FORM S-8

Initial registration statement for securities to be offered to employees pursuant to employee benefit plans

Filing Date: **2022-01-13**
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424 TOWNSEND STREET
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As filed with the United States Securities and Exchange Commission on January 12, 2022.

Registration No. 333-

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549
FORM S-8
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

EMBARK TECHNOLOGY, INC.

(Exact Name of Registrant as Specified in Its Charter)

Delaware	**85-334695**
(State or Other Jurisdiction of Incorporation or Organization)	(I.R.S. Employer Identification No.)

424 Townsend Street
San Francisco, California 94107
(415) 671-9628
(Address, Including Zip Code, and Telephone Number, Including Area Code, of Registrant's Principal Executive Offices)

Embark Technology, Inc. 2021 Incentive Award Plan
Embark Technology, Inc. 2021 Employee Stock Purchase Plan
Embark Trucks Inc. Amended and Restated 2016 Stock Plan
(Full title of the plan)

Richard Hawwa
Chief Financial Officer
Embark Technology, Inc.
424 Townsend Street
San Francisco, California 94107
(415) 671-9628
(Name, Address, Including Zip Code, and Telephone Number, Including Area Code, of Agent for Service)

Copies to:

Rachel W. Sheridan **Shagufa R. Hossain** **Samuel D. Rettew** **Latham & Watkins LLP** **555 Eleventh Street, NW, Suite 1000** **(202) 637-2200**	**Siddhartha Venkatesan** **Chief Legal Officer** **Embark Technology, Inc.** **424 Townsend Street** **San Francisco, California 94107** **(415) 671-9628**

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 7(a)(2)(B) of the Securities Act ☐

CALCULATION OF REGISTRATION FEE

Title of Each Class of Securities to be Registered	Amount to be Registered (1)	Proposed Maximum Offering Price per Share	Proposed Maximum Aggregate Offering Price	Amount of Registration Fee
Embark Technology, Inc. 2021 Incentive Award Plan Class A common stock, par value $0.0001 per share	76,873,776 (2)	$5.44 (4)	$418,193,341.44	$38,776.52
Embark Technology, Inc. 2021 Employee Stock Purchase Plan Class A common stock, par value $0.0001 per share	15,374,754 (3)	$5.44 (4)	$83,638,661.76	$7,753.30
Embark Trucks Inc. 2016 Stock Plan (Options) Class A common stock, par value $0.0001 per share	25,403,984	$0.204 (5)	$5,182,412.74	$480.41
Embark Trucks Inc. 2016 Stock Plan (Restricted Stock Units) Class A common stock, par value $0.0001 per share	54,338,520	$5.44 (6)	$295,601,548.80	$27,402.26
TOTAL	171,991,034	—	—	$74,402.49

(1) Pursuant to Rule 416(a) of the Securities Act of 1933, as amended (the "***Securities Act***"), this Registration Statement also covers any additional shares of Class A common stock, par value $0.0001 per share (the "***Class A Common Stock***"), of Embark Technology, Inc. (the "***Registrant***") that become issuable under the Embark Technology, Inc. 2021 Incentive Award Plan (the "***2021 Plan***"), the Embark Technology, Inc. 2021 Employee Stock Purchase Plan (the "***ESPP***"), and the Embark Trucks Inc. 2016 Stock Plan (the "***2016 Plan***"), as applicable, by reason of any future share splits, share dividends, recapitalizations or any other similar transactions effected without the receipt of consideration by the Registrant, which results in an increase in the number of outstanding shares of Class A Common Stock.

(2) Represents 76,873,776 shares of Class A Common Stock reserved for future issuance under the 2021 Plan, which number consists of (a) 58,713,535 shares of Class A Common Stock initially available for issuance under the 2021 Plan and (b) 18,160,241 shares of Class A Common Stock that became issuable under the 2021 Plan pursuant to its terms on January 1, 2022. The total number of shares of Class A Common Stock reserved for issuance under the 2021 Plan will continue to automatically increase on the first day of each calendar year, beginning with calendar year 2023, by (A) 5% of the total outstanding shares of Class A Common Stock on the last day of the immediately preceding calendar year and (B) such smaller number of shares as is determined by the Registrant's board of directors (the "***Board***").

(3) Represents 15,374,754 shares reserved for future issuance under the ESPP, which number consists of (a) 11,742,707 shares of Class A Common Stock initially available for issuance under the ESPP and (b) 3,632,047 shares of Class A Common Stock that became issuable under the ESPP pursuant to its terms on January 1, 2022. The total number of shares of Class A Common Stock reserved for issuance under the ESPP will continue to automatically increase on the first day of each calendar year, beginning with calendar year 2023, by a number of shares equal to the lesser of (A) 1% of the total number of outstanding shares of Class A Common Stock on the last day of the immediately preceding calendar year and (B) such smaller number of shares as is determined by the Board.

(4) Estimated solely for the purpose of calculating the registration fee in accordance with Rule 457(c) and Rule 457(h) of the Securities Act based on the average of the high and low prices of a share of the Registrant's Class A Common Stock on the Nasdaq Global Market on January 12, 2022.

(5) Estimated solely for the purpose of calculating the registration fee with respect to the shares issuable under stock options, in accordance with Rule 457(h) of the Securities Act, based on the weighted-average exercise price of previously granted stock options that remain outstanding under the 2016 Plan ($0.204 per share).

(6) Estimated solely for the purpose of calculating the registration fee with respect to the shares issuable under restricted stock units, under Rule 457(c) of the Securities Act, based on the average of the high and low prices of a share of the Registrant's Class A Common Stock on the Nasdaq Global Market on January 12, 2022.

PART I
INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

Item 1. Plan Information.*

Item 2. Registrant Information and Employee Plan Annual Information.*

* The documents containing the information specified in Part I will be delivered in accordance with Rule 428(b)(1) under the Securities Act. Such documents are not required to be, and are not, filed with the U.S. Securities and Exchange Commission (the "***SEC***"), either as part of this Registration Statement or as prospectuses or prospectus supplements pursuant to Rule 424 under the Securities Act. These documents, and the documents incorporated by reference into this Registration Statement pursuant to Item 3 of Part II of this Form S-8, taken together, constitute a prospectus that meets the requirements of Section 10(a) of the Securities Act.

PART II
INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The Registrant is incorporating by reference into this Registration Statement the filings listed below and any additional documents that the Registrant may file with the SEC pursuant to Section 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934, as amended, after the date of this Registration Statement, but prior to the filing of a post-effective amendment which indicates that all securities offered hereby have been sold or which deregisters all securities then remaining unsold, except the Registrant is not incorporating by reference any information furnished (but not filed) under Item 2.02 or Item 7.01 of any Current Report on Form 8-K and corresponding information furnished under Item 9.01 as an exhibit thereto:

- the Registrant's 424(b)(3) prospectus, dated December 13, 2021 and filed with the SEC on December 14, 2021; and
- the description of the Registrant's shares of Common Stock contained in the Registrant's Form 8-A12B filed with the SEC on November 10, 2021, including any amendment or report filed for the purpose of updating such descriptions.

Any statement contained in this Registration Statement, or in a document incorporated or deemed to be incorporated by reference herein, shall be deemed to be modified or superseded to the extent that a statement contained herein, or in any subsequently filed document that also is incorporated or deemed to be incorporated by reference herein, modifies or supersedes such statement. Any statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement.

Item 4. Description of Securities.

Not applicable.

Item 5. Interests of Named Experts and Counsel.

Not applicable.

Item 6. Indemnification of Directors and Officers.

Section 145 of the Delaware General Corporation Law (the "***DGCL***") permits a corporation to indemnify its directors and officers against expenses, including attorneys' fees, judgments, fines and amounts paid in settlements actually and reasonably incurred by them in connection with any action, suit or proceeding brought by third parties. The directors or officers must have acted in good faith and in a manner they reasonably believed to be in or not opposed to the best interests of the corporation and, with respect to any criminal action or proceeding, had no reason to believe their conduct was unlawful. In a derivative action, an action only by or in the right of the corporation, indemnification may be made only for expenses actually and reasonably incurred by directors and officers in connection with the defense or settlement of an action or suit, and only with respect to a matter as to which they must have acted in good faith and in a manner they reasonably believed to be in or not opposed to the best interests of the corporation. No indemnification may be made if such person must have been adjudged liable to the corporation, unless and only to the extent that the court in which the action or suit was brought must determine upon application that the defendant officers or directors are fairly and reasonably entitled to indemnity for such expenses despite such adjudication of liability. The current certificate of incorporation and the bylaws of the Registrant provide for indemnification by the Registrant of its directors, senior officers and employees to the fullest extent permitted by applicable law.

Section 102(b)(7) of the DGCL permits a corporation to provide in its charter that a director of the corporation must not be personally liable to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (1) for any breach of the director's duty of loyalty to the corporation or its stockholders, (2) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (3) for payments of unlawful dividends or unlawful stock purchases or redemptions or (4) for any transaction from which the director derived an improper personal benefit. The current certificate of incorporation of the Registrant provides for such limitation of liability.

The Registrant has entered into indemnification agreements with each of its directors and officers pursuant to which it has agreed to indemnify, defend and hold harmless, and also advance expenses as incurred, to the fullest extent permitted under applicable law, from damage arising from the fact that such person is or was an officer or director of the Registrant or one of its subsidiaries.

The indemnification rights set forth above shall not be exclusive of any other right which an indemnified person may have or hereafter acquire under any statute, our amended and restated certificate of incorporation, our amended and restated bylaws, any agreement, any vote of stockholders or disinterested directors or otherwise.

The Registrant maintains standard policies of insurance that provide coverage (1) to its directors and officers against loss rising from claims made by reason of breach of duty or other wrongful act and (2) to the Registrant with respect to indemnification payments that it may make to such directors and officers.

The Registrant has purchased and intends to maintain insurance on behalf of the Registrant and any person who is or was a director or officer against any loss arising from any claim asserted against him or her and incurred by him or her in that capacity, subject to certain exclusions and limits of the amount of coverage.

Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits.

Exhibit No.	Description
4.1	Second Amended and Restated Certificate of Incorporation of Northern Genesis Acquisition Corp. II (incorporated by reference to Exhibit 3.1 of the Registrant's Current Report on Form 8-K filed with the SEC on November 15, 2021).

4.2	Bylaws of Embark Technology, Inc. (incorporated by reference to Exhibit 3.2 of the Registrant's Current Report on Form 8-K filed with the SEC on November 15, 2021).
4.3	Specimen Class A Common Stock Certificate of Embark Technology, Inc. (incorporated by reference to Exhibit 4.6 to Amendment No. 4 to the Registration Statement on Form S-4 (File No. 333-257647) filed with the SEC on October 13, 2021).
5.1	Opinion of Latham & Watkins LLP (filed herewith).
10.1	Form of Founder Award Agreement (filed herewith).
23.1	Consent of Marcum LLP (filed herewith).
23.2	Consent of Deloitte & Touche LLP (filed herewith).
23.3	Consent of Latham & Watkins LLP (included in Exhibit 5.1 to this Registration Statement).
24.1	Power of Attorney (included on the signature page to this Registration Statement).
99.1	Embark Trucks Inc. Amended and Restated 2016 Stock Plan (incorporated by reference to Exhibit 10.15 to the Registration Statement on Form S-4 (File No. 333-257647), filed with the SEC on July 2, 2021).
99.2	Embark Technology, Inc. 2021 Incentive Award Plan (incorporated by reference to Annex E to Amendment No. 4 to the Registration Statement on Form S-4 (File No. 333-257647), filed with the SEC on October 13, 2021).
99.3	Embark Technology, Inc. 2021 Employee Stock Purchase Plan (incorporated by reference to Annex F to Amendment No. 4 to the Registration Statement on Form S-4 (File No. 333-257647), filed with the SEC on October 13, 2021).

Item 9. Undertakings.

(a) The undersigned Registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:

(i) to include any prospectus required by Section 10(a)(3) of the Securities Act;

(ii) to reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the SEC pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than 20 percent change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement; and

(iii) to include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement;

provided, however, that:

Paragraphs (a)(1)(i) and (ii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the SEC by the Registrant pursuant to Section 13 or Section 15(d) of the Securities and Exchange Act of 1934, as amended (the "***Exchange Act***"), that are incorporated by reference in the registration statement.

(2) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(4) That, for the purpose of determining liability under the Securities Act to any purchaser:

(i) Each prospectus filed by a Registrant pursuant to Rule 424(b)(3) shall be deemed to be part of the registration statement as of the date the filed prospectus was deemed part of and included in the registration statement; and

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(ii) Each prospectus required to be filed pursuant to Rule 424(b)(2), (b)(5) or (b)(7) as part of a registration statement in reliance on Rule 430B relating to an offering made pursuant to Rule 415(a)(1)(i), (vii) or (x) for the purpose of providing the information required by Section 10(a) of the Securities Act shall be deemed to be part of and included in the registration statement as of the earlier of the date such form of prospectus is first used after effectiveness or the date of the first contract of sale of securities in the offering described in the prospectus. As provided in Rule 430B, for liability purposes of the issuer and any person that is at that date an underwriter, such date shall be deemed to be a new effective date of the registration statement relating to the securities in the registration statement to which that prospectus relates, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof. *Provided*, *however*, that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such effective date, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such effective date.

(5) That, for the purpose of determining liability of the Registrant under the Securities Act to any purchaser in the initial distribution of the securities, the undersigned Registrant undertakes that in a primary offering of securities of the undersigned Registrant pursuant to this registration statement, regardless of the underwriting method used to sell the securities to the purchaser, if the securities are offered or sold to such purchaser by means of any of the following communications, the undersigned Registrant will be a seller to the purchaser and will be considered to offer or sell such securities to such purchaser:

(i) Any preliminary prospectus or prospectus of the undersigned Registrant relating to the offering required to be filed pursuant to Rule 424;

(ii) Any free writing prospectus relating to the offering prepared by or on behalf of the undersigned Registrant or used or referred to by the undersigned Registrant;

(iii) The portion of any other free writing prospectus relating to the offering containing material information about the undersigned Registrant or its securities provided by or on behalf of the undersigned Registrant; and

(iv) Any other communication that is an offer in the offering made by the undersigned Registrant to the purchaser.

(b) The undersigned Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the Registrant's annual report pursuant to Section 13(a) or 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Exchange Act) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

(c) Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions, or otherwise, the Registrant has been advised that in the opinion of the SEC such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of San Francisco, State of California, on January 12, 2022.

Embark Technology, Inc.

/s/ Richard Hawwa

Name: Richard Hawwa
Title: Chief Financial Officer

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints each of Richard Hawwa and Siddhartha Venkatesan, acting alone or with another attorney-in-fact, his or her true and lawful attorney-in-fact and agent, with full power of substitution and resubstitution, for such person and in his or her name, place and stead, in any and all capacities, to sign any and all amendments to the Registration Statement on Form S-8 of Embark Technology, Inc. and any subsequent registration statements related thereto pursuant to Instruction E to Form S-8 (and all further amendments, including post-effective amendments thereto), and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission (the "***SEC***"), and generally to do all such things in their names and behalf in their capacities as officers and directors to enable the registrant to comply with the provisions of the Securities Act of 1933, as amended, and all requirements of the SEC, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith, as fully to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or any of them, or their or his or her substitutes or substitute, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, as amended, this Registration Statement has been signed by the following persons in the capacities indicated.

Signature	Capacity in Which Signed	Date
/s/ Alex Rodrigues Alex Rodrigues	Director and Chief Executive Officer (Principal Executive Officer)	January 12, 2022
/s/ Brandon Moak Brandon Moak	Director and Chief Technology Officer	January 12, 2022
/s/ Richard Hawwa Richard Hawwa	Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer)	January 12, 2022
/s/ Elaine Chao Elaine Chao	Director	January 12, 2022
/s/ Patricia Chiodo Patricia Chiodo	Director	January 12, 2022
/s/ Patrick Grady Patrick Grady	Director	January 12, 2022
/s/ Ian Robertson Ian Robertson	Director	January 12, 2022

Exhibit 5.1

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LATHAM & WATKINS LLP

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Milan	

January 12, 2022

Embark Technology, Inc.
424 Townsend Street
San Francisco, CA 94107

Re: Embark Technology, Inc, – Registration Statement on Form S-8

To the addressees set forth above:

We have acted as special counsel to Embark Technology, Inc., a Delaware corporation (the "Company"), in connection with the registration by the Company of (i) 76,873,776 shares of its Class A common stock, $0.0001 par value per share (the "Class A Common Stock"), issuable under the Embark Technology, Inc. 2021 Incentive Award Plan (the "2021 Plan"), (ii) 15,374,754 shares of its Class A Common Stock issuable under the Embark Technology, Inc. 2021 Employee Stock Purchase Plan (the "ESPP"), and (iii) 79,742,504 shares of the Class A Common Stock issuable under the Embark Trucks Inc. 2016 Stock Plan (the "2016 Plan"), shares in the foregoing clauses (i), (ii) and (iii), collectively, the "Shares". The Shares are included in a registration statement on Form S-8 under the Securities Act of 1933, as amended (the "Act"), filed with the Securities and Exchange Commission (the "Commission") on January 12, 2022 (the "Registration Statement"). This opinion is being furnished in connection with the requirements of Item 601(b)(5) of Regulation S-K under the Act, and no opinion is expressed herein as to any matter pertaining to the contents of the Registration Statement or the related prospectus, other than as expressly stated herein with respect to the issue of the Shares.

As such counsel, we have examined such matters of fact and questions of law as we have considered appropriate for purposes of this letter. With your consent, we have relied upon certificates and other assurances of officers of the Company and others as to factual matters without having independently verified such factual matters. We are opining herein as to the General Corporation Law of the State of Delaware (the "DGCL") and we express no opinion with respect to any other laws.

Subject to the foregoing and the other matters set forth herein, it is our opinion that, as of the date hereof, when the Shares shall have been duly registered on the books of the transfer agent and registrar therefor in the name or on behalf of the recipients thereof, and have been issued by the Company against payment therefor in the circumstances contemplated by and pursuant to the 2021 Plan, the ESPP and the 2016 Plan, as applicable, and assuming in each case that the individual issuances, grants or awards under the 2021 Plan, the ESPP and the 2016 Plan, as applicable, are duly authorized by all necessary corporate action and duly issued, granted or awarded and exercised in accordance with the requirements of law and the 2021 Plan, the ESPP and the 2016 Plan, as applicable (and the agreements and awards duly adopted thereunder and in accordance therewith), the issue and sale of the Shares will have been duly authorized by all necessary corporate action of the Company, and the Shares will be validly issued, fully paid and nonassessable. In rendering the foregoing

opinion, we have assumed that the Company will comply with all applicable notice requirements regarding uncertificated shares in the DGCL.

This opinion is for your benefit in connection with the Registration Statement and may be relied upon by you and by persons entitled to rely upon it pursuant to the applicable provisions of the Act. We consent to your filing this opinion as an exhibit to the Registration Statement. In giving such consent, we do not thereby admit that we are in the category of persons whose consent is required under Section 7 of the Act or the rules and regulations of the Commission thereunder.

Sincerely,

Latham & Watkins LLP

Exhibit 10.1

EMBARK TRUCKS INC.

2016 STOCK PLAN

NOTICE OF RESTRICTED STOCK UNIT GRANT

Embark Trucks Inc., a Delaware corporation (the "Company") grants you an award of restricted stock units, each of which represents the right to receive, in accordance with the Restricted Stock Unit Award Agreement, attached hereto as Exhibit A (the "Agreement") and the Embark Trucks Inc. 2016 Stock Plan (amended as of June 28, 2021), as amended from time to time (the "Plan"), one share of Common Stock, as follows:

Participant	[_____]
Grant Date:	[_____]
Total Number of RSUs:	[_____]
Vesting Commencement Date:	*See Vesting Schedule*
Vesting Schedule:	Subject to the "Post-Sale Transaction Vesting" noted below and any forfeiture contemplated by Sections 2.4 or 2.5 of the Agreement, two vesting requirements must be satisfied in order for an RSU to vest — (a) a liquidity event requirement (the "Liquidity Event Requirement"), and (b) a performance-based requirement (the "Performance-Based Requirement"). No RSUs will vest (in whole or in part) if only one (or if neither) of such requirements is satisfied and, to the extent the Liquidity Event Requirement is not satisfied by December 31, 2021, the Participant shall immediately forfeit any and all RSUs granted under this Agreement. **Liquidity Event Requirement**: The Liquidity Event Requirement will be satisfied (as to any then-outstanding RSU that has not theretofore been terminated pursuant to Sections 2.4 or 2.5 of the Agreement) on the effective date of a Public Offering (as defined in the Agreement); provided that such date must occur on or prior to December 31, 2021. **Performance-Based Requirement:** The Performance-Based Requirement will be satisfied in substantially equal installments of the RSUs upon the date of achievement by the Company of a Common Stock Price that equals or exceeds each of the following six share price thresholds: 2.0x Initial Base Price, 3.5x Initial Base Price, 5.0x Initial Base Price, 6.5x Initial Base Price, 8.0x Initial Base Price and 10.0x Initial Base Price (each, a "Vesting Date"); provided that the first date on which achievement is calculated will be the first anniversary of the consummation of the Public Offering (or, if earlier, the date of consummation of any Sale Transaction) and no Vesting Date shall occur prior to such date. The parties acknowledge and agree that the six share price thresholds contained in this Agreement shall be subject to adjustment pursuant to Section 11 of the Plan (including, without limitation, adjustments to take into account any Public Offering (or any transactions related thereto) or any stock split, stock dividend or similar event).

Notwithstanding the foregoing, (a) the number of RSUs that will vest on any Vesting Date shall be rounded down to the nearest whole share and any fractional RSUs reduced by such rounding shall be aggregated and any whole RSUs resulting from such aggregation shall vest on the immediately subsequent Vesting Date and (b) unless otherwise determined by the Administrator, no RSU shall be eligible to vest at any time on or following the tenth anniversary of the Grant Date and any unvested

RSUs as of such date shall be automatically forfeited for no consideration. For the avoidance of doubt, the Participant shall only be eligible to vest into one installment of the RSUs in respect of achievement of each share price threshold; provided if on any date the Common Stock Price is determined to result in more than one Performance-Based Requirement being met for the first time, each Initial Base Price multiple achieved for the first time shall vest on such date.

"Common Stock Price" means, as of any date following the effectiveness of the Public Offering, the volume weighted average price of a share of Common Stock on the primary exchange on which it is listed during the 90 consecutive calendar days ending on (and including) such date; provided that, on the date of a Sale Transaction (as defined in the Agreement), the Common Stock Price shall equal the Fair Market Value of a share of Common Stock, taking into account the terms and conditions of such Sale Transaction. Absent a Sale Transaction, the first date the Common Stock Price may be determine is as of the first anniversary of the closing of the Public Offering.

"Initial Base Price" means $29.87 (which, for the avoidance of doubt, will be subject to adjustment pursuant to Section 11 of the Plan (including, without limitation, adjustments or share conversions to take into account any Public Offering or any transactions related thereto).

Post-Sale Transaction Vesting

The date of consummation of a Sale Transaction shall be deemed a Vesting Date to the extent the Common Stock Price on such date meets one or more thresholds in the "Performance-Based Requirement" paragraph in accordance with the Vesting Schedule set forth above. Following such vesting, twenty percent (20%) of any remaining unvested RSUs shall remain outstanding and eligible to vest in equal installments on each of the first four anniversaries of the date of such Sale Transaction, subject to any forfeiture pursuant to Section 2.4 or 2.5 of the Agreement (including Sections 2.4(a) and (c) and 2.5(b) and (c), but excluding Section 2.4(b)) without regard to the tenth year anniversary limit for vesting set forth in the Performance-Based Requirement or the three year anniversary limit for vesting set forth in Section 2.5(b); provided that upon termination of the Participant's Continuous Service Status as a result of termination by the Company without Cause (including a mutually agreed upon termination between the Participant and the Board) or his resignation with Good Reason, in each case, within twelve months following a Sale Transaction, the unvested RSUs, as of the date of such termination, shall vest on the date of such termination. Any RSUs granted under this Agreement that have not vested on or prior to the date of such Sale Transaction and do not remain outstanding and eligible to vest pursuant to this paragraph shall be immediately forfeited as of the date of such Sale Transaction.

Settlement Date

With respect to each Vesting Date, the "Settlement Date" shall be the earliest of (i) the second anniversary of such Vesting Date, (ii) the date of consummation of a Sale Transaction occurring on or after such Vesting Date, or (iii) termination of Continuous Service Status due to death or Disability occurring on or after such Vesting Date (provided such termination constitutes a "separation from service" for purposes of Section 409A of the Code), subject to Section 3.19 of the Agreement. Notwithstanding the foregoing, the Company may, in its sole discretion, accelerate the Settlement Date of a portion of the RSUs that vest on a Vesting Date up to the extent permitted to cover taxes under Treasury Regulation 1.409A-3(j)(4)(vi).

Transferability

You may not transfer the RSUs except as set forth in Section 2.2 of the Agreement (subject to compliance with Applicable Laws).

By your signature and the signature of the Company's representative or by otherwise accepting the RSUs, you and the Company agree that the RSUs are granted under and governed by the terms and conditions of this Notice, the Plan and the Agreement, which is attached to and made a part of this Notice.

In addition, you agree and acknowledge that your rights to any Shares underlying the RSUs will vest only as you provide services to the Company over time, that the grant of the RSUs is not as consideration for services you rendered to the Company prior to your date

of hire, and that nothing in this Notice or the attached documents confers upon you any right to continue your employment or consulting relationship with the Company for any period of time, nor does it interfere in any way with your right or the Company's right to terminate that relationship at any time, for any reason, with or without cause, subject to Applicable Laws. In consideration for the RSUs set forth herein, you acknowledge and agree that, unless otherwise determined by the Administrator, you shall not be entitled to any other equity awards from the Company (or any successor thereto) unless and until one of the following events occurs: (a) all of the RSUs have vested in accordance with the vesting schedule set forth in the Grant Notice and are settled in Shares in accordance with the Agreement, (b) the RSUs are forfeited due to a Public Offering failing to occur on or prior to December 31, 2021, or (c) the tenth anniversary of the Grant Date.

THE COMPANY:

EMBARK TRUCKS INC.

By: _____

PARTICIPANT:

[PARTICIPANT NAME]

_____
(Signature)

Address:

_____

_____

EXHIBIT A
TO RESTRICTED STOCK UNIT AWARD GRANT NOTICE

RESTRICTED STOCK UNIT AWARD AGREEMENT

Pursuant to the Restricted Stock Unit Award Grant Notice (the "Grant Notice") to which this Restricted Stock Unit Award Agreement (this "Agreement") is attached Embark Trucks, Inc., a Delaware corporation (the "Company"), has granted to the Participant the number of restricted stock units ("Restricted Stock Units" or "RSUs") set forth in the Grant Notice under the Embark Trucks Inc. 2016 Stock Plan (amended as of June 28, 2021), as amended from time to time (the "Plan"). Each vested Restricted Stock Unit represents the right to receive one share of Common Stock ("Share"). Capitalized terms not specifically defined herein shall have the meanings specified in the Plan and the Grant Notice.

ARTICLE I.

GENERAL

Section 1.1 Incorporation of Terms of Plan. The RSUs are subject to the terms and conditions of the Plan, which are incorporated herein by reference. In the event of any inconsistency between the Plan and this Agreement, the terms of the Plan shall control; provided that, for the avoidance of doubt, references to "Board" for purposes of the Grant Notice and this Agreement shall mean the Board of Directors of the Company or any successor thereto in connection with a Public Offering or otherwise, and any actions or consents by the Board hereunder shall require approval by a vote of disinterested members of the Board that itself is sufficient to constitute Board approval in accordance with the Company's applicable organizational documents.

ARTICLE II.

GRANT OF RESTRICTED STOCK UNITS

Section 2.1 Grant of RSUs. Pursuant to the Grant Notice and upon the terms and conditions set forth in the Plan and this Agreement, effective as of the Grant Date set forth in the Grant Notice, the Company hereby grants to the Participant an award of RSUs under the Plan in consideration of the Participant's past and/or continued employment with or service to the Company or any affiliates and for other good and valuable consideration.

Section 2.2 Unsecured Obligation to RSUs. Unless and until the RSUs have vested in the manner set forth in Article 2 hereof, the Participant will have no right to receive Common Stock underlying any such RSUs. Prior to actual settlement of any RSUs, such RSUs will represent an unsecured obligation of the Company, payable (if at all) only from the general assets of the Company. The RSUs may not be transferred in any manner otherwise than as set forth in Section 12 of the Plan. The terms of the RSUs shall be binding upon the executors, administrators, heirs, successors and assigns of the Participant.

Section 2.3 Vesting Schedule. The RSUs shall vest and become nonforfeitable with respect to the applicable portion thereof according to the vesting schedule set forth in the Grant Notice.

Section 2.4 Termination of Continuous Service Status. Unless otherwise determined by the Administrator:

(a) Upon termination of the Participant's Continuous Service Status as a result of his resignation without Good Reason or due to his death or Disability, the Participant shall immediately forfeit any and all RSUs granted under this Agreement that have not vested on or prior to the date of such termination;

(b) Upon termination of the Participant's Continuous Service Status as a result of termination by the Company without Cause (including a mutually agreed upon termination between the Participant and the Board) or his resignation with Good Reason (after taking into account any accelerated vesting set forth in the Grant Notice), a percentage of the then-unvested RSUs, as of the date of such termination, shall remain outstanding and eligible to vest in accordance with Section 2.3 through the third anniversary of the date of such termination, and, except for the RSUs eligible to continue to vest under this Section 2.4(b), the Participant shall immediately forfeit any and all other RSUs granted under this Agreement that have not vested on or prior to the date of such termination. The percentage of the unvested RSUs that would remain outstanding and eligible to vest following such a termination is set forth on Exhibit B and any such RSUs that have not vested on or prior to the third anniversary of the date of such termination shall be immediately forfeited on such anniversary; and

(c) Upon termination of the Participant's Continuous Service Status as a result of termination by the Company for Cause, the RSUs, whether or not vested, shall be forfeited on such date.

Section 2.5 Change in Role.

(a) If the Participant no longer serves as the Chief Executive Officer of the Company, but transitions to another full-time role within the C-suite of the Company, reporting to the new Chief Executive Officer of the Company or the Board (or the successor thereto), the unvested portion of the Participant's RSUs as of the date of such transition will be reduced to seven-thirteenths (7/13ths) of the number of RSUs as of immediately prior to such reduction (for example, if Participant transitions to another C-suite role after achievement of three Vesting Dates, Participant's remaining 4,871,835 unvested RSUs shall be reduced to 7/13ths of this amount, or 2,623,295 unvested RSUs eligible to vest over the three remaining Vesting Dates under this Award) and shall otherwise remain outstanding and eligible to vest in accordance with Section 2.3, subject to Section 2.4, and, except for the RSUs eligible to continue to vest under this Section 2.5(a), the Participant shall immediately forfeit any and all other RSUs granted under this Agreement that have not vested on or prior to the date of such transition.

(b) If the Participant no longer serves as the Chief Executive Officer of the Company, but transitions to any role within the Company and its Subsidiaries not set forth in Section 2.5(a), a portion of the unvested RSUs as of the date of such transition shall remain outstanding and eligible to vest in accordance with Section 2.3 through the third anniversary of the date of transition, subject to Section 2.4, and, except for the RSUs eligible to continue to vest under this Section 2.5(b), the Participant shall immediately forfeit any and all other RSUs granted under this Agreement that have not vested on or prior to the date of such transition. The portion of the unvested RSUs that remains outstanding and eligible to vest is set forth on Exhibit B and any such RSUs that have not vested on or prior to the third anniversary of the date of such transition shall be immediately forfeited on such anniversary.

Section 2.6 Tax-Related Items. As a condition to the grant, vesting and settlement of the RSUs and as further set forth in Section 10 of the Plan, the Participant hereby agrees to make adequate provision for the satisfaction of (and will indemnify the Company and any Subsidiary or Affiliate for) any applicable taxes or tax withholdings, social contributions, required deductions, or other payments, if any ("Tax-Related Items"), which arise upon the grant, vesting or settlement of the RSUs, ownership or disposition of Shares, receipt of dividends, if any, or otherwise in connection with the RSUs or the Shares, whether by withholding, direct payment to the Company, or otherwise as determined by the Company in its sole discretion. Regardless of any action the Company or any Subsidiary or Affiliate takes with respect to any or all applicable Tax-Related Items, Participant acknowledges and agrees that the ultimate liability for all Tax-Related Items is and remains Participant's responsibility and may exceed any amount actually withheld by the Company or any Subsidiary or Affiliate. Participant further acknowledges and agrees that Participant is solely responsible for filing all relevant documentation that may be required in relation to RSUs or any Tax-Related Items (other than filings or documentation that is the specific obligation of the Company or any Subsidiary or Affiliate pursuant to Applicable Law), such as but not limited to personal income tax returns or reporting statements in relation to the grant, vesting or settlement of the RSUs, the holding of Shares or any bank or brokerage account, the subsequent sale of Shares, and the receipt of any dividends. Participant further acknowledges that the Company makes no representations or undertakings regarding the treatment of any Tax-Related Items and does not commit to and is under no obligation to structure the terms or any aspect of the RSUs to reduce or eliminate Participant's liability for Tax-Related Items or achieve any particular tax result. Participant also understands that Applicable Laws may require varying Share valuation methods for purposes of calculating Tax-Related Items, and the Company assumes no responsibility or liability in relation to any such valuation or for any calculation or reporting of income or Tax-Related Items that may be required of Participant under Applicable Laws. Further, if Participant has become subject to Tax-Related Items in more than one jurisdiction, Participant acknowledges that the Company or any Subsidiary or Affiliate may be required to withhold or account for Tax-Related Items in more than one jurisdiction.

Section 2.7 Issuance of Common Stock upon Vesting.

(a) Within ninety (90) days following the applicable Settlement Date of any RSUs that vest pursuant to Section 2.3 hereof, the Company shall deliver to the Participant a number of Shares (either by delivering one or more certificates for such shares of Common Stock or by entering such shares of Common Stock in book entry form, as determined by the Company in its sole discretion) equal to the number of RSUs subject to this Award that vest on the applicable Vesting Date associated with such Settlement Date, unless such RSUs are forfeited prior to the applicable Settlement Date pursuant to Sections 2.4 or 2.5 hereof. Notwithstanding the foregoing, the Company may delay a distribution or payment in settlement of RSUs if it reasonably determines that such payment or distribution will violate federal securities laws or any other Applicable Laws, *provided* that such distribution or payment shall be made at the earliest date at which the Company reasonably determines that the making of such distribution or payment will not cause such violation, as required by Treasury Regulation Section 1.409A-2(b)(7)(ii), and provided further that no payment or distribution shall be delayed under this Section 2.7(a) if such delay will result in a violation of Section 409A of the Code.

Section 2.8 Conditions to Delivery of Shares. The Company is not obligated, and will have no liability for failure to issue or deliver any Shares upon the settlement of the RSUs unless such issuance or delivery would comply with the Applicable Laws, with such compliance determined by the Company in consultation with its legal counsel. Furthermore, the Participant understands that the Applicable Laws of the country in which the Participant is residing or working at the time of grant, vesting or settlement of the RSUs (including any rules or regulations governing securities, foreign exchange, tax, labor or other matters) may restrict or prevent settlement of the RSUs. The RSUs may not be settled until such time as the Plan has been approved by the holders of capital stock of the Company, or if the issuance of such Shares upon such settlement or the method of payment of consideration for such Shares would constitute a violation of any Applicable Laws, including any applicable U.S. federal or state securities laws or any other law or regulation, including any rule under Part 221 of Title 12 of the Code of Federal Regulations as promulgated by the Federal Reserve Board. As a condition to the issuance or delivery of the Shares, the Company may require the Participant to make any representation and warranty to the Company as may be required by the Applicable Laws. Assuming such compliance, for U.S. income tax purposes, the Shares shall be considered transferred to the Participant on the date on which the Company initiates payment of the Shares in settlement of the RSUs, subject to Applicable Laws.

Section 2.9 Rights as Stockholder. The holder of the RSUs shall not be, nor have any of the rights or privileges of, a stockholder of the Company, including, without limitation, voting rights and rights to dividends, in respect of the RSUs and any shares of Common Stock underlying the RSUs and deliverable hereunder unless and until such shares of Common Stock shall have been issued by the Company and held of record by such holder (as evidenced by the appropriate entry on the books of the Company or of a duly authorized transfer agent of the Company). No adjustment shall be made for a dividend or other right for which the record date is prior to the date the shares of Common Stock are issued, except as provided in Section 11 of the Plan.

Section 2.10 Lock-Up Agreement**.** If so requested by the Company or the underwriters in connection with a Public Offering, the Participant shall not sell, make any short sale of, loan, grant any option for the purchase of, or otherwise dispose of any securities of the Company however or whenever acquired (except for those being registered) without the prior written consent of the Company or such underwriters, as the case may be, for 180 days from the effective date of the registration statement, plus such additional period, to the extent required by FINRA rules, up to a maximum of 216 days from the effective date of the registration statement, and the Participant shall execute an agreement reflecting the foregoing as may be requested by the Company or the underwriters at the time of such offering.

ARTICLE III.

OTHER PROVISIONS

Section 3.1 Effect of Agreement. The Participant acknowledges receipt of a copy of the Plan and represents that he or she is familiar with the terms and provisions thereof (and has had an opportunity to consult counsel regarding the RSU terms), and hereby accepts the RSUs and agrees to be bound by its contractual terms as set forth herein and in the Plan (including, without limitation, Section 11 of the Plan and any actions taken thereunder in respect of a Public Offering). The Participant hereby agrees to accept as binding, conclusive and final all decisions and interpretations of the Administrator regarding any questions relating to the RSUs. In the event of a conflict between the terms and provisions of the Plan and the terms and provisions of the Notice and this Agreement, the Plan terms and provisions shall prevail.

Section 3.2 Imposition of Other Requirements. The Company reserves the right, without the Participant's consent, to cancel or forfeit outstanding grants or impose other requirements on the Participant's participation in the Plan, on the RSUs and the Shares and on any other Award or Shares acquired under the Plan, to the extent the Company determines it is necessary or advisable in order to comply with Applicable Laws or facilitate the administration of the Plan in order to prevent adverse tax or other financial consequences to the Participant; provided that any such action that would adversely affect the Participant shall not be effective without the Participant's consent. The Participant agrees to sign any additional agreements or undertakings that may be necessary to accomplish the foregoing. Furthermore, the Participant acknowledges that the Applicable Laws of the country in which the Participant is residing or working at the time of grant, holding, vesting or settlement of the RSUs or the holding or sale of Shares received pursuant to the RSUs (including any rules or regulations governing securities, foreign exchange, tax, labor, or other matters) may subject the Participant to additional procedural or regulatory requirements that the Participant is and will be solely responsible for and must fulfill. If applicable, such requirements may be outlined in but are not limited to the Country-Specific Addendum (the "Addendum") attached hereto as Exhibit B, which forms part of this Agreement. Notwithstanding any provision herein, the Participant's participation in the Plan shall be subject to any applicable special terms and conditions or disclosures as set forth in the Addendum. The Participant also understands and agrees that if the Participant works, resides, moves to, or otherwise is or becomes subject to Applicable Laws or Company policies of another jurisdiction at any time, certain country-specific notices, disclaimers and/or terms and conditions may apply to him as from the date of grant, unless otherwise determined by the Company in its sole discretion.

Section 3.3 Electronic Delivery and Translation**.** The Company may, in its sole discretion, decide to deliver any documents related to the Participant's current or future participation in the Plan, the RSUs, the Shares, any other Listed Securities or any other Company-related documents, by electronic means. By accepting the RSUs, whether electronically or otherwise, the Participant hereby (i) consents to receive such documents by electronic means, (ii) consents to the use of electronic signatures, and (iii) if applicable, agrees to participate in the Plan and/or receive any such documents through an on-line or electronic system established and maintained by the Company or a third party designated by the Company, including but not limited to the use of electronic signatures or click-through electronic acceptance of terms and conditions. To the extent the Participant has been provided with a copy of this Agreement, the Plan, or any other documents relating to the RSUs in a language other than English, the English language documents will prevail in case of any ambiguities or divergences as a result of translation.

Section 3.4 No Acquired Rights or Employment Rights. In accepting the RSUs, the Participant acknowledges that the Plan is established voluntarily by the Company, is discretionary in nature, and may be modified, amended, suspended or terminated by the Company at any time. The grant of the RSUs is voluntary and occasional and does not create any contractual or other right to receive future grants of RSUs, other Awards or benefits in lieu of RSUs, even if RSUs have been granted repeatedly in the past, and all decisions with respect to future grants of RSUs or other Awards, if any, will be at the sole discretion of the Company. In addition, the Participant's participation in the Plan is voluntary, and the RSUs and the Shares are extraordinary items that do not constitute regular compensation for services rendered to the Company or any Subsidiary or Affiliate. The RSUs and the Shares are not intended to replace any pension rights or compensation and are not part of normal or expected salary or compensation for any purpose, including but not limited to calculating severance payments, if any, upon termination. Nothing contained in this Agreement is intended to constitute or create a contract of employment, nor shall it constitute or create the right to remain associated with or in the employ of the Company or any Subsidiary or Affiliate for any particular period of time. This Agreement shall not interfere in any way with the right of the Company or any Subsidiary or Affiliate to terminate the Participant's employment or service at any time, subject to Applicable Laws.

Section 3.5 Data Privacy. The Participant hereby explicitly and unambiguously consents to the collection, use and transfer, whether in electronic or other form, of the Participant's personal data (as described below) by and among, as applicable, the Company and any Subsidiary or Affiliate or third parties as may be selected by the Company, for the exclusive purpose of implementing, administering, and managing the Participant's participation in the Plan. The Participant understands that refusal or withdrawal of consent may affect the Participant's ability to participate in the Plan or to realize benefits from the RSUs. The Participant understands that the Company and any Subsidiary or Affiliate may hold certain personal information about the Participant, including, but not limited to, the Participant's name, home address and telephone number, date of birth, social insurance number or other identification number, salary, nationality, job title, any shares of stock or directorships held in the Company or any Subsidiary or Affiliate, details of all RSUs or any other entitlement to Shares awarded, canceled, exercised, vested, unvested or outstanding in the Participant's favor ("Personal Data"). The Participant understands that Personal Data may be transferred to any Subsidiary or Affiliate or third parties assisting in the implementation, administration and management of the Plan, that these recipients may be located in the United States, the Participant's country, or elsewhere, and that the recipient's country may have different data privacy laws and protections than the Participant's country.

Section 3.6 Governing Law**.** The validity, interpretation, construction and performance of this Agreement, and all acts and transactions pursuant hereto and the rights and obligations of the parties hereto shall be governed, construed and interpreted in accordance with the laws of the state of Delaware, without giving effect to principles of conflicts of law. For purposes of litigating any dispute that may arise directly or indirectly from this Agreement, the parties hereby submit and consent to the exclusive jurisdiction of the state of Delaware and agree that any such litigation shall be conducted only in the courts of Delaware or the federal courts of the United States located in Delaware and no other courts.

Section 3.7 Entire Agreement. This Agreement sets forth the entire agreement and understanding of the parties relating to the subject matter herein and supersedes all prior or contemporaneous discussions, understandings and agreements, whether oral or written, between them relating to the subject matter hereof.

Section 3.8 Amendment and Waivers. No modification of or amendment to this Agreement, nor any waiver of any rights under this Agreement, shall be effective unless in writing signed by the parties to this Agreement. No delay or failure to require performance of any provision of this Agreement shall constitute a waiver of that provision as to that or any other instance.

Section 3.9 Successors and Assigns**.** Except as otherwise provided in this Agreement or the Plan, the rights and obligations of the parties hereunder, will be binding upon and inure to the benefit of their respective successors, assigns, heirs, executors, administrators and legal representatives. The Company may assign any of its rights and obligations under this Agreement. No other party to this Agreement may assign, whether voluntarily or by operation of law, any of its rights and obligations under this Agreement, except with the prior written consent of the Company.

Section 3.10 Notices. Any notice, demand or request required or permitted to be given under this Agreement shall be in writing and shall be deemed sufficient when delivered personally or by overnight courier or sent by email, or 48 hours after being deposited in the U.S. mail as certified or registered mail with postage prepaid, addressed to the party to be notified at such party's address as set forth on the signature page, as subsequently modified by written notice, or if no address is specified on the signature page, at the most recent

address set forth in the Company's books and records. notice, or if no address is specified on the signature page, at the most recent address set forth in the Company's books and records.

Section 3.11 Severability. If one or more provisions of this Agreement are held to be unenforceable under Applicable Law, the parties agree to renegotiate such provision in good faith. In the event that the parties cannot reach a mutually agreeable and enforceable replacement for such provision, then such provision shall be excluded from this Agreement, the balance of the Agreement shall be interpreted as if such provision were so excluded and the balance of the Agreement shall be enforceable in accordance with its terms.

Section 3.12 Construction. This Agreement is the result of negotiations between and has been reviewed by each of the parties hereto and their respective counsel, if any; accordingly, this Agreement shall be deemed to be the product of all of the parties hereto, and no ambiguity shall be construed in favor of or against any one of the parties hereto.

Section 3.13 Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, and all of which together shall constitute one and the same agreement. Execution of a facsimile or scanned copy will have the same force and effect as execution of an original, and a facsimile or scanned signature will be deemed an original and valid signature.

Section 3.14 Tax Consultation. The Participant acknowledges and agrees that his or her entry into this Agreement and participation in the Plan is voluntary and there may be consequences as a result of his or her receipt of the RSUs granted pursuant to this Agreement (and the Shares issuable with respect thereto). The Participant represents that he or she (a) has consulted with any tax advisors or consultants he or she deems advisable in connection with the RSUs and the issuance of Shares with respect thereto and (b) is not relying on the Company or its Subsidiaries or Affiliates or any of their respective officers, directors, employees or agents for any tax advice. The Participant is relying solely on his or her own advisors or consultants and not on any statements or representations of the Company or its Subsidiaries or Affiliates or any of their respective officers, directors, employees or agents. The Participant understands that he or she (and not the Company) shall be solely responsible for the Participant's tax liability that may arise as a result of the transactions contemplated by this Agreement.

Section 3.15 Participant's Representations. The Participant hereby represents, warrants, covenants, acknowledges and agrees on behalf of the Participant and his or her spouse or domestic partner, if applicable, that (a) the Participant is holding the RSUs for the Participant's own account, and not for the account of any other person, (b) the Participant is holding the RSUs for investment and not with a view to distribution or resale thereof except in compliance with Applicable Laws regulating securities; and (c) if the Participant is located outside of the United States, he or she (i) is not a U.S. person as such term is defined under Rule 902 of Regulation S promulgated under the Securities Act, (ii) is not acquiring the RSUs for the account or benefit of any U.S. person, and (iii) will not (A) resell or offer to resell the RSUs, or any portion thereof, or (B) engage in hedging transactions, in each case, except in accordance with the terms of the Plan and this Agreement and in accordance with Regulation S, or pursuant to an available exemption from registration under the Securities Act and otherwise in compliance with all applicable securities laws.

Section 3.16 Titles. Titles are provided herein for convenience only and are not to serve as a basis for interpretation or construction of this Agreement.

Section 3.17 Conformity to Securities Laws. The Participant acknowledges that the Plan and this Agreement are intended to conform to the extent necessary with all provisions of the Securities Act and the Exchange Act and any and all regulations and rules promulgated thereunder by the Securities and Exchange Commission. Notwithstanding anything herein to the contrary, the Plan shall be administered, and the RSUs are granted, only in such a manner as to conform to such laws, rules and regulations. To the extent permitted by applicable law, the Plan and this Agreement shall be deemed amended to the extent necessary to conform to such laws, rules and regulations.

Section 3.18 Shares Subject to Plan. The Participant acknowledges that any shares of Common Stock acquired upon settlement of the RSUs are subject to the terms of the Plan.

Section 3.19 Section 409A.

(a) This Agreement and the RSUs are intended to be exempt from, or comply with, Section 409A of the Code and shall be interpreted consistent with such intent. Notwithstanding any provision of this Agreement to the contrary, in the event that the Company determines in good faith that any provision of this Agreement would cause the Participant to incur an additional tax, penalty or interest under Section 409A of the Code, the Company may (but is not obligated to) (a) adopt amendments to the Notice, this Agreement and/or the Plan and appropriate policies and procedures, including amendments and policies with retroactive effect, as the Company determines to be necessary or appropriate to preserve the intended tax treatment of the benefits provided by the RSUs, to preserve the economic benefits of this Agreement and to avoid less favorable accounting or tax consequences for the Company and/or (b) take such other actions as the Company determines to be necessary or appropriate to exempt the amounts payable hereunder from Section 409A of the Code or to comply with the requirements of Section 409A of the Code and thereby avoid the application of penalty taxes thereunder. Notwithstanding the foregoing, no provision of this Agreement shall be interpreted or construed to transfer any liability for failure to comply with the requirements of Section 409A of the Code from the Participant or any other individual to the Company or any of its Subsidiaries or Affiliates or any of their respective officers, directors, employees or agents.

(b) Notwithstanding anything herein to the contrary, to the extent that the RSUs are deemed to constitute "nonqualified deferred compensation" within the meaning of Section 409A, for purposes of Section 409A of the Code (including, without limitation, for purposes of Section 1.409A-2(b)(2)(iii) of the Department of Treasury regulations), each installment of RSUs shall be treated as a right to receive a series of separate payments and, accordingly, each installment of RSUs shall at all times be considered a separate and distinct payment;

(c) Notwithstanding any contrary provision in this Agreement, any payment(s) of "nonqualified deferred compensation" required to be made under the RSUs to the Participant if deemed to be a "specified employee" (as defined under Section 409A of the Code and as the Administrator determines) due to his "separation from service" will, to the extent necessary to avoid taxes under Section 409A(a)(2)(B)(i) of the Code, be delayed for the six-month period immediately following such "separation from service" (or, if earlier, until the specified employee's death) and will instead be paid on the day immediately following such six-month period or as soon as administratively practicable thereafter (without interest). Any payments of "nonqualified deferred compensation" under the RSUs payable more than six months following the Participant's "separation from service" will be paid at the time or times the payments are otherwise scheduled to be made.

Section 3.20 Clawback. The RSUs (including any proceeds, gains or other economic benefit the Participant actually or constructively receives upon receipt or settlement of the RSUs or the receipt or resale of any Shares underlying the RSUs) will be subject to any Company claw-back policy as in effect from time to time, including any claw-back policy adopted to comply with Applicable Laws (including the Dodd-Frank Wall Street Reform and Consumer Protection Act and any rules or regulations promulgated thereunder).

ARTICLE IV.

DEFINITIONS

Section 4.1 Good Reason. "Good Reason" means a material breach by the Company of any material written agreement with the Participant, that occurs without the Participant's written consent. Notwithstanding the foregoing, no event or circumstance shall constitute "Good Reason" unless: (A) the Participant has provided the Company, within ninety (90) days of the initial occurrence of the event or circumstance, written notice stating with specificity the applicable facts and circumstances underlying such event or circumstance; (B) the Company fails to cure such event or circumstance within thirty (30) days after receiving such written notice (the "Cure Period"), and (C) the Participant resigns based on such event or circumstance within sixty (60) days after the expiration of the Cure Period.

Section 4.2 Public Offering. "Public Offering" means, whether directly or indirectly (including through one or more affiliated companies and/or IPO vehicles), (a) a direct listing of the equity securities of the Company or any of its subsidiaries, (b) the consummation of any merger of the Company or any of its subsidiaries with or into a "special purpose acquisition corporation" or "blank check company" (as defined by the Securities and Exchange Commission) or (c) the Company or any of its subsidiaries' first underwritten sale to the public of the Company's or such subsidiary's equity securities (or its successor's equity securities) under the Securities Act.

Section 4.3 Sale Transaction. "Sale Transaction" means and includes each of the following (to the extent it occurs following the Public Offering):

(a) A transaction or series of transactions (other than an offering of Common Stock to the general public through a registration statement filed with the Securities and Exchange Commission or a transaction or series of transactions that meets the requirements of clauses (i) and (ii) of subsection (b) below) whereby any "person" or related "group" of "persons" (as such terms are used in Sections 13(d) and 14(d)(2) of the Exchange Act) (other than the Company, any of its Subsidiaries, an employee benefit plan maintained by the Company or any of its Subsidiaries, Brandon Moak or the Participant (or any group which includes such persons), or a "person" that, prior to such transaction, directly or indirectly controls, is controlled by, or is under common control with, the Company) directly or indirectly acquires beneficial ownership (within the meaning of Rule 13d-3 under the Exchange Act) of securities of the Company possessing more than 50 % of the total combined voting power of the Company's securities outstanding immediately after such acquisition; or

(b) The consummation by the Company (whether directly involving the Company or indirectly involving the Company through one or more intermediaries) of (x) a merger, consolidation, reorganization, or business combination or (y) a sale or other disposition of all or substantially all of the Company's assets in any single transaction or series of related transactions or (z) the acquisition of assets or stock of another entity, in each case other than a transaction:

(i) which results in the Company's voting securities outstanding immediately before the transaction continuing to represent (either by remaining outstanding or by being converted into voting securities of the Company or the person that, as a result of the transaction, controls, directly or indirectly, the Company or owns, directly or indirectly, all or substantially all of the Company's assets or otherwise succeeds to the business of the Company (the Company or such person, the "Successor Entity")) directly or indirectly, at least a majority of the combined voting power of the Successor Entity's outstanding voting securities immediately after the transaction, and

(ii) after which no person or group (other than Brandon Moak or the Participant or any group which includes any such persons) beneficially owns voting securities representing 50% or more of the combined voting power of the Successor Entity; provided, however, that no person or group shall be treated for purposes of this clause (ii) as beneficially owning 50% or more of the combined voting power of the Successor Entity solely as a result of the voting power held in the Company prior to the consummation of the transaction.

Notwithstanding the foregoing, the transaction or event described in subsection (a) or (b) shall only constitute a Sale Transaction if such transaction or event also constitutes a "change in control event," as defined in Treasury Regulation Section 1.409A-3(i)(5). The Administrator shall have full and final authority, which shall be exercised in its discretion, to determine conclusively whether a Sale Transaction has occurred pursuant to the above definition, the date of the occurrence of a Sale Transaction and any incidental matters relating thereto; provided that any exercise of authority in conjunction with a determination of whether a Sale Transaction is a "change in control event" as defined in Treasury Regulation Section 1.409A-3(i)(5) shall be consistent with such regulation. For the avoidance of doubt, a Public Offering will not constitute a Sale Transaction.

EXHIBIT B

The percentages set forth below represent the portion of the unvested RSUs that shall remain outstanding and eligible to vest following such termination or transition. The "Year of Transition" equals the number of competed 12-month periods occurring after the consummation of the Public Offering and prior to the date of the applicable action described below.

Year of Transition	Termination without Cause (including a mutually agreed upon termination between the Participant and the Board) or Resignation for Good Reason*	Change in Role to Position Outside C-Suite of the Company
1-4	10%	20%

5	12.5%	25%
6	15%	30%
7	17.5%	35%
8	20%	40%
9	22.5%	45%
10+	25%	50%

* If the Termination without Cause or Resignation for Good Reason follows a Change in Role to a Position Outside C-Suite of the Company, the percentage of RSUs that will remain outstanding and eligible to vest under this column will be determined without taking into account the prior reduction for the Change in Role to a Position Outside C-Suite of the Company.

Exhibit 23.1

INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM'S CONSENT

We consent to the incorporation by reference in this Registration Statement of Embark Technology, Inc. (formerly Northern Genesis Acquisition Corp. II) (the "Company") on Form S-8 of our report dated April 14, 2021, with respect to our audit of the financial statements of the Company as of December 31, 2020 and for the period from September 25, 2020 (inception) through December 31, 2020, and our report dated January 22, 2021, except for the effects of the restatement discussed in Note 2 as to which the date is December 8, 2021, with respect to our audit of the financial statement of the Company as of January 15, 2021, which reports appear in the Company's 424(b)(3) Prospectus dated December 13, 2021. We were dismissed as auditors on November 10, 2021 and, accordingly, we have not performed any audit or review procedures with respect to any financial statements appearing in such Prospectus for the periods after the date of our dismissal.

/s/ Marcum LLP

Marcum LLP
Houston, Texas
January 12, 2022

Exhibit 23.2

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in this Registration Statement on Form S-8 of our report dated July 2, 2021, relating to the financial statements of Embark Trucks, Inc., appearing in Registration Statement No. 333-261324 on Form S-1, as amended, of Embark Technology, Inc.

/s/ Deloitte & Touche LLP

San Jose, California
January 12, 2022