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, 2023

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: 001-39283

Lightning eMotors, Inc.
(Exact name of registrant as specified in its charter)

Delaware	**84-4605714**
(State or other jurisdiction of incorporation or organization)	**(I.R.S. Employer Identification Number)**
815 14th Street SW Suite A100 Loveland, Colorado	**80537**
(Address of Principal Executive Offices)	**(Zip Code)**

(800) 223-0740
(Registrant's telephone number)

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 $0.0001 per share	**ZEV**	**New York Stock Exchange**
Redeemable Warrants, each full warrant exercisable for one share of Common stock at an exercise price of $230.00 per share	**ZEV.WS**	**New York Stock Exchange**

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

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

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

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

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

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

As of November 17, 2023, there were 6,593,516 shares of the registrant's common stock outstanding.

TABLE OF CONTENTS

PART I —FINANCIAL INFORMATION

Item 1. Financial Statements

Lightning eMotors, Inc.
Consolidated Balance Sheets
(in thousands, except share data)

	September 30, 2023	December 31, 2022
	(Unaudited)	
Assets		
Current assets		
Cash and cash equivalents	$ 6,022	$ 56,011
Accounts receivable, net of allowance of $2,086 and $2,028 as of September 30, 2023 and December 31, 2022, respectively	9,747	9,899
Inventories	19,214	47,066
Prepaid expenses and other current assets	4,675	9,401
Total current assets	39,658	122,377
Property and equipment, net	7,918	11,519
Operating lease right-of-use asset, net	6,718	7,735
Other assets	1,401	1,928
Total assets	$ 55,695	$ 143,559
Liabilities and stockholders' equity		
Current liabilities		
Accounts payable	$ 3,091	$ 7,961
Accrued expenses and other current liabilities	9,875	6,270
Warrant liability	—	60
Derivative liability	355	—
Current portion of operating lease obligation	1,913	1,649
Current debt, net of debt discount	55,025	—
Total current liabilities	70,259	15,940
Long-term debt, net of debt discount	2,986	62,103
Operating lease obligation, net of current portion	6,263	7,735
Derivative liability	—	78
Earnout liability	—	2,265
Other long-term liabilities	792	880
Total liabilities	80,300	89,001
Commitments and contingencies (Note 13)		
Stockholders' (deficit) equity		
Preferred stock, par value $0.0001, 1,000,000 shares authorized and no shares issued and outstanding as of September 30, 2023 and December 31, 2022	—	—
Common stock, par value $0.0001, 250,000,000 shares authorized as of September 30, 2023 and December 31, 2022; 6,593,516 and 4,492,157 shares issued and outstanding as of September 30, 2023 and December 31, 2022, respectively	1	1
Additional paid-in capital	237,343	220,951
Accumulated deficit	(261,949)	(166,394)
Total stockholders' (deficit) equity	(24,605)	54,558
Total liabilities and stockholders' (deficit) equity	$ 55,695	$ 143,559

See accompanying notes to Consolidated Financial Statements.

Lightning eMotors, Inc.
Consolidated Statements of Operations
(in thousands, except share and per share data)
(Unaudited)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2023	2022	2023	2022
Revenue, net of customer refunds	$ 12,366	$ 11,131	$ 21,593	$ 20,079
Cost of revenues	45,694	14,580	66,779	27,191
Gross loss	(33,328)	(3,449)	(45,186)	(7,112)
Operating expenses				
Research and development	1,194	1,428	4,662	5,180
Selling, general and administrative	13,503	14,897	41,376	39,055
Total operating expenses	14,697	16,325	46,038	44,235
Loss from operations	(48,025)	(19,774)	(91,224)	(51,347)
Other (income) expense, net				
Interest expense, net	3,867	3,758	10,488	11,468
(Gain) loss from change in fair value of warrant liabilities	(10)	(536)	(60)	(1,850)
(Gain) loss from change in fair value of derivative liability	353	(3,728)	290	(16,370)
(Gain) loss from change in earnout liability	(446)	(18,054)	(2,265)	(68,357)
(Gain) loss on extinguishment of debt	—	—	(2,965)	—
Other expense (income), net	(1,117)	17	(1,157)	11
Total other (income) expense, net	2,647	(18,543)	4,331	(75,098)
Net income (loss)	$ (50,672)	$ (1,231)	$ (95,555)	$ 23,751
Net income (loss) per share, basic	$ (7.84)	$ (0.33)	$ (16.79)	$ 6.30
Net income (loss) per share, diluted	$ (7.84)	$ (0.33)	$ (16.79)	$ 4.50
Weighted-average shares outstanding, basic	6,460,511	3,787,269	5,691,036	3,771,472
Weighted-average shares outstanding, diluted	6,460,511	3,787,269	5,691,036	4,268,720

See accompanying notes to Consolidated Financial Statements.

Lightning eMotors, Inc.
Consolidated Statements of Stockholders’ (Deficit) and Equity
(in thousands, except share data)
(Unaudited)

	Common Stock		Additional Paid-in Capital	Stockholders’ Accumulated Deficit	Total Stockholders’ Equity (Deficit)
	Shares	Par Value			
Balance as of June 30, 2023	**6,144,553**	**$ 1**	**$ 234,209**	**$ (211,277)**	**$ 22,933**
Vesting of restricted stock units, net of taxes	5,660	—	—	—	—
Common stock issued for conversion of debt	443,303	—	1,510	—	1,510
Stock-based compensation expense	—	—	1,624	—	1,624
Net loss	—	—	—	(50,672)	(50,672)
Balance as of September 30, 2023	**6,593,516**	**$ 1**	**$ 237,343**	**$ (261,949)**	**$ (24,605)**
Balance as of December 31, 2022	**4,492,157**	**$ 1**	**$ 220,951**	**$ (166,394)**	**$ 54,558**
Exercise of stock options	9,502	—	10	—	10
Vesting of restricted stock units, net of taxes	41,020	—	(14)	—	(14)
Common stock issued for conversion of debt	904,851	—	3,404	—	3,404
Canceled due to reverse split	(1,957)	—	—	—	—
Stock-based compensation expense	—	—	4,425	—	4,425
Conversion of convertible notes payable	1,147,943	—	8,567	—	8,567
Net loss	—	—	—	(95,555)	(95,555)
Balance as of September 30, 2023	**6,593,516**	**$ 1**	**$ 237,343**	**$ (261,949)**	**$ (24,605)**
Balance as of June 30, 2022	**3,780,505**	**$ —**	**$ 209,199**	**$ (156,582)**	**$ 52,617**
Exercise of stock options	2,941	—	6	—	6
Vesting of restricted stock units, net of taxes	1,745	—	(6)	—	(6)
Stock-based compensation expense	—	—	1,470	—	1,470
Common stock issued for commitment shares	14,975	—	851	—	851
Net loss	—	—	—	(1,231)	(1,231)
Balance as of September 30, 2022	**3,800,166**	**$ —**	**$ 211,520**	**$ (157,813)**	**$ 53,707**
Balance as of December 31, 2021	**3,753,132**	**$ —**	**$ 206,776**	**$ (181,564)**	**$ 25,212**
Exercise of stock options	18,191	—	129	—	129
Vesting of restricted stock units, net of taxes	13,868	—	(114)	—	(114)
Stock-based compensation expense	—	—	3,878	—	3,878
Common stock issued for commitment shares	14,975	—	851	—	851
Net income	—	—	—	23,751	23,751
Balance as of September 30, 2022	**3,800,166**	**$ —**	**$ 211,520**	**$ (157,813)**	**$ 53,707**

See accompanying notes to Consolidated Financial Statements.

Lightning eMotors, Inc.
Consolidated Statements of Cash Flows
(in thousands)
(Unaudited)

	Nine Months Ended September 30,	
	2023	**2022**
Cash flows from operating activities		
Net income (loss)	$ (95,555)	$ 23,751
Adjustments to reconcile net income (loss) to net cash used in operating activities:		
Depreciation and amortization	1,996	1,279
Impairment of long-lived assets	4,878	—
Right-of-use asset impairment	435	—
Provision for doubtful accounts	1,987	2,231
Provision for inventory obsolescence and write-downs	20,659	1,155
Loss (gain) on disposal of fixed asset	56	58
Gain on extinguishment of debt	(2,965)	—
Change in fair value of warrant liability	(60)	(1,850)
Change in fair value of earnout liability	(2,265)	(68,357)
Change in fair value of derivative liability	290	(16,370)
Stock-based compensation	4,425	3,878
Amortization of debt discount	6,352	6,899
Non-cash impact of operating lease right-of-use asset	1,017	849
Issuance of common stock for debt	825	—
Issuance of common stock for commitment shares	—	851
Changes in operating assets and liabilities:		
Accounts receivable	(5,777)	(4,793)
Inventories	11,135	(21,955)
Prepaid expenses and other assets	4,836	(4,126)
Accounts payable	(4,870)	6,052
Accrued expenses and other liabilities	2,715	3,462
Net cash used in operating activities	(49,886)	(66,986)
Cash flows from investing activities		
Purchase of property and equipment	(3,610)	(5,694)
Net cash used in investing activities	(3,610)	(5,694)
Cash flows from financing activities		
Proceeds from pre-paid advance agreement	2,944	—
Repayment of prepay advance agreement	(200)	—
Insurance finance agreement	1,138	—
Repayment of insurance finance agreement	(228)	—
Payments on finance lease obligations	(143)	(78)
Proceeds from exercise of stock options	10	129
Tax withholding payment related to net settlement of equity awards	(14)	(114)
Net cash provided by (used in) financing activities	3,507	(63)
Net (decrease) increase in cash	(49,989)	(72,743)
Cash - Beginning of period	56,011	168,538
Cash - End of period	$ 6,022	$ 95,795

	Nine Months Ended September 30,	
	2023	2022
Supplemental cash flow information - Cash paid for interest	$ 2,992	$ 3,536
Significant noncash transactions		
Conversion of notes for common stock	$ 8,567	$ —
Property and equipment included in accounts payable and accruals	406	879
Finance lease right-of-use asset in exchange for a lease liability	(161)	786
Inventory repossessed for accounts receivable	3,942	1,410

See accompanying notes to Consolidated Financial Statements.

Lightning eMotors, Inc.
Notes to Consolidated Financial Statements
(in thousands, except share data)
(Unaudited)

Note 1 – Description of Business and Basis of Presentation

Lightning eMotors, Inc. (the "Company", "Lightning") designs and manufactures zero-emission vehicles ("ZEV") and charging infrastructure solutions for commercial fleets, large enterprises, original equipment manufacturers, and governments. The Company's product offerings range from electrified cargo vans, transit and shuttle buses, school buses, specialty work trucks, ambulances, mobile and stationary chargers and electric powertrains for school buses, transit buses and motorcoaches. The Company operates predominately in the United States.

On May 6, 2021, GigCapital3, Inc. ("Gig"), consummated the merger pursuant to the Business Combination Agreement, dated December 10, 2020, by and among Project Power Merger Sub, Inc., a wholly-owned subsidiary of Gig incorporated in the State of Delaware, and Lightning Systems, Inc., a Delaware corporation ("Lightning Systems") (the "Business Combination"). On May 6, 2021, and in connection with the closing of the Business Combination, Gig changed its name to Lightning eMotors, Inc.

The accompanying consolidated financial statements have been prepared in accordance with U.S. Generally Accepted Accounting Principles ("GAAP") and pursuant to the regulations of the U.S. Securities and Exchange Commission ("SEC"). The unaudited financial information reflects, in the opinion of management, all adjustments, consisting of normal recurring adjustments, considered necessary for a fair statement of the Company's financial position, results of operations and cash flows for the periods indicated. The results reported for the interim period presented are not necessarily indicative of results that may be expected for the full year. These consolidated financial statements should be read in conjunction with the audited consolidated financial statements and notes thereto included in the Company's Annual Report on Form 10-K for the year ended December 31, 2022.

The consolidated financial statements include the accounts of the Company and its wholly-owned subsidiaries. Intercompany accounts and transactions have been eliminated.

NYSE Suspension of Trading and OTC Quotation

On September 18, 2023, the Company received notice from the New York Stock Exchange ("NYSE") indicating that the staff determined to suspend trading immediately and commence proceedings to delist the shares of common stock and the redeemable warrants of the Company from the NYSE (the "Notice"). The decision was reached by the NYSE staff under Section 802.01B of the NYSE Listed Company Manual because it had fallen below the NYSE's continued listing standard requiring listed companies to maintain an average global market capitalization of at least $15 million over a consecutive 30-trading day period.

The Company requested to appeal the proposed delisting and was granted a hearing on December 14, 2023 in front of the NYSE Board to review the staff's decision. During the pending appeal, the Company's common stock remains listed on the NYSE, but trading in the Company's common stock and warrants on the NYSE has been suspended as of September 18, 2023. Effective September 19, 2023, the Company's common stock and warrants trade on the over-the-counter markets under the symbols "ZEVY" and "ZEVYW," respectively.

Impairment of long-lived assets

Long-lived assets to be held and used in the Company's operations are evaluated for impairment when events or circumstances indicate the carrying value of a long-lived asset or asset group may not be recovered. The Company assesses recoverability by comparing the sum of projected undiscounted cash flows from the use and eventual disposition over the remaining economic life of a long-lived asset or asset group to its carrying value. Should the sum of the expected future net cash flows be less than the carrying value, the Company would recognize an impairment loss at that date. An impairment loss would be measured by comparing the amount by which the carrying value exceeds the fair value, or the estimated discounted future cash flows, of the long-lived assets. Assets or asset groups to be abandoned or from which no future benefit is expected are written down to zero in the period it is determined they will no longer be used and are removed entirely from service.

For the three and nine months ended September 30, 2023, and due to the Notice received from the NYSE, the Company determined a triggering event occurred that required the Company to evaluate the Company's long-lived assets for impairment. The Company's long-lived assets were evaluated using a market approach based on an in exchange premise, estimating recovery percentages that would take into account cost of installation, freight and other costs that would not be recovered. As a result, the Company recorded a loss on the impairment of property and equipment of $4,878 for the three and nine months ended September 30, 2023, which is included in "*Cost of revenues*" on the consolidated statements of operations.

Reverse Stock Split

The Company effected a 1-for-20 reverse stock split (the "Reverse Stock Split") of the Company's issued and outstanding shares of common stock, par value $0.0001 per share, effective as of 5:00 p.m. Eastern Time on April 27, 2023. As a result of the Reverse Stock Split, every twenty shares of common stock issued and outstanding were automatically reclassified into one share of common stock. The Reverse Stock Split did not reduce the number of authorized shares of common stock of 250,000,000, or change the par value of the common stock. All outstanding options, warrants, restricted stock units and similar securities entitling their holders to receive or purchase shares of common stock were adjusted as a result of the Reverse Stock Split, as required by the terms of each security. All share and per share amounts were retroactively adjusted for all periods presented to give effect to this reverse stock split, including reclassifying an amount equal to the reduction in par value of the Company's common stock to additional paid-in capital. See Note 9 for additional information.

Liquidity and Capital

As of September 30, 2023, the Company had $6,022 in cash and cash equivalents. For the nine months ended September 30, 2023, the Company incurred a net loss of $95,555 and cash used in operating activities was $49,886. The Company had negative working capital of $30,601 as of September 30, 2023. The current and historical operating cash flows, current cash and working capital balances, and forecasted obligations of the Company were considered in connection with management's evaluation of the Company's ongoing liquidity.

The Company has suffered recurring losses from operations. The continuation of the Company as a going concern is dependent upon the Company attaining and maintaining profitable operations and/or raising additional capital from equity offerings, debt financings or other capital markets transactions, collaborations, strategic partnerships or licensing arrangements.

The Company entered into a Pre-Paid Advance Agreement with YA II PN, Ltd. ("Yorkville") on May 16, 2023 and into a purchase agreement ("ELOC") with Lincoln Park Capital, LLC on August 30, 2022. Due to the suspension of trading of the Company's common stock from the NYSE or other Principal Market (as defined in the ELOC), the Company is currently unable to utilize either the ELOC or the Pre-Paid Advance Agreement. Moreover, the ability to access the Pre-Paid Advance Agreement or the ELOC in full is dependent on various factors, such as common stock trading volumes, market prices and obtaining stockholder approval, which cannot be assured, and as a result cannot be included as sources of liquidity for the Company's Accounting Standards Codification ("ASC") 205-40 *Going Concern* analysis. During the three and nine months ended September 30, 2023, the Company received proceeds in the amount of $2,944 and issued 443,303 and 904,851 shares of common stock, respectively, to Yorkville. Since September 30, 2023 and through the filing date, the Company issued zero shares of common stock to Yorkville. As of September 30, 2023 and through the date of this filing, the Company has not sold any shares of common stock to Lincoln Park under the ELOC other than the commitment shares (and is prohibited from accessing the ELOC while advances are outstanding to Yorkville).

Due to the timing of cash receipts, the Company may not be in a financial position to fund its next scheduled interest payment on its outstanding Convertible Notes, which payment is due no later than December 15, 2023 to avoid an event of default. Although the Company is working to collect outstanding accounts receivable and/or obtain bridge financing, there can be no certainty that either will occur prior to the December 15 payment deadline. Further, in the event the Company is not successful in its appeal of delisting to the NYSE, such delisting will represent a "Fundamental Change," giving each holder of Convertible Notes the right to require the Company to repurchase its Convertible Notes pursuant to the terms and procedures set forth in the indenture for a cash repurchase price equal to 100% of the principal amount of the Convertible Notes to be so repurchased, plus accrued and unpaid interest thereon, if any, plus any remaining amounts that would be owed to, but excluding the Maturity Date (as defined in the indenture), including all regularly scheduled interest payments.

The Company has been working with financial advisors to assist the Company in identifying strategic partners and financing to fund operations and to take actions to maximize our liquidity. If capital is not available to the Company when, and in the amounts needed, the Company could be required to liquidate its inventory, cease or curtail operations, or seek protection under applicable bankruptcy laws or similar state proceedings. The result of the Company's ASC 205-40 analysis, due to uncertainties discussed above, there is substantial doubt about the Company's ability to continue as a going concern through the next twelve months from the date of issuance of these consolidated financial statements.

These consolidated financial statements have been prepared by management in accordance with GAAP and this basis assumes that the Company will continue as a going concern, which contemplates the realization of assets and the satisfaction of liabilities and commitments in the normal course of business.

Note 2 – Summary of Significant Accounting Policies

Use of estimates

The preparation of financial statements in conformity with GAAP requires management to make certain estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenue and expenses during the reporting period. The Company's most significant estimates and judgments involve deferred income taxes, provision for credit losses, warranty liability, write downs and write offs of obsolete and damaged inventory, fair value estimates of property, plant and equipment and valuations of share-based compensation, warrant liability, convertible note derivative liability and earnout share liability. Management bases its estimates on historical experience and on various other assumptions believed to be reasonable, the results of which form the basis for making judgments about the carrying values of assets and liabilities. Actual results could differ from those estimates, and such differences could be material to the Company's financial statements.

Segment information

ASC 280, *Segment Reporting*, defines operating segments as components of an enterprise where discrete financial information is available that is evaluated regularly by the chief operating decision-maker ("CODM") in deciding how to allocate resources and in assessing performance. The Company operates as a single operating segment. The Company's CODM is the Chief Executive Officer, who has ultimate responsibility for the operating performance of the Company and the allocation of resources. The CODM uses Company forecasts, a financial and operations dashboard, and cash flows as the primary measures to manage the business and does not segment the business for internal reporting or decision making.

Concentrations of credit risk

As of September 30, 2023, two customers accounted for 49% and 11% of the Company's total accounts receivable. As of December 31, 2022, two customers accounted for 40% and 25% of total accounts receivable. The net sales to the following customers comprised more than 10% of revenues for the periods presented.

	Three Months Ended September 30,				Nine Months Ended September 30,			
	2023		2022		2023		2022	
	Net Sales	% of Net Revenue	Net Sales	% of Net Revenue	Net Sales	% of Net Revenues	Net Sales	% of Net Revenues
Customer A	$ 4,976	39 %	$ —	— %	$ 9,157	37 %	$ —	— %
Customer B	2,826	22 %	—	— %	3,840	16 %	—	— %
Customer C	—	— %	5,920	53 %	—	— %	5,923	29 %
Customer D	—	— %	2,075	19 %	—	— %	2,075	10 %
Customer E	—	— %	1,098	10 %	—	— %	2,822	14 %
Customer F	—	— %	—	— %	—	— %	2,675	13 %
Total of customers with sales greater than 10%	$ 7,802	61 %	$ 9,093	82 %	$ 12,997	53 %	$ 13,495	66 %
Total of customers with sales less than 10%	4,888	39 %	2,038	18 %	11,429	47 %	6,584	34 %
Gross Revenue	$ 12,690	100 %	$ 11,131	100 %	$ 24,426	100 %	$ 20,079	100 %
Customer refunds(1)	(324)		—		(2,833)		—	
Total Revenue, net of customer refunds	$ 12,366		$ 11,131		$ 21,593		$ 20,079	

(1) Customer refunds are related to the recall for certain 2021-2022 model year FE4-129 vehicles ("ZEV4") that were manufactured with Romeo Power Systems, Inc ("Romeo") battery packs. See section "*Revenue Recognition*" below for more detail concerning the accounting treatment and the section "*Warranties and Recall Campaigns*" for more detail on the recall.

Concentrations of supplier risk

As of September 30, 2023, two suppliers accounted for 13% and 10% of the Company's total accounts payable. As of December 31, 2022, two suppliers accounted for 20% and 15% of the Company's total accounts payable. For the three months ended September 30, 2023, one supplier accounted for 37% of inventory purchases. For the three months ended September 30, 2022, one supplier accounted for 42% of inventory purchases. For the nine months ended September 30, 2023, two suppliers accounted for 17% and 11% of inventory purchases. For the nine months ended September 30, 2022,two suppliers accounted for 32% and 19% of inventory purchases.

Cash and cash equivalents

Cash and cash equivalents include cash held in banks and in money market funds. The Company's cash and cash equivalents are placed with high-credit-quality financial institutions and issuers, and at times exceed federally insured limits. To date, the Company has not experienced any credit loss relating to its cash and cash equivalents. The carrying value of the cash equivalents approximates fair value, which represents a Level 1 input.

Accounts receivable

Accounts receivable are recorded at invoiced amounts, net of discounts, and allowances. The Company grants credit in the normal course of business to its customers. The Company periodically performs credit analyses and monitors the financial condition of its customers to reduce credit risk. The Company reduces the carrying value for estimated uncollectible accounts based on a variety of factors including the length of time receivables are past due, economic trends and conditions affecting the Company's customer base, and historical collection experience. Specific provisions are recorded for individual receivables when the Company becomes aware of a customer's inability to meet its financial obligations. The Company writes off accounts receivable when they are deemed uncollectible. As of September 30, 2023, two customers accounted for 49% and 11% of the Company's total accounts receivable.

The following table details the change in the allowance for credit losses for the periods indicated:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2023	2022	2023	2022
Balance at beginning of period	$ 2,041	$ 3,847	$ 2,028	$ 3,349
Credit loss expense (1)	45	1,733	1,987	2,231
Deductions (1)	—	(3,780)	(1,929)	(3,780)
Balance at end of period	$ 2,086	$ 1,800	$ 2,086	$ 1,800

(1) The charges to expense and deductions in the allowance for doubtful accounts during the nine months ended September 30, 2023 were primarily associated with two customers. The customers have not paid and the Company repossessed the vehicles as collateral for the accounts receivable balance. The charges to expense represent further impairment of the receivable balance down to the net realizable value of the collateral. The deductions represent the write off of the remaining accounts receivable balance related to these customers after applying the net realizable value of the collateral against the outstanding balance.

Inventories

Inventories consist of raw materials, work in progress, and finished goods and are stated at the lower of cost or net realizable value, with cost determined on the average cost method. A valuation adjustment is made to inventory for any excess, obsolete or slow-moving items based on management's review of on-hand inventories compared to historical and estimated future sales and usage profiles.

Property and equipment

Property and equipment are stated at cost, less accumulated depreciation. Depreciation is provided using the straight-line method over the estimated useful asset lives. Leasehold improvements are stated at cost and amortized on the straight-line basis over their estimated economic useful lives or the lease term, whichever is shorter. Costs of enhancements or modifications that substantially extend the capacity or useful life of an asset are capitalized and depreciated accordingly. Ordinary repairs and maintenance are expensed as incurred. Depreciation is included in the consolidated statements of operations in "*Cost of revenues*", "*Research and development*" and "*Selling, general and administrative*." The Company periodically reviews assets' estimated useful lives based upon actual experience and expected future utilization. A change in useful life is treated as a change in accounting estimate and is applied prospectively. When property is retired or otherwise disposed of, the cost and accumulated depreciation are removed from the consolidated balance sheets and the resulting gain or loss, if any, is reflected in "*Other income, net.*"

Revenue recognition

Revenue Summary

The following table disaggregates revenue by major source:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2023	2022	2023	2022
ZEVs	$ 12,127	$ 10,570	$ 23,234	$ 18,969
Other	563	561	1,192	1,110
Gross Revenue	$ 12,690	$ 11,131	$ 24,426	$ 20,079
Customer refunds[1]	(324)	—	(2,833)	—
Total Revenue, net of customer refunds	$ 12,366	$ 11,131	$ 21,593	$ 20,079

(1) Customer refunds are related to the recall for ZEV4 vehicles that were manufactured with Romeo battery packs.

The Company manufactures and sells ZEVs, such as delivery vans and buses. The Company manufactures ZEVs by removing the internal combustion engine and certain associated components (collectively, "decontented parts") and installing and integrating its internally-developed, zero-emission powertrain into a vehicle chassis supplied by original equipment manufacturer ("OEM") partners or from the customer. At times, the Company also installs and integrates its zero-emission powertrains into a used vehicle chassis supplied by the customer ("repower").

The Company recognizes revenue at a point in time when its performance obligation has been satisfied and control of the ZEV or zero-emission powertrain is transferred to the customer, which generally aligns with shipping terms. Contract shipping terms include ExWorks ("EXW"), "FOB Shipping Point" and "FOB Destination" all as defined in the Incoterms. Under EXW (meaning the seller fulfills its obligation to deliver when it makes goods available at its premises, or another specified location, for the buyer to collect), the performance obligation is satisfied and control is transferred at the point when the customer is notified that the ZEV is available for pickup. Under "FOB Shipping Point," control is transferred to the customer at the time the good is transferred to the shipper and under "FOB Destination," at the time the good is delivered to a customer's specified delivery location. At times, the Company sells ZEVs that require additional upfitting from a third party before the final sale to the customer. The Company is acting as the principal in such transactions and revenue is recognized on a gross basis.

Other revenue primarily includes the sale of stand-alone zero-emission powertrains, charging systems, engineering consulting services, telematics and analytics subscription services and decontented parts. Revenue for zero-emission powertrains, chargers and decontented parts is generally recognized based on contract shipping terms. At times, chargers may be drop shipped directly to the customer from the manufacturer, in which revenue is recognized at the time of shipment. The Company is acting as the principal in such transactions and revenue is recognized on a gross basis. Services are recognized as revenue over time as either percentage of completion (i.e. engineering service contracts) or as the service is transferred to the customer (i.e. telematics and analytics subscription services).

The Company made an accounting policy election to account for any shipping and handling costs that occur after control has transferred to the customer as fulfillment costs that are accrued to cost of revenues at the time control transfers. Shipping and handling costs billed to customers are initially recorded in deferred revenue and recognized as revenue once shipping is complete.

The Company often applies for governmental funding programs, including California's Hybrid and Zero Emission Truck and Bus Voucher Incentive Project ("HVIP"), on behalf of its customers for ZEV sales. Generally, as a condition of the program, the amount billed to the customer must be reduced by the amount that will be funded by the government program, and the Company will receive the funds directly from the government program. However, the discount to the customer is contingent upon the Company's receipt of the funding. Revenue is recognized on the gross amount of the ZEV at the time substantially all of the conditions of the government program required of the Company have been met and control of the ZEV has transferred to the customer based on shipping terms.

The following economic factors affect the nature, amount, timing, and uncertainty of the Company's revenue and cash flows as indicated:

- Type of customer: The Company's sales are directly to commercial fleet customers, OEMs, governments and dealers.
- Type of contract: Sales contracts are for goods or services. The majority of contracts are short term (i.e., less than or equal to one year in duration).

Significant Payment Terms

None of the Company's contracts have a significant financing component. Any cash that is received prior to revenue recognition is deferred as deferred revenue (a contract liability) until the good is delivered or service is rendered. Payment terms are identified when the contract has commercial substance and collectability of consideration is probable. The Company generally utilizes payment terms of a twenty percent deposit once a contract is executed with the remainder due upon receipt.

Contract Liabilities

Contract liabilities relate to payments received in advance of performance obligations under the contract and are realized when the associated revenue is recognized under the contracts. The Company's contract liabilities consist of customer deposits and deferred revenue, of which current amounts are included in "Accrued expenses and other current liabilities" and long-term amounts are included in "Other long-term liabilities" on the consolidated balance sheets. Changes in contract liabilities are as follows:

Balance as of December 31, 2022	$	794
Revenues recognized		(5,474)
Increase due to billings		5,466
Balance as of September 30, 2023	$	786

Returns and Refunds

Based on the Company's standard terms and conditions, consideration paid for goods and/or services that customers purchase from the Company are nonrefundable. Therefore, at the time revenue is recognized, the Company does not estimate expected refunds for goods or services, nor does the Company exclude any such amounts from revenue.

However, during the nine months ended September 30, 2023 and as special consideration to those customers impacted by the Romeo battery recall, the Company extended an offer to allow a return and refund for the affected ZEV4s. The Company applied a reserve for estimated refunds based on known pending refunds and reduced sales accordingly. The Company initially recorded in March 2023, on a gross basis, a refund liability in the amount of $5,037 and inventory in the amount of $2,171. The total refund liability associated with ZEV4 recalls was $1,285 as of September 30, 2023, which is included in "*Accrued expenses and other current liabilities*" on the consolidated balance sheets. In some instances, the refund paid to customers exceeded the original transaction price and value of goods to be received ("Accommodation"), representing consideration payable to the customer. The Company recorded the Accommodation as an asset and will derecognize the asset as a reduction to the future revenues that will be recognized from orders placed by that customer, which were associated with the Accommodation. The Company recorded an Accommodation in the amount of $ 614 in March 2023 and this amount was included in "*Prepaid expenses and other current assets*" on the consolidated balance sheets. During the three months ended September 30, 2023, the Company derecognized the Accommodation in the amount of $324 and $614, respectively, as a reduction to revenues.

Transaction Price

The transaction price of a contract is the amount of consideration to which the Company expects to be entitled in exchange for transferring promised goods to a customer. Transaction prices do not include amounts collected on behalf of third parties (e.g., sales taxes). Sales taxes collected on sales are recorded as a sales tax liability and are included in "Accrued expenses and other current liabilities."

To determine the transaction price of a contract, the Company considers its customary business practices and the terms of the contract. For the purpose of determining transaction prices, the Company assumes that the goods and/or services will be transferred to the customer as promised in accordance with existing contracts and that the contracts will not be canceled, renewed, or modified. The Company's revenue terms do not include retrospective or prospective volume discounts, rights of return, rebates, performance bonuses or other forms of variable consideration.

The Company's contracts with customers have fixed transaction prices that are denominated in U.S. dollars and payable in cash.

Future Performance Obligations

The Company has applied the practical expedient to exclude the value of remaining performance obligations for (i) contracts with an original term of one year or less and (ii) contracts for which the Company recognizes revenue in proportion to the amount it has the right to invoice for services performed (i.e. analytical data subscription services).

As of September 30, 2023, the Company had remaining performance obligations related to a non-cancellable (other than for a breach by the Company) minimum-quantity purchase commitment. The customer is obligated to purchase a fixed number of ZEVs through December 31, 2023. The Company estimates that the future revenues associated with this contract (based on estimated orders from the customer) will be $192 in 2023 and $5,088 in 2024. The timing of the revenue associated with these estimates will change if the ZEVs are commissioned and/or shipped subsequent to the year in which they were ordered, as revenue will not be recognized until control of the ZEV transfers to the customer based on the purchase order shipping terms.

Contract Balances

The following table summarizes the Company's contract balances:

	September 30, 2023	December 31, 2022	January 1, 2022
Accounts receivable, net of allowance of $2,086, $2,028 and $3,349 as of September 30, 2023, December 31, 2022 and January 1, 2022, respectively	$ 9,747	$ 9,899	$ 9,172
Contract Liabilities - Current	786	794	147

Costs to Obtain or Fulfill a Contract with a Customer

The Company has elected the practical expedient to expense contract acquisition costs, which consist of sales commissions, which are reported within "Selling, general and administrative" expenses.

Warranties and Recall Campaigns

Warranties

All ZEVs that customers purchase from the Company are covered byfive-year and 60-thousand-mile limited product warranties. At the time revenue is recognized, the Company estimates the cost of expected future warranty claims and accrues estimated future warranty costs based upon the history of warranty claims. The Company periodically reviews the adequacy of its product warranties and adjusts, if necessary, the warranty estimate and accrued warranty liability for actual historical experience. The warranty liability is included in "Accrued expenses and other current liabilities" and the cost of warranties is included in "*Cost of revenues.*"

At times, the Company may sell its ZEVs with an extended product warranty, with coverage beyond thefive-year and 60-thousand-mile limited standard warranty. The Company considers these extended warranties to be separate performance obligations. The consideration allocated to the extended warranty is deferred and recognized over the term of the extended warranty. The Company's deferred revenue associated with extended warranties is currently all classified as long-term within "*Other long-term liabilities.*"

Recall Campaigns

The Company records product recall reserves when a liability is probable and the related amounts are reasonably estimable.

On December 16, 2022, the Company initiated a voluntary recall for certain 2021-2022 model year Lightning eMotors ZEV4 vehicles due to multiple software and hardware discrepancies internal to the Romeo battery packs installed in the ZEV4 series vehicles. The affected vehicles may fail to operate in cold temperatures, fail to start, or may lose traction power while driving, increasing the risk of an accident. Romeo has been formally notified of the recall; however, Romeo has not reached a solution to honor their battery warranty. See Note 13 under the section "*Legal Proceedings*". The Company's current remedy is to either replace the ZEV4 manufactured with Romeo battery packs with updated ZEV4 models manufactured with Proterra battery packs or to refund full value of the purchase price to the customer. The Company will seek to recover the costs and expenses associated with the recall from the remaining assets of Romeo, or otherwise in the lawsuit against Nikola and Romeo described in Note 13.

On March 27, 2023, the Company initiated a voluntary recall for certain model year 2020 FT3-43, 2019-2022 FT3-86, 2020 FE4-86 and 2019-2021 FE4-129 vehicles equipped with eMatrix battery packs. Defective structural welds and internal radiator leaks have been found in the battery packs which may result in isolation faults and cell imbalances. The affected vehicles may lose traction power, increasing the potential for collisions or experience a thermal runaway which could result in vehicle fires. The Company is still in process of developing a remedy for the structural welds and internal radiator leaks and at this time is unable to reasonably estimate a range of the potential losses associated with the recall.

Fair value, measurements, and financial instruments

A fair value hierarchy was established that prioritizes fair value measurements based on the types of inputs used for the various valuation techniques (market approach, income approach, and cost approach). The Company's financial assets and liabilities are measured using inputs from the three levels of the fair value hierarchy. The three levels of the hierarchy and the related inputs are as follows:

- Level 1: Quoted prices (unadjusted) for identical assets or liabilities in active markets that the Company can access at the measurement date.
- Level 2: Significant other observable inputs other than Level 1 prices such as quoted prices for similar assets or liabilities, quoted prices in markets that are not active or other inputs that are observable or can be corroborated by observable market data.
- Level 3: Significant unobservable inputs that reflect the Company's own assumptions about the assumptions that market participants would use in pricing an asset or liability.

An asset's 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 need to maximize the use of observable inputs and minimize the use of unobservable inputs. Assets and liabilities measured at fair value are based on one or more of the following three valuation techniques:

- Market approach: Prices and other relevant information generated by market transactions involving identical or comparable assets or liabilities.
- Cost approach: Amount that would be required to replace the service capacity of an asset (replacement cost).
- Income approach: Techniques to convert future amounts to a single present value amount based upon market expectations (including present value techniques, option pricing and excess earnings models).

The Company believes its valuation methods are appropriate and consistent with other market participants, however, the use of different methodologies or assumptions to determine the fair value of certain financial instruments could result in a different fair value measurement at the reporting date. The Company's recurring fair value measurements categorized within Level 3 discussed below contain significant unobservable inputs. A change in those significant unobservable inputs could result in a significantly higher or lower fair value measurement at the reporting date.

The Company's financial instruments consist of cash and cash equivalents, accounts receivable, accounts payable, accrued liabilities, warrant liabilities, long-term debt, derivative liabilities and earnout liabilities. The carrying value of cash, accounts receivable, accounts payable, and accrued liabilities approximate fair value because of the short-term nature of those instruments.

Current debt is not presented at fair value on the consolidated balance sheets, as it is recorded at carrying value, net of unamortized debt discounts. However, the 7.5% $100,000 convertible senior note (the "Convertible Notes") has an embedded conversion option accounted for as a derivative liability, which is presented at fair value on the consolidated balance sheets. The fair value of the Convertible Notes, including the conversion option, was $9,495 and $58,155 as of September 30, 2023 and December 31, 2022, respectively. The Company's term note and working capital facility ("Facility") had an outstanding term note with a principal amount of $3,000 as of both September 30, 2023 and December 31, 2022 and a fair value of $3,091 and $3,125 as of September 30, 2023 and December 31, 2022, respectively.

The following tables set forth by level within the fair value hierarchy the Company's financial assets and liabilities that were measured at fair value on a recurring basis in the consolidated balance sheets.

	Level 1	Level 2	Level 3
As of September 30, 2023			
Financial assets			
Cash equivalents	$ 4,065	$ —	$ —
Financial Liabilities			
Derivative liability	—	—	355
As of December 31, 2022			
Financial assets			
Cash equivalents	$ 51,351	$ —	$ —
Financial Liabilities			
Warrant liability	$ —	$ —	$ 60
Derivative liability	—	—	78
Earnout liability	—	—	2,265

As of September 30, 2023 and December 31, 2022, the Company had cash equivalents held in a money market account. The Company has concluded that due to the highly liquid nature of the money market account, the carrying value approximates fair value, which represents a Level 1 input.

As a result of the Business Combination, the Company assumed the liability associated with the Gig warrants. The Company accounts for the warrants as liabilities at fair value with subsequent changes in fair value recorded in the statement of operations for each reporting period. The fair value is determined using the Black-Scholes-Merton option-pricing model ("BSM") where the share price input represents the Company's stock price as of the valuation date. The BSM is a commonly-used mathematical model for pricing an option or warrant. In particular, the model estimates the variation in value over time of financial instruments. The fair value measurements are considered Level 3 measurements within the fair value hierarchy.

The Company estimates the fair value of its derivative liability associated with the Convertible Notes at each reporting date, as well as at each conversion date. The Convertible Notes and embedded conversion option are valued using a Binomial Lattice Model designed to capture incremental value attributed to the conversion options in addition to the value of the Convertible Notes. The value of the Convertible Notes without the conversion feature is valued utilizing the income approach, specifically the discounted cash flow method. Cash flows are discounted utilizing the U.S. Treasury rate and the credit spread to estimate the appropriate risk-adjusted rate. The conversion feature utilizes the Company's stock price as of the valuation date as the starting point of the valuation. A Binomial Lattice Model is used to estimate a credit spread by solving for a premium to the U.S. Treasury rate that produces a value of the Convertible Notes. As of issuance, the value of the Convertible Notes and warrants related to the Convertible Notes were set to equal $100,000 to solve for the credit spread which is then updated quarterly. The fair value measurements are considered Level 3 measurements within the fair value hierarchy.

As a result of the Business Combination, the Company recognized additional earnout shares with performance conditions as a liability measured at fair value with subsequent changes in fair value recorded in the consolidated statement of operations for each reporting period. The earnout shares are valued using the Company's stock price as of the valuation date. The valuation methodology used is a Monte Carlo Simulation model ("MCS") utilizing a Geometric Brownian motion process to capture meeting the various performance conditions. MCS is a technique that uses a stochastic process to create a range of potential future outcomes given a variety of inputs. Stochastic processes involve the use of both predictive assumptions (e.g., volatility, risk-free rate) and random numbers to create potential outcomes of value. MCS assumes that stock prices take a random walk and cannot be predicted; therefore, random number generators are used to create random outcomes for stock prices. The fair value measurements are considered Level 3 measurements within the fair value hierarchy.

The Company's non-financial assets, which primarily consist of property and equipment, are not required to be carried at fair value on a recurring basis and are reported at carrying value. However, on a periodic basis or whenever events or changes in circumstances indicate that their carrying value may not be fully recoverable, these along with other non-financial instruments are assessed for impairment and, if applicable, written down to and recorded at fair value.

For the three and nine months ended September 30, 2023, and due to the Notice received from the NYSE, the Company determined a triggering event occurred that required the Company to evaluate the Company's long-lived assets for impairment. The Company's long-lived assets were evaluated using a market approach based on an in exchange premise, estimating recovery percentages that would take into account cost of installation, freight and other costs that would not be recovered. This approach is considered Level 3 due to the significant unobservable inputs that reflect the Company's own assumptions about the assumptions that market participants would use in pricing an asset or liability. As a result, the Company recorded a loss on the impairment of property and equipment of $ 4,878 for the three and nine months ended September 30, 2023, which is included in "*Cost of revenues*" on the consolidated statements of operations.

Beneficial conversion features

The Company followed the beneficial conversion feature guidance in ASC 470-20, *Debt with Conversion and Other Options*, which applies to redeemable convertible preferred stock and convertible debt. A beneficial conversion feature is defined as a nondetachable conversion feature that is in the money at the commitment date.

The beneficial conversion feature guidance requires recognition of the conversion option's in-the-money portion, the intrinsic value of the option, in equity, with an offsetting reduction to the carrying amount of the instrument. The resulting discount is amortized as interest over the life of the instrument. When there is a subsequent change to the conversion ratio based on a future occurrence, the new conversion price may trigger the recognition of an additional beneficial conversion feature on occurrence.

As a result of the Business Combination, the unamortized portion of the beneficial conversion feature was recorded to additional paid-in capital.

Stock-based compensation

The Company accounts for share-based compensation in accordance with ASC 718, *Compensation – Stock Compensation*, under which share based payments that involve the issuance of common stock to employees and non-employees and meet the criteria for equity-classified awards are recognized in the financial statements as share-based compensation expense based on the fair value on the date of grant. The Company issues stock option awards and restricted stock unit awards to employees and non-employees.

The Company utilizes the Black-Scholes model to determine the fair value of the stock option awards, which requires the input of subjective assumptions. These assumptions include estimating (a) the length of time grantees will retain their vested stock options before exercising them for employees and the contractual term of the option for non-employees ("expected term"), (b) the volatility of the Company's common stock price over the expected term, (c) expected dividends, and (d) the fair value of a share of common stock prior to the Business Combination. After the closing of the Business Combination, the Company's board of directors determined the fair value of each share of common stock underlying stock-based awards based on the closing price of the Company's common stock as reported by the NYSE on the date of grant. The Company has elected to recognize the adjustment to share-based compensation expense in the period in which forfeitures occur.

The assumptions used in the Black-Scholes model are management's best estimates, but the estimates involve inherent uncertainties and the application of management judgment (see Note 10). As a result, if other assumptions had been used, the recorded share-based compensation expense could have been materially different from that recorded in the financial statements.

Warrants and Warrant liabilities

As a result of the Business Combination, the Company assumed the liability associated with the Gig warrants. The Company accounts for the warrants for shares of the Company's common stock that are not indexed to its own stock as liabilities at fair value on the consolidated balance sheets. The warrants are subject to remeasurement at each balance sheet date and any change in fair value is recognized as a "*(Gain) loss from change in fair value of warrant liabilities*" in the consolidated statements of operations. The Company will continue to adjust the liability for changes in fair value until the earlier of the exercise or expiration of the common stock warrants. At that time, the portion of the warrant liability related to the common stock warrants will be reclassified to "Additional paid-in capital".

Research and development

Research and development costs are primarily expensed when incurred and consist of personnel-related expenses including salaries, benefits, travel and stock-based compensation for personnel performing research and development activities; expenses related to materials, supplies and testing; and consulting and occupancy expenses. In addition, costs for certain property and equipment utilized for research and development are capitalized and depreciated to "*Research and development*" over the useful life of the asset based on the property and equipment policy discussed above.

Advertising

Advertising costs are expensed when incurred and are included in "*Selling, general and administrative*" expenses and total $153 and $179 for the three months ended September 30, 2023 and 2022, and $548 and $422 for the six months ended September 30, 2023 and 2022, respectively.

Derivative Liability

The Company accounts for the embedded conversion feature and fundamental change clause of the Convertible Notes as derivative liabilities. Pursuant to ASC 815-15, *Derivatives and Hedging – Embedded Derivatives*, the embedded conversion feature and fundamental change clause meet all three criteria to be bifurcated and accounted for separately from the host instrument, i.e., the Convertible Notes. Because these features meet all criteria of a derivative instrument, it was accounted for and recorded as a derivative liability at fair value on the Company's balance sheet with subsequent changes in fair value recorded in the consolidated statement of operations each reporting period.

Earnout Liability

As a result of the Business Combination, the Company recognized additional earnout shares as a liability. Pursuant to ASC 805,*Business Combinations*, the initial fair value of the earnout shares was recorded as a liability with the offset going to additional paid-in capital and with subsequent changes in fair value recorded in the consolidated statement of operations for each reporting period. The following table provides a reconciliation of the beginning and ending balances for the earnout liability measured at fair value using significant unobservable inputs (Level 3):

	September 30, 2023
Balance at beginning of period	$ 2,265
(Gain) loss	(2,265)
Balance at end of period	$ —

Income taxes

Income taxes are accounted for using the asset and liability method which requires the recognition of deferred tax assets and liabilities for the expected future tax consequences of temporary differences between the carrying amounts and the tax basis of other assets and liabilities. The Company provides for income taxes at the current and future enacted tax rates and laws applicable in each taxing jurisdiction. The Company uses a two-step approach for recognizing and measuring tax benefits taken or expected to be taken in a tax return and disclosures regarding uncertainties in income tax positions. The Company recognizes interest and penalties related to income tax matters in income tax expense in the consolidated statement of operations.

Earnings per share

Basic earnings (loss) per share ("EPS") are computed by dividing net earnings (loss) by the weighted average number of common shares outstanding for the period. Diluted EPS attributable to common shareholders is computed by adjusting net earnings by the weighted average number of common shares and potential common shares outstanding (if dilutive) during each period. Potential common shares include shares issuable upon exercise of stock options and vesting of restricted stock awards. Anti-dilutive securities are excluded from diluted EPS.

The Company applies the treasury stock method to account for the dilutive impact of its options, warrants and restricted stock units and the if converted method for its Convertible Notes.

Recent accounting pronouncements issued and adopted

In June 2016, the Financial Accounting Standards Board issued Accounting Standards Update ("ASU") 2016-13 related to the measurement of credit losses on financial instruments and has since modified the standard with several ASUs (collectively, the "credit loss standard"). The credit loss standard requires a financial asset (or a group of financial assets) measured at amortized cost basis to be presented at the net amount expected to be collected. The measurement of expected credit losses is based on relevant information about past events, including historical experience, current conditions and reasonable and supportable forecasts that affect the collectability of the reported amount. The credit loss standard took effect for public entities for fiscal years beginning after December 15, 2019, including interim periods within those fiscal years. As amended in ASU 2019-10, for smaller reporting companies, the credit loss standard took effect for fiscal years beginning after December 15, 2022, and for interim periods within those fiscal years. The adoption of this ASU required a cumulative-effect adjustment to accumulated deficit as of the beginning of the first reporting period in which the guidance is effective (that is, a modified-retrospective approach). The Company adopted this standard on January 1, 2023, and this ASU did not have a material impact to the Company's financial statements.

Note 3 – Inventories

At September 30, 2023 and December 31, 2022, inventories consist of the following:

	September 30, 2023	December 31, 2022
Raw materials	$ 11,002	$ 30,763
Work in progress	373	3,357
Finished goods	7,839	12,946
Total inventories	$ 19,214	$ 47,066

The Company discontinued certain vehicle platforms due to the supply uncertainty for key components required to produce these platforms. As a result, the Company assessed its ability to reuse the remaining inventory in other platforms the Company currently produces or is developing. However, the Company determined that much of the inventory could not be used so the inventory was written down to a net realizable value. In addition, the Company reduced certain finished goods inventory to a net realizable value. As a result, the Company reduced the cost of certain inventory to net realizable value by $18,016 and $20,659 for the three and nine ended September 30, 2023, respectively. The Company reduced the cost of certain inventory to net realizable value by $378 and $1,155 for the three and nine months ended September 30, 2022, respectively. The reductions in inventory were recorded in "Cost of revenues."

Note 4 – Prepaid Expenses and Other Current Assets

At September 30, 2023 and December 31, 2022, prepaid expenses and other current assets consist of the following:

	September 30, 2023	December 31, 2022
Vendor deposits	$ 394	$ 4,447
Prepaid insurance	2,194	2,367
Other prepaid expenses	2,070	2,559
Other current assets	17	28
Total prepaid expenses and other current assets	$ 4,675	$ 9,401

Note 5 – Property and Equipment

Property and equipment as of September 30, 2023 and December 31, 2022 are as follows:

	September 30, 2023	December 31, 2022
Machinery and equipment	$ 2,559	$ 2,945
Vehicles	1,335	3,634
Mobile vehicle chargers	627	—
Leasehold improvements	1,637	3,660
Computer equipment	397	688
Software	32	11
Furniture and fixtures	571	969
Capital projects in progress	760	2,317
Total	7,918	14,224
Accumulated depreciation and amortization	—	(2,705)
Total property and equipment, net	$ 7,918	$ 11,519

For the three months ended September 30, 2023, the Company determined a triggering event occurred that required the Company to evaluate the Company's long-lived assets for impairment. The triggering event was the receipt of the Notice from the NYSE on September 18, 2023 indicating that the staff determined to suspend trading immediately and commence proceedings to delist the shares of common stock and the redeemable warrants of the Company from the NYSE. The Company evaluated the Company's long-lived assets for impairment and as a result, the Company recorded a loss on the impairment of property and equipment of $4,878 for the three and nine months ended September 30, 2023, which is included in "*Cost of revenues*" on the consolidated statements of operations.

The cost of property and equipment, in the table above, as of September 30, 2023 are stated at fair value after taking into effect the impairment of $4,878.

Depreciation and amortization expense associated with property and equipment is as follows for the periods indicated:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2023	2022	2023	2022
Cost of revenues	$ 231	$ 127	$ 620	$ 337
Research and development	73	17	104	125
Selling, general and administrative	435	328	1,147	754
Total depreciation and amortization expense	$ 739	$ 472	$ 1,871	$ 1,216

Note 6 – Accrued Expenses and Other Current Liabilities

At September 30, 2023 and December 31, 2022, accrued expenses and other current liabilities consist of the following:

	September 30, 2023	December 31, 2022
Accrued professional services	$ 831	$ 597
Accrued interest	1,684	806
Accrued payroll and benefits	3,223	1,451
Other accrued expense	275	1,436
Warranty liability	1,785	1,268
Refund liability	1,285	—
Customer deposits	468	427
Deferred revenue	112	106
Current portion of finance lease obligation	212	179
Total accrued expenses and other current liabilities	$ 9,875	$ 6,270

Changes in warranty liability (included in accrued expenses and other current liabilities) were as follows:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2023	2022	2023	2022
Balance at beginning of period	$ 1,599	$ 1,212	$ 1,268	$ 994
Charge for the period	440	531	1,107	1,231
Utilized during the period	(254)	(516)	(590)	(998)
Balance at end of period	$ 1,785	$ 1,227	$ 1,785	$ 1,227

Note 7 – Debt

Debt as of September 30, 2023 and December 31, 2022 consists of the following:

	September 30, 2023	December 31, 2022
Convertible Note	$ 59,863	$ 73,863
Facility	3,000	3,000
Prepaid Advance Agreement	200	—
Insurance Finance Agreement	910	—
Total debt principal	63,973	76,863
Unamortized debt discount - Convertible Note	(5,922)	(14,735)
Unamortized debt discount - Facility	(14)	(25)
Unamortized debt discount - Prepaid Advance Agreement	(26)	—
Total debt less unamortized debt discount	$ 58,011	$ 62,103
Less current portion - Convertible Note	(53,941)	—
Less current portion - Prepaid Advance Agreement	(174)	—
Less current portion - Insurance Finance Agreement	(910)	—
Total long-term debt	$ 2,986	$ 62,103

Convertible Note

In conjunction with the Business Combination, the Company entered into the 7.5% $100,000 Convertible Note and paid issuance costs of $5,000. The Convertible Note has a maturity date of May 15, 2024 and has semi-annual interest payments due May 15 and November 15 of each year starting on November 15, 2021. The Convertible Note has a conversion feature at a conversion price of $230.00 and warrants to purchase up to 434,782 shares of common stock for a per share price of $230.00. The Convertible Note has a mandatory conversion option that: a) is exercisable at the option of the Company on or after May 15, 2022; b) occurs when the Company's stock price (1) is greater than 120% of the conversion price of $230.00, or $276.00 for 20 trading days in a period of 30 consecutive trading days and (2) the 30-day average daily trading volume during the applicable exercise period, i.e., consecutive 30 trading day period, is greater than or equal to $3,000; and c) the Company will make payments in accordance with the interest make-whole (defined below) amount in cash or issuance of additional shares of the Company's common stock.

The interest make-whole amount means, with respect to the conversion of the Convertible Note, in an amount denominated in U.S. dollars, the sum of all regularly scheduled interest payments, if any, due on such Convertible Note on each interest payment date occurring after the conversion date for such conversion and on or before the maturity date; provided, however, that (A) for these purposes, the amount of interest due on the interest payment date immediately after such conversion date will be deemed to be the following amount: any accrued and unpaid interest, if any, at such conversion date, plus any remaining amounts that would be owed to, but excluding, the maturity date in respect of such Convertible Note, including all regularly scheduled interest payments; and (B) if such conversion date occurs after the Company has sent a mandatory conversion notice, then the interest make-whole amount for such conversion shall be the sum of all regularly scheduled interest payments, if any, due on such Convertible Note on each interest payment date occurring after the conversion date for such conversion to, but excluding, the maturity date.

If the Company incurs other unpermitted indebtedness, it is required to redeem the Convertible Notes in full including outstanding principal and accrued and unpaid interest, plus a prepayment premium equal to the amount of interest which would have accrued on the Convertible Notes through maturity (the "Redemption Feature"). In addition, the Company is required to issue to the holders a fixed number of warrants to purchase shares of Common Stock. The fixed number of warrants will be based on the principal balance of the Convertible Notes, divided by $230.00 ("Redemption Warrants"). The Redemption Warrants will be exercisable from the date of repayment of the Convertible Notes through the original maturity date of the Convertible Notes. Further, in the event the Company is not successful in its appeal of delisting to the NYSE, such delisting will represent a "Fundamental Change," giving each holder of Convertible Notes the right to require the Company to repurchase its Convertible Notes pursuant to the terms and procedures set forth in the indenture for a cash repurchase price equal to 100% of the principal amount of the Convertible Notes to be so repurchased, plus accrued and unpaid interest thereon, if any, plus any remaining amounts that would be owed to, but excluding the Maturity Date (as defined in the indenture), including all regularly scheduled interest payments.

If the number of outstanding shares of Common Stock is increased by a stock split or other similar event, the number of shares issuable on exercise of each warrant shall be increased proportionately and the exercise price shall be decreased proportionately. Consequently, if the number of outstanding shares of Common Stock is decreased by a reverse stock split, consolidation, combination or reclassification of shares of Common Stock or other similar event, the number of shares of Common Stock issuable on exercise of each warrant shall be decreased proportionately and the exercise price shall be increased proportionately.

The Company has identified certain embedded derivatives related to its Convertible Note. Since the Convertible Note has a conversion feature whereby the principal amount will convert into a variable number of shares based on the future trading price of the Company's common stock, the conversion feature is recorded as a derivative liability. Therefore, the fair value of the convertible feature at inception on May 6, 2021 in the amount of $17,063 was recorded as a debt discount and an addition to "Derivative liability" on the consolidated balance sheets. The derivative liability is adjusted to fair value each reporting period, with the changes in fair value reported in "*(Gain) loss from change in fair value of derivative liability*" on the consolidated statements of operations.

On November 21, 2022, the Company completed an exchange with certain holders of the Convertible Notes via privately negotiated exchange agreements, pursuant to which the holders agreed to exchange $14,000 in aggregate principal amount of the Company's outstanding Convertible Notes for663,822 newly issued shares of the Company's common stock, par value $0.0001 per share, at a price of $21.00 per share. The Company recognized a gain on extinguishment of $2,921 in "*(Gain) loss on extinguishment of debt*" on the consolidated statement of operations associated with the difference between (1) the sum of the fair value of the common stock issued of $8,138 and (2) the sum of the carrying amount of the converted debt $11,021 and the fair value of the convertible note derivative liability of $38.

On February 10, 2023, the Company completed an exchange with a holder of the Convertible Notes via a privately negotiated exchange agreement, pursuant to which the holder agreed to exchange $3,500 in aggregate principal amount of the Company's outstanding Convertible Notes at95% of par for 210,443 newly issued shares of the Company's common stock, par value $0.0001 per share, at a price of $15.80 per share. The Company recognized a gain on extinguishment of $47 in "(Gain) loss on extinguishment of debt" on the consolidated statement of operations associated with the difference between (1) the sum of the fair value of the common stock issued of $2,811 and (2) the sum of the carrying amount of the converted debt $2,850 and the fair value of the convertible note derivative liability of $8.

On March 15, 2023, the Company completed an exchange with certain holders of the Convertible Notes via privately negotiated exchange agreements, pursuant to which the holders agreed to exchange $10,500 in aggregate principal amount of the Company's outstanding Convertible Notes for937,500 newly issued shares of the Company's common stock, par value $0.0001 per share, at a price of $11.20 per share. The Company recognized a gain on extinguishment of $2,918 in "(Gain) loss on extinguishment of debt" on the consolidated statement of operations associated with the difference between (1) the sum of the fair value of the common stock issued of $5,756 and (2) the sum of the carrying amount of the converted debt $8,669 and the fair value of the convertible note derivative liability of $5.

The following table provides a reconciliation of the beginning and ending balances for the Convertible Note derivative liability measured at fair value using significant unobservable inputs (Level 3):

	2023
Balance at beginning of period	$ 78
(Gain) Loss	290
Change resulting from conversions	(13)
Balance at end of period	$ 355

The Convertible Note warrants are considered free-standing instruments and meet the criteria for equity classification because they are indexed to the Company's own stock and provide a fixed number of shares. Therefore, the fair value of the Convertible Note warrants on May 6, 2021 in the amount of $14,522 was recorded as a debt discount and an addition to "Additional paid-in capital" on the consolidated balance sheets.

Interest expense for the three months ended September 30, 2023 and 2022 was $3,279 and $4,129, respectively, of which $1,122 and $1,647, respectively, related to contractual interest expense and $2,157 and $2,482, respectively, related to amortization of the discount. Interest expense for the nine months ended September 30, 2023 and 2022 was $9,818 and $11,830, respectively, of which $3,499 and $4,942, respectively, related to contractual interest expense and $6,319 and $6,888, respectively, related to amortization of the discount.

Facility

The Loan and Security Agreement with Cupola Infrastructure Income Fund, L.L.L.P., as amended (the "Facility"), provides for both term and working capital loans for borrowings up to $8,600 as of September 30, 2023. However, the Company's Convertible Note requirements limit the Company's permitted indebtedness to $5,000. Interest is payable quarterly on borrowings at a fixed annual rate of 18%. Borrowings under the Facility are secured by substantially all the Company's assets, are subject to borrowing base limitations, and require the Company to meet certain covenants. The Facility borrowings, with a maturity date of October 21, 2024, were $3,000 as of September 30, 2023 and December 31, 2022. Interest expense related to the Facility was $130 and $118 for the three months ended September 30, 2023 and 2022, and $361 and $348 for the nine months ended September 30, 2023 and 2022, respectively.

Pre-Paid Advance Agreement

On May 16, 2023, the Company entered into a Pre-Paid Advance Agreement (the "PPA") with YA II PN, Ltd., a Cayman Islands exempt limited partnership (the "Investor"). In accordance with the terms of the PPA, the Company may request pre-paid advances of up to $2,000 from the Investor (or such greater amount that the parties may mutually agree) (each, a "Pre-Paid Advance"), with an aggregate limit of $50,000, over an 18-month period. Such Pre-Paid Advances will be purchased by the Investor at 92% of the face amount. Interest will accrue on the outstanding balance of any Pre-Paid Advance at 0%, subject to an increase to 15% upon events of default described in the PPA. At any time while a Pre-Paid Advance is outstanding, the Investor may, by providing written notice to the Company (a "Purchase Notice"), require the Company to issue and sell shares of common stock to the Investor. The aggregate purchase price of the shares of common stock will be based on a price per share equal to the lower of: (a) with respect to each Pre-Paid Advance, 100% of the volume weighted average price (the "VWAP") of the Company's common stock on the trading day immediately preceding the closing of such Pre-Paid Advance (the "Fixed Price") or (b) 92.0% of the average of the two lowest daily VWAPs during the seven trading days immediately prior to receipt of the Purchase Notice (as applicable, the "Purchase Price"), however in no event will the Purchase price be less than $0.856 (the "Contractual Floor Price").

While Pre-Paid Advances are outstanding, and within three trading days of a Trigger Event (as defined below), the Company must pay the Investor a monthly cash payment (the "Monthly Payment") of $1,000, plus any accrued and unpaid interest and a 7% redemption premium. Thereafter, the Company must pay the Investor the Monthly Payment every 30 calendar days after the due date of the initial Monthly Payment; provided that the Company's monthly obligation to make such payments will end with respect to a particular Trigger Event if the daily VWAP of the Company's common stock for five consecutive trading days immediately prior to the due date of the next Monthly Payment is 20% or greater than the Contractual Floor Price, unless a new Trigger Event occurs. A "Trigger Event" occurs if (i) the common stock is lower than the Contractual Floor Price for any five of seven consecutive trading days or (ii) the Company has issued substantially all of the shares available under the rules of the New York Stock Exchange until stockholder approval is received (19.9% of the shares outstanding as of the date hereof) (excluding the initial Pre-Paid Advance).

During the nine months ended September 30, 2023, the Company received Pre-Paid Advances in the aggregate amount of $3,200 and received proceeds in the amount of $2,944, net of issuance cost in the amount of $256. During the three months ended September 30, 2023, the Company converted $1,250 with the issuance of 443,303 newly issued shares of common stock to Yorkville. During the nine months ended September 30, 2023, the Company converted $2,800 with the issuance of 904,851 newly issued shares of common stock to Yorkville. The Company recognized a loss on extinguishment of $357 and $825 for the three and nine months ended September 30, 2023, respectively in "Interest expense, net" on the consolidated statement of operations associated with the difference between (1) the sum of the fair value of the common stock issued of $1,510 and (2) the sum of the carrying amount of the converted debt $1,153 for the three months ended September 30, 2023, and (1) the sum of the fair value of the common stock issued of $3,404 and (2) the sum of the carrying amount of the converted debt $2,579 for the nine months ended September 30, 2023. Interest expense related to the PPA was $825 for the three and nine months ended September 30, 2023 and zero for the three and nine months ended September 30, 2022. Due to the suspension of trading of the Company's common stock from the NYSE, the Company is currently unable to utilize the PPA.

On September 19, 2023, the Company and the Investor entered into a waiver agreement (the "Waiver Agreement"). Under the terms of the Waiver Agreement, the Investor agreed to waive the default under the PPA created by the suspension of trading of the common stock on the NYSE. As consideration for the Waiver Agreement, the Company agreed to make an Optional Prepayment (as defined in the PPA) of $200 of the outstanding advance of $400, plus the associated Payment Premium (as defined in the PPA) of $14. The Waiver Agreement did not otherwise modify or amend the PPA.

Debt maturities

The total balance of all debt matures as follows:

Period Ending December 31,	Amount
2023 (remainder of the year)	$ 200
2024	63,773
2025	—
Thereafter	—
Total	$ 63,973

Note 8 – Leases

A contract is or contains a lease when, (1) the contract contains an explicitly or implicitly identified asset and (2) the customer obtains substantially all of the economic benefits from the use of that underlying asset and directs how and for what purpose the asset is used during the term of the contract in exchange for consideration. The Company assesses whether an arrangement is or contains a lease at inception of the contract. For all leases, other than those that qualify for the short-term recognition exemption, the Company recognizes as of the lease commencement date on the balance sheet a liability for its obligation related to the lease and a corresponding asset representing the Company's right to use the underlying asset over the period of use.

The Company leases its manufacturing center, distribution center, and office space (collectively "Operating Facility") and certain information technology ("IT") equipment under non-cancelable operating leases. The Company also leases equipment utilized in the manufacturing process under non-cancelable financing leases. These financing leases include either a bargain purchase option or the equipment reverts ownership to the Company at the end of the lease term.

The Company assesses the expected lease term at lease inception and discounts the lease using a fully-secured, annual incremental borrowing rate (or rate implicit in the lease, if readily determinable), adjusted for time value corresponding with the expected lease term. The Company elected, for all classes of underlying assets, to not apply the balance sheet recognition requirements of ASC 842, *Leases*, to leases with a term of one year or less and not expected to be renewed, and instead, recognize the lease payments in the income statement on a straight-line basis over the lease term. The Company elected to combine lease and non-lease components for its Operating Facility, IT equipment and manufacturing equipment leases.

Right-of-use assets and lease liabilities as of September 30, 2023 and December 31, 2022 consist of the following:

	September 30, 2023		December 31, 2022	
	Operating	Finance	Operating	Finance
Assets				
Right-of-use assets, net (1)	$ 6,718	$ 928	$ 7,735	$ 893
Liabilities				
Lease obligation - current portion (2)	$ 1,913	$ 212	$ 1,649	$ 179
Lease obligation - long-term portion (3)	6,263	586	7,735	619
Total lease obligations	$ 8,176	$ 798	$ 9,384	$ 798
Weighted average remaining lease terms (in years)	3.4	4.1	4.2	4.8
Weighted average discount rate	15%	4%	15%	4%

(1) Finance right-of-use assets, net are included in "Other assets" on the consolidated balance sheets.
(2) Finance lease obligation – current portion is included in "Accrued expenses and other current liabilities" on the consolidated balance sheets.
(3) Finance lease obligation – long-term portion is included in "Other long-term liabilities" on the consolidated balance sheets.

The Company’s lease cost is presented below. The Company does not have any short-term leases or leases with variable lease payments. The financing lease cost for the three and nine months ended September 30, 2023 and 2022 was immaterial.

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2023	2022	2023	2022
Operating Lease Cost				
Cost of revenues	$ 404	$ 356	$ 1,211	$ 878
Research and development	76	77	228	232
Selling, general and administrative	183	230	548	857
Total operating lease cost	$ 663	$ 663	$ 1,987	$ 1,967

The maturities of the Company’s lease liabilities are as follows:

	September 30, 2023	
	Operating	Finance
2023 (remainder of year)	$ 733	$ 59
2024	2,997	237
2025	3,043	192
2026	3,105	160
2027	518	113
Thereafter	—	95
Total future minimum lease payments	10,396	856
Less: imputed interest	(2,220)	(58)
Total maturities	$ 8,176	$ 798

Note 9 – Capital Structure

Reverse Stock Split

On April 24, 2023, the Company filed with the Secretary of State of the State of Delaware a Certificate of Amendment (the “Certificate of Amendment”) to the Company’s Second Amended and Restated Certificate of Incorporation to effect a 1-for-20 reverse stock split (the “Reverse Stock Split”) of the Company’s issued and outstanding shares of common stock, par value $0.0001 per share, effective as of 5:00 p.m. Eastern Time on April 27, 2023. Beginning with the opening of trading on April 28, 2023, the Company’s common stock traded on the New York Stock Exchange on a split-adjusted basis under the new CUSIP number 53228T 200 and under the symbol “ZEV.”

As a result of the Reverse Stock Split, every twenty shares of common stock issued and outstanding were automatically reclassified into one share of common stockNo fractional shares were issued in connection with the Reverse Stock Split. Stockholders who otherwise would have been entitled to receive fractional shares because they held a number of shares of common stock not evenly divisible by the Reverse Stock Split ratio were automatically entitled to receive a cash payment equal to the value of such fractional share based on the closing price of the common stock as of the effective time of the Reverse Stock Split adjusted for the Reverse Stock Split.

The Reverse Stock Split did not reduce the number of authorized shares of common stock of250,000,000, or change the par value of the common stock. The Reverse Stock Split affected all stockholders uniformly and did not affect any stockholder’s ownership percentage of the Company’s shares of common stock.

All outstanding options, warrants, restricted stock units and similar securities entitling their holders to receive or purchase shares of common stock were adjusted as a result of the Reverse Stock Split, as required by the terms of each security. Prior to the Reverse Stock Split, the Company had outstanding issued warrants listed on the NYSE to purchase a total of 14,999,970 shares of common stock, with each whole warrant being exercisable to purchaseone share of common stock at $11.50 per share. After giving effect to the Reverse Stock Split, these warrants are now exercisable for a total of approximately 749,998 shares of common stock, resulting in each warrant becoming exercisable for 1/20th of a share of common stock with an exercise price of $230.00 per whole share.

Equity Line of Credit ("ELOC")

On August 30, 2022, the Company entered into the ELOC Agreement with Lincoln Park, pursuant to which Lincoln Park committed to purchase up to $50.0 million of shares of the Company's common stock, subject to certain limitations and conditions set forth in the ELOC Agreement. The Company may not issue or sell any shares of common stock under the ELOC Agreement which, when aggregated with all other shares of common stock beneficially owned by Lincoln Park, would result in beneficial ownership of more than 9.99% of the Company's outstanding shares of common stock.

Under the terms of the ELOC Agreement, the Company has the right, but not the obligation, to sell to Lincoln Park, shares of its common stock over the period commencing on or about August 30, 2022 (the "Closing Date") and ending on the first day of the month following the 36-month anniversary of the Closing Date. Purchase notices for regular or accelerated purchases to Lincoln Park include share volume limitations and are at prevailing market prices as defined in the ELOC Agreement.

During the three months ended September 30, 2022 and concurrently with the signing of the ELOC Agreement, the Company issued 14,974 shares of its common stock to Lincoln Park as a commitment fee. The fair value of the shares issued for the commitment fee of $851 was recorded in "Selling, general and administrative" expense on the Company's consolidated statements of operations.

As of September 30, 2023, the Company had not sold any common stock to Lincoln Park under the ELOC Agreement, other than the shares of common stock issued as a commitment fee. The Company has agreed with the Investor that it will not utilize the ELOC while there are outstanding Pre-Paid Advances without the Investor's consent. In addition, the Company may not utilize the ELOC while its shares of common stock are suspended from trading on the NYSE or other Principal Market (as defined in the ELOC).

Warrants

As of September 30, 2023, there were warrants outstanding convertible into 1,218,285 shares of common stock. In total, the warrants include 14,999,970 public warrants convertible into 749,998 shares of common stock, 8,695,641 Convertible Note warrants convertible into 434,782 shares of common stock, and 670,108 private placement warrants convertible into 33,505 shares of common stock outstanding. Each warrant entitles the holder to purchase 1/20th of a share of common stock at a price of $230.00 per whole share, subject to adjustment as discussed below. The warrants will expire at 5:00 p.m., New York City time, on May 26, 2026, the fifth anniversary of the completion of the Company's Business Combination, or earlier upon redemption or liquidation.

The private placement warrants are identical to the public warrants except that such private placement warrants will be exercisable for cash or on a cashless basis, at the holder's option, and will not be redeemable by the Company, in each case so long as they are still held by the sponsor or its affiliates.

The Company may redeem the outstanding warrants (excluding the private placement warrants):

- in whole and not in part;
- at a price of $0.01 per warrant;
- upon a minimum of 30 days' prior written notice of redemption, which the Company refers to as the 30-day redemption period; and
- if, and only if, the last reported sale price of the Company's common stock equals or exceeds $360.00 per share (as adjusted for stock splits, stock dividends, reorganizations, recapitalizations and the like) for any 20 trading days within a 30 trading day period ending on the third trading day prior to the date on which the Company sends the notice of redemption to the warrant holders.

The fair value of the private placement warrants on May 6, 2021 in the amount of $1,253 was recorded as a "Warrant liability" and a reduction to "Additional paid-in capital" on the consolidated balance sheets. The change in fair value at each reporting date was recognized in "*(Gain) loss from change in fair value of warrant liabilities*" on the consolidated statements of operations. The fair value of the Convertible Note warrants on May 6, 2021 in the amount of $14,522 was recorded as a debt discount and an addition to "*Additional paid-in capital*" on the consolidated balance sheets.

The following table presents information for privately placed warrants that were assumed in the Business Combination:

	Number of Warrants[(1)]	Warrant Fair Value	Weighted Average Exercise Price	Weighted Average Remaining Life
Private warrants assumed through Business Combination				
Outstanding at December 31, 2021	670,108	$ 2,185	$ 230.00	4.3
Change in fair value	—	(2,125)	—	—
Outstanding — December 31, 2022	670,108	60	230.00	3.4
Change in fair value	—	(60)	—	—
Outstanding — September 30, 2023	670,108	—	230.00	2.5

(1) The 670,108 private placement warrants are convertible into 33,505 shares of common stock outstanding. Each warrant entitles the holder to purchase 1/20th of a share of common stock at a price of $230.00 per whole share, subject to adjustment.

Note 10 – Stock-Based Compensation

2021 Equity Incentive Plan

In connection with the Business Combination, the stockholders approved the 2021 Equity Incentive Plan (the “2021 Plan”). The 2021 Plan provides the Company the ability to grant incentive stock options, non-qualified stock options, restricted stock awards, stock appreciation rights, restricted stock units, performance units, performance shares, cash-based awards and other stock-based awards. The purpose of the 2021 Plan is to advance the interests of the Company and its stockholders by providing an incentive to attract, retain and reward persons for performing services and by motivating such persons to contribute to the growth and profitability of the Company and its subsidiaries. As of September 30, 2023, there were 1,114,318 shares reserved and 659,190 shares available for grant under the 2021 Plan.

Prior Lightning Systems 2019 Equity Incentive Plan

The legacy Lightning Systems 2019 Equity Incentive Plan (“2019 Plan”) provided for the grant of incentive stock options, non-qualified stock options, and other awards. As a result of the Business Combination, the 2019 Plan was superseded by the 2021 Plan; therefore, no further awards will be granted under the 2019 Plan. In connection with the Business Combination, awards outstanding were converted into an option exercisable for common stock of the Company based on the Exchange Ratio. As of September 30, 2023, there were 73,099 stock options previously granted and unexercised under the 2019 Plan, which remain subject to the terms and conditions of the 2019 Plan.

Compensation Expense

To date, the Company has issued stock option and restricted stock unit (“RSU”) awards. The Company recognizes stock-based compensation expense based on the fair value of the awards issued at the date of grant and amortized on a straight-line basis as the employee renders services over the requisite service period. Forfeitures are accounted for as they occur by reversing the expense previously recognized for non-vested awards that were forfeited during the period.The following table presents the stock-based compensation related to stock option and RSU awards for the periods presented:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2023	2022	2023	2022
Stock options expense				
Cost of revenues	$ 5	$ 3	$ 12	$ 13
Research and development	4	5	11	24
Selling, general and administrative	323	239	842	623
Total stock options expense	$ 332	$ 247	$ 865	$ 660
Restricted stock units expense				
Cost of revenues	$ 99	$ 98	$ 259	$ 205
Research and development	43	44	97	123
Selling, general and administrative	1,150	1,081	3,204	2,890
Total restricted stock units expense	$ 1,292	$ 1,223	$ 3,560	$ 3,218
Total stock-based compensation	$ 1,624	$ 1,470	$ 4,425	$ 3,878

The estimated unrecognized expense for stock options and RSUs not vested as of September 30, 2023, which will be recognized over the remaining requisite service period, is as follows:

Stock options unrecognized expense	$ 2,371
Stock options weighted-average remaining requisite service period (in years)	2.1
Restricted stock units unrecognized expense	$ 6,964
Restricted stock units weighted-average remaining requisite service period (in years)	1.7

Stock Option Awards

Stock option awards are issued to employees with an exercise price equal to the estimated fair market value per share at the date of grant and a term of10 years. Stock option awards generally vest over 4 years. It is the Company's policy to issue new shares upon option exercise.Changes in the Company's stock options for the nine months ended September 30, 2023 are presented in the table below.

	Number of Options	Weighted Average Exercise Price per Share	Aggregate Intrinsic Value (in thousands)	Weighted Average Remaining Life (in years)
Outstanding at January 1, 2023	138,091	$ 45.60		
Granted	—	$ —		
Exercised	(9,502)	$ 1.08		
Forfeited	(4,189)	$ 14.52		
Expired	(1,093)	$ —		
Outstanding at September 30, 2023	123,307	$ 50.19	$ —	7.3
Vested and exercisable at September 30, 2023	73,099	$ 38.69	$ —	7.0

Changes in the status of the Company's non-vested stock option awards for the nine months ended September 30, 2023 are presented in the table below.

	Non-vested Shares Under Option		Weighted Average Grant Date Fair Value per Share
Non-vested at January 1, 2023	73,939	$	35.00
Granted	—	$	—
Vested	(18,691)	$	70.00
Forfeited	(5,040)	$	36.39
Non-vested at September 30, 2023	50,208	$	56.75

The aggregate intrinsic value of options exercised were $0 and $106 during the three months ended September 30, 2023 and 2022, respectively.

Restricted Stock Unit Awards

The Company grants RSU awards to employees that generally vest over3 years. RSU awards are valued based on the closing market price of the Company's common stock on the grant date.

	Number of RSUs		Weighted Average Grant Date Fair Value per Share
Outstanding at January 1, 2023	188,223	$	71.40
Granted	239,189	$	5.45
Vested	(44,661)	$	86.30
Forfeited	(38,219)	$	52.01
Outstanding at September 30, 2023	344,532	$	25.78

Other Employee Benefits - 401(k) Savings Plan

The Company has an employee-directed 401(k) savings plan (the "401(k) Plan") for all eligible employees. Under the 401(k) Plan, employees may make voluntary contributions based on a percentage of their pretax income, subject to statutory limitations. The Company matches 100% for the first 3% of each employee's contribution and 50% for the next 2% of each employee's contribution. The Company's cash contributions are fully vested upon the date of match. The Company made matching cash contributions of $224 and $213 for the three months ended September 30, 2023 and 2022, respectively, and $721 and $578 for the nine months ended September 30, 2023 and 2022, respectively

Note 11 – Income Taxes

The provision for income taxes is recorded at the end of each interim period based on the Company's best estimate of its effective income tax rate expected to be applicable for the full fiscal year. There is no provision for income taxes because the Company has incurred taxable losses since inception. The Company's effective income tax rate was0% for the three and nine months ended September 30, 2023 and 2022 and the realization of any deferred tax assets is not more likely than not.

Note 12 – Earnings (Loss) per Common Share

Basic income or loss per common share is computed by dividing net income or loss by the weighted average number of common shares outstanding during the period. Diluted income or loss per common share is computed by dividing net income or loss by the weighted average number of common shares outstanding, plus the issuance of potentially dilutive common shares that could result from the exercise of outstanding stock options and warrants, vesting of restricted stock and conversion of convertible notes. No potentially dilutive common shares are included in the computation of any diluted per share amount when a loss is reported, which was the case for the three and nine months ended September 30, 2023 and

2022. The Company applied the treasury stock method to account for the dilutive impact of its options, warrants and restricted stock units and the if-converted method for its Convertible Note.

The following table reconciles the earnings (loss) and number of common shares used to calculate basic and diluted earnings per common share attributable to the Company's shareholders:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2023	2022	2023	2022
Basic earnings per common share:				
Net income (loss) - basic	$ (50,672)	$ (1,231)	$ (95,555)	$ 23,751
Weighted shares outstanding - basic	6,460,511	3,787,269	5,691,036	3,771,472
Basic earnings (loss) per common share	$ (7.84)	$ (0.33)	$ (16.79)	$ 6.30
Diluted earnings per common share:				
Net income (loss) - basic	$ (50,672)	$ (1,231)	$ (95,555)	$ 23,751
Add: Convertible Note interest expense, net of tax	—	—	—	11,830
Reverse: Change in fair value of derivative liability	—	—	—	(16,370)
Net income (loss) - diluted	$ (50,672)	$ (1,231)	$ (95,555)	$ 19,211
Weighted shares outstanding - basic	6,460,511	3,787,269	5,691,036	3,771,472
Add: Dilutive effects of stock options and restricted stock units	—	—	—	115,236
Add: Dilutive effects of if-converted Convertible Note	—	—	—	382,012
Weighted shares outstanding - diluted	6,460,511	3,787,269	5,691,036	4,268,720
Diluted earnings (loss) per common share	$ (7.84)	$ (0.33)	$ (16.79)	$ 4.50

All potentially dilutive common shares in the following table were excluded from the computation of diluted loss per share for the three and nine months ended September 30, 2023 and for the three months ended September 30, 2022 because including them would have had an anti-dilutive effect due to losses reported during those periods.

	Outstanding as of September 30,	
	2023	2022
Convertible notes payable	260,273	382,012
Outstanding warrants	1,218,286	1,218,286
Stock options	123,307	164,902
Restricted stock units	344,492	158,635
Common and preferred Series C warrants	—	—
Total anti-dilutive stock	1,946,358	1,923,835

Note 13 – Commitments and Contingencies

Firm Purchase and Other Commitments

The Company is party to firm purchase commitments with some of its suppliers. A firm purchase commitment represents an agreement that specifies all significant terms, including price and timing of the transactions, and includes a disincentive for non-performance that is sufficiently large to make performance probable. This disincentive is generally in the form of a take-or-pay provision, which requires the Company to pay for committed volumes regardless of whether the Company actually acquires the materials. The Company evaluates these agreements and records a loss, if any, on firm purchase commitments using the same lower of cost or market approach as that used to value inventory.

The Company amended certain firm purchase commitments during the year ended December 31, 2022, which significantly reduced its commitments. Negotiations with other suppliers are still ongoing to blend and extend or terminate other future commitments due to supply chain constraints and cost increases for both parties. If negotiations to amend certain purchase commitments are not successful, the Company may incur additional losses in future periods.

The Company also has other commitments, including marketing and software subscription agreements.

The amounts in the table below represent the Company’s future minimum commitments.

	As of September 30, 2023		
	Firm Purchase	Other	Total
2023 (remainder of the year)	$ —	$ 345	$ 345
2024	16,627	457	17,084
2025	—	178	178
2026	—	138	138
2027	—	—	—
Thereafter	—	—	—
Total	$ 16,627	$ 1,118	$ 17,745

Legal Proceedings

Aside from the proceedings described below, the Company may be involved in legal matters arising in the ordinary course of business from time to time. While the Company believes that such matters are currently not material, there can be no assurance that matters arising in the ordinary course of business for which the Company is or could become involved in litigation will not have a material adverse effect on its business, financial condition or results of operations. The Company records an accrual for legal contingencies when it determines that it is probable that it has incurred a liability and it can reasonably estimate the amount of the loss.

On August 4, 2021, a purported stockholder of the Company filed a putative class action complaint in the Delaware Chancery Court, captioned Delman v. GigCapitalAcquisitions3, LLC, et al. (Case No. 2021-0679) on behalf of a purported class of stockholders. The lawsuit names GigCapitalAcquisitions3, LLC and the Company’s former directors Dr. Katz, Dr. Dinu, and Messrs. Betti-Berutto, Mikulsky, Miotto and Wang, as defendants. The lawsuit alleges that the defendants breached their fiduciary duty stemming from Gig’s merger with Lightning Systems and unjust enrichment of certain of the defendants. The lawsuit seeks, among other relief, unspecified damages, redemption rights, and attorneys’ fees. Neither the Company nor any of its current officers or directors are parties to the lawsuit. The Company’s former directors are subject to certain indemnification obligations of the Company. On January 4, 2023, the Delaware Chancery Court denied the defendant's motion to dismiss.

In addition, on October 15, 2021, the Company and certain of its officers were named as defendants in a putative securities class action. The action is pending in the U.S. District Court for the District of Colorado, and is captioned Shafer v. Lightning eMotors, Inc., et al., Case No. 1:21-cv02774. The lawsuit alleges violations of Sections 10(b), Section 14(a) and 20(a) of the Securities Exchange Act of 1934, as amended, and Rule 10b-5 promulgated thereunder for purported false or misleading statements regarding the Company’s business operations and financial condition. A related lawsuit captioned Cohen v. Lightning eMotors, Inc., et al., Case No. 1:21-cv-03215, was filed in the United States District Court for the District of Colorado on December 1, 2021. On December 17, 2021, the Cohen lawsuit was consolidated with the Shafer lawsuit. On April 22, 2022, the court appointed a lead plaintiff in the consolidated lawsuit. The lead plaintiff’s filed a consolidated complaint on May 20, 2022. The plaintiffs seek damages in an unspecified amount, attorneys’ fees, and other remedies. The Company believes the allegations are without merit and intends to defend vigorously against such allegations.

On February 6, 2023, a purported stockholder of the Company filed a derivative complaint in the Delaware Chancery Court, captioned Uvaydov v. Robert Fenwick-Smith, Tim Reeser, et al. (Case No. 2023-0137-LWW). The lawsuit names certain current and former officers and directors of the Company as defendants. The lawsuit alleges that the defendants breached their fiduciary duty stemming from GigCapital3’s merger with Lightning Systems. The lawsuit seeks, among other relief, unspecified damages, redemption rights, and attorneys’ fees. The Company believes the allegations are without merit and intends to defend vigorously against them.

On February 24, 2023, a purported stockholder of the Company filed a derivative complaint in the U.S. District Court for the District of Colorado, captioned Lanham v. Robert Fenwick-Smith, et al. (Case No. 1:23-cv00507). The lawsuit names certain current and former officers and directors of the Company as defendants. The lawsuit alleges, among others, that the defendants breached their fiduciary duty stemming from GigCapital3's merger with Lightning Systems. The lawsuit seeks, among other relief, unspecified damages, and attorneys' fees. The Company believes the allegations are without merit and intends to defend vigorously against them.

On March 9, 2023, the Company filed a lawsuit against Romeo Systems, Inc. and Nikola Corporation in the Larimer County District Court, Colorado (Case No. 2023CV30187) seeking damages for breach of contract and tortious interference related to the product supply agreement between the Company and Romeo dated July 13, 2020, arising from Romeo's failure to deliver batteries under the agreement and for costs associated with a recall of the batteries. The Company initiated a voluntary recall after Romeo refused to take action as the supplier of the batteries. On June 28, 2023, the Company was awarded a default judgment in the amount of $9,800 against Romeo. Romeo instituted an assignment for the benefit of creditors in California and the Company will file a claim for recovery in the proceeding. It is uncertain if the Company will receive any distribution of the claim. The Company will continue to pursue claims against Nikola in the lawsuit.

Recall Campaigns

On December 16, 2022, the Company initiated a voluntary recall for certain 2021-2022 model year Lightning eMotors ZEV4 vehicles due to multiple software and hardware discrepancies internal to the Romeo battery packs installed in the ZEV4 series vehicles. The affected vehicles may fail to operate in cold temperatures, fail to start, or may lose traction power while driving, increasing the risk of an accident. Romeo has been formally notified of the recall; however, Romeo has not reached a solution to honor their battery warranty. The Company's current remedy is to either replace the ZEV4 manufactured with Romeo battery packs with updated ZEV4 models manufactured with Proterra battery packs or to refund full value of the purchase price to the customer. The Company will seek to recover the costs and expenses associated with the recall from Romeo and Nikola

On March 27, 2023, the Company initiated a voluntary recall for certain model year 2020 FT3-43, 2019-2022 FT3-86, 2020 FE4-86 and 2019-2021 FE4-129 vehicles equipped with eMatrix battery packs. Defective structural welds and internal radiator leaks have been found in the battery packs which may result in isolation faults and cell imbalances. The affected vehicles may lose traction power, increasing the potential for collisions or experience a thermal runaway which could result in vehicle fires. Because the remedy is still being developed, the Company is unable to reasonably estimate a range of the potential losses associated with the recall.

Note 14 - Subsequent Events

On November 15, 2023, Lightning Systems, Inc. entered into a forbearance agreement with Cupola Infrastructure Income Fund, L.L.L.P. to the Loan and Security Agreement dated October 10, 2019, as amended (the "Facility"). In exchange for Cupola waiving all existing events of default as of the date of the agreement and agreeing to forbear from exercising its rights and remedies with respect to the Facility through the earlier of February 29, 2024 or a breach by the Company, the Company agreed to pay $150 as a forbearance fee. The description of the forbearance agreement is qualified in its entirety by reference to the text of the forbearance agreement, which is filed as Exhibit 10.9 to this report and is incorporated herein by reference.

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

References to "we," "us," "our" or the "Company" are to Lightning eMotors, Inc., together with its wholly owned subsidiary, except where the context requires otherwise. The following discussion should be read in conjunction with our unaudited consolidated financial statements and related notes thereto included elsewhere in this report and our audited consolidated financial statements and the related notes included in our annual report on Form 10-K for the year ended December 31, 2022 filed with the Securities and Exchange Commission on March 13, 2023.

CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

This quarterly report on Form 10-Q includes forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended (the "Exchange Act"). Our forward-looking statements include, but are not limited to, statements regarding our or our management team's expectations, hopes, beliefs, intentions, or strategies regarding the future. In addition, any statements that refer to projections, forecasts or other characterizations of future events or circumstances, including any underlying assumptions, are forward-looking statements. The words "anticipate," "believe," "continue," "could," "estimate," "expect," "intend," "may," "might," "plan," "possible," "potential," "predict," "project," "should," "will," "would" and similar expressions may identify forward-looking statements, but the absence of these words does not mean that a statement is not forward-looking.

The forward-looking statements contained in this report are based on our current expectations and beliefs concerning future developments and their potential effects on us. There can be no assurance that future developments affecting us will be those that we have anticipated. These forward-looking statements involve a number of risks, uncertainties (some of which are beyond our control) or other assumptions that may cause actual results or performance to be materially different from those expressed or implied by these forward-looking statements. These risks and uncertainties include, but are not limited to the risks described herein and in our annual report on Form 10-K, including, but not limited to: our ability to continue as a going concern; our ability to continue operations; our ability to become profitable; our ability to raise additional funds or find a strategic partner; our ability to service our debt; our ability to control costs of our operations; our ability to obtain sufficient supplies of chassis, motors, batteries and other critical components for the manufacture of our ZEVs and powertrains; an increase in the cost of raw materials due to inflation; the impact of inflation and rising rates on customers' decisions to purchase ZEVs; the number of orders placed by our commercial fleet customers; the market acceptance of our products; the availability, amount and disbursement of government grants, loans or other incentives; and other risks and uncertainties.

Should one or more of these risks or uncertainties materialize, or should any of our assumptions prove incorrect, actual results may vary in material respects from those projected in these forward-looking statements. These forward-looking statements speak only as of the date hereof. We undertake no obligation to update or revise any forward-looking statements, whether as a result of new information, future events or otherwise, except as may be required by law.

Overview

We are a leading designer and manufacturer of zero-emission commercial trucks and buses and charging infrastructure solutions for fleets, large enterprises, original equipment manufacturers, and governments. Our product offerings range from cargo vans, transit and shuttle buses, school buses, specialty work trucks, ambulances and electric powertrains for school buses, transit buses and motorcoaches. Our product solutions help our customers reduce their greenhouse gas emissions, lower operating costs and improve energy efficiency.

We started in 2008 as a manufacturer of hybrid systems for commercial vehicles. In 2017, we redirected our efforts to focus exclusively on the market opportunity in ZEVs. We successfully and quickly adapted to developing ZEVs by leveraging nearly 10 years of extensive knowledge and production infrastructure for the hybrid systems. Our 14-year track-record of research and development, significant customer engagement and validation, and focus on building highly customized vehicles has allowed us to create an electric solution that we believe remains ahead of the competition in terms of technology, reliability, and versatility. We combine internally-developed, optimized modular software, which can be used in multiple platforms and applications, with hardware designs that allows us to address a diverse range of opportunities in the markets in which we operate in a cost-effective manner. Our flexible approach provides a significant time-to-market advantage. We believe we are the only full-range manufacturer of Class 3 to 7 ZEVs in the United States providing end-to-end electrification solutions including advanced analytics software and mobile charging solutions to our customers.

Recent Developments

Production. During the three months ended September 30, 2023 and 2022, we produced 55 and 104 units, respectively, consisting of zero-emission vehicles ("ZEVs") and separately sold zero-emission powertrains (collectively, "ZEV units"), and mobile battery vehicle chargers. During 2023, we have slowed production compared to 2022 to meet customer demand for our ZEVs and to reduce our inventory. During the three months ended September 30, 2023, we sold 110 units compared to the sale of 93 units in the same period in 2022, as we focused on selling ZEVs from our inventory. During the nine months ended September 30, 2023 and 2022, we produced 154 and 248 units, respectively. During the nine months ended September 30, 2023, we sold 209 units compared to the sale of 192 units in the same period in 2022. As of November 20, 2023, we have deployed over 750 vehicles with over 5.8 million miles driven.

ISO 9001:2015 Certification. On September 7, 2023, we announced that we achieved the independent International Organization for Standardization (ISO) 9001:2015 certification for our quality management system. ISO is the leading international standard that specifies the requirements for a quality management system. The ISO 9001 certification recognizes our prioritization of quality control and our efforts to develop a mature production process.

NYSE Suspension of Trading and OTC Quotation. On September 18, 2023, we received notice from the NYSE indicating that the staff has determined to suspend trading immediately and commence proceedings to delist the shares of common stock and the redeemable warrants of the Company from the NYSE. The decision was reached by the NYSE staff under Section 802.01B of the NYSE Listed Company Manual because we had fallen below the NYSE's continued listing standard requiring listed companies to maintain an average global market capitalization of at least $15 million over a consecutive 30-trading day period.

We requested to appeal the proposed delisting and were granted a hearing on December 14, 2023 in front of the NYSE Board to review the staff's decision. During the pending appeal, our common stock remains listed on the NYSE, but trading in our common stock on the NYSE has been suspended as of September 18, 2023. Effective September 19, 2023, our common stock and warrants trade on the over-the-counter markets under the symbols "ZEVY" and "ZEVYW," respectively.

Material Trends and Uncertainties

NYSE Suspension of Trading and Ability to Continue as a Going Concern As mentioned above, our common stock was suspended from trading on the NYSE on September 18, 2023. While we are in the process of appealing the proposed delisting, our common stock is currently traded on the over-the-counter market. The outcome of our appeal of the NYSE decision is uncertain and if our appeal is not successful, our common stock will be delisted from the NYSE. The NYSE suspension and potential delisting may negatively impact our ability to access capital and a delisting would trigger a repurchase right for the holders of our Convertible Notes. For example, we are unable to access the ELOC or the PPA while our common stock is suspended (or delisted) from the NYSE or other Principal Market (as defined in the ELOC).

Our ability to access capital is critical. We have suffered recurring losses from operations and there is substantial doubt about our ability to continue as a going concern. Our continuation as a going concern is dependent upon us attaining and maintaining profitable operations and/or raising additional capital from equity offerings, debt financings or other capital markets transactions, collaborations, strategic partnerships or licensing arrangements. We have been working with financial advisors to assist us in identifying strategic partners, reducing our liabilities, secure financing to fund operations and to take actions to maximize our liquidity. If capital is not available to us in the amounts needed and/or we are unable to complete a strategic transaction, we could be required to liquidate inventory, cease or curtail operations, or seek protection under applicable bankruptcy laws or similar state proceedings. As of the date hereof, it is uncertain whether we will have the cash flows or bridge financing needed to pay the next scheduled interest payment on the Convertible Notes due on December 15, which would result in an event of default. There can be no assurance that we will be able to raise the capital we need to continue our operations.

Macroeconomic Factors. The impact of current macroeconomic conditions on our business - including slowed economic growth or the potential for a recession, softening global EV demand, sustained inflation and higher interest rates which affect customer demand of our ZEVs and our ability to raise capital, supply chain constraints, and geopolitical events - is uncertain. Our outlook depends upon the various economic and regulatory conditions, and on our ability to manage through supply chain issues that have, and will continue to, limit the level to which we can increase output in the near term. Our long-term outlook remains positive as we believe the adoption of alternative fuel vehicles and the electric vehicle market will continue to grow.

Availability of grant funding. Many of our customers utilize state and federal incentive programs to offset the higher initial costs of electric vehicles, as well as to fund the installation of charging equipment. In connection with the new tax credits for certain commercial EVs established by the Inflation Reduction Act of 2022, we have been transitioning some of our efforts towards larger ZEVs that qualify for the larger tax credits. The IRS is still in the process of releasing further guidance on specific aspects of the aforementioned credits. The announcement of the IRA and the delay in receiving adequate IRS guidance as to the roll-out of the new tax credits has slowed order volumes thus far in 2023 and increased customer buying decision cycle times, as many existing or potential customers are waiting to place orders until they are certain of the amount of tax credits available per ZEV. In addition, many customers are evaluating the size and type of ZEV they intend to purchase because the amount of the tax credit depends on the weight of the vehicle, among other factors. Furthermore, other government programs, such as the FTA's Low- and No-Emission Vehicle Program, the Colorado Electric School Bus Grant Program or certain other state programs, recently announced new funding and are in the process of making these funds available for eligible purchases. However, we have experienced delays in defining such programs, approving grants and payment of grants which lead to delays in vehicle deliveries and our overall revenue recognition.

Supply-Chain challenges. One of our battery suppliers, Proterra, Inc., filed for Chapter 11 bankruptcy protection on August 7, 2023. The bankruptcy proceedings add uncertainty over future supplies of Proterra batteries to us as well as concerns over support with ongoing issues and warranty claims with the batteries. Even before the bankruptcy filing, we have been experiencing significant delivery delays and cancellations from our suppliers since April 2020. In addition, we often do not get informed of delivery delays until or after the expected delivery dates and have, at times, also experienced deliveries in advance of expected delivery dates without prior notice (for orders that were previously delayed), which does not allow for adequate planning. We have also been experiencing shortages of chassis, motors and other components. In response, we have increased our raw material inventories and added new suppliers. However, adding new suppliers, especially for batteries and chassis, increases cost as new parts require significant engineering changes and delays production. We expect supply chain challenges will continue for the foreseeable future. As a result of these challenges, we are carefully monitoring our inventory of chassis, batteries, motors and other raw materials to optimize cost, minimize supply chain issues. We have also entered into multi-year minimum purchase commitments with some of our suppliers of critical components. As of September 30, 2023, the minimum purchase commitment for the next twelve months is $0.8 million under these agreements. However, we are constantly evaluating our commitments and are currently in negotiations to either blend and extend or terminate some of our future commitments to address supply chain constraints and costs.

Inflation and interest rates. We are experiencing cost increases due to inflation resulting from various supply chain disruptions and general global economic conditions. In the last twelve months, two major battery suppliers that we used have either ceased production or filed for bankruptcy or similar state creditor protection, lowering competition in the battery market and increasing prices for batteries. The cost of raw materials, manufacturing equipment, labor and shipping and transportation has increased considerably. We expect higher levels of inflation to persist for the foreseeable future. If we are unable to fully offset higher costs through price increases or other measures, we could experience an adverse impact to our business, prospects, financial condition, results of operations, and cash flows. Interest rates have also increased considerably. The increase in inflation and interest rates impacts the demand for our ZEVs, as customers may delay purchasing ZEVs and/or have difficulty financing their ZEV purchases. Rising interest rates also present a recent challenge impacting the U.S. economy and could make it more difficult for us to obtain financing on acceptable terms, if at all, in the future. Additionally, the general consensus among economists suggests that we should expect a higher recession risk to continue over the next year, which, together with the foregoing, could result in further economic uncertainty and volatility in the capital markets in the near term, and could negatively affect our operations. Furthermore, such economic conditions have produced downward pressure on share prices.

Ability to Attract New Customers and Customer Demand Our growth will depend in large part on our ability to attract new customers. We have invested heavily in developing our ZEVs and electric powertrains and plan to continue to do so. We anticipate that our sales activities will lead to additional orders and deliveries, and, as a result, increase our base of customers. An inability to attract new customers would substantially impact our ability to grow revenue or improve our financial results. Further, we often receive binding and non-binding purchase orders from customers that are contingent on various factors, such as completing a successful pilot program, obtaining third-party financing or obtaining government grants, such as HVIP. In addition, some customers are interested in future products, not yet in our production. While we continuously strive to expand our product catalog, developing new platforms takes a significant amount of time and expense, such as engineering work, sourcing new suppliers, marketing, testing and quality control. In addition, orders may be delayed for a number of reasons, many of which are beyond our control, including supplier delays, which may cause delays in our manufacturing process, or delays in customers obtaining financing. As a result, any such orders may not result in actual revenue in the near term or at all. Accordingly, revenue estimates and the amount and timing of work expected to be performed at the time the estimate of order backlog is developed is subject to change.

Results of Operations

Comparison of Three and Nine Months Ended September 30, 2023 and 2022

Revenue

The following table compares revenue for the three and nine months ended September 30, 2023 and 2022:

	Three Months Ended September 30,			
	2023	2022	Change	% Change
	(dollar amounts in thousands)			
Gross Revenue	$ 12,690	$ 11,131	$ 1,559	14 %
Customer refunds[1]	(324)	—	$ (324)	nm*
Revenue, net of customer refunds	$ 12,366	$ 11,131	$ 1,235	11 %
ZEV units sold	110	93	17	18 %

	Nine Months Ended September 30,			
	2023	2022	Change	% Change
	(dollar amounts in thousands)			
Gross Revenue	$ 24,426	$ 20,079	$ 4,347	22 %
Customer refunds[1]	(2,833)	—	$ (2,833)	nm*
Revenue, net of customer refunds	$ 21,593	$ 20,079	$ 1,514	8 %
ZEV units sold	209	192	17	9 %

(1) Customer refunds are related to the ZEV4 recall on vehicles that were manufactured with Romeo battery packs.

Revenue is primarily derived from the sale of our ZEVs. Revenue, net of customer refunds increased by $1.2 million, or 11%, during the three months ended September 30, 2023, due to an increase in ZEV unit sales offset by a slight decrease in the average sales price per unit and by refunds of the purchase price made to customers for the ZEV4 manufactured with Romeo batteries in connection with the Romeo recall. Excluding the adjustment for customer refunds, revenue increased by $1.6 million, or 14%, during the three months ended September 30, 2023.

Revenue, net of customer refunds increased by $1.5 million, or 8%, during the nine months ended September 30, 2023 due to an increase in ZEV unit sales offset by a slight decrease in the average sales price per unit and by refunds of the purchase price made to customers for the ZEV4 manufactured with Romeo batteries in connection with the Romeo recall. Excluding the adjustment for customer refunds, revenue increased by $4.3 million, or 22%, during the nine months ended September 30, 2023.

Cost of Revenues, Gross Loss and Gross Margin

The following table compares the cost of revenues, gross loss and gross margin for the three and nine months ended September 30, 2023 and 2022:

	Three Months Ended September 30, 2023	2022	Change	% Change
	(dollar amounts in thousands)			
Cost of revenues	$ 45,694	$ 14,580	$ 31,114	213 %
Gross loss	$ (33,328)	$ (3,449)	$ (29,879)	(866)%
Gross margin	(270)%	(31)%		

	Nine Months Ended September 30, 2023	2022	Change	% Change
	(dollar amounts in thousands)			
Cost of revenues	$ 66,779	$ 27,191	$ 39,588	146 %
Gross loss	$ (45,186)	$ (7,112)	$ (38,074)	(535)%
Gross margin	(209)%	(35)%		

Cost of revenues includes direct costs (parts, material, and labor); indirect manufacturing costs (manufacturing overhead, depreciation and plant operating lease expense); shipping, field services, logistics and warranty costs.

Cost of revenues increased during the three and nine months ended September 30, 2023 driven by an obsolescence charge associated with inventory and an impairment recorded against our property and equipment. We discontinued certain vehicle platforms due to the supply uncertainty for key components required to produce these platforms. As a result, we assessed our ability to reuse the remaining inventory in other platforms we currently produce or are developing. However, we determined that much of the inventory could not be used so the inventory was written down to a net realizable value. In addition, we reduced certain finished goods inventory to a net realizable value. As a result, cost of revenues includes lower of cost or net realizable value ("LCNRV") and obsolescence expense in the amount of $18.0 million for the three months ended September 30, 2023. The LCNRV and obsolescence expense for the nine months ended September 30, 2023 was $20.7 million. In addition, the three and nine months ended September 30, 2023 cost of revenues includes impairment expense related to our property and equipment in the amount of $4.9 million. See Note 1 to the consolidated financial statements for additional information related to the impairment. Excluding the property and equipment impairment and the LCNRV and obsolescence expenses, cost of revenues was $22.8 million and $41.2 million for the three and nine months ended September 30, 2023.

Research and Development

The following table compares research and development expense for the three and nine months ended September 30, 2023 and 2022:

	Three Months Ended September 30, 2023	2022	Change	% Change
	(dollar amounts in thousands)			
Research and development	$ 1,194	$ 1,428	$ (234)	(16) %

	Nine Months Ended September 30, 2023	2022	Change	% Change
	(dollar amounts in thousands)			
Research and development	$ 4,662	$ 5,180	$ (518)	(10) %

Research and development expenses consist primarily of costs incurred for the discovery and development of our zero-emission powertrain solutions and the production thereof, which principally include personnel-related expenses including salaries, benefits, travel and stock-based compensation, for personnel performing research and development activities; expenses related to materials, supplies and testing; and consulting and occupancy expenses.

Research and development expenses decreased during the three and nine months ended September 30, 2023 primarily due to a decrease in our engineering headcount year-over-year.

Selling, General and Administrative

The following table compares selling, general and administrative expense for the three and nine months ended September 30, 2023 and 2022:

	Three Months Ended September 30,			
	2023	2022	Change	% Change
	(dollar amounts in thousands)			
Selling, general and administrative	$ 13,503	$ 14,897	$ (1,394)	(9) %

	Nine Months Ended September 30,			
	2023	2022	Change	% Change
	(dollar amounts in thousands)			
Selling, general and administrative	$ 41,376	$ 39,055	$ 2,321	6 %

Selling, general and administrative expenses consist of personnel-related expenses for our corporate, executive, engineering, finance, sales, marketing, program management support, and other administrative functions, expenses for outside professional services, including legal, audit and accounting services, as well as expenses for information technology, facilities, insurance, depreciation, amortization, travel, and sales and marketing costs. Personnel-related expenses consist of salaries, payroll taxes, benefits, and stock-based compensation.

Selling, general and administrative expenses decreased by $1.4 million or 9% during the three months ended September 30, 2023 primarily due to the reduction of bad debt expense compared to the three months ended September 30, 2022, offset by an increase in professional and legal fee expenses. Selling, general and administrative expenses increased by $2.3 million, or 6%, during the nine months ended September 30, 2023, primarily due to an increase in salary, professional and legal fee expenses, offset by a decrease in insurance expense compared to the nine months ended September 30, 2022. The increase in professional and legal fee expenses for the three and nine months ended September 30, 2023 are primarily related to working with financial advisors to assist the Company in identifying strategic partners and financing to fund operations and to take actions to maximize our liquidity. See Note 1 to the consolidated financial statements for additional information related to liquidity and capital.

Interest Expense, net

The following table compares interest expense for the three and nine months ended September 30, 2023 and 2022:

	Three Months Ended September 30,			
	2023	2022	Change	% Change
	(dollar amounts in thousands)			
Interest expense, net	$ 3,867	$ 3,758	$ 109	3 %

	Nine Months Ended September 30,			
	2023	2022	Change	% Change
	(dollar amounts in thousands)			
Interest expense, net	$ 10,488	$ 11,468	$ (980)	(9) %

Interest expense consists of interest paid on notes payable, the amortization of debt issuance costs, the amortization of debt discounts attributable to the bifurcation of warrants issued, and amortization of an embedded conversion feature. The notes payable included, over the periods presented, the Convertible Note and the Facility, as described in more detail in Note 7 to the consolidated financial statements.

Interest expense for the three months ended September 30, 2023 included $3.3 million of accrued interest and discount amortization related to the Convertible Note, $0.1 million of interest expense associated with the Facility and $0.5 million of interest expense associated with the PPA, offset by $0.1 million of interest income on our cash equivalents. Interest expense for the three months ended September 30, 2022 included $4.1 million of accrued interest and discount amortization related to the Convertible Note and $0.1 million of interest expense associated with the Facility, offset by $0.5 million of interest income on our cash equivalents. Interest expense for the nine months ended September 30, 2023 included $9.8 million of accrued interest and discount amortization related to the Convertible Note, $0.4 million of interest expense associated with the Facility and $1.0 million of interest expense associated with the PPA, offset by $0.7 million of interest income on our cash equivalents. Interest expense for the nine months ended September 30, 2022 included $11.8 million of accrued interest and discount amortization related to the Convertible Note and $0.3 million of interest expense associated with the Facility, offset by $0.7 million of interest income on our cash equivalents. The decrease in interest expense for the three and nine and months ended September 30, 2023 was due to the decrease in the Convertible Note balance from $87.8 million as of September 30, 2022 to $59.9 million as of September 30, 2023.

Change in Fair Value of Warrant Liabilities

The following table compares the change in fair value of warrant liabilities for the three and nine months ended September 30, 2023 and 2022:

	Three Months Ended September 30,		
	2023	**2022**	**Change**
		(dollar amounts in thousands)	
Gain from change in fair value of warrant liabilities	$ (10)	$ (536)	$ 526

	Nine Months Ended September 30,		
	2023	**2022**	**Change**
		(dollar amounts in thousands)	
Gain from change in fair value of warrant liabilities	$ (60)	$ (1,850)	$ 1,790

The change in fair value of the warrant liabilities for the three and nine months ended September 30, 2023 and September 30, 2022 reflect the impact of the marking-to-market of the warrant liabilities.

Change in Fair Value of Derivative Liability

The following table compares the change in fair value of derivative liability embedded in the Convertible Note for the three and nine months ended September 30, 2023 and 2022:

	Three Months Ended September 30,		
	2023	2022	Change
	(dollar amounts in thousands)		
(Gain) loss from change in fair value of derivative liability	$ 353	$ (3,728)	4,081

	Nine Months Ended September 30,		
	2023	2022	Change
	(dollar amounts in thousands)		
(Gain) loss from change in fair value of derivative liability	$ 290	$ (16,370)	16,660

The changes in fair value of the derivative liability for the three and nine months ended September 30, 2023 and September 30, 2022 reflect the impact of the marking-to-market of the underlying derivative embedded in the Convertible Note.

Change in Fair Value of Earnout Liability

The following table compares the change in fair value of earnout liability for the three and nine months ended September 30, 2023 and 2022:

	Three Months Ended September 30,		
	2023	2022	Change
	(dollar amounts in thousands)		
Gain from change in fair value of earnout liability	$ (446)	$ (18,054)	$ 17,608

	Nine Months Ended September 30,		
	2023	2022	Change
	(dollar amounts in thousands)		
Gain from change in fair value of earnout liability	$ (2,265)	$ (68,357)	$ 66,092

The changes in fair value of the earnout liability for the three and nine months ended September 30, 2023 and September 30, 2022 reflect the impact of the marking-to-market of the earnout shares.

Non-GAAP Financial Measures

In addition to our results determined in accordance with GAAP, we believe the following non-GAAP measures, as defined in Item 10(e) of Regulation S-K, are useful in evaluating our operational performance. We use the following non-GAAP financial information among other operational metrics to evaluate our ongoing operations and for internal planning and forecasting purposes. We believe that non-GAAP financial information, when taken collectively, may be helpful to investors in assessing our operating performance. The presentation of non-GAAP financial information should not be considered in isolation or as a substitute for, or superior to, the financial information prepared and presented in accordance with GAAP.

EBITDA and Adjusted EBITDA

We define EBITDA as net income (loss) before depreciation and amortization and interest expense. We define adjusted EBITDA as net income (loss) before depreciation and amortization, interest expense, stock-based compensation, gains or losses related to the change in fair value of warrant, derivative and earnout share liabilities and other non-recurring costs determined by management, such as gains or losses on extinguishment of debt and losses related to the Romeo battery recall. We believe EBITDA and adjusted EBITDA are meaningful metrics intended to supplement measures of our performance that are neither required by, nor presented in accordance with, GAAP. We believe that using EBITDA and adjusted EBITDA provides an additional tool for investors to use in evaluating ongoing operating results and trends while comparing our financial measures with those of comparable companies, which may present similar non-GAAP financial measures to investors. However, you should be aware that when evaluating EBITDA and adjusted EBITDA we may incur future expenses similar to those excluded when calculating these measures. In addition, our presentation of these measures should not be construed as an inference that our future results will be unaffected by unusual or non-recurring items. Our computation of EBITDA and adjusted EBITDA may not be comparable to other similarly titled measures computed by other companies, because all companies may not calculate EBITDA and adjusted EBITDA in the same fashion.

Because of these limitations, EBITDA and adjusted EBITDA should not be considered in isolation or as a substitute for performance measures calculated in accordance with GAAP. We compensate for these limitations by relying primarily on our GAAP results and using EBITDA and adjusted EBITDA on a supplemental basis. No undue reliance should be placed on these non-GAAP measures.

The following table reconciles net income (loss) to EBITDA and adjusted EBITDA for the three and nine months ended September 30, 2023 and 2022:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2023	2022	2023	2022
Net income (loss)	$ (50,672)	$ (1,231)	$ (95,555)	$ 23,751
Adjustments:				
Depreciation and amortization	827	511	1,996	1,279
Interest expense, net	3,867	3,758	10,488	11,468
EBITDA	$ (45,978)	$ 3,038	$ (83,071)	$ 36,498
Stock-based compensation expense	1,624	1,470	4,425	3,878
(Gain) loss from change in fair value of warrant liabilities	(10)	(536)	(60)	(1,850)
(Gain) loss from change in fair value of derivative liability	353	(3,728)	290	(16,370)
(Gain) loss from change in earnout liability	(446)	(18,054)	(2,265)	(68,357)
(Gain) loss on extinguishment of debt	—	—	(2,965)	—
ELOC Agreement commitment fee	—	851	—	851
Romeo battery recall	324	—	2,833	—
Impairment of long-lived assets	$ 4,878	$ —	$ 4,878	$ —
Adjusted EBITDA	$ (39,255)	$ (16,959)	$ (75,935)	$ (45,350)

Adjusted Revenue

Adjusted revenue is defined as revenue before customer refunds. The following table reconciles revenue, net of customer refunds and adjusted revenue for the three and nine months ended September 30, 2023 and 2022:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2023	2022	2023	2022
Revenue, net of customer refunds	$ 12,366	$ 11,131	$ 21,593	$ 20,079
Customer refunds	324	—	2,833	—
Adjusted Revenue	$ 12,690	$ 11,131	$ 24,426	$ 20,079

Liquidity and Going Concern

Since our inception, we have financed our operations primarily from debt financing and the sales of common and convertible preferred shares.

In accordance with the ASC 205-40, Disclosure of Uncertainties about an Entity's Ability to Continue as a Going Concern, ("ASC 205-40"), we have evaluated whether there are conditions and events, considered in the aggregate, that raise substantial doubt about our ability to continue as a going concern within one year after the date that the consolidated financial statements are issued.

As of September 30, 2023, we had $6,022 in cash and cash equivalents and an accumulated deficit of $261,949. For the nine months ended September 30, 2023, our net loss amounted to $95,555 and cash used in operating activities was $49,886. We had negative working capital of $30,601 as of September 30, 2023. The current and historical operating cash flows, current cash and working capital balances, and forecasted obligations were considered in connection with management's evaluation of our ongoing liquidity. However, we will require additional capital to fund our operations. Our ability to access capital is critical. Until we can generate sufficient cash flow from operations, we expect to finance our operations equity offerings, debt financings or other capital markets transactions, collaborations, strategic partnerships or licensing arrangements. The amount and timing of future funding requirements depend on many factors, including the pace and results of development efforts and our ability to scale our operations. We have been working with financial advisors to assist us in identifying strategic partners and financing to fund operations and to take actions to maximize our liquidity. If capital is not available to us when, and in the amounts needed, we could be required to liquidate inventory, cease or curtail operations, or seek protection under applicable bankruptcy laws or similar state proceedings. There can be no assurance that we will be able to raise the capital we need to continue our operations.

We have secured and intend to employ various strategies to obtain the required funding for future operations such as accessing capital through our ELOC with Lincoln Park Capital, LLC or the Pre-Paid Advance Agreement with Yorkville. Due to the suspension of trading of our common stock from the NYSE, we are currently unable to utilize either the ELOC or the Pre-Paid Advance Agreement. Moreover, the ability to access the ELOC and the Pre-Paid Advance Agreement is dependent on our common stock trading volumes and the market price of our common stock, which cannot be assured, and as a result cannot be included as sources of liquidity for our ASC 205-40 analysis. During the three and nine months ended September 30, 2023, we received proceeds in the amount of $2,944 and issued 443,303 and 904,851 shares of common stock, respectively, to Yorkville. Since September 30, 2023 and through the filing date, we issued zero shares of common stock to Yorkville. As of September 30, 2023 and through the date of this filing, we did not sell any shares of common stock to Lincoln Park under the ELOC other than the commitment shares (and are prohibited from accessing the ELOC while advances are outstanding to Yorkville).

Due to the timing of cash receipts, we may not be in a financial position to fund its next scheduled interest payment on our outstanding Convertible Notes, which payment is due no later than December 15, 2023 to avoid an event of default. Although we are working to collect outstanding accounts receivable and/or obtain bridge financing, there can be no certainty that either will occur prior to December 15 payment deadline. Further, in the event we are not successful in its appeal of delisting to the NYSE, such delisting will represent a "Fundamental Change," giving each holder of Convertible Notes the right to require us to repurchase its Convertible Notes pursuant to the terms and procedures set forth in the indenture for a cash repurchase price equal to 100% of the principal amount of the Convertible Notes to be so repurchased, plus accrued and unpaid interest thereon, if any, plus any remaining amounts that would be owed to, but excluding the Maturity Date (as defined in the indenture), including all regularly scheduled interest payments. Accordingly, there is no assurance that we will default on our Convertible Notes in the future.

Due to uncertainties discussed above, there is substantial doubt about our ability to continue as a going concern through the next twelve months from the date of issuance of the consolidated financial statements contained herein.

Material Cash Requirements

From time to time in the ordinary course of business, we enter into agreements with vendors for the purchase of components and raw materials to be used in the manufacture of our products. To provide flexibility in our development and production plan and opportunities to renegotiate pricing, we generally do not have binding and enforceable purchase orders beyond the near term. However, in order to secure raw materials vital to our products, we have entered into multi-year minimum purchase commitments with some of our suppliers. If we fail to meet the minimum purchase commitments, we must pay a penalty. As of September 30, 2023, the minimum purchase commitment for the next twelve months is $0.8 million under these agreements. However, we are currently in negotiations with certain suppliers to either blend and extend or terminate some of our future commitments due to supply chain constraints and cost increases for both parties. See Note 13 to the consolidated financial statements for additional information.

Our capital expenditures are typically difficult to project beyond the short term given potential supply chain constraints and market conditions. We estimate our total capital expenditures for the year 2023 to be between $5.0 and $8.0 million for development and production activities.

Debt

As of September 30, 2023, we had outstanding $59.9 million of principal indebtedness associated with our Convertible Notes, which matures on May 15, 2024. We are obligated to make semi-annual interest payments of $2.3 million in May and November through maturity based on an annual interest rate of 7.5%.

On February 10, 2023, we completed an exchange with a holder of the outstanding Convertible Notes via privately negotiated exchange agreements, pursuant to which the holder agreed to exchange $3.5 million in aggregate principal amount of the Convertible Notes at a discount of 95% of par for 210,443 shares of our common stock at a price of $15.80 per share.

On March 15, 2023, we entered into privately negotiated exchange agreements with certain holders pursuant to which the holders agreed to exchange $10.5 million in aggregate principal amount of the outstanding Convertible Notes for 937,500 shares of our common stock, par value $0.0001 per share, at a price of $11.20 per share.

We also had outstanding $3.0 million of principal indebtedness associated with our Facility, which matures on October 21, 2024. We are obligated to make quarterly interest payments of $0.1 million through maturity based on an annual interest rate of 18%. See Note 7 to the consolidated financial statements for additional information.

On May 16, 2023, we entered into a Pre-Paid Advance Agreement, or the PPA, with YA II PN, Ltd., a Cayman Islands exempt limited partnership, or Yorkville. In accordance with the terms of the PPA, we may request pre-paid advances of up to $2,000 from the Investor at a discount of 92% (or such greater amount that the parties may mutually agree), with an aggregate limit of $50,000, over an 18-month period. Interest will accrue on the outstanding balance of any Pre-Paid Advance at 0%, subject to an increase to 15% upon events of default described in the PPA. At any time while a Pre-Paid Advance is outstanding, Yorkville may, by providing written notice, require us to issue and sell shares of common stock. The aggregate purchase price of the shares of common stock will be based on a price per share equal to the lower of: (a) with respect to each advance, 100% of the volume weighted average price (the "VWAP") of our common stock on the trading day immediately preceding the closing of such advance (the "Fixed Price") or (b) 92.0% of the average of the two lowest daily VWAPs during the seven trading days immediately prior to receipt of the notice (as applicable, the "Purchase Price"), however in no event will the Purchase price be less than $0.856 (the "Contractual Floor Price").

During the nine months ended September 30, 2023, we received Pre-Paid Advances in the aggregate amount of $3,200 and received proceeds in the amount of $2,944, net of issuance cost in the amount of $256. During the three months ended September 30, 2023, we converted $1,250 with the issuance of 443,303 newly issued shares of common stock to Yorkville. During the nine months ended September 30, 2023, we converted $2,800 with the issuance of 904,851 newly issued shares of common stock to Yorkville. We recognized a loss on extinguishment of $357 and $468 for the three and nine months ended September 30, 2023, respectively in "Interest expense, net" on the consolidated statement of operations associated with the difference between (1) the sum of the fair value of the common stock issued of $1,510 and (2) the sum of the carrying amount of the converted debt $1,153 for the three months ended September 30, 2023, and (1) the sum of the fair value of the common stock issued of $3,404 and (2) the sum of the carrying amount of the converted debt $2,579 for the three months ended September 30, 2023 Interest expense related to the PPA was $825 for the three and nine months ended September 30, 2023 and zero for the three and nine months ended September 30, 2022.Due to the suspension of trading of our common stock from the NYSE, we are currently unable to utilize the PPA.

On September 19, 2023, we entered into a waiver agreement (the "Waiver Agreement"). Under the terms of the Waiver Agreement, the Investor agreed to waive the default under the PPA created by the suspension of trading of the common stock on the NYSE. As consideration for the Waiver Agreement, we agreed to make an Optional Prepayment (as defined in the PPA) of $200,000 of the currently outstanding advance of $400,000, plus the associated Payment Premium (as defined in the PPA) of $14,000. The Waiver Agreement did not otherwise modify or amend the PPA.

Leases

We have one material lease commitment, an operating lease covering our manufacturing center, distribution center and office space. We also have an operating lease for IT equipment and finance leases for manufacturing equipment. As of

September 30, 2023, our total minimum lease commitments were $11.3 million, with $3.2 million due in the next twelve months. See Note 8 to the consolidated financial statements for additional information.

Cash Flows

The following table provides a summary of cash flow data (in thousands):

	Nine Months Ended September 30,	
	2023	2022
	(dollar amounts in thousands)	
Net cash used in operating activities	$ (49,886)	$ (66,986)
Net cash used in investing activities	(3,610)	(5,694)
Net cash provided by (used in) financing activities	3,507	(63)
Net (decrease) increase in cash	$ (49,989)	$ (72,743)

Cash Flows Used In Operating Activities

Net cash used in operating activities for the nine months ended September 30, 2023 and 2022 was $49.9 million and $67.0 million, respectively. Cash flows from operating activities are significantly affected by revenue levels, mix of products and services, and investments in the business in research and development and selling, general and administrative costs in order to develop products and services, improve manufacturing capacity and efficiency, and support revenue growth. With respect to the nine months ended September 30, 2023, decreases in net cash used in operating activities, in comparison to the corresponding prior period, were principally driven by decreases in inventory offset with cost of revenues and selling, general and administrative expenses, as described in more detail above.

Cash Flows Used In Investing Activities

Net cash used in investing activities for the nine months ended September 30, 2023 and 2022 was $3.6 million and $5.7 million, respectively. The decrease is primarily related to a decrease in capital expenditures.

Cash Flows From Financing Activities

Net cash provided in financing activities for the nine months ended September 30, 2023 was $3.5 from the Pre-Paid Advance Agreement and Insurance Finance Agreement offset by payments of finance lease obligations, Pre-Paid Advance Agreement and Insurance Finance Agreement.

Off-Balance Sheet Arrangements

We have not engaged in any off-balance sheet arrangements, as defined in the rules and regulations of the SEC.

Critical Accounting Policies and Estimates

We believe that there have been no significant changes to our critical accounting policies and estimates during the nine months ended September 30, 2023 as compared to those disclosed in our Annual Report on Form 10-K for the year ended December 31, 2022, except for the estimate related to the impairment of long-lived assets as discussed below.

Impairment of long-lived assets

Long-lived assets to be held and used in our operations are evaluated for impairment when events or circumstances indicate the carrying value of a long-lived asset or asset group may not be recovered. We assess recoverability by comparing the sum of projected undiscounted cash flows from the use and eventual disposition over the remaining economic life of a long-lived asset or asset group to its carrying value. If the sum of the expected future net cash flows is less than the carrying value, we recognize an impairment loss at that date. An impairment loss would be measured by comparing the amount by which the carrying value exceeds the fair value, or the estimated discounted future cash flows, of the long-lived assets. Assets or asset groups to be abandoned or from which no future benefit is expected are written down to zero in the period it is determined they will no longer be used and are removed entirely from service.

On September 18, 2023, we received notice from the NYSE indicating that the staff determined to suspend trading immediately and commence proceedings to delist our shares of common stock and our redeemable warrants from the NYSE. The decision was reached by the NYSE staff under Section 802.01B of the NYSE Listed Company Manual because we had fallen below the NYSE's continued listing standard requiring listed companies to maintain an average global market capitalization of at least $15 million over a consecutive 30-trading day period.

For the three and nine months ended September 30, 2023, and due to the NYSE notice, we determined a triggering event occurred that required us to evaluate our long-lived assets for impairment. As a result of this evaluation, we recorded a loss on the impairment of property and equipment of $4,878 for the three and nine months ended September 30, 2023, which is included in "Cost of revenues" on the consolidated statements of operations.

Emerging Growth Company Status

We are an emerging growth company, or EGC, as defined in Section 2(a) of the Securities Act, as modified by the JOBS Act. As an EGC, we are permitted to take advantage of an extended transition period to comply with new or revised accounting standards, delaying the adoption of these accounting standards until they would apply to private companies. We have elected to use this extended transition period to enable us to comply with new or revised accounting standards that have different effective dates for public and private companies until the earlier of the date we (i) are no longer an emerging growth company or (ii) affirmatively and irrevocably opt out of the extended transition period. As a result, our financial statements may not be comparable to companies that comply with the new or revised accounting standards as of public company effective dates.

In addition, we intend to rely on the other exemptions and reduced reporting requirements provided by the JOBS Act. Subject to certain conditions set forth in the JOBS Act, if, as an EGC, we intend to rely on such exemptions, we are not required to, among other things: (i) provide an auditor's attestation report on our system of internal controls over financial reporting pursuant to Section 404(b) of the Sarbanes-Oxley Act; (ii) provide all of the compensation disclosure that may be required of non-emerging growth public companies under the Dodd-Frank Wall Street Reform and Consumer Protection Act; (iii) comply with any requirement that may be adopted by the Public Company Accounting Oversight Board regarding mandatory audit firm rotation or a supplement to the auditor's report providing additional information about the audit and the financial statements (auditor discussion and analysis); and (iv) disclose certain executive compensation-related items such as the correlation between executive compensation and performance and comparisons of the Chief Executive Officer's compensation to median employee compensation.

We will remain an EGC under the JOBS Act until the earliest of (i) December 31, 2025, which is the last day of our first fiscal year following the fifth anniversary of our initial public offering, (ii) the last date of our fiscal year in which we have total annual gross revenue of at least $1.24 billion, (iii) the date on which we are deemed to be a "large accelerated filer" under the rules of the SEC with at least $700.0 million of our common equity held by non-affiliates, or (iv) the date on which we have issued more than $1.0 billion in non-convertible debt securities during the previous three-year period.

Item 3. Quantitative and Qualitative Disclosures About Market Risk

As a small reporting company defined by Rule 12b-2 of the Exchange Act and in Item 10(f)(1) of regulation S-K, we are not required to provide the information requested by this item.

Item 4. Controls and Procedures

Disclosure Controls and Procedures

The Company maintains disclosure controls and procedures designed to provide reasonable assurance that information required to be disclosed by the Company in reports that it files or submits under the Exchange Act is recorded, processed, summarized, and reported within the time periods specified in SEC rules and forms. Any controls and procedures, no matter how well designed and operated, can provide only reasonable, not absolute, assurance of achieving the desired control objectives. The Company's management, with participation from our Chief Executive Officer and Chief Financial Officer, has evaluated the effectiveness of our design and operation of the Company's disclosure controls and procedures as of September 30, 2023. Based upon that evaluation, the Chief Executive Officer and Chief Financial Officer concluded that our disclosure controls and procedures were effective as of September 30, 2023.

Changes in Internal Control over Financial Reporting

During the three months ended September 30, 2023, there has been no change in our internal control over financial reporting that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

PART II — OTHER INFORMATION

Item 1. Legal Proceedings

The information with respect to this Part II, Item 1 can be found in Note 13 to the consolidated financial Statements included in this quarterly report on Form 10-Q, and is incorporated herein by reference.

Item 1A. Risk Factors

Except as set forth below, there have been no material changes from the risk factors previously discussed in Part 1, Item 1A Risk Factors in our annual report on Form 10-K for the year ended December 31, 2022. However, these risks are not the only risks facing us. There may be additional risks and uncertainties that are not currently known to us or that we currently consider to be insignificant that could materially and adversely affect our business, financial condition, or operating results in the future.

We have a history of losses, and we expect to incur significant expenses and continuing losses for the foreseeable future and there is substantial doubt regarding our ability to continue as a going concern.

As indicated in our annual report on Form 10-K for the year ended December 31, 2022, we have a history of losses, and expect to incur losses and significant expenses for the foreseeable future, which casts substantial doubt regarding our ability to continue as a going concern.

Doubts about our ability to continue as a going concern have and could continue to negatively impact our relationships with our suppliers, vendors, and other third parties and our ability to obtain, maintain or renew agreements with them, or negatively impact our negotiating leverage with such parties, which could have a material adverse effect on our business, financial condition and results of operations. Furthermore, any loss of key personnel, employee attrition or material erosion of employee morale arising out of doubts about our ability to operate as a going concern could have a material adverse effect on our ability to effectively conduct our business, and could impair our ability to execute our business plan, thereby having a material adverse effect on our business, financial condition and results of operations.

In addition, we may not be in a financial position to fund our next scheduled interest payment on our outstanding Convertible Notes, which payment is due no later than December 15, 2023 to avoid an event of default. Although we are working to collect outstanding accounts receivable and/or obtain bridge financing, there can be no certainty that either will occur prior to December 15 payment deadline. Further, in the event we are not successful in its appeal of delisting to the NYSE, such delisting will represent a “Fundamental Change,” giving each holder of Convertible Notes the right to require us to repurchase its Convertible Notes pursuant to the terms and procedures set forth in the indenture for a cash repurchase price equal to 100% of the principal amount of the Convertible Notes to be so repurchased, plus accrued and unpaid interest thereon, if any, plus any remaining amounts that would be owed to, but excluding the Maturity Date (as defined in the indenture), including all regularly scheduled interest payments. Accordingly, there can be no assurance that we avoid a default under the indenture governing the Convertible Notes, which would cause a cross-default under our other debt instruments.

We need significant additional funding to execute our business plan and to continue operations. We continue to seek and evaluate opportunities to raise additional funds through the issuance of our securities, asset sales, and through arrangements with strategic partners. We have engaged a financial advisor to assist us in identifying strategic partners and financing to fund operations and to take actions to maximize our liquidity. If capital is not available to us when, and in the amounts needed, we could be required to liquidate our inventory, cease or curtail operations, or seek protection under applicable bankruptcy laws or similar state proceedings. There can be no assurance that we will be able to raise the capital we need to continue our operations.

Item 2. Unregistered Sales of Equity Securities and Use of Proceeds

During the three months ended September 30, 2023, we did not issue unregistered shares.

Item 3. Defaults Upon Senior Securities

None.

Item 4. Mine Safety Disclosures

Not applicable.

Item 5. Other Information

On November 15, 2023, our subsidiary, Lightning Systems, Inc., entered into a forbearance agreement with Cupola Infrastructure Income Fund, L.L.L.P. to the Loan and Security Agreement dated October 10, 2019, as amended (the "Facility"). In exchange for Cupola waiving all existing events of default as of the date of the agreement and agreeing to forbear from exercising its rights and remedies with respect to the Facility through the earlier of February 29, 2024 or a breach by the Company, the Company agreed to pay $150 as a forbearance fee. The description of the forbearance agreement is qualified in its entirety by reference to the text of the forbearance agreement, which is filed as Exhibit 10.9 to this report and is incorporated herein by reference.

Item 6. Exhibits

EXHIBIT INDEX

Exhibit No.	Description
2.1*	Business Combination Agreement, dated as of December 10, 2020, by and among GigCapital3, Inc., Project Power Merger Sub, Inc. and Lightning Systems, Inc. (included as Annex A to the Final Proxy Statement/Prospectus filed under Rule 424(b)(3) on March 26, 2021)
3.1	Second Amended and Restated Certificate of Incorporation of Lightning eMotors, Inc. (incorporated by reference to Exhibit 3.1 filed on the Company's Current Report on Form 8-K, filed by the Company on May 12, 2021)
3.2	Certificate of Amendment to the Second Amended and Restated Certificate of Incorporation of the Company, effective April 27, 2023 (incorporated by reference to Exhibit 3.1 filed on the Company's Current Report on Form 8-K, filed by the Company of April 24, 2023)
3.3	Amended and Restated Bylaws of Lightning eMotors, Inc. (incorporated by reference to Exhibit 3.2 filed on the Company's Current Report on Form 8-K, filed by the Company on May 12, 2021)
4.1	Specimen Common Stock Certificate (incorporated by reference to Exhibit 4.1 filed on the Company's Form S-1 (File No. 333-257237), filed by the Company on June 21, 2021)
4.2	Specimen Warrant Certificate (incorporated by reference to Exhibit A in Exhibit 10.4 filed on the Company's Current Report on Form 8-K, filed by the Company on May 12, 2021)
4.3	Description of the Company's Securities (incorporated by reference to Exhibit 4.3 filed on the Company's Annual Report on Form 10-K for the year ended December 31, 2021, filed by the Company on March 30, 2022)
10.1	Lightning Systems, Inc. 2019 Equity Incentive Plan (incorporated by reference to Exhibit 10.16 filed on the Company's Current Report on Form 8-K/A, filed by the Company on May 17, 2021)
10.2	2021 Equity Incentive Plan (incorporated by reference to Exhibit 10.7 filed on the Company's Current Report on Form 8-K, filed by the Company on May 12, 2021)
10.3	Indenture dated May 6, 2021, by and between the Company and Wilmington Trust, National Association, in its capacity as trustee thereunder (incorporated by reference to Exhibit 10.3 filed on the Company's Current Report on Form 8-K, filed by the Company on May 12, 2021)
10.4	Amended and Restated Warrant Agreement, dated May 6, 2021, by and between the Company and Continental Stock Transfer & Trust Company, as warrant agent (incorporated by reference to Exhibit 10.4 filed on the Company's Current Report on Form 8-K, filed by the Company on May 12, 2021)
10.5	Purchase Agreement, dated August 30, 2022, between the Company and Lincoln Park Capital Fund, LLC (incorporated by reference to Exhibit 10.1 filed on the Company's Current Report on Form 8-K, filed by the Company on August 30, 2022)
10.6	Loan and Security Agreement, dated October 10, 2019, between the Company and Cupola Infrastructure Income Fund L.L.L.P. (incorporated by reference to Exhibit 10.7 filed on the Company's Quarterly Report on Form 10-Q, filed by the Company on August 14, 2023)

10.7	First Amendment to the Loan and Security Agreement, dated November 15, 2021, between the Company and Cupola Infrastructure Income Fund L.L.L.P. (incorporated by reference to Exhibit 10.8 filed on the Company's Quarterly Report on Form 10-Q filed by the Company on August 14, 2023)
10.8	Second Amendment to the Loan and Security Agreement dated August 10, 2023 between the Company and Cupola Infrastructure Income Fund L.L.L.P. (incorporated by reference to Exhibit 10.9 filed on the Company's Quarterly Report on Form 10-Q filed by the Company on August 14, 2023)
10.9†	Forbearance Agreement to the Loan and Security Agreement dated November 15, 2023, between the Company and Cupola Infrastructure Income Fund L.L.L.P.
31.1†	Certification of Chief Executive Officer Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
31.2†	Certification of Chief Financial Officer Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
32.1**	Certification of Chief Executive Officer (Principal Executive Officer) and Chief Financial Officer (Principal Financial Officer) Pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
101.INS	Inline XBRL Instance Document
101.SCH	Inline XBRL Taxonomy Extension Schema Document
101.CAL	Inline XBRL Taxonomy Calculation Linkbase Document
101.DEF	Inline XBRL Taxonomy Definition Linkbase Document
101.LAB	Inline XBRL Taxonomy Extension Label Linkbase Document
101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase Document
104†	Cover Page Interactive Data File (formatted in iXBRL and contained in Exhibit 101)

* Schedules and similar attachments to this exhibit have been omitted pursuant to Item 601(a)(5) of Regulation S-K and the Company agrees to furnish a copy of such omitted materials to the SEC upon request.
† Filed herewith.
\# Indicates a management contract or compensatory plan, contract or arrangement.
** Furnished herewith.

SIGNATURES

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

Date: November 20, 2023

LIGHTNING EMOTORS, INC.

By:	/s/ Timothy Reeser
Name:	Timothy Reeser
Title:	Chief Executive Officer and President (Principal Executive Officer)
By:	/s/ David Agatston
Name:	David Agatston
Title:	Chief Financial Officer (Principal Financial Officer)

Exhibit 10.9

FORBEARANCE AGREEMENT

THIS FORBEARANCE AGREEMENT (this "Agreement") is entered into as of November 15, 2023, by and among **LIGHTNING SYSTEMS, INC. (F/K/A LIGHTNING HYBRIDS, LLC)**, a Delaware corporation ("Borrower") and **CUPOLA INFRASTRUCTURE INCOME FUND, L.L.L.P,** a Colorado limited liability limited partnership, as Lender ("Lender").

WITNESSETH:

A. Lender and Borrower are parties to that certain Loan and Security Agreement dated as of October 10, 2019 (as amended by that certain First Amendment to Loan and Security Agreement dated as of November 15, 2021, and that certain Amendment No. 2 to Loan and Security Agreement dated as of August 10, 2023 (collectively, the "Loan Agreement")), whereby Lender has made available to Borrower:

(i) a Working Capital Line in the maximum amount of $3,000,000 (the "Working Capital Loan"), the outstanding balance of which is currently $0.00, and

(ii) a Term Loan in the amount of $3,000,000 (the "Term Loan"), the outstanding principal balance of which is currently $3,000,000.

B. Certain Events of Default have occurred under the Loan Documents (as defined in the Loan Agreement) (the "Existing Events of Default").

C. Borrower is unable at the present time to cure the Existing Events of Default, and Borrower has asked Lender to forbear from exercising its rights under the Loan Documents, which will inure to Borrower's direct and substantial benefit.

D. Lender is willing to forbear from exercising such rights as set forth herein, solely for the period and solely on the terms and conditions provided herein.

NOW, THEREFORE, in consideration of the above premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Definitions. Capitalized terms used and not otherwise defined herein shall have the meanings given to such terms in the Loan Agreement.

2. Existence of Defaults; Claims and Defenses. As a material inducement to Lender to enter this Agreement, Borrower acknowledges and agrees that:

a. Outstanding Balance. As of October 31, 2023:

i. The total indebtedness due and owing to Lender by Borrower under the Term Loan was principal in the amount of $3,000,000, and accrued interest of $45,863.01.

ii. The total indebtedness due and owing to Lender by Borrower under the Working Line was $0, which amount includes all principal and interest.

b. Existing Defaults. Borrower is in default on its Obligations to Lender under the Loan Documents, including, without limitation, the Events of Default that have occurred, or may be interpreted to have occurred, prior to the date hereof set forth on Schedule 1[1] attached hereto (the "Existing Defaults").

c. No Other Defaults. Borrower represents and warrants to Lender that no Events of Default exist except for the Existing Defaults.

d. No Lender Defaults. Lender has fulfilled all of its obligations under the Loan Documents, and has acted reasonably, in good faith and appropriately under the circumstances.

e. No Defenses. Borrower has no defense, deduction, set-off, claim or counterclaim of any kind to its Obligations or liens granted to Lender. Borrower waives the right to contest the occurrence, existence, accuracy or materiality of the Existing Defaults.

f. Full Force and Effect. The Loan Documents are in full force and effect and valid and enforceable in accordance with their terms, subject only to forbearance hereunder regarding the Existing Defaults, and the Collateral secures all of the Obligations.

g. No Lending Obligation. Lender has no obligation to make additional loans or otherwise extend further credit to Borrower under the Loan Documents.

h. Default Notice. To the extent required by the Loan Documents, Lender received timely and proper notice of the Existing Defaults in accordance with the Loan Documents or applicable law and waive any rights to receive further notice thereof.

3. Representations and Warranties of Borrower. As a material inducement to Lender to enter this Agreement, Borrower represents and warrants that:

a. Authorization; Consents; No Conflicts. The execution, delivery, and performance of this Agreement, and the documents required herein, are within the power of Borrower, have been duly authorized by all necessary actions, and do not and will not (i) require any consent or approvals not already provided; (ii) violate any provision of Borrower's certificate of incorporation/formation or by-laws or operating agreement or any applicable law; (iii) require the consent or approval of, or filing or registration with, any Governmental Authority; or (iv) result in any breach of or constitute a default under, or result in the imposition of any Lien upon any property of Borrower pursuant to any indenture or other agreement or instrument under which Borrower is a party or by which it or its properties may be bound or affected.

b. Enforceability. This Agreement constitutes, and each of the documents required by this Agreement when executed and delivered hereunder will constitute, legal, valid and binding obligations of Borrower enforceable in accordance with its terms.

c. Accuracy of Information. All information provided by Borrower, or any of its agents, is true, correct, and complete in all material respects, as of the date provided and neither contains any untrue statements of material fact nor omits to state any material fact necessary to make the statements made not misleading.

[1] Schedules and exhibits have been omitted pursuant to Item 601(A)(5) of Regulation S-K.

4. Forbearance. Lender does not waive the Existing Defaults, any other existing or future Default or Event of Default under any of the Loan Documents, or any of the payment demands made upon Borrower. Nevertheless, in reliance upon the acknowledgments, representations, warranties and agreements of Borrower set forth herein, and subject to satisfaction of the conditions in Section 5 below, Lender agrees to forbear from the following actions by reason of the Existing Defaults:

a. Instituting legal action to enforce rights under the Loan Documents; or

b. Exercising rights as a secured party after default with respect to the Collateral;

during the period of time (the "Forbearance Period") commencing on the date of this Agreement and ending on the earlier of:

i. February 29, 2024; or

ii. a breach by Borrower of any of the agreements, post-closing obligations, covenants, representations, or warranties of Borrower in this Agreement (each such breach, a "Forbearance Default");

Upon the expiration or other termination of the Forbearance Period pursuant to Section 4(i)-(ii) of this Agreement, Lender may, in any such case, immediately and without notice of any kind, exercise any and all rights or pursue any and all claims or remedies available to Lender under the Loan Documents or otherwise under applicable law.

5. Conditions. This Agreement shall be effective upon (i) its execution by all parties, and (ii) Lender shall have received payment in the amount of $150,000 delivered pursuant to the wire instructions included on Schedule 2.

6. Release. In further consideration of the execution by Lender of this Agreement, Borrower hereby releases, discharges, waives and agrees to hold harmless Lender and its representatives, agents, employees, attorneys, successors, directors, officers, parents, affiliates, assigns and subsidiaries (collectively, the "Releasees") from any and all claims, defenses, set-offs, counterclaims, actions, causes of action, suits, controversies, agreements, provisions, liabilities and demands in law or in equity, in contract or in tort, whether known or unknown (collectively, the "Claims") which Borrower ever had, now has, or may hereafter have, arising from the past or present state of things, against or related to the Releasees and the Loan Documents through the date of this Agreement, including, but not limited to, claims relating to or arising out of the Loan Documents and the negotiation and entrance into this Agreement. Borrower agrees to assume the risk of any and all actually known, constructively known, unknown, unanticipated, or misunderstood Claims that are released hereby, whether related to the good faith, reasonableness, or appropriateness of any action or inaction by Lender. Borrower further agrees that it will not commence, institute, or prosecute any lawsuit, action, or other proceeding, whether judicial, administrative, or otherwise, to collect or enforce any Claim.

7. Indemnification. Borrower expressly acknowledges, agrees and reaffirms its indemnification Obligations set forth in Section 12.3 of the Loan Agreement. Borrower further acknowledges, agrees, and reaffirms that all such indemnification Obligations in Section 12.3 of the Loan Agreement will survive the expiration of the Forbearance Period and the termination of this Agreement, the Loan Agreement, the other Loan Documents, and the payment in full of the Loans.

8. Effect of this Agreement; Collateral. Unless otherwise defined herein, all capitalized terms used herein shall have the meanings given to them in the Loan Agreement. Except as expressly provided for in this Agreement, the Loan Documents are and shall remain in full force and effect. This Agreement shall not release, discharge or satisfy any present or future debts, obligations or liabilities to Lender of Borrower or any other debtor, guarantor or other person or entity liable for payment or performance of any of such debts, obligations or liabilities of Borrower or any mortgage, security interest, lien or other collateral or security for any of such debts, obligations or liabilities of Borrower or such debtors, guarantors, or other persons or entities, or waive any default. Lender expressly reserves all of its rights and remedies with respect to Borrower and all such debtors, guarantors or other persons or entities, and all such mortgages, security interests, liens and other collateral and security. Without limiting the foregoing, loans and all extensions, renewals, modifications, and refinancings thereof, and all present and future debts, obligations, and liabilities of Borrower to Lender shall continue to be secured by the Loan Documents. Borrower acknowledges that Lender shall not be obligated to extend the Forbearance Period, to enter any forbearance agreement on any future occasion, to otherwise forbear from exercising its rights after the expiration or other termination of the Forbearance Period, or to offer Borrower any new credit facility upon the expiration or other termination of the Forbearance Period.

9. Entire Agreement. This Agreement and the other documents referred to herein contain the entire agreement between Lender and Borrower with respect to the subject matter hereof, superseding all previous communications and negotiations, and no representation, undertaking, promise or condition concerning the subject matter hereof shall be binding upon Lender unless clearly expressed in this Agreement or in the other agreements referred to herein. All discussions and correspondence about the terms of a possible extension, modification and/or restructuring of the Loan Documents will be deemed to be in the nature of settlement and compromise negotiations and will not be admissible in any legal or administrative proceedings, deemed actionable under any theory of law, or utilized for any purpose without the consent of all parties. No agreement that is reached shall give rise to any claim or cause of action except for a breach of the express provisions of a legally binding written agreement. This paragraph shall survive any termination of this Agreement.

10. Non-Waiver. No course of dealing between Lender and any other party, or failure or delay on the part of Lender in exercising any rights or remedies hereunder, shall operate as a waiver of any rights or remedies Lender under this or any other agreement. No single or partial exercise of any rights or remedies shall operate as a waiver or preclude the exercise of any other rights or remedies.

11. Relationship of the Parties. Nothing in this Agreement or in the other documents referred to herein, and no action taken pursuant hereto, shall be construed as permitting or obligating Lender to act as financial or business advisor or consultant to Borrower, as permitting or obligating Lender to control or to conduct the operations of the Loan Parties, as creating any fiduciary obligation on the part of Lender to Borrower, as causing Borrower to be treated as an agent of Lender, or as causing Lender and Borrower, to constitute a partnership, association, joint venture or other entity.

12. Interpretation. Each of Borrower and Lender represents that it has had the advice of experienced counsel of its own choosing in connection with the negotiation and execution of this Agreement and with respect to all matters contained herein. This Agreement will not be construed against any party as the drafter hereof. The section headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

13. Amendments. This Agreement may not be waived, modified, altered or amended except by agreement in writing signed by all the parties hereto.

14. Severability. If one or more of the provisions contained herein shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, then such provision shall be ineffective to the extent, but only to the extent, of such invalidity, illegality or unenforceability without invalidating the remainder of such invalid, illegal or unenforceable provision or provisions or any other provisions hereof. Wherever possible, each provision hereof shall be interpreted in a manner as to be effective and valid.

15. Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon any successor to or permitted assign of any of the parties; *provided* that Borrower may not assign any rights or delegate any obligations arising herein without the prior written consent of Lender, and any prohibited assignment shall be void ab initio. Lender may assign its rights and interests in this Agreement, the Loan Documents and all documents executed in connection with or related to this Agreement or the Loan Documents, at any time without the consent of or notice to Borrower or any other party.

16. Survival. All agreements, representations, and warranties made herein shall survive the execution of this Agreement, and the representations and warranties of Borrower shall survive the expiration of the Forbearance Period and repayment of the Loans and other amounts owed by Borrower under the Loan Documents.

17. Choice of Law. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Colorado without giving effect to the choice of law provisions thereof.

18. Counterparts; Electronic Execution, Authorization. This Agreement may be signed in any number of counterparts with the same effect as if the signatures thereto and hereto were upon the same instrument. Delivery of an executed counterpart of a signature page to this Agreement by facsimile or in electronic (*i.e.*, “pdf” or “tif”) format will be effective as delivery of a manually executed counterpart of this Agreement. The parties hereto respectively represent and warrant that the persons signing on their behalf have all necessary authority and approval to do so.

19. No Third Party Benefit. This Agreement is solely for the benefit of the parties hereto and their permitted successors and assigns. No other person or entity shall have any rights under, or because of the existence of, this Agreement.

20. Jurisdiction. Lender and Borrower hereby consent to the exclusive jurisdiction of any state or federal court situated in Colorado and waive any objection based on lack of personal jurisdiction, improper venue or *forum non conveniens*, with regard to any actions, claims, disputes, or proceedings relating to this Agreement, any of the Loan Documents, or any document delivered hereunder or in connection herewith, or any transaction arising from or connected to any of the foregoing. Borrower waives personal service of any and all process upon them and consents to all such service of process made by mail or by messenger directed to it at the following addresses:

Lightning eMotors, Inc.
815 14th Street SW
Suite A100
Loveland, CO 80537
Attn: Chief Legal Officer
Email:

With a copy to:

Michael Small
Foley & Lardner LLP
321 N. Clark St., Suite 3000
Chicago, IL 60654
Email:

Nothing herein shall affect the right of Lender to serve process in any manner permitted by law or limit the right of Lender to bring proceedings against Borrower or any of its property or assets in the competent courts of any other jurisdiction or jurisdictions.

21. Waiver of Jury Trial. The parties to this Agreement hereby jointly and severally waive any and all right to trial by jury in any action or proceeding relating to this Agreement, any of the Loan Documents, any document delivered hereunder or in connection herewith, or any transaction arising from or connected to any of the foregoing. Each party to this Agreement represents that this waiver is knowingly, willingly, and voluntarily given.

[Signature pages follow]

IN WITNESS WHEREOF, the parties have entered this Agreement as of the date first set forth above.

BORROWER: **LIGHTNING SYSTEMS, INC.**

By: /s/ David Agatston
Name: David Agatston
Title: Chief Financial Officer

LENDER: **CUPOLA INFRASTRUCTURE INCOME FUND, LLLP**

By: Asset Management Group Investment Corp., General Partner

By: /s/ Michael D. Bergmann
Name: Michel D. Bergmann
Title: Vice President/Secretary

Exhibit 31.1

CERTIFICATION OF CHIEF EXECUTIVE OFFICER

I, Timothy Reeser, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Lightning eMotors, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

   (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principle;

   (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

   (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 20, 2023

By:	/s/ Timothy Reeser
Name:	Timothy Reeser
Title:	Chief Executive Officer (Principal Executive Officer)

Exhibit 31.2

CERTIFICATION OF CHIEF FINANCIAL OFFICER

I, David Agatston, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Lightning eMotors, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

   (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principle

   (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

   (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 20, 2023

By:	/s/ David Agatston
Name:	David Agatston
Title:	Chief Financial Officer (Principal Financial Officer)

Exhibit 32.1

Certification of CEO and CFO Pursuant to 18 U.S.C. Section 1350,

As Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002

In connection with the quarterly report of Lightning eMotors, Inc. on Form 10-Q for the period ended September 30, 2023, as filed with the Securities and Exchange Commission on the date hereof, I, Timothy Reeser, hereby certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, to the best of my knowledge, that:

(1) The quarterly report fully complies with the requirements of Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934, as amended; and

(2) The information contained in the quarterly report fairly presents, in all material respects, the financial condition and results of operations of Lightning eMotors, Inc.

In connection with the quarterly report of Lightning eMotors, Inc. on Form 10-Q for the period ended September 30, 2023, as filed with the Securities and Exchange Commission on the date hereof, I, David Agatston, hereby certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, to the best of my knowledge, that:

(1) The quarterly report fully complies with the requirements of Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934, as amended; and

(2) The information contained in the quarterly report fairly presents, in all material respects, the financial condition and results of operations of Lightning eMotors, Inc.

Date: November 20, 2023

By:	/s/ Timothy Reeser
Name:	Timothy Reeser
Title:	Chief Executive Officer (Principal Executive Officer)

Date: November 20, 2023

By:	/s/ David Agatston
Name:	David Agatston
Title:	Chief Financial Officer (Principal Financial Officer)

The foregoing certification is being furnished pursuant to 18 U.S.C. Section 1350. It is not being filed for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, and it is not to be incorporated by reference into any filing of Lightning eMotors, Inc., regardless of any general incorporation language in such filing.