or otherwise terminated (other than by exercise) shall be added back to the shares of Stock available for issuance under the Plan. Notwithstanding the foregoing, the following shares shall not be added to the shares authorized for grant under the Plan: (i) shares tendered or held back upon exercise of an Option or settlement of an Award to cover the exercise price or tax withholding, and (ii) shares subject to a Stock Appreciation Right that are not issued in connection with the stock settlement of the Stock Appreciation Right upon exercise thereof. In the event the Company repurchases shares of Stock on the open market, such shares shall not be added to the shares of Stock available for issuance under the Plan. Subject to such overall limitations, shares of Stock may be issued up to such maximum number pursuant to any type or types of Award; provided, however, no more than 200,000 shares of Stock may be granted to any one individual grantee during any one calendar year period, and no more than 1,900,000 shares of the Stock may be issued in the form of Incentive Stock Options. The shares available for issuance under the Plan may be authorized but unissued shares of Stock or shares of Stock reacquired by the Company.

(b) Maximum Awards to Non-Employee Directors. Notwithstanding anything to the contrary in this Plan, the value of all Awards awarded under this Plan and all other cash compensation paid by the Company to any Non-Employee Director in any calendar year shall not exceed \$300,000. For the purpose of this limitation, the value of any Award shall be its grant date fair value, as determined in accordance with ASC 718 or successor provision but excluding the impact of estimated forfeitures related to service-based vesting provisions.

(c) Changes in Stock. Subject to Section 3(d) hereof, if, as a result of any reorganization, recapitalization, reclassification, stock dividend, stock split, reverse stock split or other similar change in the Company's capital stock, the outstanding shares of Stock are increased or decreased or are exchanged for a different number or kind of shares or other securities of the Company, or additional shares or new or different shares or other securities of the Company or other non-cash assets are distributed with respect to

such shares of Stock or other securities, or, if, as a result of any merger or consolidation, sale of all or substantially all of the assets of the Company, the outstanding shares of Stock are converted into or exchanged for securities of the Company or any successor entity (or a parent or subsidiary thereof), the Administrator shall make an appropriate or proportionate adjustment in (i) the maximum number of shares reserved for issuance under the Plan, including the maximum number of shares that may be issued in the form of Incentive Stock Options, (ii) the number of Stock Options or Stock Appreciation Rights that can be granted to any one individual grantee and the maximum number of shares that may be granted under a Performance-Based Award, (iii) the number and kind of shares or other securities subject to any then outstanding Awards under the Plan, (iv) the repurchase price, if any, per share subject to each outstanding Restricted Stock Award, and (v) the exercise price for each share subject to any then outstanding Stock Options and Stock Appreciation Rights under the Plan, without changing the aggregate exercise price (i.e., the exercise price multiplied by the number of Stock Options and Stock Appreciation Rights) as to which such Stock Options and Stock Appreciation Rights remain exercisable. The Administrator shall also make equitable or proportionate adjustments in the number of shares subject to outstanding Awards and the exercise price and the terms of outstanding Awards to take into consideration cash dividends paid other than in the ordinary course or any other extraordinary corporate event. The adjustment by the Administrator shall be final, binding and conclusive. No fractional shares of Stock shall be issued under the Plan resulting from any such adjustment, but the Administrator in its discretion may make a cash payment in lieu of fractional shares.

(d) Mergers and Other Transactions. In the case of and subject to the consummation of a Sale Event, the parties thereto may cause the assumption or continuation of Awards theretofore granted by the successor entity, or the substitution of such Awards with new Awards of the successor entity or parent thereof, with appropriate adjustment as to the number and kind of shares and, if appropriate, the per share exercise prices, as such parties shall agree. To the extent the parties to such Sale Event do not provide for the assumption, continuation or substitution of Awards, upon the effective time of the Sale Event, the Plan and all outstanding Awards granted hereunder shall terminate. In such case, except as may be otherwise provided in the relevant Award Certificate, all Options and Stock Appreciation Rights that are not exercisable immediately prior to the effective time of the Sale Event shall become fully exercisable as of the effective time of the Sale Event, all other Awards with time-based vesting, conditions or restrictions shall become fully vested and nonforfeitable as of the effective time of the Sale Event, and all Awards with conditions and restrictions relating to the attainment of performance goals may become vested and nonforfeitable in connection with a Sale Event in the Administrator's discretion or to the extent specified in the relevant Award Certificate. In the event of such termination, (i) the Company shall have the option (in its sole discretion) to make or provide for a payment, in cash or in kind, to the grantees holding Options and Stock Appreciation Rights, in exchange for the cancellation thereof, in an amount equal to the difference between (A) the Sale Price multiplied by the number of shares of Stock subject to outstanding Options and Stock

Appreciation Rights (to the extent then exercisable at prices not in excess of the Sale Price) and (B) the aggregate exercise price of all such outstanding Options and Stock Appreciation Rights; or (ii) each grantee shall be permitted, within a specified period of time prior to the consummation of the Sale Event as determined by the Administrator, to exercise all outstanding Options and Stock Appreciation Rights (to the extent then exercisable) held by such grantee. The Company shall also have the option (in its sole discretion) to make or provide for a payment, in cash or in kind, to the grantees holding other Awards in an amount equal to the Sale Price multiplied by the number of vested shares of Stock under such Awards.

SECTION 4. ELIGIBILITY

Grantees under the Plan will be such full or part-time officers and other employees, Non-Employee Directors and Consultants of the Company and its Subsidiaries as are selected from time to time by the Administrator in its sole discretion.

SECTION 5. STOCK OPTIONS

(a) Award of Stock Options. The Administrator may grant Stock Options under the Plan. Any Stock Option granted under the Plan shall be in such form as the Administrator may from time to time approve.

Stock Options granted under the Plan may be either Incentive Stock Options or Non-Qualified Stock Options. Incentive Stock Options may be granted only to employees of the Company or any Subsidiary that is a “subsidiary corporation” within the meaning of Section 424(f) of the Code. To the extent that any Option does not qualify as an Incentive Stock Option, it shall be deemed a Non-Qualified Stock Option.

Stock Options granted pursuant to this Section 5 shall be subject to the following terms and conditions and shall contain such additional terms and conditions, not inconsistent with the terms of the Plan, as the Administrator shall deem desirable; provided, that, the vesting period applicable to any Stock Options may not be less than one year except in the case of a Sale Event. If the Administrator so determines, Stock Options may be granted in lieu of cash compensation at the optionee’s election, subject to such terms and conditions as the Administrator may establish.

(b) Exercise Price. The exercise price per share for the Stock covered by a Stock Option granted pursuant to this Section 5 shall be determined by the Administrator at the time of grant but shall not be less than 100 percent of the Fair Market Value on the date of grant. In the case of an Incentive Stock Option that is granted to a Ten Percent Owner, the option price of such Incentive Stock Option shall be not less than 110 percent of the Fair Market Value on the grant date.

(c) Option Term. The term of each Stock Option shall be fixed by the Administrator, but no Stock Option shall be exercisable more than ten years after the date the Stock Option is granted. In the case of an Incentive Stock Option that is granted to a Ten Percent Owner, the term of such Stock Option shall be no more than five years from the date of grant.

(d) Exercisability; Rights of a Stockholder. Stock Options shall become exercisable at such time or times, whether or not in installments, as shall be determined by the Administrator at or after the grant date. The Administrator may at any time accelerate the exercisability of all or any portion of any Stock Option. An optionee shall have the rights of a stockholder only as to shares acquired upon the exercise of a Stock Option and not as to unexercised Stock Options.

(e) Method of Exercise. Stock Options may be exercised in whole or in part, by giving written or electronic notice of exercise to the Company, specifying the number of shares to be purchased. Payment of the purchase price may be made by one or more of the following methods except to the extent otherwise provided in the Option Award Certificate:

(i) In cash, by certified or bank check or other instrument acceptable to the Administrator;

(ii) Through the delivery (or attestation to the ownership following such procedures as the Company may prescribe) of shares of Stock that are not then subject to restrictions under any Company plan. Such surrendered shares shall be valued at Fair Market Value on the exercise date;

(iii) By the optionee delivering to the Company a properly executed exercise notice together with irrevocable instructions to a broker to promptly deliver to the Company cash or a check payable and acceptable to the Company for the purchase price; provided that in the event the optionee chooses to pay the purchase price as so provided, the optionee and the broker shall comply with such procedures and enter into such agreements of indemnity and other agreements as the Company shall prescribe as a condition of such payment procedure; or

(iv) With respect to Stock Options that are not Incentive Stock Options, by a “net exercise” arrangement pursuant to which the Company will reduce the number of shares of Stock issuable upon exercise by the largest whole number of shares with a Fair Market Value that does not exceed the aggregate exercise price.

Payment instruments will be received subject to collection. The transfer to the optionee on the records of the Company or of the transfer agent of the shares of Stock to be purchased pursuant to the exercise of a Stock Option will be contingent upon receipt from the optionee (or a purchaser acting in his stead in accordance with the

provisions of the Stock Option) by the Company of the full purchase price for such shares and the fulfillment of any other requirements contained in the Option Award Certificate or applicable provisions of laws (including the satisfaction of any withholding taxes that the Company is obligated to withhold with respect to the optionee). In the event an optionee chooses to pay the purchase price by previously-owned shares of Stock through the attestation method, the number of shares of Stock transferred to the optionee upon the exercise of the Stock Option shall be net of the number of attested shares. In the event that the Company establishes, for itself or using the services of a third party, an automated system for the exercise of Stock Options, such as a system using an internet website or interactive voice response, then the paperless exercise of Stock Options may be permitted through the use of such an automated system.

(f) Annual Limit on Incentive Stock Options. To the extent required for “incentive stock option” treatment under Section 422 of the Code, the aggregate Fair Market Value (determined as of the time of grant) of the shares of Stock with respect to which Incentive Stock Options granted under this Plan and any other plan of the Company or its parent and subsidiary corporations become exercisable for the first time by an optionee during any calendar year shall not exceed \$100,000. To the extent that any Stock Option exceeds this limit, it shall constitute a Non-Qualified Stock Option.

SECTION 6. STOCK APPRECIATION RIGHTS

(a) Award of Stock Appreciation Rights. The Administrator may grant Stock Appreciation Rights under the Plan. A Stock Appreciation Right is an Award entitling the recipient to receive shares of Stock having a value equal to the excess of the Fair Market Value of a share of Stock on the date of exercise over the exercise price of the Stock Appreciation Right multiplied by the number of shares of Stock with respect to which the Stock Appreciation Right shall have been exercised.

(b) Exercise Price of Stock Appreciation Rights. The exercise price of a Stock Appreciation Right shall not be less than 100 percent of the Fair Market Value of the Stock on the date of grant.

(c) Grant and Exercise of Stock Appreciation Rights. Stock Appreciation Rights may be granted by the Administrator independently of any Stock Option granted pursuant to Section 5 of the Plan.

(d) Terms and Conditions of Stock Appreciation Rights. Stock Appreciation Rights shall be subject to such terms and conditions as shall be determined on the date of grant by the Administrator provided, that, the vesting period applicable to any Stock Appreciation Rights may not be less than one year except in the case of a Sale Event. The term of a Stock Appreciation Right may not exceed ten years. The terms and conditions of each such Award shall be determined by the Administrator, and such terms and conditions may differ among individual Awards and grantees.

SECTION 7. RESTRICTED STOCK AWARDS

(a) Nature of Restricted Stock Awards. The Administrator may grant Restricted Stock Awards under the Plan. A Restricted Stock Award is any Award of Restricted Shares subject to such restrictions and conditions as the Administrator may determine at the time of grant. Conditions may be based on continuing employment (or other service relationship) and/or achievement of pre-established performance goals and objectives.

(b) Rights as a Stockholder. Upon the grant of the Restricted Stock Award and payment of any applicable purchase price, a grantee shall have the rights of a stockholder with respect to the voting of the Restricted Shares and receipt of dividends; provided that if the lapse of restrictions with respect to the Restricted Stock Award is tied to the attainment of performance goals, any dividends paid by the Company during the performance period shall accrue and shall not be paid to the grantee until and to the extent the performance goals are met with respect to the Restricted Stock Award. Unless the Administrator shall otherwise determine, (i) uncertificated Restricted Shares shall be accompanied by a notation on the records of the Company or the transfer agent to the effect that they are subject to forfeiture until such Restricted Shares are vested as provided in Section 7(d) below, and (ii) certificated Restricted Shares shall remain in the possession of the Company until such Restricted Shares are vested as provided in Section 7(d) below, and the grantee shall be required, as a condition of the grant, to deliver to the Company such instruments of transfer as the Administrator may prescribe.

(c) Restrictions. Restricted Shares may not be sold, assigned, transferred, pledged or otherwise encumbered or disposed of except as specifically provided herein or in the Restricted Stock Award Certificate. Except as may otherwise be provided by the Administrator either in the Award Certificate or, subject to Section 17 below, in writing after the Award is issued, if a grantee's employment (or other service relationship) with the Company and its Subsidiaries terminates for any reason, any Restricted Shares that have not vested at the time of termination shall automatically and without any requirement of notice to such grantee from or other action by or on behalf of, the Company be deemed to have been reacquired by the Company at its original purchase price (if any) from such grantee or such grantee's legal representative simultaneously with such termination of employment (or other service relationship), and thereafter shall cease to represent any ownership of the Company by the grantee or rights of the grantee as a stockholder. Following such deemed reacquisition of Restricted Shares that are represented by physical certificates, a grantee shall surrender such certificates to the Company upon request without consideration.

(d) Vesting of Restricted Shares. The Administrator at the time of grant shall specify the date or dates and/or the attainment of pre-established performance goals, objectives and other conditions on which the non-transferability of the Restricted Shares

and the Company's right of repurchase or forfeiture shall lapse; provided, that, such period may not be less than one year except in the case of a Sale Event. Subsequent to such date or dates and/or the attainment of such pre-established performance goals, objectives and other conditions, the shares on which all restrictions have lapsed shall no longer be Restricted Shares and shall be deemed "vested."

SECTION 8. RESTRICTED STOCK UNITS

(a) Nature of Restricted Stock Units. The Administrator may grant Restricted Stock Units under the Plan. A Restricted Stock Unit is an Award of stock units that may be settled in shares of Stock upon the satisfaction of such restrictions and conditions at the time of grant. Conditions may be based on continuing employment (or other service relationship) and/or achievement of pre-established performance goals and objectives; provided, that, such period may not be less than one year except in the case of a Sale Event. The terms and conditions of each such Award shall be determined by the Administrator, and such terms and conditions may differ among individual Awards and grantees. Except in the case of Restricted Stock Units with a deferred settlement date that complies with Section 409A, at the end of the vesting period, the Restricted Stock Units, to the extent vested, shall be settled in the form of shares of Stock. Restricted Stock Units with deferred settlement dates are subject to Section 409A and shall contain such additional terms and conditions as the Administrator shall determine in its sole discretion in order to comply with the requirements of Section 409A.

(b) Election to Receive Restricted Stock Units in Lieu of Compensation The Administrator may, in its sole discretion, permit a grantee to elect to receive a portion of future cash compensation otherwise due to such grantee in the form of an award of Restricted Stock Units. Any such election shall be made in writing and shall be delivered to the Company no later than the date specified by the Administrator and in accordance with Section 409A and such other rules and procedures established by the Administrator. Any such future cash compensation that the grantee elects to defer shall be converted to a fixed number of Restricted Stock Units based on the Fair Market Value of Stock on the date the compensation would otherwise have been paid to the grantee if such payment had not been deferred as provided herein. The Administrator shall have the sole right to determine whether and under what circumstances to permit such elections and to impose such limitations and other terms and conditions thereon as the Administrator deems appropriate. Any Restricted Stock Units that are elected to be received in lieu of cash compensation shall be fully vested, unless otherwise provided in the Award Certificate.

(c) Rights as a Stockholder. A grantee shall have the rights as a stockholder only as to shares of Stock acquired by the grantee upon settlement of Restricted Stock Units; provided, however, that the grantee may be credited with Dividend Equivalent Rights with respect to the stock units underlying his Restricted Stock Units, subject to such terms and conditions as the Administrator may determine.

(d) Termination. Except as may otherwise be provided by the Administrator either in the Award Certificate or, subject to Section 17 below, in writing after the Award is issued, a grantee's right in all Restricted Stock Units that have not vested shall automatically terminate upon the grantee's termination of employment (or cessation of service relationship) with the Company and its Subsidiaries for any reason.

SECTION 9. UNRESTRICTED STOCK AWARDS

Grant or Sale of Unrestricted Stock. The Administrator may grant (or sell at par value or such higher purchase price determined by the Administrator) an Unrestricted Stock Award under the Plan. An Unrestricted Stock Award is an Award pursuant to which the grantee may receive shares of Stock free of any restrictions under the Plan. Unrestricted Stock Awards may be granted in respect of past services or other valid consideration, or in lieu of cash compensation due to such grantee.

SECTION 10. CASH-BASED AWARDS

Grant of Cash-Based Awards. The Administrator may grant Cash-Based Awards under the Plan. A Cash-Based Award is an Award that entitles the grantee to a payment in cash upon the attainment of specified Performance Goals. The Administrator shall determine the maximum duration of the Cash-Based Award, the amount of cash to which the Cash-Based Award pertains, the conditions upon which the Cash-Based Award shall become vested or payable, and such other provisions as the Administrator shall determine. Each Cash-Based Award shall specify a cash-denominated payment amount, formula or payment ranges as determined by the Administrator. Payment, if any, with respect to a Cash-Based Award shall be made in accordance with the terms of the Award and may be made in cash.

SECTION 11. PERFORMANCE-BASED AWARDS TO COVERED EMPLOYEES

(a) Performance-Based Awards. The Administrator may grant one or more Performance-Based Awards in the form of a Restricted Stock Award, Restricted Stock Units or Cash-Based Award payable upon the attainment of Performance Goals that are established by the Administrator and relate to one or more of the Performance Criteria, in each case on a specified date or dates or over any period or periods determined by the Administrator. The Administrator shall define in an objective fashion the manner of calculating the Performance Criteria it selects to use for any Performance Cycle. Depending on the Performance Criteria used to establish such Performance Goals, the Performance Goals may be expressed in terms of overall Company performance or the performance of a division, business unit, or an individual. Each Performance-Based Award shall comply with the provisions set forth below.

(b) Grant of Performance-Based Awards. With respect to each Performance-Based Award granted to a Covered Employee, the Administrator shall select, within the

first 90 days of a Performance Cycle (or, if shorter, within the maximum period allowed under Section 162(m) of the Code) the Performance Criteria for such grant, and the Performance Goals with respect to each Performance Criterion (including a threshold level of performance below which no amount will become payable with respect to such Award). Each Performance-Based Award will specify the amount payable, or the formula for determining the amount payable, upon achievement of the various applicable performance targets. The Performance Criteria established by the Administrator may be (but need not be) different for each Performance Cycle and different Performance Goals may be applicable to Performance-Based Awards to different Covered Employees.

(c) Payment of Performance-Based Awards. Following the completion of a Performance Cycle, the Administrator shall meet to review and certify in writing whether, and to what extent, the Performance Goals for the Performance Cycle have been achieved and, if so, to also calculate and certify in writing the amount of the Performance-Based Awards earned for the Performance Cycle. The Administrator shall then determine the actual size of each Covered Employee's Performance-Based Award.

(d) Maximum Award Payable. The maximum Performance-Based Award payable to any one Covered Employee under the Plan for a Performance Cycle is 200,000 shares of Stock (subject to adjustment as provided in Section 3(c) hereof) or \$3,000,000 in the case of a Performance-Based Award that is a Cash-Based Award.

SECTION 12. DIVIDEND EQUIVALENT RIGHTS

(a) Dividend Equivalent Rights. The Administrator may grant Dividend Equivalent Rights under the Plan. A Dividend Equivalent Right is an Award entitling the grantee to receive credits based on cash dividends that would have been paid on the shares of Stock specified in the Dividend Equivalent Right (or other Award to which it relates) if such shares had been issued to the grantee. A Dividend Equivalent Right may be granted hereunder to any grantee as a component of an award of Restricted Stock Units or as a freestanding award. The terms and conditions of Dividend Equivalent Rights shall be specified in the Award Certificate. Dividend equivalents credited to the holder of a Dividend Equivalent Right may be paid currently or may be deemed to be reinvested in additional shares of Stock, which may thereafter accrue additional equivalents. Any such reinvestment shall be at Fair Market Value on the date of reinvestment or such other price as may then apply under a dividend reinvestment plan sponsored by the Company, if any. Dividend Equivalent Rights may be settled in cash or shares of Stock or a combination thereof, in a single installment or installments. A Dividend Equivalent Right granted as a component of an Award of Restricted Stock Units shall provide that such Dividend Equivalent Right shall be settled only upon settlement or payment of, or lapse of restrictions on, such other Award, and that such Dividend Equivalent Right shall expire or be forfeited or annulled under the same conditions as such other Award.

(b) Termination. Except as may otherwise be provided by the Administrator either in the Award Certificate or, subject to Section 17 below, in writing after the Award is issued, a grantee's rights in all Dividend Equivalent Rights shall automatically terminate upon the grantee's termination of employment (or cessation of service relationship) with the Company and its Subsidiaries for any reason.

SECTION 13. Transferability of Awards

(a) Transferability. Except as provided in Section 13(b) below, during a grantee's lifetime, his or her Awards shall be exercisable only by the grantee, or by the grantee's legal representative or guardian in the event of the grantee's incapacity. No Awards shall be sold, assigned, transferred or otherwise encumbered or disposed of by a grantee other than by will or by the laws of descent and distribution or pursuant to a domestic relations order. No Awards shall be subject, in whole or in part, to attachment, execution, or levy of any kind, and any purported transfer in violation hereof shall be null and void.

(b) Administrator Action. Notwithstanding Section 13(a), the Administrator, in its discretion, may provide either in the Award Certificate regarding a given Award or by subsequent written approval that the grantee (who is an employee or director) may transfer his or her Non-Qualified Stock Options to his or her immediate family members, to trusts for the benefit of such family members, or to partnerships in which such family members are the only partners, provided that the transferee agrees in writing with the Company to be bound by all of the terms and conditions of this Plan and the applicable Award. In no event may an Award be transferred by a grantee for value.

(c) Family Member. For purposes of Section 13(b), "family member" shall mean a grantee's child, stepchild, grandchild, parent, stepparent, grandparent, spouse, former spouse, sibling, niece, nephew, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, including adoptive relationships, any person sharing the grantee's household (other than a tenant of the grantee), a trust in which these persons (or the grantee) have more than 50 percent of the beneficial interest, a foundation in which these persons (or the grantee) control the management of assets, and any other entity in which these persons (or the grantee) own more than 50 percent of the voting interests.

(d) Designation of Beneficiary. To the extent permitted by the Company, each grantee to whom an Award has been made under the Plan may designate a beneficiary or beneficiaries to exercise any Award or receive any payment under any Award payable on or after the grantee's death. Any such designation shall be on a form provided for that purpose by the Administrator and shall not be effective until received by the Administrator. If no beneficiary has been designated by a deceased grantee, or if the designated beneficiaries have predeceased the grantee, the beneficiary shall be the grantee's estate.

SECTION 14. TAX WITHHOLDING

(a) Payment by Grantee. Each grantee shall, no later than the date as of which the value of an Award or of any Stock or other amounts received thereunder first becomes includable in the gross income of the grantee for Federal income tax purposes, pay to the Company, or make arrangements satisfactory to the Administrator regarding payment of, any Federal, state, or local taxes of any kind required by law to be withheld by the Company with respect to such income. The Company and its Subsidiaries shall, to the extent permitted by law, have the right to deduct any such taxes from any payment of any kind otherwise due to the grantee. The Company's obligation to deliver evidence of book entry (or stock certificates) to any grantee is subject to and conditioned on tax withholding obligations being satisfied by the grantee.

(b) Payment in Stock. Subject to approval by the Administrator, a grantee may elect to have the Company's tax withholding obligation satisfied, in whole or in part, by authorizing the Company to withhold from shares of Stock to be issued pursuant to any Award a number of shares with an aggregate Fair Market Value (as of the date the withholding is effected) that would satisfy the withholding amount due; provided, however, that, to the extent necessary to avoid adverse accounting treatment such share withholding may be limited to the minimum required tax withholding obligation. The Administrator may also require Awards to be subject to mandatory share withholding up to the required withholding amount. For purposes of share withholding, the Fair Market Value of withheld shares shall be determined in the same manner as the value of Stock includable in income of the Participants.

SECTION 15. SECTION 409A AWARDS

To the extent that any Award is determined to constitute "nonqualified deferred compensation" within the meaning of Section 409A (a "409A Award"), the Award shall be subject to such additional rules and requirements as specified by the Administrator from time to time in order to comply with Section 409A. In this regard, if any amount under a 409A Award is payable upon a "separation from service" (within the meaning of Section 409A) to a grantee who is then considered a "specified employee" (within the meaning of Section 409A), then no such payment shall be made prior to the date that is the earlier of (i) six months and one day after the grantee's separation from service, or (ii) the grantee's death, but only to the extent such delay is necessary to prevent such payment from being subject to interest, penalties and/or additional tax imposed pursuant to Section 409A. Further, the settlement of any such Award may not be accelerated except to the extent permitted by Section 409A.

SECTION 16. TERMINATION OF EMPLOYMENT, TRANSFER, LEAVE OF ABSENCE, ETC.

(a) Termination of Employment. If the grantee's employer ceases to be a Subsidiary, the grantee shall be deemed to have terminated employment for purposes of the Plan.

(b) For purposes of the Plan, the following events shall not be deemed a termination of employment:

(i) a transfer to the employment of the Company from a Subsidiary or from the Company to a Subsidiary, or from one Subsidiary to another; or

(ii) an approved leave of absence for military service or sickness, or for any other purpose approved by the Company, if the employee's right to re-employment is guaranteed either by a statute or by contract or under the policy pursuant to which the leave of absence was granted or if the Administrator otherwise so provides in writing.

SECTION 17. AMENDMENTS AND TERMINATION

The Board may, at any time, amend or discontinue the Plan and the Administrator may, at any time, amend or cancel any outstanding Award for the purpose of satisfying changes in law or for any other lawful purpose, but no such action shall adversely affect rights under any outstanding Award without the holder's consent. Except as provided in Section 3(c) or 3(d), without prior stockholder approval, in no event may the Administrator exercise its discretion to reduce the exercise price of outstanding Stock Options or Stock Appreciation Rights or effect repricing through cancellation and re-grants or cancellation of Stock Options or Stock Appreciation Rights in exchange for cash or other Awards. To the extent required under the rules of any securities exchange or market system on which the Stock is listed, to the extent determined by the Administrator to be required by the Code to ensure that Incentive Stock Options granted under the Plan are qualified under Section 422 of the Code, or to ensure that compensation earned under Awards qualifies as performance-based compensation under Section 162(m) of the Code, Plan amendments shall be subject to approval by the Company stockholders entitled to vote at a meeting of stockholders. Nothing in this Section 17 shall limit the Administrator's authority to take any action permitted pursuant to Section 3(c) or 3(d).

SECTION 18. STATUS OF PLAN

With respect to the portion of any Award that has not been exercised and any payments in cash, Stock or other consideration not received by a grantee, a grantee shall have no rights greater than those of a general creditor of the Company unless the Administrator shall otherwise expressly determine in connection with any Award or

Awards. In its sole discretion, the Administrator may authorize the creation of trusts or other arrangements to meet the Company's obligations to deliver Stock or make payments with respect to Awards hereunder, provided that the existence of such trusts or other arrangements is consistent with the foregoing sentence.

SECTION 19. GENERAL PROVISIONS

(a) No Distribution. The Administrator may require each person acquiring Stock pursuant to an Award to represent to and agree with the Company in writing that such person is acquiring the shares without a view to distribution thereof.

(b) Delivery of Stock Certificates. Stock certificates to grantees under this Plan shall be deemed delivered for all purposes when the Company or a stock transfer agent of the Company shall have mailed such certificates in the United States mail, addressed to the grantee, at the grantee's last known address on file with the Company. Uncertificated Stock shall be deemed delivered for all purposes when the Company or a Stock transfer agent of the Company shall have given to the grantee by electronic mail (with proof of receipt) or by United States mail, addressed to the grantee, at the grantee's last known address on file with the Company, notice of issuance and recorded the issuance in its records (which may include electronic "book entry" records). Notwithstanding anything herein to the contrary, the Company shall not be required to issue or deliver any certificates evidencing shares of Stock pursuant to the exercise of any Award, unless and until the Administrator has determined, with advice of counsel (to the extent the Administrator deems such advice necessary or advisable), that the issuance and delivery of such certificates is in compliance with all applicable laws, regulations of governmental authorities and, if applicable, the requirements of any exchange on which the shares of Stock are listed, quoted or traded. All Stock certificates delivered pursuant to the Plan shall be subject to any stop-transfer orders and other restrictions as the Administrator deems necessary or advisable to comply with federal, state or foreign jurisdiction, securities or other laws, rules and quotation system on which the Stock is listed, quoted or traded. The Administrator may place legends on any Stock certificate to reference restrictions applicable to the Stock. In addition to the terms and conditions provided herein, the Administrator may require that an individual make such reasonable covenants, agreements, and representations as the Administrator, in its discretion, deems necessary or advisable in order to comply with any such laws, regulations, or requirements. The Administrator shall have the right to require any individual to comply with any timing or other restrictions with respect to the settlement or exercise of any Award, including a window-period limitation, as may be imposed in the discretion of the Administrator.

(c) Stockholder Rights. Until Stock is deemed delivered in accordance with Section 19(b), no right to vote or receive dividends or any other rights of a stockholder will exist with respect to shares of Stock to be issued in connection with an Award,

notwithstanding the exercise of a Stock Option or any other action by the grantee with respect to an Award.

(d) Other Compensation Arrangements; No Employment Rights. Nothing contained in this Plan shall prevent the Board from adopting other or additional compensation arrangements, including trusts, and such arrangements may be either generally applicable or applicable only in specific cases. The adoption of this Plan and the grant of Awards do not confer upon any employee any right to continued employment with the Company or any Subsidiary.

(e) Trading Policy Restrictions. Option exercises and other Awards under the Plan shall be subject to the Company's insider trading policies and procedures, as in effect from time to time.

(f) Clawback Policy. Awards under the Plan shall be subject to the Company's clawback policy, as in effect from time to time.

SECTION 20. EFFECTIVE DATE OF PLAN

This Plan, as amended, became effective on the Effective Date. No grants of Stock Options and other Awards may be made hereunder after August 31, 2017 and no grants of Incentive Stock Options may be made hereunder after June 30, 2027.

SECTION 21. GOVERNING LAW

This Plan and all Awards and actions taken thereunder shall be governed by, and construed in accordance with, the laws of the state of incorporation of the Company, applied without regard to conflict of law principles.

DATE APPROVED BY BOARD OF DIRECTORS: June 2, 2021

DATE APPROVED BY STOCKHOLDERS: August 27, 2021

