

REFINITIV

DELTA REPORT

10-Q

NKLA - NIKOLA CORP

10-Q - MARCH 31, 2024 COMPARED TO 10-Q - SEPTEMBER 30, 2023

The following comparison report has been automatically generated

TOTAL DELTAS 3581

 CHANGES 291

 DELETIONS 1819

 ADDITIONS 1471

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

FORM 10-Q

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

For the quarterly period ended **September 30, 2023** **March 31, 2024**

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: 001-38495

Nikola Corporation

(Exact Name of Registrant as Specified in Its Charter)

Delaware

(State or other jurisdiction of incorporation or organization)

82-4151153

(I.R.S. Employer
Identification No.)

4141 E Broadway Road

Phoenix, AZ

85040

(Address of principal executive offices)

(Zip Code)

(480) 666-1038 581-8888

(Registrant's telephone number, including area code)

N/A

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

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

Title of Each Class	Trading Symbol(s)	Name of each exchange on which registered
Common stock, \$0.0001 par value per share	NKLA	The Nasdaq Stock Market LLC

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	<input checked="" type="checkbox"/>	Accelerated filer	<input type="checkbox"/>
Non-accelerated filer	<input type="checkbox"/>	Smaller reporting company	<input type="checkbox"/>
		Emerging growth company	<input type="checkbox"/>

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 **October 30, 2023** **May 3, 2024**, there were **1,016,409,878** **1,356,551,286** shares of the registrant's common stock outstanding.

NIKOLA CORPORATION
CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

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Summary of Risk Factors

Our business is subject to numerous risks and uncertainties that could affect our ability to successfully implement our business strategy and affect our financial results. You should carefully consider all of the information in this report and, in particular, the following principal risks and all of the other specific factors described in Item 1A. of this report, "Risk Factors," before deciding whether to invest in our company.

- We are an early stage company with a history of losses, expect to incur significant expenses and continuing losses for the foreseeable future, and there is substantial doubt that we will have sufficient funds to satisfy our obligations through the next 12 months from the date of this report.
- We may be unable to adequately control the costs associated with our operations.

- We need to raise additional capital, which may not be available to us when we need it. If we cannot raise additional capital when needed, our operations and prospects will be negatively affected.
- Our business model has yet to be tested and any failure to commercialize our strategic plans would have an adverse effect on our operating results and business, harm our reputation and could result in substantial liabilities that exceed our resources.
- Our limited operating history makes evaluating our business and future prospects difficult and may increase the risk of your investment.
- We may be unable to issue sufficient additional shares to operate our business, including pursuant to existing potential sources of capital, or strategic transitions, unless we obtain stockholder approval to amend our certificate of incorporation to effect a reverse stock split of the issued shares of our common stock, which will result in an increase in the number of authorized shares of our common stock available for issuance.
- Our future success is dependent upon the trucking industry's market's willingness to adopt hydrogen-electric ("FCEV") trucks and battery-electric ("BEV") trucks.
- The unavailability, reduction or elimination of government grant and timing of the adoption, economic incentives could have a material adverse effect on our business, prospects, financial condition and operating results.
- If we fail to manage our future growth effectively, we may not be able to market and sell our vehicles successfully.
- We may face legal challenges in one or more states attempting to sell directly to customers, fleets or end users, which could materially and adversely affect our costs.
- We face risks and uncertainties related to litigation, regulatory actions and government investigations and inquiries.
- Product recalls have and may in the future materially and adversely affect our business prospects, operating results and financial condition.
- Our success will depend on our ability to economically manufacture our trucks at scale and develop establish a hydrogen fueling infrastructure ecosystem to meet our customers' business needs, and our ability to develop and manufacture trucks of sufficient quality and appeal to customers end user fleets on schedule and at scale is unproven.
- We may experience significant delays in the design, manufacture validation and financing manufacture of our trucks, which could harm our business and prospects.
- Increases in costs, disruption of supply or shortage of components and raw materials and delays in the manufacturing and servicing of battery-packs for our BEV and FCEV trucks could harm our business.
- Our plan to build a network of hydrogen fueling stations will require significant cash investments and management resources and may not meet our expectations with respect to additional sales of our FCEV trucks. In addition, we may not be able to open fueling stations in certain states.
- We may not be able to produce or source the hydrogen needed to establish our planned hydrogen fueling stations, solutions, in sufficient volumes or may not be able to produce at favorable prices, or source the hydrogen needed at competitive prices.
- Reservations for the purchase or lease for our trucks are cancellable.
- Collaboration with strategic partners is subject to risks.
- We are or may be subject to risks associated with strategic alliances or acquisitions.
- We may face challenges related to perceptions of safety for commercial electric vehicles, especially if adverse events or accidents occur that are linked to the quality or safety of commercial electric vehicles.
- Servicing our debt may require a significant amount of cash, and we may not have sufficient cash flow from our business to pay our substantial debt.
- We identified a material weakness in our internal control over financial reporting, and have identified other material weaknesses in the past. If we are unable to remediate this material weakness, or if we experience additional material weaknesses or other deficiencies in the future or otherwise fail to maintain an effective system of internal control over financial reporting, we may not be able to accurately or timely report our financial results.
- Servicing our debt may require a significant amount of cash, and we may not have sufficient cash flow from our business to pay our substantial debt.

PART I - FINANCIAL INFORMATION

Item 1. Financial Statements

NIKOLA CORPORATION
CONDENSED CONSOLIDATED BALANCE SHEETS
 (In thousands, except share and per share data)

	September 30, 2023	December 31, 2022		March 31, 2024	December 31, 2023
(Unaudited)					

Assets			
Assets			
Assets	Assets		
Current assets	Current assets		
Current assets			
Current assets			
Cash and cash equivalents	Cash and cash equivalents		
Cash and cash equivalents			
Cash and cash equivalents	Cash and cash equivalents	\$ 362,850	\$ 225,850
Restricted cash and cash equivalents	Restricted cash and cash equivalents	1,224	10,600
Accounts receivable, net	Accounts receivable, net	10,707	31,638
Inventory	Inventory	56,958	111,870
Prepaid expenses and other current assets	Prepaid expenses and other current assets	38,978	27,943
Assets subject to assignment for the benefit of creditors, current portion		—	29,025
Prepaid expenses and other current assets			
Prepaid expenses and other current assets			
Total current assets	Total current assets	470,717	436,926
Restricted cash and cash equivalents	Restricted cash and cash equivalents	28,026	77,459
Long-term deposits	Long-term deposits	16,681	34,279
Property, plant and equipment, net	Property, plant and equipment, net	469,851	417,785
Property, plant and equipment, net			
Property, plant and equipment, net			
Intangible assets, net	Intangible assets, net	87,712	92,473
Investment in affiliates		58,193	62,816
Investment in affiliate			
Goodwill	Goodwill	5,238	6,688
Other assets	Other assets	11,868	8,107
Assets subject to assignment for the benefit of creditors		—	100,125
Other assets			
Other assets			
Total assets	Total assets	\$ 1,148,286	\$1,236,658
Liabilities and stockholders' equity	Liabilities and stockholders' equity		
Current liabilities	Current liabilities		
Current liabilities			
Accounts payable			
Accounts payable			

Accounts payable	Accounts payable	\$ 48,809	\$ 93,242
Accrued expenses and other current liabilities	Accrued expenses and other current liabilities	205,155	179,571
Debt and finance lease liabilities, current (including \$32.4 million and \$50.0 million measured at fair value, respectively)		39,177	61,675
Liabilities subject to assignment for the benefit of creditors, current portion		—	49,102
Debt and finance lease liabilities, current			
Total current liabilities	Total current liabilities	293,141	383,590
Long-term debt and finance lease liabilities, net of current portion	Long-term debt and finance lease liabilities, net of current portion	232,371	290,128
Operating lease liabilities	Operating lease liabilities	5,023	6,091
Other long-term liabilities	Other long-term liabilities	14,168	6,684
Deferred tax liabilities, net		15	15
Liabilities subject to assignment for the benefit of creditors		—	23,671
Other long-term liabilities			
Other long-term liabilities			
Total liabilities	Total liabilities	544,718	710,179
Commitments and contingencies (Note 12)			
Total liabilities			
Commitments and contingencies (Note 11)	Commitments and contingencies (Note 11)		
Stockholders' equity	Stockholders' equity		
Preferred stock, \$0.0001 par value, 150,000,000 shares authorized, no shares issued and outstanding as of September 30, 2023 and December 31, 2022		—	—
Common stock, \$0.0001 par value, 1,600,000,000 and 800,000,000 shares authorized as of September 30, 2023 and December 31, 2022, respectively, 992,033,979 and 512,935,485 shares issued and outstanding as of September 30, 2023 and December 31, 2022, respectively		99	51
Preferred stock, \$0.0001 par value, 150,000,000 shares authorized, no shares issued and outstanding as of March 31, 2024 and December 31, 2023			
Preferred stock, \$0.0001 par value, 150,000,000 shares authorized, no shares issued and outstanding as of March 31, 2024 and December 31, 2023			

Preferred stock, \$0.0001 par value,
150,000,000 shares authorized, no
shares issued and outstanding as
of March 31, 2024 and December
31, 2023

Common stock,
\$0.0001 par
value,
1,600,000,000
shares
authorized,
1,342,842,964
and
1,330,083,002
shares issued
and
outstanding
as of March
31, 2024 and
December 31,
2023,
respectively

Additional paid-in capital	Additional paid-in capital	3,520,890	2,562,855
Accumulated deficit	Accumulated deficit	(2,917,473)	(2,034,850)
Accumulated other comprehensive loss	Accumulated other comprehensive loss	52	(1,577)
Total stockholders' equity	Total stockholders' equity	603,568	526,479
Total liabilities and stockholders' equity	Total liabilities and stockholders' equity	\$ 1,148,286	\$ 1,236,658

See accompanying notes to the **condensed** consolidated financial statements.

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NIKOLA CORPORATION
CONDENSED 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		
Three Months Ended March 31,						
Three Months Ended March 31,						
Three Months Ended March 31,						
2024						
Revenues:	Revenues:				2023	
Truck sales						

Truck sales					
Truck sales	Truck sales	\$ (2,368)	\$ 23,853	\$ 19,693	\$ 41,236
Service and other	Service and other	636	388	4,614	3,026
Total revenues	Total revenues	(1,732)	24,241	24,307	44,262
Cost of revenues:	Cost of revenues:				
Truck sales	Truck sales				
Truck sales	Truck sales	122,679	54,080	195,902	100,861
Service and other	Service and other	1,092	330	4,236	2,396
Total cost of revenues	Total cost of revenues	123,771	54,410	200,138	103,257
Gross loss	Gross loss	(125,503)	(30,169)	(175,831)	(58,995)
Operating expenses:	Operating expenses:				
Research and development	Research and development	41,966	66,683	168,286	204,346
Research and development	Research and development				
Selling, general, and administrative	Selling, general, and administrative	57,982	132,865	159,443	289,916
Loss on supplier deposits		716	—	18,433	—
Total operating expenses					
Total operating expenses					
Total operating expenses	Total operating expenses	100,664	199,548	346,162	494,262
Loss from operations	Loss from operations	(226,167)	(229,717)	(521,993)	(553,257)
Other income (expense):	Other income (expense):				
Interest expense, net	Interest expense, net	(52,680)	(7,735)	(71,262)	(10,754)
Interest expense, net	Interest expense, net				
Revaluation of warrant liability		—	586	315	3,493
Gain on divestiture of affiliate		—	—	70,849	—
Loss on debt extinguishment	Loss on debt extinguishment	—	—	(20,362)	—
Other income (expense), net		(146,654)	2,617	(152,284)	4,423
Loss on debt extinguishment					
Loss on debt extinguishment					
Other income, net					
Loss before income taxes and equity in net loss of affiliates	Loss before income taxes and equity in net loss of affiliates				
Income tax expense	Income tax expense	1	1	1	3

Loss before	Loss before			
equity in net	equity in net			
loss of affiliates	loss of affiliates	(425,502)	(234,250)	(694,738)
Equity in net	Equity in net			
loss of	loss of			
affiliates	affiliates	(262)	(1,984)	(16,287)
Net loss from	Net loss from			
continuing	continuing			
operations	operations	(425,764)	(236,234)	(711,025)
Discontinued	Discontinued			
operations:	operations:			
Loss from	Loss from			
discontinued	discontinued			
operations	operations	—	—	(76,726)
Loss from deconsolidation of				
discontinued operations		—	—	(24,935)
Loss from discontinued				
operations				
Loss from discontinued				
operations				
Net loss from discontinued				
operations				
Net loss from discontinued				
operations				
Net loss from discontinued	Net loss from			
operations	discontinued			
operations		—	—	(101,661)
Net loss	Net loss	\$ (425,764)	\$ (236,234)	\$ (812,686)
Basic and diluted	Basic and diluted			
net loss per	net loss per			
share:	share:			
Basic and diluted net loss per share:				
Basic and diluted net loss per share:				
Net loss from continuing				
operations				
Net loss from continuing				
operations				
Net loss from	Net loss from			
continuing	continuing			
operations	operations	\$ (0.50)	\$ (0.54)	\$ (1.01)
Net loss from	Net loss from			
discontinued	discontinued			
operations	operations	\$ —	\$ —	\$ (0.14)
Net loss	Net loss	\$ (0.50)	\$ (0.54)	\$ (1.15)
Weighted-average	Weighted-average			
shares	shares			
outstanding,	outstanding,			
basic and	basic and			
diluted	diluted	857,213,992	438,416,393	706,325,212
Weighted-average shares				
outstanding, basic and diluted				
Weighted-average shares				
outstanding, basic and diluted				

See accompanying notes to the **condensed** consolidated financial statements.

NIKOLA CORPORATION
CONDENSED CONSOLIDATED STATEMENTS OF COMPREHENSIVE LOSS
(In thousands)
(Unaudited)

		Three Months Ended		Nine Months Ended	
		September 30,		September 30,	
		2023	2022	2023	2022
Three Months Ended					
March 31,					
Three Months Ended					
March 31,					
Three Months Ended					
March 31,					
2024					
Net loss	Net loss	\$(425,764)	\$(236,234)	\$(812,686)	\$(562,172)
Other comprehensive income (loss):	Other comprehensive income (loss):				
Foreign currency translation adjustment, net of tax					
Foreign currency translation adjustment, net of tax					
Foreign currency translation adjustment, net of tax	Foreign currency translation adjustment, net of tax				
of tax	of tax	145	(1,237)	1,629	(2,226)
Comprehensive loss	Comprehensive loss	\$(425,619)	\$(237,471)	\$(811,057)	\$(564,398)

See accompanying notes to the condensed consolidated financial statements.

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NIKOLA CORPORATION
CONDENSED CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY
(In thousands, except share data)
(Unaudited)

	Three Months Ended September 30, 2023								
	Common Stock			Additional Paid-in Capital		Accumulated Deficit		Accumulated Other Comprehensive Income (Loss)	
	Shares	Amount	Capital		Deficit		Income (Loss)		Total Stockholders' Equity
Balance as of June 30, 2023	769,300,317	\$ 77	\$ 2,944,504	\$ (2,421,772)	\$ (93)	\$ 522,716			
Exercise of stock options	5,967,257	1	6,352	—	—	—	—	—	6,353
Issuance of shares for RSU awards	3,143,110	—	—	—	—	—	—	—	—
Common stock issued under Equity Distribution Agreement, net	27,662,880	3	53,136	—	—	—	—	—	53,139

Issuance of common stock upon conversion of Senior Convertible Notes	134,101,626	13	139,237	—	—	139,250
Common stock issued for conversion of April 2023 Toggle Convertible Notes	72,458,789	7	115,145	—	—	115,152
Common stock received for contingent stock consideration	(20,600,000)	(2)	—	(69,937)	—	(69,939)
Reclassification of conversion features embedded in Toggle Convertible Notes to equity	—	—	241,851	—	—	241,851
Reclassification of share-based payment awards from liability to equity	—	—	20,992	—	—	20,992
Reclassification of share-based payment awards from equity to liability	—	—	(8,395)	—	—	(8,395)
Stock-based compensation	—	—	8,068	—	—	8,068
Net loss	—	—	—	(425,764)	—	(425,764)
Other comprehensive loss	—	—	—	—	145	145
Balance as of September 30, 2023	992,033,979	\$ 99	\$ 3,520,890	\$ (2,917,473)	\$ 52	\$ 603,568

	Three Months Ended March 31, 2024						
	Common Stock		Additional Paid-in Capital	Accumulated Deficit	Other Comprehensive Income (Loss)	Accumulated Stockholders' Equity	
	Shares	Amount				Total	
Balance as of December 31, 2023	1,330,083,002	\$ 133	\$ 3,790,272	\$ (3,071,069)	\$ (162)	\$ 719,174	
Issuance of shares for RSU awards	4,371,075	—	—	—	—	—	—
Common stock issued for conversions of 8.25% Convertible Notes	8,388,887	1	5,916	—	—	—	5,917
Stock-based compensation	—	—	8,786	—	—	—	8,786
Net loss	—	—	—	(147,722)	—	—	(147,722)
Other comprehensive income	—	—	—	—	120	120	120
Balance as of March 31, 2024	1,342,842,964	\$ 134	\$ 3,804,974	\$ (3,218,791)	\$ (42)	\$ 586,275	

	Three Months Ended March 31, 2023						
	Common Stock		Additional Paid-in Capital	Accumulated Deficit	Other Comprehensive Income (Loss)	Accumulated Stockholders' Equity	
	Shares	Amount				Total	
Balance as of December 31, 2022	512,935,485	\$ 51	\$ 2,562,855	\$ (2,034,850)	\$ (1,577)	\$ 526,479	
Exercise of stock options	156,366	—	166	—	—	—	166
Issuance of shares for RSU awards	2,789,660	—	—	—	—	—	—
Common stock issued under Tumim Purchase Agreements	28,922,476	3	64,710	—	—	—	64,713
Common stock issued under Equity Distribution Agreement, net	17,020,258	2	31,610	—	—	—	31,612
Issuance of common stock upon conversion of Senior Convertible Notes	32,358,306	3	67,497	—	—	—	67,500
Stock-based compensation	—	—	24,548	—	—	—	24,548
Net loss	—	—	—	(169,094)	—	—	(169,094)
Other comprehensive loss	—	—	—	—	(53)	(53)	(53)
Balance as of March 31, 2023	594,182,551	\$ 59	\$ 2,751,386	\$ (2,203,944)	\$ (1,630)	\$ 545,871	

See accompanying notes to the condensed consolidated financial statements.

Nine Months Ended September 30, 2023						
--------------------------------------	--	--	--	--	--	--

							Accumulated	Total Stockholders' Equity
	Common Stock		Additional Paid-in Capital	Accumulated Deficit	Other			
	Shares	Amount			Comprehensive Income (Loss)			
Balance as of December 31, 2022	512,935,485	\$ 51	\$ 2,562,855	\$ (2,034,850)	\$ (1,577)	\$ 526,479		
Exercise of stock options	6,723,629	1	7,154	—	—	—	7,155	
Issuance of shares for RSU awards	10,915,751	—	—	—	—	—	—	
Common stock issued under Tumim Purchase Agreements	32,211,777	3	67,584	—	—	—	67,587	
Common stock issued under Equity Distribution Agreement, net	66,690,443	7	115,586	—	—	—	115,593	
Issuance of common stock upon conversion of Senior Convertible Notes	221,412,391	23	246,408	—	—	—	246,431	
Common stock issued in public offering	29,910,715	3	32,241	—	—	—	32,244	
Common stock issued in registered direct offering	59,374,999	6	63,150	—	—	—	63,156	
Common stock issued for conversion of April 2023 Toggle Convertible Notes	72,458,789	7	115,145	—	—	—	115,152	
Common stock received for contingent stock consideration	(20,600,000)	(2)	—	(69,937)	—	—	(69,939)	
Reclassification of conversion features embedded in Toggle Convertible Notes to equity	—	—	241,851	—	—	—	241,851	
Reclassification of share-based payment awards from liability to equity	—	—	20,992	—	—	—	20,992	
Reclassification of share-based payment awards from equity to liability	—	—	(10,401)	—	—	—	(10,401)	
Stock-based compensation	—	—	58,325	—	—	—	58,325	
Net loss	—	—	—	(812,686)	—	—	(812,686)	
Other comprehensive loss	—	—	—	—	—	1,629	1,629	
Balance as of September 30, 2023	992,033,979	\$ 99	\$ 3,520,890	\$ (2,917,473)	\$ 52	\$ 603,568		

See accompanying notes to the consolidated financial statements.

							Accumulated	Total Stockholders' Equity
	Common Stock		Additional Paid-in Capital	Accumulated Deficit	Other			
	Shares	Amount			Comprehensive Income (Loss)			
Balance as of June 30, 2022	433,475,084	\$ 43	\$ 2,176,945	\$ (1,576,550)	\$ (1,187)	\$ 599,251		
Exercise of stock options	1,296,206	1	1,404	—	—	—	1,405	
Issuance of shares for RSU awards	1,425,182	—	—	—	—	—	—	
Common stock issued under Equity Distribution Agreement, net	19,009,227	2	97,997	—	—	—	97,999	
Stock-based compensation	—	—	102,845	—	—	—	102,845	
Net loss	—	—	—	(236,234)	—	—	(236,234)	
Other comprehensive loss	—	—	—	—	(1,237)	—	(1,237)	
Balance as of September 30, 2022	455,205,699	\$ 46	\$ 2,379,191	\$ (1,812,784)	\$ (2,424)	\$ 564,029		

							Accumulated	Total Stockholders' Equity
	Common Stock		Additional Paid-in Capital	Accumulated Deficit	Other			
	Shares	Amount			Comprehensive Income (Loss)			
Balance as of December 31, 2021	413,340,550	\$ 41	\$ 1,944,341	\$ (1,250,612)	\$ (198)	\$ 693,572		
Exercise of stock options	1,581,791	1	1,969	—	—	—	1,970	

Issuance of shares for RSU awards	4,025,887	—	—	—	—	—
Common stock issued under Tumim Purchase Agreements	17,248,244	2	123,670	—	—	123,672
Common stock issued under Equity Distribution Agreement, net	19,009,227	2	97,997	—	—	97,999
Stock-based compensation	—	—	211,214	—	—	211,214
Net loss	—	—	—	(562,172)	—	(562,172)
Other comprehensive loss	—	—	—	—	(2,226)	(2,226)
Balance as of September 30, 2022	455,205,699	\$ 46	\$ 2,379,191	\$ (1,812,784)	\$ (2,424)	\$ 564,029

See accompanying notes to the consolidated financial statements.

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NIKOLA CORPORATION
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(In thousands)
(Unaudited)

		Nine Months Ended September 30,			
		2023	2022	2024	2023
Three Months Ended March 31,				Three Months Ended March 31,	
Cash flows from operating activities	Cash flows from operating activities				
Net loss					
Net loss					
Net loss	Net loss	\$(812,686)	\$(562,172)		
Less: Loss from discontinued operations	Less: Loss from discontinued operations	(101,661)	—		
Loss from continuing operations	Loss from continuing operations	(711,025)	(562,172)		
Adjustments to reconcile net loss from continuing operations to net cash used in operating activities:	Adjustments to reconcile net loss from continuing operations to net cash used in operating activities:				
Depreciation and amortization	Depreciation and amortization	28,758	16,472		
Depreciation and amortization	Depreciation and amortization				
Stock-based compensation	Stock-based compensation	68,916	211,214		
Equity in net loss of affiliates	Equity in net loss of affiliates	16,287	6,074		
Revaluation of financial instruments	Revaluation of financial instruments	195,132	(94)		
Revaluation of contingent stock consideration		(43,981)	—		
Inventory write-downs	Inventory write-downs	64,500	16,617		

Non-cash interest expense	Non-cash interest expense	72,846	8,890
Loss on supplier deposits		18,433	—
Gain on divestiture of affiliate		(70,849)	—
Loss on debt extinguishment		20,362	—
Loss on disposal of assets			
Loss on disposal of assets			
Loss on disposal of assets			
Other non-cash activity	Other non-cash activity	3,888	476
Changes in operating assets and liabilities:	Changes in operating assets and liabilities:		
Accounts receivable, net			
Accounts receivable, net			
Accounts receivable, net	Accounts receivable, net	20,932	(37,662)
Inventory	Inventory	(9,983)	(97,952)
Prepaid expenses and other current assets	Prepaid expenses and other current assets	(48,332)	(10,371)
Other assets	Other assets	(2,384)	(912)
Accounts payable, accrued expenses and other current liabilities	Accounts payable, accrued expenses and other current liabilities	(1,672)	25,128
Long-term deposits		(1,377)	(8,356)
Operating lease liabilities			
Operating lease liabilities			
Operating lease liabilities	Operating lease liabilities	(1,191)	(416)
Other long-term liabilities	Other long-term liabilities	2,316	1,605
Net cash used in operating activities	Net cash used in operating activities	(378,424)	(431,459)
Cash flows from investing activities	Cash flows from investing activities		
Purchases and deposits of property, plant and equipment	Purchases and deposits of property, plant and equipment	(108,409)	(118,436)
Divestiture of affiliate		35,000	—
Purchases and deposits of property, plant and equipment			
Purchases and deposits of property, plant and equipment			
Proceeds from the sale of assets	Proceeds from the sale of assets	20,742	18

Payments to Assignee	(2,725)	—
Investments in affiliates	(250)	(23,027)
Issuance of senior secured note receivable and prepaid acquisition-related consideration	—	(21,910)
Settlement of Second Price Differential	—	(6,588)
Net cash used in investing activities	(55,642)	(169,943)
Net cash provided by (used in) investing activities		
Net cash provided by (used in) investing activities		
Net cash provided by (used in) investing activities		
Cash flows from financing activities		
Proceeds from the exercise of stock options		
Proceeds from the exercise of stock options		
Proceeds from the exercise of stock options		
Proceeds from issuance of shares under the Tumim		
Purchase Agreements		
Proceeds from issuance of common stock under Equity Distribution Agreement, net of commissions paid		
Proceeds from issuance of common stock under Equity Distribution Agreement, net of commissions paid		
Proceeds from issuance of common stock under Equity Distribution Agreement, net of commissions paid		
Proceeds from issuance of convertible notes, net of discount and issuance costs		
Repayment of debt and promissory notes		
Repayment of debt and promissory notes		
Repayment of debt and promissory notes		
Payment for Coupon Make-Whole Premium		
Payments on insurance premium financing		
Payments on finance lease liabilities and financing obligation		
Payments for issuance costs		

Net cash provided by (used in) financing activities
Net decrease in cash and cash equivalents, including restricted cash and cash equivalents
Cash and cash equivalents, including restricted cash and cash equivalents, beginning of period
Cash and cash equivalents, including restricted cash and cash equivalents, end of period

See accompanying notes to the **condensed** consolidated financial statements.

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Cash flows from financing activities		
Proceeds from the exercise of stock options	7,393	1,645
Proceeds from issuance of shares under the Tumim Purchase Agreements	67,587	123,672
Proceeds from registered direct offering, net of underwriter's discount	63,456	—
Proceeds from public offering, net of underwriter's discount	32,244	—
Proceeds from issuance of common stock under Equity Distribution Agreement, net of commissions paid	115,027	100,512
Proceeds from issuance of convertible notes, net of discount and issuance costs	217,075	183,504
Proceeds from issuance of Collateralized Promissory Notes	—	54,000
Proceeds from issuance of financing obligation, net of issuance costs	53,548	44,007
Proceeds from insurance premium financing	5,223	6,637
Repayment of debt and promissory notes	(45,287)	(28,125)
Payments on insurance premium financing	(3,550)	(2,635)
Payments on finance lease liabilities and financing obligation	(459)	(266)
Net cash provided by financing activities	512,257	482,951
Net increase (decrease) in cash and cash equivalents, including restricted cash and cash equivalents	78,191	(118,451)
Cash and cash equivalents, including restricted cash and cash equivalents, beginning of period	313,909	522,241
Cash and cash equivalents, including restricted cash and cash equivalents, end of period	\$ 392,100	\$ 403,790
Cash flows from discontinued operations:		
Operating activities	(4,964)	—
Investing activities	(1,804)	—
Financing activities	(572)	—
Net cash used in discontinued operations	\$ (7,340)	\$ —
Supplementary cash flow disclosures:		

Cash paid for interest	\$	5,561	\$	2,643
Cash interest received	\$	7,153	\$	257
<u>Supplementary disclosures for noncash investing and financing activities:</u>				
Conversion of Senior Convertible Notes into common stock	\$	246,431	\$	—
Reclassification of conversion features embedded in Toggle Convertible Notes to equity	\$	241,851	\$	—
Conversion of April 2023 Toggle Convertible Notes	\$	115,152	\$	—
Contingent stock consideration for divestiture of affiliate	\$	25,956	\$	—
Embedded derivative liability bifurcated from April 2023 Toggle Convertible Notes	\$	21,180	\$	—
Reclassification from liability to equity for certain share-based awards	\$	20,992	\$	—
PIK interest	\$	16,263	\$	7,284
Purchases of property, plant and equipment included in liabilities	\$	13,551	\$	28,912
Leased assets obtained in exchange for new finance lease liabilities	\$	10,982	\$	698
Reclassification from equity to liability for certain share-based awards	\$	10,401	\$	—
Accrued commissions under Equity Distribution Agreement	\$	1,114	\$	2,513
Accrued issuance costs	\$	300	\$	—
Embedded derivative asset bifurcated from June 2022 Toggle Convertible Notes	\$	—	\$	1,500
Stock option proceeds receivable	\$	—	\$	325
Accrued debt issuance costs	\$	—	\$	311
Accrued deferred issuance costs	\$	—	\$	—

Cash flows from discontinued operations:			
Operating activities	\$	—	\$ (3,939)
Investing activities		—	(1,772)
Financing activities		—	(308)
Net cash used in discontinued operations	\$	—	\$ (6,019)
<hr/>			
<u>Supplementary cash flow disclosures:</u>			
Cash paid for interest	\$	2,896	\$ 1,490
Cash interest received	\$	5,330	\$ 1,583
<u>Supplementary disclosures for noncash investing and financing activities:</u>			
Purchases of property, plant and equipment included in liabilities	\$	12,039	\$ 26,827
Conversion of 8.25% Convertible Notes	\$	5,917	\$ —
PIK interest	\$	3,625	\$ 5,801
Accrued issuance costs	\$	89	\$ 550
Conversion of Senior Convertible Notes into common stock	\$	—	\$ 64,286
Accrued commissions under Equity Distribution Agreement	\$	—	\$ 593

See accompanying notes to the **condensed** consolidated financial statements.

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NIKOLA CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(UNAUDITED)

1. BASIS OF PRESENTATION

(a) Overview

Nikola Corporation ("Nikola" or the "Company") is a designer and manufacturer of heavy-duty commercial **hydrogen-electric** ("FCEV") and **battery-electric** and **hydrogen-electric** vehicles ("BEV") trucks and energy infrastructure solutions.

(b) Unaudited Condensed Consolidated Financial Statements

The accompanying unaudited condensed 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 condensed 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 December 31, 2023, as amended.

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

Certain prior period balances have been reclassified to conform to the current period presentation in the condensed consolidated financial statements and the accompanying notes. All dollar amounts are in thousands, unless otherwise noted.

Prior to the start of production for the Tre BEV trucks late in the first quarter of 2022, pre-production activities, including manufacturing readiness, process validation, prototype builds, freight, inventory write-downs, and operations of the Company's manufacturing facility in Coolidge, Arizona were recorded as research and development activities on the Company's consolidated statements of operations. Commensurate with the start of production, manufacturing costs, including labor and overhead, as well as inventory-related expenses related to the Tre BEV trucks, and related facility costs, are recorded in cost of revenues beginning in the second quarter of 2022.

The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect certain reported amounts and disclosures. Accordingly, actual results could differ from those estimates.

On October 14, 2022, Pre-production activities for Tre FCEV trucks, including manufacturing readiness, process validation, prototype builds, freight, and inventory write-downs were recorded as research and development activities on the Company completed Company's condensed consolidated statements of operations. Commensurate with the acquisition start of all production, manufacturing costs, including labor and overhead, facility costs, and inventory-related expenses related to the Tre FCEV trucks, are recorded in cost of revenues beginning in the outstanding common stock fourth quarter of Romeo Power, Inc. ("Romeo") (the "Romeo Acquisition") for a total purchase price of \$78.6 million. See Note 3, *Business Combination*, 2023.

On June 30, 2023, pursuant to a general assignment (the "Assignment"), the Company transferred ownership of all of Romeo's its subsidiary, Romeo Power, Inc.'s ("Romeo") right, title and interest in and to all of its tangible and intangible assets, subject to certain agreed upon exclusions (collectively, the "Assets") to SG Service Co., LLC, in its sole and limited capacity as Assignee for the Benefit of Creditors of Romeo ("Assignee"), and also designated Assignee to act as the assignee for the benefit of creditors of Romeo, such that Assignee succeeded to all of Romeo's right, title and interest in and to the Assets. The results of operations of Romeo are reported as discontinued operations for the three and nine months ended September 30, 2023 March 31, 2023. See Note 10, *Deconsolidation of Subsidiary*, 9, *Discontinued Operations*, for additional information.

All references made to financial data in this Quarterly Report on Form 10-Q are to the Company's continuing operations, unless otherwise specifically noted.

(c) Funding Risks and Going Concern

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

As an early stage early-stage growth company, the Company's ability to access capital is critical. Until the Company can generate sufficient revenue to cover its operating expenses, working capital and capital expenditures, the Company will need to raise

NIKOLA CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
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additional capital. Additional stock financing may not be available on favorable terms, or at all, and would be dilutive to current stockholders. Debt financing, if available, may involve restrictive covenants and dilutive financing instruments.

The Company has secured and intends to employ various strategies to obtain the required funding for future operations such as continuing to access capital through the amended and restated equity distribution agreement with Citigroup Global Markets Inc. ("Citi"), as sales agent, see agent. See Note 8, 7, *Capital Structure*. However, the ability to access the amended and restated equity distribution agreement is dependent on common stock trading volumes and the market price of the Company's Company's common stock, trading volumes, and

NIKOLA CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
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availability of unreserved shares, which cannot be assured, and as a result cannot be included as sources of liquidity for the Company's ASC 205-40 analysis.

If capital is not available to the Company when, and in the amounts needed, the Company would be required to delay, scale back, or abandon some or all of its development programs and operations, which could materially harm the Company's business, financial condition and results of operations. The result of the Company's ASC 205-40 analysis, due to uncertainties discussed above, is that 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 condensed consolidated financial statements.

These 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. These financial statements do not include any adjustments that may result from the outcome of this uncertainty.

2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

(a) Cash, Cash Equivalents and Restricted Cash and Cash Equivalents

The Company considers all highly liquid investments purchased with a remaining maturity of three months or less, to be cash equivalents. Additionally, the Company considers investments in such as money market funds, to be cash equivalents. As of **September 30, 2023** **March 31, 2024** and **December 31, 2022** **December 31, 2023**, the Company had **\$362.9 million** **\$345.6 million** and **\$225.9 million** **\$464.7 million** of cash and cash equivalents, respectively. Cash equivalents and restricted cash equivalents included **\$14.3 million** **\$33.4 million** and **zero** **\$29.8 million** of highly liquid investments as of **September 30, 2023** **March 31, 2024** and **December 31, 2022** **December 31, 2023**, respectively.

As of **September 30, 2023** **March 31, 2024** and **December 31, 2022** **December 31, 2023**, the Company had **\$29.3 million** **\$32.6 million** and **\$88.1 million** **\$29.3 million**, respectively, in current and non-current restricted cash. Restricted cash represents cash that is restricted as to withdrawal or usage and primarily consists of securitization of the Company's letters of credit **leases**, and debt. See Note **7, 6, Debt and Finance Lease Liabilities**, for additional details.

The reconciliation of cash and cash equivalents and restricted cash and cash equivalents to amounts presented in the **condensed** consolidated statements of cash flows are as follows:

		As of					
		September 30, 2023	December 31, 2022	September 30, 2022	As of		
		As of			March 31, 2024	December 31, 2023	March 31, 2023
Cash and cash equivalents	Cash and cash equivalents	\$362,850	\$225,850	\$315,731			
Restricted cash and cash equivalents	Restricted cash and cash equivalents	1,224	10,600	600			
– current	– current						
Restricted cash and cash equivalents	Restricted cash and cash equivalents	28,026	77,459	87,459			
– non-current	– non-current						
Cash, cash equivalents and restricted cash and cash equivalents	Cash, cash equivalents and restricted cash and cash equivalents	\$392,100	\$313,909	\$403,790			

NIKOLA CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
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Money market funds consist of highly liquid investments with original maturities of three months or less and are classified in cash and cash equivalents and restricted cash in the accompanying condensed consolidated balance sheets.

(b) Fair Value of Financial Instruments

The carrying value and fair value of the Company's financial instruments are as follows:

As of March 31, 2024		As of March 31, 2024		
Level	1	Level 1	Level 2	Level 3
Assets				Total
Cash equivalents				
– money market				

Cash equivalents				
- money				
market				
Cash equivalents				
- money				
market				
Liabilities				
Liabilities				
Liabilities				
Derivative liability				
Derivative liability				
Derivative liability				
	As of September 30, 2023			
	Level 1	Level 2	Level 3	Total
Assets				
Cash equivalents	\$ 14,339	\$ —	\$ —	\$ 14,339
- money				
market				
Derivative asset	—	—	124	124
Liabilities				
Warrant liability	\$ —	\$ —	\$ 65	\$ 65
Senior Convertible Notes	—	—	32,381	32,381

	As of December 31, 2022				
	Level 1	Level 2	Level 3	Total	
Assets					
Derivative asset	\$	—	\$	—	\$ 170
				170	170
Liabilities					
Warrant liability	\$	—	\$	—	\$ 380
				380	380
Senior Convertible Notes	—	—	—	50,000	50,000

Put Premium Derivative Asset

NIKOLA CORPORATION

**In June 2022, NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(UNAUDITED)**

	As of December 31, 2023			
	Level 1	Level 2	Level 3	Total
Assets				
Cash equivalents – money market	\$ 29,839	\$ —	\$ —	\$ 29,839
Liabilities				
Derivative liability	\$ —	\$ —	\$ 8,871	\$ 8,871

Embedded conversion features derivative liability

On December 12, 2023, the Company completed a private placement consummated an underwritten public offering of \$200.0 million aggregate principal amount of unsecured 8.00% / 11.00% convertible senior paid in kind ("PIK") toggle notes the Company's 8.25% Green Convertible Senior Notes due 2026 (the "June 2022 Toggle" "8.25% Convertible Notes"). In conjunction with the issuance of the June 2022 Toggle The 8.25% Convertible Notes were issued pursuant to, and are governed by, an indenture, dated as of

December 12, 2023, between the Company entered into and U.S. Bank Trust Company, National Association, as trustee (the "Trustee"), as supplemented by a premium letter agreement (the "Put Premium") with the purchasers (the "Note Purchasers") first supplemental indenture, dated as of the June 2022 Toggle Convertible Notes which requires the Note Purchasers to pay \$9.0 million to December 12, 2023, between the Company if during and the period through the date that is thirty months after the closing date of the private placement of June 2022 Toggle Convertible Notes, the last reported sale price of the Company's common stock has been at least \$20.00 for at least 20 trading days during any consecutive 40 trading day period. Trustee.

The Put Premium was determined to be an conversion features embedded derivative asset and in the 8.25% Convertible Notes met the criteria to be separated from the host contract and carried recognized separately at fair value. The derivative is measured both initially and in subsequent periods at fair value, with changes in fair value recognized in other income, (expense), net on the condensed consolidated statements of operations. The fair value As of the derivative asset is included in other assets on the consolidated balance sheets. The change in fair value of the derivative asset was as follows:

	Three months Ended September 30, 2022	Nine Months Ended September 30, 2022
Estimated fair value - beginning of period	\$ 800	\$ —
Recognition of derivative asset	—	1,500
Change in fair value	(300)	(1,000)
Estimated fair value - end of period	<u>\$ 500</u>	<u>\$ 500</u>

The fair value of the derivative asset was immaterial as of September 30, 2023 and December 31, 2022.

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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
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Derivative Liabilities

Embedded conversion features derivative liability

On April 11, 2023, the Company completed an exchange (the "Exchange") of \$100.0 million aggregate principal amount of the Company's existing June 2022 Toggle Convertible Notes for the issuance of \$100.0 million aggregate principal amount of 8.00% / 11.00% Series B convertible senior PIK toggle notes (the "April 2023 Toggle the 8.25% Convertible Notes"). The April 2023 Toggle Convertible Notes, were issued pursuant to an indenture dated as of April 11, 2023 (the "April 2023 Toggle Convertible Notes Indenture").

Additionally, in June 2023, the Company completed a private placement of \$11.0 million aggregate principal amount of unsecured 8.00% / 8.00% Series C convertible senior PIK toggle notes (the "June 2023 Toggle Convertible Notes"). The June 2023 Toggle Convertible Notes were issued pursuant to an indenture dated as of June 23, 2023 (the "June 2023 Toggle Convertible Notes Indenture").

The April 2023 Toggle Convertible Notes Indenture and June 2023 Toggle Convertible Notes Indenture, among other things, limits conversion of the notes in certain instances until the earlier to occur of (x) an increase in the number of authorized shares in an amount sufficient to, among other things, allow for the issuance of common stock underlying the notes and (y) October 11, 2023, and provides that the Company shall elect to settle conversions of the notes in cash until such increase in the number of authorized shares has occurred, and the Company obtains the stockholder approval contemplated by Rule 5635 of the Nasdaq listing rules ("Nasdaq Rule").

The conversion features embedded to the April 2023 Toggle Convertible Notes were bifurcated and recognized separately at fair value due to the temporary requirement to settle conversions in cash, in certain instances, until stockholder approval as contemplated by Nasdaq Rule 5635 is obtained to increase the number of authorized shares. Upon the Exchange, the Company recognized \$21.2 million for the embedded conversion features as a derivative liability within accrued expenses and other current liabilities on the consolidated balance sheets.

During the third quarter of 2023, and commensurate with the approval to increase the number of authorized shares on August 3, 2023, the Company reassessed the conversion features bifurcated from the April 2023 Toggle Convertible Notes and June 2023 Toggle Convertible Notes. As of August 3, 2023, the conversion features met all equity classification criteria, and as a result, the derivative liabilities were remeasured as of August 3, 2023, and reclassified from accrued expenses and other current liabilities to additional paid-in capital on the condensed consolidated balance sheets. Changes in the fair value of the derivative liabilities are recorded within other income (expense) on the consolidated statements of operations.

During the three and nine months ended September 30, 2023, the The change in fair value of the derivative liabilities liability for the three months ended March 31, 2024 was as follows:

	Three months Ended September 30, 2023	Nine Months Ended September 30, 2023
Estimated fair value - beginning of period	\$ 29,340	\$ —
Recognition of derivative liability	—	21,180
Change in estimated fair value	212,511	220,671
Reclassification to equity	(241,851)	(241,851)
Estimated fair value - end of period	<u>\$ —</u>	<u>\$ —</u>

NIKOLA CORPORATION
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	Derivative liability
Estimated fair value at December 31, 2023	\$ 8,871
Change in estimated fair value	839
Settlement of derivative liability for conversions	(1,683)
Estimated fair value at March 31, 2024	\$ 8,027

The fair value of the conversion features ~~were was~~ estimated by applying a with-and-without approach to a binomial lattice model. The following reflects the ranges of inputs and assumptions used:

	For the three months ended September 30, 2023	For the three months ended March 31, 2024	June 30, 2023
Stock price	\$1.09 0.63 - \$3.40	\$1.09 -	\$1.38 \$1.04
Conversion price	\$1.46 - \$1.48	\$1.46 0.90	\$1.46 0.90
Risk free rate	3.76% 3.01% - 4.58%	3.76% -	4.49%
Equity volatility	47.50% - 60%	60% - 70%	60% - 70%
Expected dividend yield	—%	—% 4.52%	—% 16.4%
Credit spread	14.9% 14.10% - 20.1%	17.2% 15.10%	17.2% 15.10%

Put right and price differential derivative liabilities

On September 13, 2021, the Company entered into an Amended Membership Interest Purchase Agreement (the "Amended MIPA") with Wabash Valley Resources ("WVR") and the sellers party thereto (each, a "Seller"), pursuant to which the Company was subject to the first price differential and second price differential (together the "Price Differential").

The Price Differential was a freestanding financial instrument and accounted for as a derivative liability. The derivative liability was remeasured at each reporting period with changes in its fair value recorded in other income (expense), net on the consolidated statements of operations. The first price differential was settled in the fourth quarter of 2021. The second price differential was settled in the third quarter of 2022 for \$6.6 million, eliminating the Company's derivative liability balance as of September 30, 2022. During the three and nine months ended September 30, 2022, the change in fair value of the derivative liability was as follows:

	Three Months Ended	Nine Months Ended	
	September 30, 2022	September 30, 2022	
Estimated fair value - beginning of the period	\$ 6,588	\$ 4,189	
Change in estimated fair value	—	2,399	
Settlement of second price differential	(6,588)	(6,588)	
Estimated fair value - end of the period	<u>\$ —</u>	<u>\$ —</u>	<u>—</u>

Liability Classified Awards

During the second and third quarters of 2023, the Company reclassified certain share-based payment awards from equity to liabilities that would require cash settlement upon distribution or exercise. The fair value of these awards was determined based on the closing price of the Company's stock or a Black-Scholes model as of the measurement date and as of the end of each reporting period. Changes in the fair value of the liabilities were recognized as compensation cost over the requisite service period.

As of August 3, 2023, the share-based payment awards classified as liabilities no longer required cash settlement upon distribution or exercise. The Company reclassified the share-based payment awards into additional paid in capital on the

NIKOLA CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
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Company's consolidated balance sheets at their fair value. Changes in the fair value of liability classified awards during the three and nine months ended September 30, 2023, were as follows:

	Three Months Ended	Nine Months Ended	
	September 30, 2023	September 30, 2023	

Liability classified awards - beginning of the period	\$ 2,006	\$ —	—
Reclassification of share-based payment awards to liability	8,395	10,401	
Change in fair value	10,591	10,591	
Reclassification of share-based payment awards to equity	(20,992)	(20,992)	
Liability classified awards - end of the period	\$ —	\$ —	—

(c) Revenue Recognition

Truck sales

Truck sales consist of revenue recognized on the sales of the Company's trucks. The sale of a truck is generally recognized as a single performance obligation at the point in time when control is transferred to the customer, (dealers), which has historically been only the Company's dealers. Control is generally deemed transferred when the product is picked up by the carrier and the customer (dealer) dealer can direct the product's use and obtain substantially all of the remaining benefits from the product. The Company may offer certain after-market upgrades at the request of the dealers. If a contract contains more than one distinct performance obligation, the transaction price is allocated to each performance obligation based on the standalone selling price of each performance obligation. The Company does not offer returns on truck sales. In accordance with state law and the Company's dealer agreements, the Company may be required to repurchase dealer inventory in the event a dealer agreement is terminated, terminated, and accounts for these as sales with right of return.

NIKOLA CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
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The Company estimates a reserve for returns based on average historical returns in the event of dealer agreement terminations. Management believes that the estimate is an accurate reflection of expected returns, but actual return activity may vary from estimates. Accrued returns were approximately \$8.6 million and \$0.7 million as of March 31, 2024 and December 31, 2023, respectively, and are generally reflected in accrued expenses and other current liabilities on the condensed consolidated balance sheets. If the reserve applies to trucks that have an outstanding accounts receivable balance, the reserve is reflected as a reduction of accounts receivable, net.

Revenue is recognized based on the transaction price, which is measured as the amount of consideration that the Company expects to receive in exchange for transferring the product pursuant to the terms of the contract with its customer, dealer. The transaction price may be adjusted, if applicable, for variable consideration, such as customer rebates and financing costs on floor plan arrangements, which requires the Company to make estimates for the portion of these allowances that have yet to be credited to customers, dealers.

Payments for trucks sold are made in accordance with the Company's customary payment terms. The Company has elected an accounting policy whereby the Company does not adjust the promised amount of consideration for the effects of a significant financing component because, at contract inception, the Company expects the period between the time when the Company transfers a promised good or service to the customer, dealer and the time when the customer, dealer pays for that good or service will be one year or less. Sales tax collected from customers, dealers is not considered revenue and is accrued until remitted to the taxing authorities. Shipping and handling activities occur after the customer, dealer has obtained control of the product, thus the Company has elected to account for those expenses as fulfillment costs in cost of revenues, rather than an additional promised service.

Services Service and other

Services Service and other revenues primarily consists of sales of charging products, service parts, after-market parts, service and labor, and hydrogen. Sales are generally recognized as a single performance obligation at the point in time when control is transferred to the customer. Control is generally deemed transferred when the product is delivered to the customer and the customer can direct the product's use and obtain substantially all of the remaining benefits from the asset. The Company does not offer sales returns on products. Payment for products sold are made in accordance with the Company's customary payment terms and the Company's contracts do not have significant financing components. The Company has elected Sales tax collected is not considered revenue and is accrued until remitted to exclude sales taxes from the measurement of the transaction price, taxing authorities.

(d) Product Warranties and Recall Campaigns

Product warranty costs are recognized upon transfer of control of trucks to dealers, and are estimated based on factors including the length of the warranty (generally 2 to 5 years), product costs, supplier warranties, and product failure rates. Warranty reserves are reviewed and adjusted quarterly to ensure that accruals are adequate to meet expected future warranty obligations. Initial

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Estimating future warranty data costs is highly subjective and requires significant management judgment. Management believes that the accruals are adequate. However, based on the limited early in the launch of a new product and accordingly, future adjustments to the warranty accrual historical information available, it is possible that substantial additional charges may be material, required in future periods based on new information or changes in facts and circumstances. The Company's accrual includes estimates of the replacement costs for covered parts which is based on historical experience. This estimate could be impacted by contractual changes with third-party suppliers or the need to identify new suppliers and the engineering and design costs that would accompany such a change.

Recall campaign costs are recognized when a product recall liability is probable and related amounts are reasonably estimable. Costs are estimated based on the number of trucks to be repaired and the required repairs including engineering and development, product costs, labor rates, and shipping. Estimating the cost to repair the trucks is highly

subjective and requires significant management judgment. Based on information that is currently available, management believes that the accruals are adequate. It is possible that substantial additional charges may be required in future periods based on new information, changes in facts and circumstances, availability of materials from key suppliers, and actions the Company may commit to or be required to undertake.

During the third quarter of 2023, the Company filed a voluntary recall with the National Highway Traffic Safety Administration for 209 of the Company's BEV trucks. The recall was initiated as a result of preliminary results of trucks, related to issues with the Company's existing battery pack thermal event investigation. The investigation was in response to a thermal event caused by a battery pack defect. The Company is transporting all BEV trucks to the Company's Coolidge manufacturing facility where the BEV trucks will be retrofit with battery packs from another supplier. The Company accrued recall campaign costs of \$61.8-\$65.0 million for the BEV trucks that are expected to be returned to dealers and customers once the recall work is complete, of which \$9.7 million has been incurred through March 31, 2024. The Company placed a temporary hold on new BEV truck shipments until its BEV truck inventory has been retrofit with alternative battery packs. See Note 12, 11, Commitments and Contingencies, for additional information.

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The change in warranty liability for the three and nine months ended September 30, 2023 March 31, 2024 and 2022 2023 is summarized as follows:

	Three Months Ended September 30,			Nine months ended September 30,			
	2023		2022		2023		2022
	Three Months Ended March 31,		Three Months Ended March 31,		Three Months Ended March 31,		Three Months Ended March 31,
	2024		2024		2024		2024
	2024		2024		2024		2024
Accrued warranty - beginning of period							
Accrued warranty - beginning of period							
Accrued warranty - beginning of period	\$ 11,057		\$ 2,203		\$ 7,788		\$ —
Warranties issued in period - product warranty	Warranties issued in period - product warranty		172		2,611		4,245 4,601
Warranties issued in period - recall campaign	61,848		—		61,848		—
Warranties issued in period - product warranty							
Warranties issued in period - product warranty							
Net changes in liability for pre-existing warranties							
Net changes in liability for pre-existing warranties							
Net changes in liability for pre-existing warranties	\$ (1,084)		(\$213)		(\$1,304)		—
Warranty costs incurred	Warranty costs incurred		(\$1,665)		(\$200)		(\$2,249) (\$200)
Warranty costs incurred							
Warranty costs incurred							
Accrued warranty - end of period	\$ 70,328		\$ 4,401		\$ 70,328		\$ 4,401
Accrued warranty - end of period							
Accrued warranty - end of period							

As of September 30, 2023 March 31, 2024, warranty accrual of \$62.0-\$61.5 million was recorded in accrued expenses and other current liabilities and \$8.4-\$19.2 million in other long-term liabilities on the condensed consolidated balance sheets. As of December 31, 2022 December 31, 2023, warranty accrual of \$1.5-\$65.7 million was recorded in accrued expenses and other current liabilities and \$6.3-\$13.2 million in other long-term liabilities on the consolidated balance sheets.

(e) Recent Accounting Pronouncements

Recently issued accounting pronouncements not yet adopted

In October 2023, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update No. 2023-06 to clarify or improve disclosure and presentation requirements of a variety of topics, which will allow users to more easily compare entities subject to the SEC's existing disclosures with those entities that were not previously subject to the requirements, and align the requirements in the FASB accounting standard codification with the SEC's regulations. The Company is currently evaluating the provisions of the amendments and the impact on its future consolidated statements.

3. BUSINESS COMBINATION

Romeo Acquisition

On October 14, 2022 In December 2023, FASB issued ASU No. 2023-09 ("ASU 2023-09"), Income Taxes, to enhance income tax disclosures to address investor requests for more information about the tax risks and opportunities present in an entity's worldwide operation. ASU 2023-09 is effective for annual periods beginning after December 15, 2024 and early adoption is permitted. The Company completed the Romeo Acquisition. Under the terms of the acquisition, the Company acquired all of the issued and outstanding shares of common stock, par value 0.0001 per share, of Romeo ("Romeo Common Stock") in exchange for 0.1186 of a share (the "Romeo Exchange Ratio") of the Company's common stock, rounded down plans to the nearest whole number of shares.

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Total consideration adopt ASU 2023-09 for the acquisition year ended December 31, 2025, and is currently evaluating the impact of Romeo is summarized as follows:

	Purchase consideration
Fair value of Nikola common stock issued to Romeo stockholders ⁽¹⁾	\$ 67,535
Settlement of pre-existing relationships in the form of loan forgiveness ⁽²⁾	27,923
Settlement of pre-existing relationships in the form of accounts payable	(18,216)
Fair value of outstanding stock compensation awards attributable to pre-acquisition services ⁽³⁾	1,345
Total purchase consideration	\$ 78,587

⁽¹⁾Represents the acquisition date fair value of 22.1 million shares of Nikola common stock issued to Romeo stockholders, based this accounting standard update on the Romeo Exchange Ratio, at the October 14, 2022 closing price of \$3.06 per share.

⁽²⁾The Company entered into an Agreement and Plan of Merger and Reorganization dated July 30, 2022 (the "Merger Agreement") with Romeo. Concurrently with the execution of the Merger Agreement, Romeo entered into a loan agreement (the "Loan Agreement") with the Company as the lender. The Loan Agreement provided for a facility in an aggregate principal amount of up to \$30.0 million (subject to certain incremental increases of up to \$20.0 million), which were available for drawing subject to certain terms and conditions set forth in the Loan Agreement. Interest was payable on borrowings under the facility at the secured overnight financing rate ("SOFR") plus 8.00%. Upon closing, the loan its consolidated financial statements and related accrued interest were forgiven and considered part of the purchase price. As of acquisition close, Romeo had drawn \$12.5 million on the loan and accrued \$0.1 million in interest.

Additionally, as part of the Loan Agreement entered into with Romeo, the Company agreed to a short-term battery price increase. Through the acquisition close, the Company recorded \$15.3 million in prepaid expenses and other current assets on the consolidated balance sheets related to the incremental pack price increase, which was considered part of the purchase consideration upon close.

⁽³⁾Represents the portion of the fair value of the replacement awards related to services provided prior to the acquisition. The remaining portion of the fair value is associated with future service and will be recognized as expense over the future service period.

The acquisition was accounted for as a business combination using the acquisition method of accounting in accordance with ASC 805, Business Combinations ("ASC 805"). The purchase price was allocated to the assets acquired and liabilities assumed based on the estimated fair values at the date of acquisition. The acquisition resulted in goodwill due to the purchase consideration exceeding the estimated fair value of the identifiable net assets acquired by \$1.5 million.

During the second quarter of 2023, the Company transferred ownership of all of Romeo's right, title and interest in and to all of its tangible and intangible assets to an Assignee, who is designated Assignee to act as the assignee for the benefit of creditors of Romeo. Refer to Note 10, *Deconsolidation of Subsidiary*, for additional information.disclosures.

4.3. BALANCE SHEET COMPONENTS

Inventory

Inventory consisted of the following at September 30, 2023 March 31, 2024 and December 31, 2022 December 31, 2023, respectively:

	As of	
	September 30, 2023	December 31, 2022
Raw materials	\$ 18,707	\$ 52,442
Work in process	22,120	9,646
Finished goods	10,437	47,677

Service parts	5,694	2,105
Total inventory	\$ 56,958	\$ 111,870

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	As of	
	March 31, 2024	December 31, 2023
Raw materials	\$ 29,782	\$ 32,889
Work in process	16,591	15,486
Finished goods	8,919	8,206
Service parts	6,050	6,007
Total inventory	\$ 61,342	\$ 62,588

Inventory cost is computed using standard cost, which approximates actual cost on a first-in, first-out basis. Inventories are stated at the lower of cost or net realizable value. Inventories are written down for any excess or obsolescence and when net realizable value, which is based upon estimated selling prices, is in excess of carrying value. Once inventory is written-down, a new, lower cost basis for that inventory is established and subsequent changes in facts and circumstances do not result in the restoration of or increase in that newly established cost basis.

During the third quarter of 2023, the Company reclassified all BEV truck finished goods inventory to work in process to be retrofit with alternative battery packs related to the Company's voluntary recall. Additionally, during the third quarter of 2023, the Company wrote down BEV inventory related to the existing battery packs, cells and other BEV components which were deemed excess or obsolete due to the voluntary recall.

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Prepaid Expenses and Other Current Assets

Prepaid expenses and other current assets consisted of the following at **September 30, 2023** **March 31, 2024** and **December 31, 2022** **December 31, 2023**, respectively:

	As of	
	September 30, 2023	December 31, 2022
Inventory deposits	\$ 14,810	\$ 415
Prepaid expenses	7,941	5,333
Non-trade receivables	5,827	6,064
Prepaid insurance premiums	3,409	3,611
Headquarters sale agreement receivable	2,600	5,487
Deposits	2,052	3,917
Prepaid software	1,879	1,015
Deferred implementation costs	460	2,101
Total prepaid expenses and other current assets	\$ 38,978	\$ 27,943

Deferred implementation costs

Deferred implementation costs are amortized on a straight-line basis over the estimated useful life of the related software. The Company recorded an immaterial amount of amortization expense on the consolidated statements of operations for the three and nine months ended September 30, 2023, related to deferred implementation costs.

During the second quarter of 2022, the Company re-assessed the estimated useful life of its existing enterprise resource planning system as a result of ongoing re-implementation. The Company recorded \$1.2 million and \$2.4 million of amortization expense on the consolidated statements of operations for the three and nine months ended September 30, 2022, respectively, related to deferred implementation costs.

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	As of	
	March 31, 2024	December 31, 2023
Inventory deposits	\$ 11,308	\$ 4,843
Prepaid expenses	5,505	6,152
Non-trade receivables	4,913	4,895

Holdback receivable	4,886	3,655
Other deposits	4,076	1,643
Prepaid software	2,815	1,421
Return assets	1,653	675
Prepaid insurance premiums	1,606	2,148
Deferred implementation costs	479	479
Total prepaid expenses and other current assets	\$ 37,241	\$ 25,911

Property, Plant and Equipment, Net

Property, plant and equipment, net consisted of the following at **September 30, 2023** **March 31, 2024** and **December 31, 2022** **December 31, 2023**:

		As of	
		September 30, 2023	December 31, 2022
		As of	
		March 31, 2024	March 31, 2024
Buildings			December 31, 2023
Construction-in-progress	Construction-in-progress	\$217,899	\$209,187
Buildings		162,795	127,797
Equipment	Equipment	49,535	35,257
Tooling	Tooling	38,833	17,693
Finance lease assets	Finance lease assets	14,887	2,193
Software	Software	8,617	8,568
Land	Land	7,957	24,762
Other	Other	3,683	3,501
Other			
Other			
Leasehold improvements	Leasehold improvements	3,082	2,953
Demo vehicles			
Furniture and fixtures	Furniture and fixtures	1,483	1,492
Demo vehicles		—	15,215
Property, plant and equipment, gross			
Property, plant and equipment, gross			
Property, plant and equipment, gross	Property, plant and equipment, gross	508,771	448,618
Less: accumulated depreciation and amortization	Less: accumulated depreciation and amortization	(38,920)	(30,833)
Total property, plant and equipment, net	Total property, plant and equipment, net	\$469,851	\$417,785

Construction-in-progress on the Company's condensed consolidated balance sheets as of September 30, 2023 March 31, 2024 relates primarily to the expansion of the Company's manufacturing plant in Coolidge, Arizona, and development of hydrogen infrastructure.

During the three months ended March 31, 2024, the Company changed its accounting estimate for the expected useful life of tooling. The Company determined that straight-line depreciation with an estimated useful life of 5 years was more representative of the estimated economic lives of those assets than the consumption method. This change in estimate was applied prospectively effective for the first quarter of 2024 and resulted in an increase in depreciation expense of \$2.6 million for the three months ended March 31, 2024.

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Depreciation expense for the three months ended September 30, 2023 March 31, 2024 and 2022 2023 was \$15.1 million \$8.6 million and \$3.9 million \$4.2 million, respectively. Depreciation expense for the nine months ended September 30, 2023 and 2022 was \$23.9 million and \$10.5 million, respectively.

In July 2023, the Company executed a membership interest and asset purchase agreement (the "Purchase" FFI Purchase Agreement") with FFI Phoenix Hub Holdings, LLC, a wholly-owned subsidiary of Fortescue Future Industries ("FFI"). Pursuant to the terms of the Purchase Agreement, FFI Phoenix Hub Holdings, LLC, acquired 100% of the interests in Phoenix Hydrogen Hub, LLC, the Company's wholly owned subsidiary holding the assets related to the Phoenix hydrogen hub project, including land and construction-in-progress. The Company received net proceeds of \$20.7 million during During the third first quarter of 2023 pursuant to 2024, the Company completed the second closing under the terms of the FFI Purchase Agreement. The Company sold \$25.1 million of assets during the first quarter of 2024 pursuant to the second closing. The Company's proceeds are net of a \$3.7 \$3.7 million holdback, related to which holdback. As of March 31, 2024, the Company recorded \$1.2 million recognized \$4.9 million in prepaid expenses and other current assets and \$2.5 million \$2.5 million in other assets on the condensed consolidated balance sheets.

During sheets for the third quarter holdback receivable on the first and second closings. As of December 31, 2023, the Company reassessed recognized \$3.7 million in prepaid and other current assets on the useful lives of its BEV demo vehicles, and subsequently retired all demo vehicles. balance sheets for the holdback receivable on the first closing.

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Accrued Expenses and Other Current Liabilities

Accrued expenses and other current liabilities consisted of the following at September 30, 2023 March 31, 2024 and December 31, 2022 December 31, 2023:

	As of		As of
	March 31, 2024		March 31, 2024
Settlement liabilities			
Warranty liability, current			
Accrued purchase of intangible asset			
Inventory received not yet invoiced			
Derivative liability			
Other accrued expenses			
Accrued payroll and payroll related expenses			

Accrued outsourced engineering services		
Operating lease liabilities, current		
Operating lease liabilities, current		
Operating lease liabilities, current		
Accrued purchases of property, plant and equipment		
Accrued legal expenses		
Accrued legal expenses		
Accrued legal expenses		
	As of	
Total accrued expenses and other current liabilities		
	September 30, 2023	December 31, 2022
SEC settlement	\$ 85,500	\$ 90,000
Warranty liability, current	61,953	1,484
Accrued purchase of intangible asset	13,216	32,126
Total accrued expenses and other current liabilities		
Inventory received not yet invoiced	12,696	18,167
Accrued outsourced engineering services	7,845	8,056
Accrued legal expenses	6,618	2,041
Accrued payroll and payroll related expenses	5,797	8,298
Other accrued expenses	4,264	2,152
Accrued purchases of property, plant and equipment	3,718	3,587
Operating lease liabilities, current	2,434	1,979
Accrued Equity Distribution Agreement fees	1,114	1,681
Supply agreement revision commitment	—	10,000
Total accrued expenses and other current liabilities	\$205,155	\$179,571

4. INTANGIBLE ASSETS, NET

The gross carrying amount and accumulated amortization of separately identifiable intangible assets are as follows:

	As of March 31, 2024		
	Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount
Licenses:			
S-WAY Product and Platform license	\$ 50,000	\$ 14,286	\$ 35,714
FCPM license	47,181	—	47,181
Other intangibles	1,650	535	1,115
Total intangible assets, net	\$ 98,831	\$ 14,821	\$ 84,010

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	As of December 31, 2023		
	Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount
Licenses:			
S-WAY Product and Platform license	\$ 50,000	\$ 12,500	\$ 37,500
FCPM license	47,181	—	47,181
Other intangibles	1,650	471	1,179
Total intangible assets, net	\$ 98,831	\$ 12,971	\$ 85,860

Amortization expense related to intangible assets for the three months ended March 31, 2024 and 2023 was \$1.8 million and \$1.8 million, respectively.

In 2021, the Company acquired a license for fuel cell power modules ("FCPMs") for use in the production of FCEVs. The Company expects to amortize the license beginning at the start of in-house FCPM production. As of March 31, 2024, the Company has not started amortizing the license.

5. INVESTMENTS IN AFFILIATES

Investments in unconsolidated affiliates accounted for under the equity method consisted of the following:

	Ownership as of September 30, 2023	As of	
		September 30, 2023	December 31, 2022
Nikola Iveco Europe GmbH	— %	\$ —	\$ 4,142
Wabash Valley Resources LLC	20 %	57,193	57,674
Nikola - TA HRS 1, LLC	50 %	1,000	1,000
		\$ 58,193	\$ 62,816

	Ownership as of March 31, 2024	As of	
		March 31, 2024	December 31, 2023
Wabash Valley Resources LLC	20 %	\$ 56,905	\$ 57,062
		\$ 56,905	\$ 57,062

Equity in net loss of affiliates on the condensed consolidated statements of operations for the three and nine months ended September 30, 2023 March 31, 2024 and 2022, 2023, were as follows:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2023	2022	2023	2022
Three Months Ended March 31,				
Three Months Ended March 31,				
Three Months Ended March 31,				
2024				
2024				

Nikola Iveco Europe GmbH

In April 2020, the Company and Iveco S.P.A. ("Iveco") became parties to a series of agreements which established a joint venture in Europe, Nikola Iveco Europe GmbH. The operations of the joint venture are located in Ulm, Germany, and consist of manufacturing the FCEV and BEV Class 8 trucks for the European market. The agreements provided for a 50/50 ownership of the joint venture and a 50/50 allocation of the joint venture's production volumes and profits between the

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Company and Iveco. Nikola Iveco Europe GmbH was considered a variable interest entity ("VIE") due to insufficient equity to finance its activities without additional subordinated financial support. The Company was not considered the primary beneficiary as it did not have the power to direct the activities that most significantly impact the economic performance based on the terms of the agreements. Accordingly, the VIE was accounted for under the equity method.

On June 29, 2023 (the "Divestiture Closing"), the Company and Iveco executed the European Joint Venture Transaction Agreement (the "Transaction Agreement") whereby the Company sold its 50% equity interest in Nikola Iveco Europe GmbH to Iveco for \$35.0 million. In conjunction with the Transaction Agreement, the Company issued an intellectual property license agreement (the "License Agreement"), which grants Iveco and Nikola Iveco Europe GmbH a non-exclusive, perpetual, irrevocable, fully sublicensable, transferable, and fully assignable license ("Licensed Software") to software and controls technology related to the BEV and FCEV. According to the terms of the Transaction Agreement, the Company was eligible to receive 20.6 million shares of its own common stock from Iveco, contingent on successful due diligence ("Software Due Diligence") performed by Iveco and its consultants on the Licensed Software delivered to Iveco on the Divestiture Closing pursuant to the License Agreement. The Software Due Diligence was evaluated based on mutually agreed criteria between Iveco and the Company.

On the Divestiture Closing, the Company recognized a gain equal to the difference between the consideration received and its basis in the Nikola Iveco Europe GmbH investment, consisting of a liability balance of \$11.4 million for investment in affiliates, and cumulative currency translation losses of \$1.5 million. The delivery of the Licensed Software on the Divestiture Closing was determined to represent a right to use the Licensed Software and the performance obligation was satisfied upon the delivery of the Licensed Software on Divestiture Closing. The Company recognized gains related to the derecognition of its basis in Nikola Iveco Europe GmbH and delivery of the Licensed Software in gain on divestiture of affiliate on the consolidated statements of operations. During the nine months ended September 30, 2023, the Company recognized a gain of \$70.8 million in gain on divestiture of affiliates consisting of the following:

	Nine Months Ended	September 30, 2023
Cash consideration received	\$	35,000
Contingent stock consideration receivable		25,956
Derecognition of investment in affiliate		11,428
Derecognition of cumulative currency translation losses		(1,535)
Gain on divestiture of affiliate	\$	70,849

Contingent stock consideration received

The contingent stock consideration was accounted for as variable consideration and included in total consideration as of Divestiture Closing, as it was not probable that a significant reversal of such consideration would occur upon resolution of the contingency. On August 3, 2023, the Software Due Diligence was deemed successful and Ivecos transferred to the Company 20.6 million shares of Nikola common stock, which were immediately retired. The Company recognized the fair value of the common stock upon receipt

in accumulated deficit on the consolidated balance sheets. The fair value of the contingent stock consideration was measured based on the closing price of the Company's common stock price, with changes in fair value recognized in other income (expense), net on the consolidated statements of operations. **Iveco**.

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During the three and nine months ended September 30, 2023, the change in fair value of the contingent stock consideration was as follows:

	Three Months Ended September 30, 2023	Nine Months Ended September 30, 2023
Fair value - beginning of the period	\$ 28,428	\$ —
Contingent stock consideration recognized on Divestiture Closing	—	25,956
Change in fair value	41,509	43,981
Delivery of shares for stock consideration	(69,937)	(69,937)
Fair value - end of the period	\$ —	\$ —

Wabash Valley Resources LLC

On June 22, 2021, the Company entered into a Membership Interest Purchase Agreement (the "MIPA") with **WVR** **Wabash Valley Resources LLC ("WVR")** and the Sellers, pursuant to which, the Company purchased a 20% equity interest in WVR in exchange for \$25.0 million in cash and 1,682,367 shares of the Company's common stock. **WVR** is developing a clear hydrogen project in West Terre Haute, Indiana, including a hydrogen production facility. The common stock consideration was calculated based on the Company's 30-day average closing stock price, or \$14.86 per share, and the Company issued 1,682,367 shares of its common stock.

The Company's interest in WVR is accounted for under the equity method and is included in investment in **affiliates** **affiliate** on the Company's **condensed** consolidated balance sheets. Included in the initial carrying value was a basis difference of \$55.5 million due to the difference between the cost of the investment and the Company's proportionate share of WVR's net assets. The basis difference is primarily comprised of property, plant and equipment and intangible assets.

As of **September 30, 2023** **March 31, 2024**, the Company's maximum exposure to loss was **\$57.7** **\$57.4** million, which represents the book value of the Company's equity interest and loans to WVR for \$0.5 million.

Nikola - TA HRS 1, LLC

In March 2022, the Company and Travel Centers of America, Inc. ("TA") entered into a series of agreements which established a joint venture, Nikola - TA HRS 1, LLC. The operations expected to be performed by the joint venture consist of the development, operation and maintenance of a hydrogen fueling station. Operations have not commenced as of September 30, 2023.

The agreements provide for 50/50 ownership of the joint venture. Both parties are entitled to appoint an equal number of board members to the management committee of the joint venture. Pursuant to the terms of the agreements, the Company contributed \$1.0 million to Nikola - TA HRS 1, LLC in 2022.

Nikola - TA HRS 1, LLC is considered a VIE due to insufficient equity to finance its activities without additional subordinated financial support. The Company is not considered the primary beneficiary as it does not have the power to direct the activities that most significantly impact the economic performance based on the terms of the agreements. Accordingly, the VIE is accounted for under the equity method.

The Company does not guarantee debt for, or have other financial support obligations to the entity and its maximum exposure to loss in connection with its continuing involvement with the entity is limited to the carrying value of the investment.

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6. INTANGIBLE ASSETS, NET

The gross carrying amount and accumulated amortization of separately identifiable intangible assets are as follows:

	As of September 30, 2023		
	Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount
Licenses:			
S-WAY Product and Platform license	\$ 50,000	\$ 10,714	\$ 39,286
FCPM license	47,181	—	47,181
Other intangibles	1,650	405	1,245
Total intangible assets	\$ 98,831	\$ 11,119	\$ 87,712
As of December 31, 2022			

	Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount
Licenses:			
S-WAY Product and Platform license	\$ 50,000	\$ 5,357	\$ 44,643
FCPM license	47,181	—	47,181
Other intangibles	800	151	649
Total intangible assets	\$ 97,981	\$ 5,508	\$ 92,473

Amortization expense related to intangible assets for the three and nine months ended September 30, 2023 was \$1.9 million and \$5.6 million, respectively. Amortization expense related to intangible assets for the three and nine months ended September 30, 2022 was \$1.7 million and \$3.6 million, respectively.

In 2021, the Company acquired a license for fuel cell power modules ("FCPMs") for use in the production of FCEVs. The Company expects to amortize the license beginning at the start of in-house FCPM production, expected to commence in the first half of 2024. As of September 30, 2023, the Company has not started amortizing the license.

7. DEBT AND FINANCE LEASE LIABILITIES

A summary of debt and finance lease liabilities as of September 30, 2023 March 31, 2024 and December 31, 2022 December 31, 2023, were as follows:

		As of			
		September 30, 2023	December 31, 2022		
		As of		As of	
		March 31, 2024	December 31, 2023		
Current:	Current:				
Senior Convertible Notes	\$ 32,381	\$ 50,000			
Finance lease liabilities					
Finance lease liabilities					
Finance lease liabilities					
Insurance premium financing	3,673	1,999			
Finance lease liabilities	2,370	367			
Insurance premium financing					
Insurance premium financing					
Promissory notes	686	9,309			
Financing obligations	67	—			
Debt and finance lease liabilities, current	\$ 39,177	\$ 61,675			
Debt and finance lease liabilities, current					
Debt and finance lease liabilities, current					
Non-current:		As of			
		March 31, 2024	December 31, 2023		
Toggle Convertible Notes	\$ 128,740	\$ 124,061			
Financing obligations	101,712	101,470			
Finance lease liabilities	25,916	26,395			

8.25% Convertible Notes	9,771	15,047
Promissory notes	2,206	2,306
Long-term debt and finance lease liabilities, net of current portion	\$ 268,345	\$ 269,279

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	As of	
	September 30, 2023	December 31, 2022
<i>Non-current:</i>		
Toggle Convertible Notes	\$ 119,291	\$ 199,786
Financing obligations	101,233	50,359
Promissory notes	2,501	39,165
Finance lease liabilities	9,346	818
Long-term debt and finance lease liabilities, net of current portion	<u>\$ 232,371</u>	<u>\$ 290,128</u>

The fair values of the following debt obligations are estimated using level 2 fair value inputs, including stock price and risk-free rates. The following table presents the carrying value and estimated fair values:

	As of September 30, 2023	
	Carrying Value	Fair Value
June 2022 Toggle Convertible Notes	\$ 111,003	\$ 93,788
June 2023 Toggle Convertible Notes	8,288	13,220
Second Collateralized Note	3,187	3,086
Insurance Premium financing	2,372	2,370
September 2023 Insurance Premium financing	1,224	1,220

	As of March 31, 2024	
	Carrying Value	Fair Value
June 2022 Toggle Convertible Notes	\$ 119,336	\$ 104,499
8.25% Convertible Notes	9,771	19,079
June 2023 Toggle Convertible Notes	9,404	10,973
Promissory notes	3,004	2,938

Toggle Convertible Notes

In June 2022, the Company completed a private placement of \$200.0 million aggregate principal amount of the Company's June 2022 Toggle Convertible Notes, which will mature on May 31, 2026. The June 2022 Toggle Convertible Notes were issued pursuant to an indenture, dated as of June 1, 2022 (the "June 2022 Toggle Convertible Notes Indenture").

In April 2023, the Company completed an exchange of \$100.0 million aggregate principal amount of the Company's June 2022 Toggle Convertible Notes for the issuance of \$100.0 million aggregate principal amount of April unsecured 8.00% / 11.00% Series B convertible senior PIK toggle notes (the "April 2023 Toggle Convertible Notes, which will mature on May 31, 2026. The April 2023 Toggle Convertible Notes were issued pursuant to the April 2023 Toggle Convertible Notes Indenture. In conjunction with the issuance of the April 2023 Toggle Convertible Notes, the Company executed the first supplemental indenture to the June 2022 Toggle Convertible Notes Indenture dated as of April 3, 2023 (the "First Supplemental Indenture to June 2022 Notes"), and the second supplemental indenture to the June 2022 Toggle Convertible Notes Indenture dated as of April 10, 2023 (the "Second Supplemental Indenture to June 2022 Notes"), which First Supplemental Indenture to June 2022 Notes, among other things, amended the conversion provisions of the June 2022 Toggle Convertible Notes Indenture to limit conversions of the June 2022 Toggle Convertible Notes in certain instances until the earlier to occur of (x) an increase in the number of authorized shares in an amount sufficient to, among other things, allow for the issuance of common stock underlying the June 2022 Toggle Convertible Notes and (y) October 11, 2023, and provide that the Company shall elect to settle conversions of the June 2022 Toggle Convertible Notes in cash prior to such increase in the number of authorized shares. May 31, 2026.

Additionally, in June 2023, the Company completed a private placement of \$11.0 million aggregate principal amount of the Company's June 2023 Toggle Convertible Notes (together with the June 2022 Toggle Convertible Notes and the April 2023 Toggle Convertible Notes, the "Toggle Convertible Notes"), which will mature on May 31, 2026. The June 2023 Toggle Convertible Notes were issued pursuant to the June 2023 Toggle Convertible Notes Indenture (together with the June 2022 Toggle Convertible Notes Indenture, and the "Toggle Convertible Notes Indentures").

During 2023, the holders of the April 2023 Toggle Convertible Notes Indenture, converted the "Toggle Convertible Notes Indentures". The June 2023 Toggle Convertible Notes were issued in consideration as a consent fee to the holders for execution aggregate principal balance of the third supplemental indenture to the June 2022 Toggle Convertible Notes Indenture dated as of June 23, 2023 (the "Third Supplemental Indenture to June 2022 Notes"), and the first supplemental indenture to the April 2023 Toggle Convertible Notes Indenture dated as Notes. As of June 23, 2023 (the "First Supplemental Indenture to April 2023 Notes") March 31, 2024 and December 31, 2023, which, among other things, released Romeo as a guarantor of the June 2022 Toggle Convertible Notes and the April June 2023 Toggle Convertible Notes respectively.

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were outstanding.

Below is a summary of certain terms of the Toggle Convertible Notes: Notes outstanding:

Interest Payments

The Company can elect to make any interest payment on the Toggle Convertible Notes in cash ("Cash Interest"), through the issuance of additional Toggle Convertible Notes in the form of the Toggle Convertible Notes with respect to which such interest is due ("PIK Interest"), or any combination thereof. Interest on the Toggle Convertible Notes is payable semi-annually in arrears. The interest rates and payment dates for each of the Toggle Convertible Notes is summarized below:

	June 2022	April 2023	June 2023			
	Toggle	Toggle	Toggle			
	Convertible Notes	Convertible Notes	Convertible Notes			
PIK interest rate (per annum)	11.00%	11.00%	8.00%			
Cash interest rate (per annum)	8.00%	8.00%	8.00%			
Semi-annual interest payable dates	May 31 and 30 of each year	May 31 and November 30 of each year	June 30 and December 31 of each year			
First interest payment date	November 30, 2022	November 30, 2022	December 31, 2023			

The April 2023 Toggle Convertible Note and Interest on the June 2023 Toggle Convertible Note shall bear interest at the applicable Cash Interest rate or that accrued from June 23, 2023 was paid as PIK Interest rate from November 30, 2022 and June 23, 2023, respectively, on December 31, 2023.

Conversions

Based on the applicable conversion rates, the Toggle Convertible Notes plus any accrued and unpaid interest are convertible into cash, shares of the Company's common stock or a combination thereof, at the Company's election. However, conversions of the Toggle Convertible Notes are limited in certain instances until the earlier

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With respect to occur of (x) an increase in the number of authorized shares in an amount sufficient to, among other things, allow for the issuance of common stock underlying such Toggle Convertible Notes and (y) October 11, 2023, and the Company shall elect to settle conversions of the Toggle Convertible Notes in cash until such increase in the number of authorized shares has occurred and in the case of conversions of the April 2023 Toggle Convertible Notes, the Company obtains the stockholder approval contemplated by Nasdaq Rule 5635. The Company amended its Second Amended and Restated Certificate of Incorporation to increase the number of authorized shares of common stock from 800,000,000 to 1,600,000,000, following approval by the stockholders at the Company's annual meeting of stockholders on August 3, 2023.

The initial conversion rates are 114.3602 and 686.8132 shares per \$1,000 principal amount of the June 2022 Toggle Convertible Notes, and April 2023 Toggle Convertible Notes, respectively, the initial conversion rate is 114.3602 shares per \$1,000 principal amount, subject to customary anti-dilution adjustments in certain circumstances, which

represents an initial conversion price of approximately \$8.74 and \$1.46 per share, respectively.

With respect to the June 2023 Toggle Convertible Notes, the initial conversion rate shall be an amount equal to (a) 674.4258 divided by (b) a quotient, (i) the numerator of which is the sum of (x) the initial principal amount of the June 2023 Toggle Convertible Notes outstanding immediately prior to such conversion and (y) the aggregate amount capitalized related to PIK Interest issuances in respect of interest that came due on the June 2023 Toggle Convertible Notes and (ii) the denominator of which is the initial principal amount of the June 2023 Toggle Convertible Notes.

The Toggle Convertible Notes Indentures provide that prior to February 28, 2026, the Toggle Convertible Notes will be convertible at the option of the holders only upon the occurrence of specified events and during certain periods, and will be convertible on or after February 28, 2026, at any time until the close of business on the second scheduled trading day immediately preceding the maturity date of the Toggle Convertible Notes.

Holders of the Toggle Convertible Notes will have the right to convert all or a portion of their Toggle Convertible Notes prior to the close of business on the business day immediately preceding February 28, 2026 only under the following circumstances: (i) during any fiscal quarter commencing after the fiscal quarter ending on September 30, 2022 for the June 2022 Toggle Convertible Notes, during any fiscal quarter commencing after the fiscal quarter ending on June 30, 2023 for the April 2023 Toggle Convertible Notes, and during any fiscal quarter commencing after the fiscal quarter ending on September 30, 2023 for the June 2023 Toggle Convertible Notes (and only during such fiscal quarter), if the last reported sale price of the Common Stock for at least 20 trading days (whether or not consecutive) during a period of 30 consecutive trading days ending on, and

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including, the last trading day of the immediately preceding fiscal quarter is greater than or equal to 130% of the conversion price for the Toggle Convertible Notes on each applicable trading day; (ii) during the five business day period after any ten consecutive trading day period in which the trading price per \$1,000 principal amount of the Toggle Convertible Notes for each trading day of that ten consecutive trading day period was less than 98% of the product of the last reported sale price of the Common Stock and the conversion rate of the Toggle Convertible Notes on each such trading day; (iii) if the Company calls such Toggle Convertible Notes for redemption, at any time prior to the close of business on the second business day immediately preceding the redemption date; or (iv) upon the occurrence of specified corporate events.

Redemption

Except with respect to the June 2023 Toggle Convertible Notes as described in the immediately succeeding paragraph, the Company may not redeem the Toggle Convertible Notes prior to June 1, 2025. The Company may redeem the Toggle Convertible Notes in whole or in part, at its option, on or after such date and prior to the 26th scheduled trading day immediately preceding the maturity date, for a cash purchase price equal to the aggregate principal amount of any Toggle Convertible Notes to be redeemed plus accrued and unpaid interest.

The June 2023 Toggle Convertible Notes provide for an additional optional redemption period from the initial issuance of such Toggle Convertible Notes through the first interest payment date of December 31, 2023, in whole and not in part for a cash purchase price equal to the aggregate principal amount of the June 2023 Toggle Convertible Notes.

In addition, following certain corporate events that occur prior to the maturity date or following issuance by the Company of a notice of redemption, in certain circumstances, the Company will increase the conversion rate for a holder who elects to convert its Toggle Convertible Notes (other than the June 2023 Toggle Convertible Notes) in connection with such a corporate event or who elects to convert any such Toggle Convertible Notes called for redemption during the related redemption period. Additionally, in the event of a fundamental change or a change in control transaction, holders of the Toggle Convertible Notes will have the right to require the Company to repurchase all or a portion of their Toggle Convertible Notes at a price equal to 100% of the capitalized principal amount of such Toggle Convertible Notes, in the case of a fundamental change, or 130% of the capitalized principal amount of such Toggle Convertible Notes, in the case of change in control transactions, in each case plus any accrued and unpaid interest to, but excluding, the repurchase date.

The Toggle Convertible Notes Indentures include restrictive covenants that, subject to specified exceptions, limit the ability of the Company and its subsidiaries to incur secured debt in excess of \$500.0 million, incur other subsidiary guarantees, and sell equity interests of any subsidiary that guarantees the Toggle Convertible Notes. In addition, the Toggle Convertible Notes Indentures include customary terms and covenants, including certain events of default after which the holders may accelerate the maturity of the Toggle Convertible Notes issued thereunder and cause them to become due and payable immediately upon such acceleration.

In conjunction with the issuance of the June 2022 Toggle Convertible Notes, the Company executed the Put Premium which was determined to be an embedded derivative that met the criteria for bifurcation from the host. The total proceeds received were first allocated to the fair value of the bifurcated derivative asset, and the remaining proceeds allocated to the host resulting in an adjustment to the initial purchasers' debt discount.

The net proceeds from the sale of the June 2022 Toggle Convertible Notes were \$183.2 million, net of initial purchasers' discounts and debt issuance costs. Unamortized debt discount and issuance costs were reported as a direct deduction from the face amount of the June 2022 Toggle Convertible Notes.

During the second quarter of 2023, the exchange of \$100.0 million of June 2022 Toggle Convertible Notes for the issuance of \$100.0 million of April 2023 Toggle Convertible Notes was determined to represent a substantial change in terms and extinguishment accounting was applied. The Company recognized a loss on debt extinguishment of \$20.4 million for the nine months ended September 30, 2023. As part of the assessment of the exchange, the Company bifurcated the conversion features on the April 2023 Toggle Convertible Notes and recognized a derivative liability of \$21.2 million as of the exchange date, resulting in an adjustment to the debt discount.

Additionally, during the second quarter of 2023, the execution of the Third Supplemental Indenture to June 2022 Notes and First Supplemental Indenture to April 2023 Notes were deemed modifications to the Toggle Convertible Notes outstanding under the June 2022 Toggle Convertible Notes Indenture and April 2023 Toggle Convertible Notes Indenture, respectively, as the amended terms did not substantially change the terms of the respective notes. The consideration paid to the holders in the

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form of the issuance of the June 2023 Toggle Convertible Notes was recognized as an issuance cost upon modification and is amortized as an adjustment of interest expense over the remaining terms of the June 2022 Toggle Convertible Notes and April 2023 Toggle Convertible Notes.

On August 4, 2023, the holders of the April 2023 Toggle Convertible Notes exercised their conversion right for all the outstanding principal amount. The Company elected to settle the conversion with the issuance of 72,458,789 shares of common stock. The remaining unamortized discount was recognized in interest expense, net on the consolidated statements of operations due to the reclassification of the conversion feature to equity.

The net carrying amounts of the debt component of the Toggle Convertible Notes as of September 30, 2023 March 31, 2024 and December 31, 2023 were as follows:

	June 2022 Toggle Convertible Notes	June 2023 Toggle Convertible Notes
Principal amount	\$ 117,041	\$ 11,000
Accrued PIK interest	4,327	237
Unamortized discount	(2,502)	(2,949)
Unamortized issuance costs	(7,863)	—
Net carrying amount	<u><u>\$ 111,003</u></u>	<u><u>\$ 8,288</u></u>

The net carrying amounts of the debt component of the Toggle Convertible Notes as of December 31, 2022 were as follows:

	June 2022 Toggle Convertible Notes
Principal amount	\$ 210,939
Accrued PIK interest	1,998
Unamortized discount	(6,443)
Unamortized issuance costs	(6,708)
Net carrying amount	<u><u>\$ 199,786</u></u>

	June 2022 Toggle Convertible Notes		June 2023 Toggle Convertible Notes	
	As of March 31, 2024	As of December 31, 2023	As of March 31, 2024	As of December 31, 2023
Principal amount	\$ 123,478	\$ 123,478	\$ 11,460	\$ 11,460
Accrued PIK interest	4,565	1,170	229	—
Unamortized discount	(2,102)	(2,306)	(2,285)	(2,496)
Unamortized issuance costs	(6,605)	(7,245)	—	—
Net carrying amount	<u><u>\$ 119,336</u></u>	<u><u>\$ 115,097</u></u>	<u><u>\$ 9,404</u></u>	<u><u>\$ 8,964</u></u>

As of September 30, 2023 March 31, 2024, the effective interest rates on the June 2022 Toggle Convertible Notes and June 2023 Toggle Convertible Notes were 13.90% and 8.00% 17.24%, respectively. Amortization of the debt discount and issuance costs is reported as a component of interest expense and is computed using the straight-line method over the term of the applicable Toggle Convertible Notes, which approximates the effective interest method.

The following table presents the Company's interest expense related to the June 2022 Toggle Convertible Notes:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2023	2022	2023	2022
Contractual interest expense	\$ 3,219	\$ 5,500	\$ 12,464	\$ 7,284
Amortization of debt discount and issuance costs	785	922	2,520	1,228
Total interest expense	<u><u>\$ 4,004</u></u>	<u><u>\$ 6,422</u></u>	<u><u>\$ 14,984</u></u>	<u><u>\$ 8,512</u></u>

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	Three Months Ended March 31,	
	2024	2023
Contractual interest expense	\$ 3,396	\$ 5,801
Amortization of debt discount and issuance costs	844	932
Total interest expense	<u><u>\$ 4,240</u></u>	<u><u>\$ 6,733</u></u>

The following table presents the Company's interest expense related to the April June 2023 Toggle Convertible Notes:

	Three Months Ended		Nine Months Ended	
	September 30, 2023	September 30, 2023	September 30, 2023	September 30, 2023
Contractual interest expense	\$ 1,096	\$ 1,096	\$ 3,562	\$ 3,562

Amortization of debt discount and issuance costs	41,530	42,242
Total interest expense	\$ 42,626	\$ 45,804

For the three and nine months ended September 30, 2023, the Company recognized an immaterial amount of interest expense on the June 2023 Toggle Convertible Notes.

	Three Months Ended March 31, 2024
Contractual interest expense	\$ 229
Amortization of debt discount and issuance costs	211
Total interest expense	<u>440</u>

Senior Convertible Notes

First Purchase Agreement Notes

On December 30, 2022, the Company entered into a securities purchase agreement (the "First Purchase Purchase Agreement") with the investors named therein for the sale of up to \$125.0 million in initial principal amount of senior convertible notes (the First Purchase Purchase Agreement Notes"), in a registered direct offering. The First Purchase Agreement Notes are convertible into shares of the Company's common stock, subject to certain conditions and limitations. The Company consummated an initial closing for the sale of \$50.0 million in aggregate principal amount of First Purchase Agreement Notes on December 30, 2022 (the "Series A Notes").

Subsequent to the initial closing, the Company entered into an amended securities purchase agreements agreement (the "Amended Purchase Agreements Agreement") pursuant to which the Company consummated an additional closings closing on March 17, 2023 for the sale of \$25.0 million in aggregate principal amount of First Purchase Agreement Notes (the "Series B-1 Notes"), on May 10, 2023 for the sale of \$15.0 million in aggregate principal amount of First Purchase Agreement Notes (the "Series B-2 Notes"), and on May 25, 2023 for the sale of \$12.1 million in aggregate principal amount of First Purchase Agreement Notes (the "Series B-3 Notes").

The purchase price for the First Purchase Agreement Notes is \$1,000 per \$1,000 principal amount. Subject to certain conditions being met or waived, at the option of the Company, one or more additional closings for up to the remaining principal amount of First Purchase Agreement Notes may occur.

Each First Purchase Agreement Note will accrue accrued interest at a rate of 5% per annum, payable in arrears on the first calendar day of each calendar quarter, beginning April 1, 2023 for the Series A Notes, and June 1, 2023 for the Series B-1 Notes and July 1, 2023 for the Series B-2 and Series B-3 Notes. Interest will be was payable in cash or shares of the Company's common stock or in a combination of cash and shares of common stock, at the Company's option. The interest rate will increase to an annual rate of 12.5% per annum upon the occurrence and during the continuance of an event of default under the term of the First Purchase Agreement Notes. Each First Purchase Agreement Note issued pursuant to the First Purchase Agreement and Amended Purchase Agreements will have Agreement had a maturity date of one year from issuance, which may be extended at the option of the noteholders in certain instances issuance. Upon any conversion, redemption or other repayment of a First Purchase

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Agreement Note, a "make-whole" amount equal to the amount of additional interest that would accrue under such First Purchase Agreement Note at the interest rate then in effect assuming that the outstanding principal of such First Purchase Agreement Notes remained outstanding through and including the maturity date of such First Purchase Agreement Note.

At any time on or after January 9, 2023, all or any portion of the principal amount of each First Purchase Agreement Note, plus accrued and unpaid interest, any make-whole amount and any late charges thereon (the "Conversion Amount"), is convertible at any time, in whole or in part, at the noteholder's option, into shares of the Company's common stock at a conversion price per share (the "Conversion Price") equal to the lower of (i) the applicable "reference price", subject to certain adjustments (the "Reference Price"), (ii) the greater of (x) the applicable "floor price" (the "Floor Price") and (y) the volume weighted average price ("VWAP") of the Common Stock as of the conversion date, and (iii) the greater of (x) the Floor Price, and as elected by the converting noteholder, (y) either (X) depending on the delivery time of the applicable conversion notice, (1) the VWAP as of the applicable conversion date or (2) the VWAP immediately prior to the applicable conversion date and (Y) 95% of the average VWAP for the three trading days commencing on, and including, the applicable conversion date,

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subject to adjustment in accordance with the terms of the Notes. The Reference Price and Floor Price applicable to each issuance of First Purchase Agreement Notes is summarized below:

Reference Price	Reference Price	Floor Price
Series A Notes		

Series	Reference Price	Floor Price
Series A	\$ 5.975	\$0.478
Series B-1	\$ 4.050	\$0.478
Series B-2	\$ 2.140	\$0.478
Series B-3	\$ 1.952	\$0.478

At any time during an Event of Default Redemption Right Period (as defined below), a noteholder may alternatively elect to convert all or any portion of the First Purchase Agreement Notes at an alternate conversion rate (the "Alternate Conversion Rate") equal to the quotient of (i) 115% of the Conversion Amount divided by (ii) the Conversion Price.

Upon a change of control, a noteholder may, subject to certain exceptions, require the Company to redeem all, or any portion, of the First Purchase Agreement Notes in cash at a price equal to 115% of the greatest of: (i) the Conversion Amount, (ii) the product of (x) the Conversion Amount and (y) the quotient of (I) the greatest closing sale price of the common stock during the period beginning on the date immediately preceding the earlier to occur of (1) the consummation of a change of control and (2) the public announcement of such change of control, and ending on the date the noteholder notifies the Company of its exercise of its right to redeem pursuant to the change of control divided by (II) the Conversion Price, and (iii) the product of (x) the Conversion Amount and (y) the quotient of (I) the aggregate consideration per share of common stock to be paid to the holders of the Common Stock upon consummation of such change of control divided by (II) the Conversion Price.

At any time an "Equity Conditions Failure" (as defined in the First Purchase Agreement Notes) exists at the time of consummation of certain "Subsequent Placements" (as defined in the Purchase Agreement), the noteholders have the right, subject to certain exceptions, to require that the Company redeem all, or any portion, of the Conversion Amount of the Notes not in excess of the gross proceeds of such Subsequent Placement at a redemption price of 100% of the Conversion Amount to be redeemed. If the noteholder is participating in such Subsequent Placement, the noteholder may require the Company to apply all, or any part, of any amounts that would otherwise be payable to the noteholder in such redemption, on a dollar-for-dollar basis, against the purchase price of the securities to be purchased by the noteholder in such Subsequent Placement.

A noteholder will not have the right to convert any portion of the First Purchase Agreement Notes, to the extent that, after giving effect to such conversion, the noteholder (together with certain of its affiliates and other related parties) would beneficially own in excess of 4.99% of the shares of common stock outstanding immediately after giving effect to such conversion (the "Maximum Percentage"). The noteholder may from time to time increase the Maximum Percentage to 9.99%, provided that any such increase will not be effective until the 61st day after delivery of a notice to the Company of such increase.

The First Purchase Agreement Notes provide for certain Events of Default, including certain types of bankruptcy or insolvency events of default involving the Company after which the First Purchase Agreement Notes become automatically due and payable. At any time after the earlier of (x) a noteholder's receipt of a required notice of an event of default, and (y) the noteholder becoming aware of an event of default, and ending on the twentieth trading day after the later of (I) the date such event of default is cured, and (II) the investor's receipt of an event of default notice from the Company (such period, the "Event of Default Redemption Rights Period"), the noteholder may require the Company to redeem, subject to certain exceptions, all or any portion of its Notes at a price equal to 115% of the greater of (i) the Conversion Amount and (ii) the product of the Alternate Conversion Rate and the greatest closing sale price of the common stock on any trading day during the period commencing on the date immediately preceding such Event of Default and ending on the trading day immediately prior to the date the Company makes the entire redemption payment.

The Company will be subject to certain customary affirmative and negative covenants regarding the rank of the Senior Convertible Notes, the incurrence of certain indebtedness, the repayment of certain indebtedness, transactions with affiliates, and restrictions on certain issuance of securities, among other customary matters.

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The following table summarizes conversions of the First Purchase Agreement Notes during the **nine** three months ended **September 30, 2023****March 31, 2023**:

Series A Notes	Series B-1 Notes	Series B-2 Notes	Series B-3 Notes
Series A Notes			
Series A Notes			
Shares of common stock issued for conversions			

Shares of common stock issued for conversions								
Shares of common stock issued for conversions	Shares of common stock issued for conversions	21,785,618	21,127,720	21,758,268	22,639,159			
Principal balance converted	Principal balance converted	\$ 50,000	\$ 25,000	\$ 15,000	\$ 12,075			
Principal balance converted								
Principal balance converted								
Make-whole interest converted	Make-whole interest converted	\$ 2,500	\$ 1,250	\$ 750	\$ 604			
Average conversion price	Average conversion price	\$ 2.41	\$ 1.24	\$ 0.72	\$ 0.56			
Average conversion price								
Average conversion price								

The Company elected to account for the First Purchase Agreement Notes pursuant to the fair value option under ASC 825. ASC 825-10-15-4 provides for the "fair value option" ("FVO") election, to the extent not otherwise prohibited by ASC 825-10-15-5, to be afforded to financial instruments, wherein the financial instrument is initially measured at its issue-date estimated fair value and subsequently remeasured at estimated fair value on a recurring basis at each reporting period date. The Company believes that the fair value option better reflects the underlying economics of the First Purchase Agreement Notes. As The Series A Notes and Series B-1 Notes were fully converted in the first and second quarters of December 31, 2022, 2023, and the Company recognized \$50.0 million on the consolidated balance sheets for the fair value of First Purchase Agreement Notes outstanding. The First Purchase Agreement was terminated in the third quarter of 2023.

Second Purchase Agreement 8.25% Convertible Notes

On August 21, 2023 December 12, 2023, the Company entered into a securities purchase agreement (the "Second Purchase Agreement") with the investors named therein for consummated the sale and issuance of up to \$325.0 \$175.0 million in initial aggregate principal amount of the 8.25% Convertible Notes. The 8.25% Convertible Notes are senior, convertible notes (the "Second Purchase Agreement Notes"), in a registered direct offering. Pursuant to Nasdaq Rule 5635, the Company is limited to the issuance of an aggregate of 171,179,577 shares under the terms unsecured obligations of the Second Purchase Agreement. Company.

The Second Purchase Agreement 8.25% Convertible Notes (together with accrue interest at a rate of 8.25% per annum, payable semi-annually in arrears on June 15 and December 15 of each year, beginning on June 15, 2024. The 8.25% Convertible Notes will mature on December 15, 2026, unless earlier repurchased, redeemed or converted. At any time before the First Purchase Agreement close of business on the second scheduled trading day immediately before the maturity date, noteholders may convert their 8.25% Convertible Notes the "Senior Convertible Notes") are convertible into at their option. The Company will settle conversions by delivering (i) shares of the Company's common stock subject to certain conditions and limitations. The Company consummated an initial closing for the sale (together, if applicable, with cash in lieu of \$125.0 million in aggregate principal amount of Second Purchase Agreement Notes on August 21, 2023 (the "Series A-1 Notes").

Subsequent to the initial closing, the Company entered into a supplemental indenture pursuant to which the Company consummated an additional closing on September 22, 2023 for the sale of \$40.0 million in aggregate principal amount of Second Purchase Agreement Notes (the "Series A-2 Notes").

The purchase price for the Second Purchase Agreement Notes is \$1,000 per \$1,000 principal amount. Subject to certain conditions being met or waived, any fractional share), at the option then-applicable conversion rate; and (ii) a cash amount representing the present value of the Company, one or more additional closings for up to the remaining principal amount of Second Purchase Agreement Notes may occur. The aggregate principal amount of Second Purchase Agreement Notes that may be offered in the additional closings may not be more than \$160.0 million and the Company's option to sell additional Second Purchase Agreement Notes will be exercisable until the 18 month anniversary of the date of the Second Purchase Agreement.

Each Second Purchase Agreement Note will accrue interest at a rate of 5% per annum, payable in arrears scheduled coupon payments on the first calendar day of each calendar quarter, beginning January 1, 2024 for the Series A-1 Notes and for the Series A-2 Notes. Interest will be payable in cash or shares of the Company's common stock or in a combination of cash and converted notes discounted at United States treasuries plus 50 basis points (the "Coupon Make-Whole Premium"). The initial conversion rate is 1,111.11 shares of common stock at the Company's option per \$1,000 principal amount of 8.25% Convertible Notes, which represents an initial conversion price of approximately \$0.90 per share of common stock. The interest conversion rate will increase and conversion price are subject to an annual rate of 12.5% per annum customary adjustments upon the occurrence and during the continuance of an event of default under the term of the Second Purchase Agreement Notes. Each Second Purchase Agreement Note issued pursuant to the Second Purchase Agreement will have a maturity date of one year from issuance, which may be extended at the option of the noteholders in certain instances. Upon any conversion, redemption or other repayment of a Second Purchase Agreement Note, a "make-whole" amount equal to the amount of additional interest that would accrue under such Second Purchase Agreement Note at the interest rate then in effect assuming that the outstanding principal of such Second Purchase Agreement Notes remained outstanding through and including the maturity date of such Second Purchase Agreement Note.events. In

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At addition, if certain corporate events that constitute a make-whole fundamental change occur, then the conversion rate will, in certain circumstances, be increased for a specified period of time.

The 8.25% Convertible Notes will be redeemable, in whole or in part (subject to certain limitations described below), at the Company's option at any time, and from time to time, on or after **August 21, 2023**, December 15, 2025 and before the **Conversion Amount is convertible** maturity date, but only if the last reported sale price per share of the Company's common stock exceeds 175% of the conversion price on each of at least 20 trading days, whether or not consecutive, during the 30 consecutive trading days ending on, and including, the trading day immediately before the date the Company sends the related redemption notice. However, the Company may not redeem less than all of the outstanding 8.25% Convertible Notes unless at least \$100.0 million aggregate principal amount of 8.25% Convertible Notes are outstanding and not called for redemption as of the time the Company sends the related redemption notice. The redemption price will be a cash amount equal to the principal amount of the 8.25% Convertible Notes to be redeemed, plus accrued and unpaid interest, if any, **time**, to, but excluding, the redemption date.

If certain corporate events that constitute a fundamental change occur prior to the maturity date, then, subject to a limited exception for certain cash mergers, noteholders may require the Company to repurchase their 8.25% Convertible Notes at a cash repurchase price equal to the **Conversion Price**, principal amount of the 8.25% Convertible Notes to be repurchased, plus accrued and unpaid interest, if any, to, but excluding, the fundamental change repurchase date. The **Reference Price** definition of fundamental change includes certain business combination transactions involving the Company and **Floor Price applicable** certain de-listing events with respect to each issuance of Second Purchase Agreement Notes is summarized below:

	Reference Price	Floor Price
Series A-1 Notes	\$ 2.940	\$ 0.380
Series A-2 Notes	\$ 2.940	\$ 0.380

the Company's common stock.

The following table summarizes conversions 8.25% Convertible Notes have customary provisions relating to the occurrence of events of default, which include the following: (i) certain payment defaults on the 8.25% Convertible Notes (which, in the case of a default in the payment of interest on the 8.25% Convertible Notes, will be subject to a 30-day cure period); (ii) the Company's failure to send certain notices under the Indenture within specified periods of time; (iii) the Company's failure to comply with certain covenants in the Indenture relating to the Company's ability to consolidate with or merge with or into, or sell, lease or otherwise transfer, in one transaction or a series of transactions, all or substantially all of the **Second Purchase Agreement** assets of the Company and its subsidiaries, taken as a whole, to another person; (iv) a default by the Company in its other obligations or agreements under the Indenture or the Notes if such default is not cured or waived within 60 days after notice is given in accordance with the Indenture; (v) certain payment defaults or other defaults that result in the acceleration prior to stated maturity of indebtedness for borrowed money of the Company or any of its significant subsidiaries of at least \$30,000,000 are not cured, waived, rescinded or discharged, as applicable, within 30 days after notice is given in accordance with the Indenture; (vi) the rendering of certain judgments against the Company or any of its significant subsidiaries for the payment of at least \$30,000,000 (excluding any amounts covered by insurance), where such judgments are not discharged or stayed within 60 days after date on which the right to appeal has expired or on which all rights to appeal have been extinguished; and (vii) certain events of bankruptcy, insolvency and reorganization involving the Company or any of its significant subsidiaries.

If an event of default involving bankruptcy, insolvency or reorganization events with respect to the Company (and not solely with respect to a significant subsidiary of the Company) occurs, then the principal amount of, and all accrued and unpaid interest and Coupon Make-Whole Premium, if any, on, all of the 8.25% Convertible Notes then outstanding will immediately become due and payable without any further action or notice by any person. If any other event of default occurs and is continuing, then, the Trustee, by notice to the Company, or noteholders of at least 25% of the aggregate principal amount of 8.25% Convertible Notes then outstanding, by notice to the Company and the Trustee, may declare the principal amount of, and all accrued and unpaid interest and Coupon Make-Whole Premium, if any, on, all of the 8.25% Convertible Notes then outstanding to become due and payable immediately. However, notwithstanding the foregoing, the Company may elect, at its option, that the sole remedy for an event of default relating to certain failures by the Company to comply with certain reporting covenants in the Indenture consists exclusively of the right of the noteholders to receive during the **three and nine months ended September 30, 2023**:

	Series A-1 Notes	Series A-2 Notes
Shares of common stock issued for conversions	128,380,608	5,721,018
Principal balance converted	\$ 125,000	\$ 7,619
Make-whole interest converted	\$ 6,250	\$ 381
Average conversion price	\$ 1.02	\$ 1.40

The Company elected continuance of such event of default special interest on the 8.25% Convertible Notes for up to **180** days at a specified rate per annum of 0.25% for the **Second Purchase Agreement** first 90 days and 0.50% from the 91st day until the 180th day, in each case, on the principal amount of the 8.25% Convertible Notes.

The conversion features embedded to the 8.25% Convertible Notes **pursuant** met the criteria to be separated from the host contract and recognized separately at fair value. See Note 2, *Summary of Significant Accounting Policies*. The total proceeds received were first allocated to the fair value **option** under ASC 825. As of September 30, 2023, the bifurcated derivative liability, and the remaining proceeds allocated to the host resulting in an adjustment to the initial purchasers' debt discount.

The Company recognized \$32.4 \$122.1 million upon issuance of the 8.25% Convertible Notes, net of initial purchasers' discounts of \$47.3 million and debt issuance costs of \$5.6 million. Unamortized debt discount and issuance costs were reported

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as a direct deduction from the face amount of the 8.25% Convertible Notes. During 2023, noteholders of the 8.25% Convertible Notes converted aggregate principal amount of \$153.4 million for issuance of 170,491,093 shares of the Company's common stock.

During the three months ended March 31, 2024, noteholders of the 8.25% Convertible Notes converted aggregate principal amount of \$7.6 million for issuance of 8,388,887 shares of the Company's common stock and Coupon Make-Whole Premium in cash of \$1.7 million. The Company extinguished 8.25% Convertible Notes with a carrying amount of \$5.2 million for conversions, resulting in a loss on debt extinguishment of \$0.8 million on the condensed consolidated balance sheets statements of operations for the fair value three months ended March 31, 2024.

The net carrying amount of Second Purchase Agreement the debt component of the 8.25% Convertible Notes outstanding as of March 31, 2024 and December 31, 2023 was as follows:

	As of	
	March 31, 2024	December 31, 2023
Principal amount	\$ 14,008	\$ 21,558
Unamortized discount	(3,782)	(5,821)
Unamortized issuance costs	(455)	(690)
Net carrying amount	\$ 9,771	\$ 15,047

Interest expense on the 8.25% Convertible Notes for the three months ended March 31, 2024 was immaterial.

Financing Obligations

On May 10, 2022 (the "Sale Date"), the Company entered into a sale agreement (the "Sale Agreement"), pursuant to which the Company sold the land and property related to the Company's headquarters in Phoenix, Arizona for a purchase price of \$52.5 million. As of the Sale Date, \$13.1 million was withheld from the proceeds received related to portions of the headquarters undergoing construction. The Company received the remaining proceeds throughout the completion of construction pursuant to the terms of the Sale Agreement. Concurrent with the sale, the Company entered into a lease agreement (the "Lease Agreement"), whereby the Company leased back the land and property related to the headquarters for an initial term of 20 years with four extension options for 7 years each. As of the Sale Date, the Company considered one extension option reasonably certain of being exercised.

The buyer is not considered to have obtained control of the headquarters because the lease is classified as a finance lease. Accordingly, the sale of the headquarters is not recognized and the property and land continue to be recognized on the Company's condensed consolidated balance sheets. As of the Sale Date, the Company recorded \$38.3 million as a financing obligation on the Company's condensed consolidated balance sheets representing proceeds received net of debt issuance costs of \$1.1 million. Rent payments under the terms of the Lease Agreement will be allocated between interest expense and principal repayments using the effective interest method. Additionally, debt issuance costs will be amortized to interest expense over the lease term.

After the Sale Date and through September 30, 2023 March 31, 2024, the Company recognized an additional \$13.1 million for financing obligations on the Company's condensed consolidated balance sheets for construction completed after related to the Sale Date. As completion of September 30, 2023, the Company has recognized a HQ Sale Agreement receivable of \$2.6 million for funds not yet received for construction completed in prepaid expenses and other current assets. Additionally, for construction. For the three and nine months ended September 30, 2023, March 31, 2024 and 2023, the Company recognized \$0.9 million and \$2.7 million, respectively, of interest expense related to interest on the financing obligation and amortization of debt issuance costs. For the three and nine months ended September 30, 2022, the Company recognized \$0.9 million and \$1.4 million, respectively, of interest expense related to interest on the financing obligation and amortization of debt issuance costs.

On June 29, 2023 (the "Land Sale Date"), the Company entered into a sale agreement (the "Land Sale Agreement"), pursuant to which the Company sold the land in Coolidge, Arizona on which the Company's manufacturing facility is located for a purchase price of \$50.4 million. Concurrent with the sale, the Company entered into a lease agreement (the "Land Lease Agreement"), whereby the Company leased back the land for an initial term of 99 years. The Land Lease Agreement grants the Company an option to repurchase the land upon the fiftieth (50th) anniversary of the Land Sale Date for a price equal to the

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greater of the fair market value, or 300% of the purchase price. As of the Land Sale Date, the Company considered the purchase option reasonably certain of being exercised.

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The buyer is not considered to have obtained control of the land because the lease is classified as a finance lease. Accordingly, the sale of the land in Coolidge, Arizona is not recognized and the land continues to be recognized on the Company's condensed consolidated balance sheets. As of the Land Sale Date, the Company recorded \$49.4 million as a financing obligation on the Company's condensed consolidated balance sheets representing proceeds received net of debt issuance costs of \$1.0 million. Rent payments under the terms of the Land Lease Agreement will be allocated between interest expense and principal repayments using the effective interest method. Additionally, debt issuance costs will be amortized to interest expense over the lease term.

For the three and nine months ended September 30, 2023 March 31, 2024, the Company recognized \$1.3 million and \$1.3 million, respectively, of interest expense related to interest on the financing obligation and amortization of debt issuance costs.

Collateralized Promissory Notes

On June 7, 2022, the Company executed a promissory note and a master security agreement (the "Master Security Agreement") for \$50.0 million at a stated interest rate of 4.26% (the "Collateralized Note"). The Collateralized Note was fully collateralized by certain personal property assets as fully described in the Master Security Agreement. The

Collateralized Note carried a 60 month term and was payable in 60 equal consecutive monthly installments due in arrears.

For the three and nine months ended September 30, 2023, the Company recognized \$0.2 million and \$1.1 million of interest expense, respectively, on the Collateralized Note. For the three and nine months ended September 30, 2022 March 31, 2023, the Company recognized \$0.5 million and \$0.7 million, respectively, of interest expense on the Collateralized Note. The Company repaid \$39.3 million the promissory note during the third quarter of 2023, representing the outstanding principal balance of the Collateralized Note. 2023.

On August 4, 2022, the Company executed a promissory note and a security agreement for \$4.0 million at an implied interest rate of 7.00% (the "Second Collateralized Note"). The Second Collateralized Note is fully collateralized by certain personal property assets as fully described in the security agreement. The Second Collateralized Note carries a 60 month term and is payable in 60 equal monthly installments due in arrears.

For the three and nine months ended September 30, 2023 March 31, 2024 and 2022, 2023, interest expense related to the Second Collateralized Note was immaterial.

Insurance Premium Financing

The Company executed an insurance premium financing agreement pursuant to which the Company financed certain annual insurance premiums for \$6.6 million, primarily consisting of premiums for directors' and officers' insurance. The insurance premium payable incurred interest at 2.95%, and matured on March 27, 2023.

During the second and third quarters of 2023, the Company executed additional insurance premium financing agreements pursuant to which the Company financed certain annual insurance premiums for \$3.9 million and \$1.2 million, respectively, primarily consisting of premiums for directors' and officers' insurance. The insurance premium payables each incurred interest at 6.64%, and is due in monthly installments maturing matured on March 27, 2024.

For the three and nine months ended September 30, 2023 March 31, 2024 and 2022, 2023, the Company recognized an immaterial amount of interest expense on the insurance premium financing agreements.

Letters of Credit

During the third first quarter of 2022, 2024, the Company executed a \$0.6 million \$3.0 million letter of credit to secure a customs bond in connection with the FFI Purchase Agreement through August 31, 2023 January 30, 2025. As of March 31, 2024, no amounts have been drawn on the letter of credit.

During the third quarter of 2023, the Company executed a \$1.2 million letter of credit to secure a customs bond through September 14, 2024. As of September 30, 2023 March 31, 2024, no amounts have been drawn on the letter of credit.

During the second quarter of 2022, and in conjunction with the execution of the Lease Agreement, the Company executed an irrevocable standby letter of credit for \$12.5 million to collateralize the Company's lease obligation. The Lease Agreement was subsequently amended, increasing the amount of the letter of credit to \$13.1 million. The letter of credit is subject to annual increases commensurate with base rent increases pursuant to the Lease Agreement. The letter of credit will

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expire upon the expiration of the Lease Agreement, but may be subject to reduction or early termination upon the satisfaction of certain conditions as described in the Lease Agreement.

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During the fourth quarter of 2021, the Company executed an irrevocable standby letter of credit for \$25.0 million through December 31, 2024 in connection with the execution of a product supply agreement with a vendor. The supply agreement was subsequently amended, reducing the amount of the letter of credit to \$15.0 million. As of September 30, 2023 March 31, 2024, no amounts have been drawn on the letter letters of credit.

8.7. CAPITAL STRUCTURE

Shares Authorized

As of September 30, 2023 March 31, 2024, the Company had authorized a total of 1,750,000,000 shares consisting of 1,600,000,000 shares designated as common stock and 150,000,000 shares designated as preferred stock.

Warrants

As of September 30, 2023 March 31, 2024 and December 31, 2022 December 31, 2023, the Company had 841,183 and 1,137,850 private warrants outstanding, respectively, outstanding. The Company assumed the private warrants previously issued by VectoIQ Acquisition Corp. ("VectoIQ") and Romeo, through the Business Combination and Romeo Acquisition, respectively, and each private warrant entitles the registered holder to purchase one share of common stock at a price of \$11.50 or \$96.96 per share, respectively, subject to adjustment. The outstanding private warrants are immaterial.

The exercise price and number of common shares issuable upon exercise of the private warrants may be adjusted in certain circumstances including in the event of a stock dividend, or recapitalization, reorganization, merger or consolidation. However, the private warrants will not be adjusted for the issuance of common stock at a price below their exercise price.

For the three months ended September 30, 2023 and 2022, the Company recorded zero, and a \$0.6 million gain, respectively, for revaluation of warrant liability on the consolidated statement of operations. For the nine months ended September 30, 2023 and 2022, the Company recorded gains of \$0.3 million and \$3.5 million,

respectively, for revaluation of warrant liability on the consolidated statement of operations. As of September 30, 2023 and December 31, 2022, the Company had \$0.1 million and \$0.4 million, respectively, for warrant liability related to the private warrants outstanding on the consolidated balance sheets.

Stock Purchase Agreements

First Purchase Agreement with Tumim Stone Capital LLC

On June 11, 2021, the Company entered into a common stock purchase agreement (the "First Tumim Purchase Agreement") and a registration rights agreement (the "Registration Rights Agreement") with Tumim Stone Capital LLC ("Tumim"), pursuant to which Tumim committed to purchase up to \$300.0 million in shares of the Company's common stock, subject to certain limitations and conditions set forth in the First Tumim Purchase Agreement. The Company shall not issue or sell any shares of common stock under the First Tumim Purchase Agreement which, when aggregated with all other shares of common stock beneficially owned by Tumim, would result in beneficial ownership of more than 4.99% of the Company's outstanding shares of common stock.

Under the terms of the First Tumim Purchase Agreement, the Company has had the right, but not the obligation, to sell to Tumim, shares of common stock over the period commencing on the date of the First Tumim Purchase Agreement (the "Tumim Closing Date") and ending on the first day of the month following the 36-month anniversary of the Tumim Closing Date. The purchase price will be was calculated as 97% of the volume weighted average prices of the Company's common stock during normal trading hours for three consecutive trading days commencing on the purchase notice date.

Concurrent with the signing of the First Tumim Purchase Agreement, the Company issued 155,703 shares of its common stock to Tumim as a commitment fee ("Commitment Shares"). The total fair value of the shares issued for the commitment fee of \$2.6 million was recorded in selling, general, and administrative expense on the Company's consolidated statements of operations.

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During the nine three months ended March 31, 2023September 30, 2023, the Company sold 3,420,990 shares of common stock, for proceeds of \$8.4 million, and terminated the First Tumim Purchase Agreement during the first quarter of 2023. During the nine months ended September 30, 2022, the Company sold 17,248,244 shares of common stock under the First Tumim Purchase Agreement for proceeds of \$123.7 million.

Second Purchase Agreement with Tumim

On September 24, 2021, the Company entered into a second common stock purchase agreement (the "Second Tumim Purchase Agreement") and a registration rights agreement with Tumim, pursuant to which Tumim committed to purchase up to \$300.0 million in shares of the Company's common stock, subject to certain limitations and conditions set forth in the Second Tumim Purchase Agreement. The Company will not issue or sell any shares of common stock under the Second Tumim Purchase Agreement which, when aggregated with all other shares of common stock beneficially owned by Tumim, would result in beneficial ownership of more than 4.99% of the Company's outstanding shares of common stock.

Under the terms of the Second Tumim Purchase Agreement, the Company has had the right, but not the obligation, to sell to Tumim, shares of common stock over the period commencing on the date of the Second Tumim Purchase Agreement (the "Second Tumim Closing Date") and ending on the first day of the month following the 36-month anniversary of the Second Tumim Closing Date, provided that certain conditions have been met. These conditions include effectiveness of a registration statement covering the resale of shares of common stock that have been and may be issued under the Second Tumim Purchase Agreement and termination of the First Tumim Purchase Agreement. The registration statement covering the offer and sale of up to 29,042,827 shares of common stock, including the commitment shares, to Tumim was declared effective on November 29, 2021. The purchase price will be was calculated as 97% of the volume weighted average prices of the Company's common stock during normal trading hours for three consecutive trading days commencing on the purchase notice date.

Concurrent with the signing of the Second Tumim Purchase Agreement, the Company issued 252,040 shares of its common stock to Tumim as a commitment fee. The total fair value of the shares issued for the commitment fee of \$2.9 million was recorded in selling, general, and administrative expense on the Company's consolidated statement of operations.

During the nine three months ended March 31, 2023September 30, 2023, the Company sold 28,790,78725,501,486 shares of common stock, for proceeds of \$59.2\$56.3 million, to Tumim under the terms of the Second Tumim Purchase Agreement, and terminated the Second Tumim Purchase Agreement during the third quarter of 2023.

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Equity Distribution Agreement

In August 2022, the Company entered into an equity distribution agreement with Citi as sales agent, pursuant to which the Company can issue and sell shares of its common stock with an aggregate maximum offering price of \$400.0 million. In August 2023, the Company amended and restated the equity distribution agreement (as amended and restated, the "Equity Distribution Agreement") with Citi as a sales agent, pursuant to which the Company increased the aggregate maximum offering price by \$200.0 million, resulting in an aggregate offering price of up to \$600.0 million.

The Company pays Citi a fixed commission rate of 2.5% of gross offering proceeds of shares sold under the Equity Distribution Agreement. During the three and nine months ended September 30, 2023March 31, 2023, the Company sold 27,662,880 and 66,690,443 shares, respectively, of common stock under the Equity Distribution Agreement at an average price per share of \$1.97 and \$1.78, respectively, for gross proceeds of \$54.5 million and \$118.6 million, and net proceeds of approximately \$53.1 million and \$115.6 million, after \$1.4 million and \$3.0 million in commissions to the sales agent. During the three and nine months ended September 30, 2022, the Company sold

19,009,227 17,020,258 shares of common stock under the Equity Distribution Agreement at an average price per share of \$5.29 \$1.90 for gross proceeds of \$100.5 32.4 million and net proceeds of approximately \$98.0 million, \$31.6 million, after \$2.5 million \$0.8 million in commissions to the sales agent. There were no sales under the Equity Distribution Agreement during the three months ended March 31, 2024. Commissions incurred in connection with the Equity Distribution Agreement are reflected as a reduction of additional paid-in capital on the Company's condensed consolidated balance sheets. As of CSeptember 30, 2023 and December 31, 2022, \$1.1 million and \$1.7 million, respectively, in commissions were recognized in accrued expenses and other current liabilities on the Company's condensed consolidated balance sheets.

Public Offering

The Company sold 29,910,715 shares sheets were immaterial as of common stock in an underwritten public offering (the "Public Offering") at an offering price of \$1.12 per share. The Public Offering closed on April 4, 2023, March 31, 2024 and the Company received net proceeds of \$32.2 million after underwriter's discounts and offering costs.

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Direct Offering

The Company entered into a stock purchase agreement with an investor (the "Investor") pursuant to which the investor agreed to purchase up to \$100.0 million of shares of the Company's common stock in a registered direct offering (the "Direct Offering"), with the actual amount of shares of common stock purchased in the Direct Offering reduced to the extent of the total number of shares issued pursuant to the Public Offering. The Direct Offering closed on April 11, 2023, and the Company sold 59,374,999 shares of common stock at the Public Offering price of \$1.12 per share to the Investor for net proceeds of \$63.2 million, after deducting placement agent fees and offering expenses. December 31, 2023.

9.8. STOCK BASED COMPENSATION EXPENSE

2017 and 2020 Stock Plans

The 2017 Stock Option Plan (the "2017 Plan") provides for the grant of incentive and nonqualified options to purchase common stock to officers, employees, directors, and consultants. Options were granted at a price not less than the fair market value on the date of grant and generally became exercisable between one and four years after the date of grant. Options generally expire ten years from the date of grant. Outstanding awards under the 2017 Plan continue to be subject to the terms and conditions of the 2017 Plan.

On June 2, 2020, the stockholders approved the The Nikola Corporation 2020 Stock Incentive Plan (the "2020 ("2020 Plan") and the Nikola Corporation 2020 Employee Stock Purchase Plan (the "2020 ESPP"). The 2020 Plan provides for the grant of incentive and nonqualified stock options, restricted stock units ("RSUs"), restricted share awards, stock appreciation awards, and cash-based awards to employees, outside directors, and consultants of the Company. The 2020 Plan and the Nikola Corporation 2020 ESPP Employee Stock Purchase Plan ("2020 ESPP") became effective immediately upon the closing of the Business Combination. business combination with VectoIQ. No offerings have been authorized to date by the Company's board of directors under the ESPP.

Stock Options

The Company utilizes the Black-Scholes option pricing model for estimating the fair value A summary of options granted. Options vest in accordance with the terms set forth in the grant letter. Time-based options generally vest ratably over a period of approximately 36 months. Changes changes in stock options are as follows:

	Options	Weighted Average Exercise Price Per share	Weighted Average Remaining Contractual Term (Years)
Outstanding at December 31, 2022	22,470,585	\$ 1.31	5.33
Granted	—	—	—
Exercised	6,723,629	1.06	—
Cancelled	588,508	2.24	—
Outstanding at September 30, 2023	15,158,448	—	3.86
Vested and exercisable as of September 30, 2023	15,158,448	\$ 1.39	3.86

Restricted Stock Units

The fair value of RSUs is based on the closing price of the Company's common stock on the grant date. The time-based RSUs generally vest in increments over a three-year period or, in the case of executive officers, cliff-vest following the third anniversary from the date of grant. The RSUs to directors have a vesting cliff of one year after the grant date.

	Options	Weighted Average Exercise Price Per share	Weighted Average Remaining Contractual Term (Years)
Outstanding at December 31, 2023	15,041,373	\$ 1.37	3.64
Granted	—	—	—
Exercised	—	—	—
Cancelled	(8,493)	3.28	—

Outstanding at March 31, 2024	15,032,880	3.38
Vested and exercisable as of March 31, 2024	15,032,880	\$ 1.37 3.38

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Changes Restricted Stock Units

A summary of changes in RSUs are as follows:

	Number of RSUs
Balance at December 31, 2022 December 31, 2023	19,574,800 25,541,121
Granted	11,631,426 920,220
Released	10,915,751 (4,371,075)
Cancelled	6,188,682 (1,815,195)
Balance at September 30, 2023 March 31, 2024	14,101,793 20,275,071

Market Based RSUs

The Company's Company grants market based RSUs contained a stock price index as a benchmark for vesting. Through the second quarter of 2022, these awards were issued with three milestones that vest depending upon a consecutive 20-trading day stock price target of the Company's common stock. The Company's stock price targets ranged from \$25 to \$55 per share.

During the third quarter of 2022, the market based RSUs subject to the \$40 and \$55 stock price milestones were cancelled and the Company expensed \$55.8 million related to the cancelled awards representing the remaining unamortized expense as of the cancellation date.

During the second quarter of 2023, the market based RSUs subject to the \$25 stock price milestone were cancelled and the Company expensed \$6.8 million related to the cancelled awards representing the remaining unamortized expense as of the cancellation date.

On April 24, 2023, the Company granted 2,900,000 performance-based RSUs to the Company's its executive officers, which entitle them to receive a specified number of shares of the Company's common stock upon vesting. Additionally, during the third quarter of 2023, the Company granted 1,500,000 performance-based RSUs in connection with the appointment of new executive officers.

The number of shares earned could range between 0% and 200% of the target award depending upon the Company's performance at the conclusion of the three-year performance period, ending December 31, 2025. The performance condition of the awards is based on total shareholder return ("TSR") of the Company's common stock relative to a broad group of green energy companies. The TSR performance condition is deemed a market condition. The fair value

During the first quarter of 2024, the Company granted 600,000 TSR awards on the grant date was determined using a Monte Carlo simulation model, which utilizes significant assumptions including stock volatility and risk free rates, and does not change throughout the vesting period. new executive officer. The grant date fair value of the TSR awards award was determined to be \$11.1 million and is recognized over the vesting period. The following represents the significant assumptions used to determine the grant date fair value for the TSR awards:

	During the three months ended September 30, 2023	During the three months ended June 30, 2023
Stock price	\$1.40 - \$3.40	\$0.82
Term (years)	2.30 - 2.40	2.70
Risk-free interest rate	4.8% - 5.0%	3.9%
Expected volatility	116% - 127%	99.0%
Expected dividend yield	—%	—%

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Changes immaterial. A summary of changes in market based RSUs are as follows:

		Number of Market Based RSUs
Balance at December 31, 2022	December 31, 2023	2,071,058 3,000,000
Granted		4,400,000 600,000
Released		—
Cancelled		3,571,058
Balance at September 30, 2023	March 31, 2024	<u><u>2,900,000 3,600,000</u></u>

Stock Compensation Expense

The following table presents the impact of stock-based compensation expense on the **condensed** consolidated statements of operations for the three **and nine** months ended **September 30, 2023** **March 31, 2024** and **2022**: **2023**:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2023	2022	2023	2022
Three Months Ended March 31,				
Three Months Ended March 31,				
Three Months Ended March 31,				
2024				
2024				
2024				
Cost of revenues				
Cost of revenues				
Cost of revenues	Cost of revenues	\$ 414	\$ —	\$ 1,813
Research and development	Research and development	3,383	10,105	19,043
Research and development				28,112
Research and development				
Selling, general, and administrative	Selling, general, and administrative	14,862	92,740	48,060
Selling, general, and administrative				183,102
Selling, general, and administrative				
Discontinued operations				
Discontinued operations				
Discontinued operations				
Total stock-based compensation expense	Total stock-based compensation expense	\$ 18,659	\$ 102,845	\$ 68,916
Total stock-based compensation expense				\$ 211,214
Total stock-based compensation expense				

As of **September 30, 2023** **March 31, 2024**, total unrecognized compensation expense was as follows:

	Unrecognized Compensation Expense
Market based RSUs	\$ 8,331 6,864
RSUs	\$ 38,530 31,022
Total unrecognized compensation expense at September 30, 2023 March 31, 2024	<u><u>\$ 46,861 37,886</u></u>

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10.9. DECONSOLIDATION OF SUBSIDIARY DISCONTINUED OPERATIONS

As discussed in Note 1, *Basis of Presentation*, on June 30, 2023, the Company transferred ownership of all of Romeo's right, title and interest in and to all of its tangible and intangible assets, subject to certain agreed upon exclusions, to the Assignee. The Company received no cash consideration related to the Assignment.

The Company deconsolidated Romeo as of the Assignment as the Company no longer held a controlling financial interest in Romeo as of that date. The Company did not have any amounts included in accumulated other comprehensive loss associated with Romeo at the time of deconsolidation. The Assignment of Romeo represents a strategic shift and its results are reported as discontinued operations for the prior year periods period presented. Following the Assignment, the Company retained no interest in Romeo, and Romeo is not deemed a related party.

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In connection with the deconsolidation, the Company recognized a loss from deconsolidation of subsidiaries of \$24.9 million which is recorded in loss from deconsolidation of discontinued operations in the consolidated statements of operations for the nine months ended September 30, 2023 and consisted of the following:

	As of deconsolidation
Assets deconsolidated:	
Cash and cash equivalents	\$ 213
Accounts receivable, net	—
Inventory	7,271
Prepaid expenses and other current assets	3,351
Restricted cash and cash equivalents, non-current	1,500
Property, plant and equipment, net	17,555
Intangible assets, net	656
Investments in affiliates	10,000
Other assets	23,364
Total assets deconsolidated	\$ 63,910
Liabilities deconsolidated:	
Accounts payable	\$ 15,583
Accrued expenses and other current liabilities	57,612
Debt and finance lease liabilities, current	1,206
Long-term debt and finance lease liabilities, net of current portion	1,160
Operating lease liabilities	21,664
Warrant liability	8
Other non-current liabilities	—
Total liabilities deconsolidated	97,233
Net liabilities derecognized from deconsolidation	(33,323)
Less: intercompany balances derecognized	54,084
Less: cash payments directly related to deconsolidation	2,724
Less: derecognition of goodwill	1,450
Loss from deconsolidation of discontinued operation	\$ 24,935

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As of December 31, 2022, the assets and liabilities of Romeo subject to assignment for the benefit of creditors have been reflected as assets subject to assignment for the benefit of creditors and liabilities subject to assignment for the benefit of creditors on the Company's consolidated balance sheets and consisted of the following:

December 31, 2022

Assets:

Current assets		
Cash and cash equivalents	\$	7,555
Accounts receivable, net		262
Inventory		11,327
Prepaid expenses and other current assets		9,881
Total current assets subject to assignment for the benefit of creditors		29,025
Non-current assets		
Restricted cash and cash equivalents, non-current		1,500
Property, plant and equipment, net		19,221
Intangible assets, net		621
Investments in affiliates		10,000
Prepayment - Long-term Supply Agreement		44,835
Other assets		23,948
Total non-current assets subject to assignment for the benefit of creditors		100,125
Total assets subject to assignment for the benefit of creditors	\$	129,150

Liabilities:

Current liabilities		
Accounts payable	\$	24,672
Accrued expenses and other current liabilities		22,990
Debt and finance lease liabilities, current		1,440
Total current liabilities subject to assignment for the benefit of creditors		49,102
Long-term liabilities		
Long-term debt and finance lease liabilities, net of current portion		1,499
Operating lease liabilities		22,132
Warrant liability		40
Total long-term liabilities subject to assignment for the benefit of creditors		23,671
Total liabilities subject to assignment for the benefit of creditors	\$	72,773

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The following represents the major components of loss from discontinued operations presented in the condensed consolidated statements of operations:

	For the nine months ended September 30, 2023	March 31, 2023
Revenues	\$ 1,665	440
Cost of revenues	12,926	10,653
Gross loss	(11,261)	(10,213)
Operating expenses:		
Research and development	5,673	2,620
Selling, general and administrative	14,937	11,012
Total operating expenses	65,445	13,632
Loss from operations	(76,706)	(23,845)
Other income, (expense), net		
Interest expense, net	(53)	(30)
Revaluation of warrant liability	33	32
Loss from discontinued operations	\$ (76,726)	(23,843)

11.10. INCOME TAXES

To calculate the interim tax provision, at the end of each interim period the Company estimates the annual effective tax rate and applies that to its ordinary quarterly earnings. The effect of changes in the enacted tax laws or rates is recognized in the interim period in which the change occurs. The computation of the annual estimated effective tax rate at each interim period requires certain estimates and judgments including, but not limited to, the expected operating income for the year, projections of the proportion of income earned and taxed in foreign jurisdictions, permanent differences between book and tax amounts, and the likelihood of recovering deferred tax assets generated in the current year. The accounting estimates used to compute the provision for income taxes may change as new events occur, additional information is obtained, or the tax environment changes.

Beginning in 2022, the Tax Cuts and Jobs Act ("TCJA") requires taxpayers to capitalize certain research and development costs and amortize them over five or fifteen years pursuant to Internal Revenue Code Section 174. Previously, such costs could be deducted in the period they were incurred. This provision is not anticipated to impact ~~our~~ the Company's effective tax rate or result in any cash payments for ~~our~~ its federal income taxes.

Income tax expense was immaterial for the three and nine months ended ~~September 30, 2023~~ March 31, 2024 and ~~2022~~ 2023 due to cumulative tax losses.

12.11. COMMITMENTS AND CONTINGENCIES

Legal Proceedings

The Company is subject to legal and regulatory actions that arise from time to time. The assessment as to whether a loss is probable or reasonably possible, and as to whether such loss or a range of such loss is estimable, often involves significant judgment about future events, and the outcome of litigation is inherently uncertain. The Company expenses professional legal fees as incurred, which are included in selling, general, and administrative expense on the ~~condensed~~ consolidated financial

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statements. Other than as described below, there is no material pending or threatened litigation against the Company that remains outstanding as of ~~September 30, 2023~~ March 31, 2024.

Regulatory and Governmental Investigations

By order dated December 21, 2021, the Company and the SEC reached a settlement arising out of the SEC's investigation of the Company related to a short-seller article published in September 2020. Under the terms of the settlement,

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without admitting or denying the SEC's findings, the Company among other things, agreed to pay a \$125 million civil penalty. The first \$25 million installment was paid at the end of 2021 and the remaining installments to be paid semiannually through 2023. The Company previously reserved the full amount of the settlement in the quarter ended September 30, 2021, as disclosed in the Company's quarterly report on Form 10-Q for such quarter, filed with the SEC on November 4, 2021. In July 2022, the Company and SEC agreed to an alternative payment ~~plan with the first two payments of \$5 million to be paid in July 2022 and December 2022~~; ~~plan~~. The ~~July 2022 and December 2022 payments have been~~ Company made by the Company. In February 2023, the Company and the SEC agreed to another alternative payment plan, with two payments of \$1.5 million each to be paid in March 2023 and June 2023. The March 2023 and June 2023 payments have been made by the Company. In August 2023, the Company and the SEC agreed to an additional ~~a~~ payment of \$1.5 million ~~to be paid in September 2023, which has been made by~~ during the Company first quarter of 2024. The remainder of the payment plan is subject to determination. As of ~~September 30, 2023~~, ~~March 31, 2024~~, the Company has reflected the remaining liability of ~~\$85.5~~ \$82.5 million in accrued expenses and other current liabilities on the ~~condensed~~ consolidated balance sheets.

The legal and other professional costs the Company incurred during the three and nine months ended ~~September 30, 2023~~ March 31, 2024 and 2023 in connection with legal work disclosed elsewhere in this Report include ~~approximately zero and \$0.2 million, respectively, expensed for Mr. Milton's attorneys' fees under his indemnification agreement with the Company. During the three and nine months ended September 30, 2022 the Company expensed \$6.0 million and \$25.5 million, respectively, immaterial amounts for Mr. Milton's attorneys' fees under his indemnification agreement with the Company. As of September 30, 2023~~ March 31, 2024 and ~~December 31, 2022~~ December 31, 2023, accrued expenses for legal and other professional costs for Mr. Milton's attorneys' fees under his indemnification agreement were immaterial.

To the extent that these investigations and any resulting third-party claims yield adverse results over time, such results could jeopardize the Company's operations and exhaust its cash reserves, and could cause stockholders to lose their entire investment.

The Company is currently seeking reimbursement from Mr. Milton for costs and damages arising from the actions that are the subject of the government and regulatory investigations. On October 20, 2023, an arbitration panel in New York, New York awarded the Company approximately \$165 million plus interest in an arbitration proceeding against Mr. Milton. The Company ~~intends is currently in the process of seeking to file with have the arbitration panel an application to recover attorneys' fees related to award confirmed in the matter~~. United States District Court of the District of Arizona. The Company's ability to enforce the arbitration award and recover any judgment from the counterparty is not guaranteed and could result in no recovery.

Shareholder Securities Litigation

The Company and certain of its current and former officers and directors are defendants in a consolidated securities class action lawsuit pending in the United States District Court of the District of Arizona (the "Shareholder Securities Litigation"). On December 15, 2020, the United States District Court for the District of Arizona consolidated the actions

under lead case *Borteanu v. Nikola Corporation, et al.*, No. CV-20-01797-PXL-SPL, and appointed Angelo Baio as the "Lead Plaintiff". On December 23, 2020, a motion for reconsideration of the Court's order appointing the Lead Plaintiff was filed. On December 30, 2020, a petition for writ of mandamus seeking to vacate the District Court's Lead Plaintiff order and directing the court to appoint another Lead Plaintiff was filed before the United States Court of Appeals for the Ninth Circuit, Case No. 20-73819. The motion for reconsideration was denied on February 18, 2021. On July 23, 2021, the Ninth Circuit granted in part the mandamus petition, vacated the district court's December 15, 2020 order, and remanded the case to the District Court to reevaluate the appointment of a Lead Plaintiff. On November 18, 2021, the Court court appointed Nikola Investor Group II as Lead Plaintiff. On January 24, 2022, Lead Plaintiffs filed the Consolidated Amended Class Action Complaint which asserts claims under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and Rule 10b-5 promulgated thereunder, based on allegedly false and/or misleading statements and omissions in press releases, public filings, and in social media regarding the Company's business plan and prospects. In accordance with the Court's scheduling order, on April 8, 2022, Defendants filed their motions moved to dismiss on April 8, 2022. On May 9, 2022, Plaintiffs filed their opposition to Defendants' motions to dismiss, and on June 8, 2022, Defendants filed their reply briefs. the Consolidated Amended Class Action Complaint. On February 2, 2023, the court issued a ruling granting the Defendants' motions to dismiss, without prejudice. As a result, Plaintiffs' complaint was dismissed in its entirety, with leave to amend by April 3, 2023. On April 3, 2023, Plaintiff's Plaintiffs filed the Second Consolidated Amended Class Action Complaint. In accordance with the Court's scheduling order, Defendants filed their motions to dismiss the Second Consolidated Amended Class Action Complaint on May 15, 2023. On June 14, 2023 December 8, 2023, Plaintiffs filed their oppositions the court granted in part and denied in part Defendants' motion to Defendants' motions to dismiss, dismiss. On January 26, 2024, the Company and certain former officers and directors answered the Second Consolidated Amended Class Action Complaint. On February 23, 2024, the parties exchanged initial disclosures. The Lead Plaintiffs' motion for class certification is due on June 29, 2023, Defendants filed their reply briefs. The Court has not yet ruled on the motions. May 17, 2024.

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Plaintiffs seek an unspecified amount in damages, attorneys' fees, and other relief. The Company intends to vigorously defend itself. The Company is unable to estimate the potential loss or range of loss, if any, associated with these lawsuits, which could be material.

Derivative Litigation

Beginning on September 23, 2020, two purported shareholder derivative actions were filed in the United States District Court for the District of Delaware (*Byun v. Milton, et al.*, Case No. 1:20-cv-01277-UNA; *Salguocar v. Girskey et. al.*, Case No. 1:20-cv-01404-UNA), purportedly on behalf of the Company, against certain of the Company's current and former directors alleging breaches of fiduciary duties, violations of Section 14(a) of the Exchange Act, and gross mismanagement. The *Byun* action also brings claims for unjust enrichment and abuse of control, while the *Salguocar* action brings a claim for waste of corporate assets. On October 19, 2020, the *Byun* action was stayed until 30 days after the earlier of (a) the Shareholder Securities Litigation being dismissed in their entirety with prejudice; (b) defendants filing an answer to any complaint in the Shareholder Securities Litigation; or (c) a joint request by plaintiff and defendants to lift the stay. On November 17, 2020, the *Byun* and *Salguocar* actions were consolidated as *In re Nikola Corporation Derivative Litigation*, Lead Case No. 20-cv-01277-CFC. In its order consolidating the actions, the Court court applied the *Byun* stay to the consolidated action. On January 31, 2023, plaintiffs filed an amended complaint. The consolidated action remains stayed.

On December 18, 2020, a purported shareholder derivative action was filed in the United States District Court for the District of Arizona, *Huhn v. Milton et al.*, Case No. 2:20-cv-02437-DWL, purportedly on behalf of the Company, against certain of the Company's current and former directors alleging breaches of fiduciary duties, violations of Section 14(a) of the Exchange Act, unjust enrichment, and against defendant Jeff Ubben, a member of the Company's board of directors, insider selling and misappropriation of information. On January 26, 2021, the *Huhn* action was stayed until 30 days after the earlier of (a) the Shareholder Securities Litigation being dismissed in its entirety with prejudice; (b) defendants filing an answer to any complaint in the Shareholder Securities Litigation; or (c) a joint request by plaintiff and defendants to lift the stay. The *Huhn* On April 5, 2024, the court entered an order further staying the action remains stayed. (a) until a joint request by plaintiff and defendants to lift the stay; or (b) absent agreement from the parties that the stay should be lifted, upon motion by any party and good cause shown.

On January 7, 2022, Barbara Rhodes, a purported stockholder of the Company, filed her Verified Stockholder Derivative Complaint in Delaware Chancery Court captioned *Rhodes v. Milton, et al. and Nikola Corp.*, C.A. No. 2022-0023-KSJM (the "Rhodes Action"). On January 10, 2022, Zachary BeHage and Benjamin Rowe, purported stockholders of the Company, filed their Verified Shareholder Derivative Complaint in Delaware Chancery Court captioned *BeHage v. Milton, et al. and Nikola Corp.*, C.A. No. 2022-0045-KSJM (the "BeHage Rowe Action" and, together with the Rhodes Action, the "Related Actions"). These actions are against certain of the Company's current and former directors and allege breach of fiduciary duties, insider selling under *Brophy*, aiding and abetting insider selling, aiding and abetting breach of fiduciary duties, unjust enrichment, and waste of corporate assets.

On February 1, 2022, the Court court consolidated the Rhodes Action and the BeHage Rowe Action as *In re Nikola Corporation Derivative Litigation*, C.A. No. 2022-0023-KJSM (the "Consolidated Chancery Action"). The Consolidated Chancery Action was stayed through February 2, 2022 on a combination of joint stipulations and court orders. Plaintiffs then filed a second amended complaint on February 14, 2023 (the "Second Amended Complaint"). On March 10, 2022, Michelle Brown and Crisanto Gomes, purported stockholders of the Company, filed their Verified Shareholder Derivative Complaint in Delaware Chancery Court captioned *Brown v. Milton, et al. and Nikola Corp.*, C.A. No. 2022-0223-KSJM (the "Brown & Gomes Action"). The Brown & Gomes Action likewise alleges claims against certain of the Company's current and former directors for purported breaches of fiduciary duty and unjust enrichment. On January 12, 2023, the parties entered into a stipulation consolidating the Brown & Gomes Action in the Consolidated Chancery Derivative Action. On May 3, 2023, each of the current and former director defendants moved to partially dismiss the Second Amended Complaint. Briefing concluded on August 25, 2023, and oral argument the court heard arguments on December 8, 2023. On April 9, 2024, the court issued an order, granting in part and denying in part the defendants' motion to dismiss. Defendants' deadline to answer the Complaint is scheduled for December 8, 2023 June 3, 2024.

In addition, on March 8, 2021, the Company received a demand letter from a law firm representing a purported stockholder of the Company alleging facts and claims substantially the same as many of the facts and claims in the filed derivative shareholder lawsuit. The demand letter requests that the board of directors (i) undertake an independent internal investigation into certain board members and management's purported violations of Delaware and/or federal law; and (ii) commence a civil action against those

members of the board and management for alleged fiduciary breaches. In April 2021, the board of directors formed a demand review committee, consisting of independent directors Bruce L. Smith, and Mary L.

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Petrovich, to review such demands and provide input to the Company and retained independent counsel. Upon completion of the independent internal investigation by the demand review committee, it was recommended that the board take no action in response to the demand letter at this time. The independent counsel for the demand review committee provided an update to

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counsel for the stockholder who sent the demand letter. There can be no assurance as to whether any litigation will be commenced by or against the Company by the purported shareholder with respect to the claims set forth in the demand letter, or whether any such litigation could be material.

Additionally, on December 23, 2022, the Company received another demand letter from a law firm representing purported stockholder of the Company, Ed Lomont, alleging facts and claims substantially the same as many of the facts and claims in the filed derivative shareholder lawsuits. The demand letter requested that the board's demand review committee (i) undertake an independent internal investigation into certain board members and management's purported violations of Delaware and/or federal law; and (ii) commence a civil action against those members of the board and management for alleged fiduciary breaches. In February 2023, the board of directors reengaged the demand review committee, consisting of independent directors Bruce L. Smith, and Mary L. Petrovich, to review such demands and provide input to the Company and retained independent counsel. Upon completion of the independent internal investigation by the demand review committee, it was recommended that the board take no action in response to the demand letter at this time.

On September 6, 2023, Lomont filed a Verified Stockholder Derivative Complaint in Delaware Chancery Court captioned *Lomont v. Milton, et al.*, C.A. No. 2023-0908-KSJM (the "Lomont Action") against certain of the Company's current and former directors, alleging claims against those defendants for purported breaches of fiduciary duty, unjust enrichment, and contribution and indemnification. The Lomont Action alleges that the Company constructively and wrongfully refused Lomont's demand that the Company bring claims against officers and directors. The parties have not yet On February 21, 2024, the court entered into a schedule the parties' stipulation staying the action for the Lomont Action six months.

The complaints seek unspecified monetary damages, costs and fees associated with bringing the actions, and reform of the Company's corporate governance, risk management and operating practices. The Company is vigorously defending against the foregoing complaints. The Company is unable to estimate the potential loss or range of loss, if any, associated with these lawsuits, which could be material.

On February 21, 2024, a purported shareholder derivative action was filed in the United States District Court for the District of Delaware, captioned *Roy v. Russell, et al.*, Case No. 1:24-cv-00230-UNA (the "Roy Action"), purportedly on behalf of the Company, against certain of the Company's current and former officers and directors alleging violations of Section 14(a) of the Exchange Act, breach of fiduciary duty based on false statements; oversight, and insider trading; unjust enrichment; abuse of control; corporate waste; and gross mismanagement. The Company is currently evaluating the claims asserted in the complaint.

Tenneson Action

On October 13, 2023, John Tenneson filed a purported securities class action in the United States District Court for the District of Arizona, captioned *Tenneson v. Nikola et al.*, Case No. 2:23-cv-02131-DJH (the "Tenneson Action"). The Tenneson Action asserts claims against the Company and certain officers and directors asserts under Sections 10(b) and 20(a) of the Exchange Act, and Rule 10b-5 promulgated thereunder, based on allegedly false and/or misleading statements and omissions in press releases, public filings, and in social media regarding the Company's safety and structural controls related to its manufacturing of battery components and the likelihood of a product recall. On December 12, 2023, three sets of plaintiffs filed motions to be appointed as lead plaintiff. On January 16, 2024, the court entered the parties' stipulated extension of time for Defendants to respond to the complaint until after a lead plaintiff is appointed and an amended complaint is filed. On February 29, 2024, the magistrate issued a report and recommendation that plaintiff Randolph Reyes be appointed as lead plaintiff. On April 25, 2024, the District of Arizona court accepted and adopted the magistrate's report and recommendation and appointed plaintiff Reyes as lead plaintiff.

Plaintiff seeks an unspecified amount in damages, attorneys' fees, and other relief. The Company intends to vigorously defend itself. The Company is unable to estimate the potential loss or range of loss, if any, associated with the Tenneson Action, which could be material.

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Lion Electric matter

On March 2, 2023, Lion Electric filed a complaint against Nikola in Arizona federal district court alleging that Nikola tortiously interfered with the Romeo Power, Inc. / Lion Electric business relationship and Lion's business expectancy from the commercial relationship. Nikola denies the allegations and intends to vigorously defend the matter. Based upon information presently known to management, as of March 31, 2024 and December 31, 2023, the Company is not currently able to estimate recognized an estimated liability of \$1.8 million in accrued expenses and other current liabilities on the outcome of this proceeding or a possible range of loss, if any.

Lightning eMotors matter

On March 9, 2023, Lightning eMotors filed a complaint in Colorado State Court alleging that Nikola tortiously interfered with the Romeo Power, Inc. / Lightning eMotors business relationship and Lightning's business expectancy. Nikola denies the allegations and intends to vigorously defend the matter. Based upon information presently known to management, the Company is not currently able to estimate the outcome of this proceeding or a possible range of loss, if any.

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condensed consolidated balance sheets.

Commitments and Contingencies

FCPM License

In the third quarter of 2021, the Company entered into a FCPM fuel cell power module ("FCPM") license to intellectual property that will be used to adapt, further develop and assemble FCPMs. Payments for the license will be due in installments ranging from 2022 to 2025. As of **September 30, 2023** **March 31, 2024** and **December 31, 2022** **December 31, 2023**, the Company accrued **\$13.2 million** **\$18.9 million** and **\$32.1 million** **\$13.8 million**, respectively, in accrued expenses and other current liabilities, and **\$5.3 million** **zero** and **zero**, **\$5.5 million**, respectively, in other long-term liabilities on the condensed consolidated balance sheets.

Inventory Repurchase Agreements

During the first quarter of 2023, the Company entered into an arrangement with a finance company to provide floor plan financing to its dealers (the "Floor Plan"), generally with terms of approximately 15 months. The Company receives payment from the finance company following shipment of trucks to the dealers, and the Company participates in the cost of dealer financing up to certain limits. In conjunction with the Floor Plan, the Company entered into an inventory repurchase agreement (the "Inventory Repurchase Agreement") with the finance company, whereby the Company has agreed to repurchase trucks re-possessed by the financing company in the event of a dealer default, at the financing company's option. As of **September 30, 2023** **March 31, 2024**, the maximum potential cash payments the Company could be required to make under the terms of the Inventory Repurchase Agreement was **\$11.9 million** **\$13.7 million**. The Company's financial exposure under the Inventory Repurchase Agreement is limited to the difference between the amount paid to the financing company and the amount received upon subsequent resale of the re-possessed truck. As of **September 30, 2023** **March 31, 2024**, the Company had not repurchased any trucks under the terms of the Inventory Repurchase Agreement, nor received any requests for repurchase.

BEV Recall Campaign

On August 11, 2023, the Company announced a voluntary recall of approximately 209 its BEV trucks as a result of the preliminary results of the Company's battery pack thermal event investigations. The incident was deemed likely caused by a defect within components of the supplier battery pack. The Company has ceased investigations of the thermal event and has determined that replacement of the battery pack in all BEV trucks is was the safest, most cost effective remedy. All BEV trucks are being were transported to the Company's Coolidge manufacturing facility to be retrofit with alternative battery packs.

Amounts accrued for the recall campaign are based on management's best estimates of the amounts that will ultimately be required to settle such items. The Company can provide no assurances that it will not experience material claims in the future or that it will not incur significant costs to defend or settle such claims beyond the amounts accrued. The As of March 31, 2024 and December 31, 2023, the Company accrued **\$61.8 million** **\$65.0 million** during and **\$65.8 million**, respectively, of which the third quarter Company incurred claims through such date of **2023 \$9.7 million** and **\$3.0 million**, respectively, related to the recall campaign.

Purchase Commitments

As of September 30, 2023, the Company entered into agreements with four liquid hydrogen suppliers which require a minimum commitment of product purchases on a take-or-pay basis starting in the fourth quarter of 2023. The Company's purchase obligations with these suppliers contain minimum purchase quantities, provisions for price adjustments, and in certain instances, are contingent on the supplier's expected construction of the production site and commencement of production by a certain deadline. As of September 30, 2023, minimum future product purchases are estimated to be \$1.3 million during the fourth quarter of 2023, \$10.1 million during 2024, \$62.6 million during 2025, \$143.4 million during 2026, and \$491.0 million thereafter through December 31, 2029.

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13.12. NET LOSS PER SHARE

The following table sets forth the computation of the basic and diluted net loss per share for the three and nine months ended **September 30, 2023** **March 31, 2024** and **2022**: **2023**:

Three Months Ended September 30,		Nine Months Ended September 30,	
2023	2022	2023	2022

		Three Months Ended March 31,			
		Three Months Ended March 31,			
		Three Months Ended March 31,			
2024		2024		2023	
Numerator:	Numerator:				
Net loss from continuing operations					
Net loss from continuing operations					
Net loss from continuing operations					
Net loss from continuing operations	Net loss from continuing operations	\$ (425,764)	\$ (236,234)	\$ (711,025)	\$ (562,172)
Net loss from discontinued operations	Net loss from discontinued operations	—	—	(101,661)	—
Net loss	Net loss	\$ (425,764)	\$ (236,234)	\$ (812,686)	\$ (562,172)
Denominator:	Denominator:				
Denominator:					
Weighted average shares outstanding, basic and diluted					
Weighted average shares outstanding, basic and diluted					
Weighted average shares outstanding, basic and diluted	Weighted average shares outstanding, basic and diluted	857,213,992	438,416,393	706,325,212	426,382,736
Net loss per share, basic and diluted:	Net loss per share, basic and diluted:				
Net loss per share, basic and diluted:					
Net loss from continuing operations					
Net loss from continuing operations					
Net loss from continuing operations	Net loss from continuing operations	\$ (0.50)	\$ (0.54)	\$ (1.01)	\$ (1.32)
Net loss from discontinued operations	Net loss from discontinued operations	—	—	\$ (0.14)	—
Net loss	Net loss	\$ (0.50)	\$ (0.54)	\$ (1.15)	\$ (1.32)

Basic net loss per share is computed by dividing net loss for the period by the weighted-average number of common shares outstanding during the period.

Diluted net loss per share is computed by dividing the net loss, adjusted for the revaluation of warrant liability, for the private warrants, by the weighted average number of common shares outstanding for the period, adjusted for the dilutive effect of shares of common stock equivalents resulting from the assumed exercise of the warrants. The treasury stock method was used to calculate the potential dilutive effect of these common stock equivalents. There were no adjustments for revaluations of the warrant liability as the warrants outstanding are anti-dilutive for all periods presented.

Potentially dilutive shares were excluded from the computation of diluted net loss when their effect was antidilutive. The following outstanding common stock equivalents were excluded from the computation of diluted net loss per share for the periods presented because including them would have been anti-dilutive.

		Three Months Ended		Nine Months Ended	
		September 30,		September 30,	
		2023	2022	2023	2022
Three Months Ended					
March 31,					
Three Months Ended					
March 31,					
Three Months Ended					
March 31,					
2024		2024		2023	
Toggle Convertible Notes (on an as-converted basis)	Toggle Convertible Notes (on an as-converted basis)	20,803,462	22,872,040	20,803,462	22,872,040
Senior Convertible Notes (on an as-converted basis)	Senior Convertible Notes (on an as-converted basis)	21,232,749	—	21,232,749	—
8.25% Convertible Notes (on an as-converted basis)					
Outstanding warrants	Outstanding warrants	841,183	760,915	841,183	760,915
Stock options, including performance stock options	Stock options, including performance stock options	15,158,448	27,385,088	15,158,448	27,385,088
Restricted stock units, including market based RSUs		17,001,793	23,911,805	17,001,793	23,911,805
Restricted stock units, including Market Based RSUs					
Total	Total	75,037,635	74,929,848	75,037,635	74,929,848

14.13. SUBSEQUENT EVENTS

Conversion In April 2024, the Company settled a conversion of Senior the 8.25% Convertible Notes

The Company issued 30,231,974 shares of common stock for settlement of conversions of \$34.0 million aggregate principal amount of \$12.0 million with the Second Purchase Agreement Notes issuance of 13,333,333 shares of the Company's common stock and make-whole interest pursuant to the Second Purchase Agreement Coupon Make-Whole Premium payment of \$2.8 million.

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

This report contains forward-looking statements that are not historical facts. When used in this report, words such as "believe," "may," "will," "shall," "estimate," "continue," "anticipate," "intend," "expect," "should," "would," "could," "plan," "predict," "potential," "target," "goal," "strategy," "seem," "future," "outlook," and similar expressions are intended to identify forward looking statements. These are statements that predict or indicate future events or trends or that are not statements of historical matters. These forward-looking statements include, but are not limited to, statements regarding the company's our expectations regarding its our business model and strategy; expected timing of completion of business milestones; the potential benefits received from the planned integrated offering of trucks and fueling solutions, including the Tre FCEV and mobile fuelers, and its belief that its integrated fueling and charging systems will create competitive benefits; the potential benefits received from the company's our hydrogen production, offtake, distribution and dispensing plans; expectations regarding our hydrogen supply and plans to secure adequate hydrogen supply; the expected performance and specifications of company our vehicles, and hydrogen production, distribution and fueling solutions; the benefits and attributes of the company's business model and strategy; the company's expectations for its trucks and market acceptance of electric trucks; expected our trucks and hydrogen fueling solutions; government incentives and expectations regarding customer demand related to such incentives; potential benefits of the company's planned and actual collaborations with strategic partnerships; the company's partners; plans with respect to its our potential leasing arrangements; the company's plans with respect to its our maintenance and service program; our future expectations regarding cash uses and capital requirements and requirements; our ability to raise capital; expected uses of our common stock; beliefs regarding our competitive position; market opportunity; expectations and estimates regarding expense levels; levels and costs; our beliefs regarding our ability to remediate our material weakness and the timing thereof; our critical judgements and estimates, and the sufficiency thereof; the expected scope, costs and timing related to the battery-electric truck recall, including the nature of the repairs, expected costs to repair the vehicles and timing of such expenses, and any potential offsets, timing of battery replacement replacements, truck deliveries and truck deliveries, sales; and supply chain challenges. These statements are based on various assumptions, whether or not identified in this report, and on the current expectations of management and are not predictions of actual performance. These assumptions include, but are not limited to: our financial and business performance; expected timing with respect to the build out of our manufacturing facility, and production and attributes of our FCEV and BEV trucks; expectations regarding our hydrogen fuel station rollout plan; solutions; timing of completion of validation testing, volume production and other milestones; changes in our strategy, future operations, financial position, estimated revenues and losses, projected costs, prospects and plans; the execution of definitive agreements with our business strategic partners and the success of our planned collaborations; the failure to convert LOIs or MOUs into binding orders; the cancellation of orders; our future capital requirements, ability to raise capital in the future and sources and uses of cash; costs of capital; the availability of sufficient authorized common stock; the ability to obtain parts and components on a timely basis and at the acceptable prices; the outcome of investigations, litigation, complaints, product liability claims and/or adverse publicity; the implementation, execution, market acceptance and success of our business model; developments relating to our competitors and industry; the impact of health epidemics on our business and the actions we may take in response thereto; our expectations regarding our ability to obtain and maintain intellectual property protection and not infringe on the rights of others; our ability to obtain funding for our operations and planned operations; the impact of interest rates and inflation on our business; our business, expansion plans and opportunities; our ability to achieve cost reductions for our vehicles; customer end user demand for our trucks; assumptions regarding our recall campaign; campaign and warranty costs; the continued availability of government incentives; changes in applicable laws or regulations; and anticipated trends and challenges in our business and the markets in which we operate.

Forward-looking statements are subject to risks and uncertainties that could cause actual results to differ materially from those expected. These risks and uncertainties include, but are not limited to, those risks discussed in Part II, Item 1A of this report, as well as our ability to execute our business model, including demand for and market acceptance of our products and planned services; changes in applicable laws or regulations; risks associated with the outcome of any legal, regulatory, or judicial proceedings; the effect of the COVID-19 pandemic on our business; proceedings to which we are, or may become a party; our ability to raise capital and the terms thereof; our ability to service or repay our debt; our ability to compete; the success of our business collaborations; regulatory developments in the United States; the possibility that we may be adversely affected by grant, receipt and continued availability of federal and state incentives; the effects of interest rates, inflation, supply chain issues and other economic, business, and/or competitive factors; the effects of competition on our business; risks related to the recall, including higher than expected costs, the discovery of additional problems, delays retrofitting the trucks and delivering such trucks to customers, supply chain and other issues that may create additional delays, order cancellations as a result of the recall, litigation, complaints and/or product liability claims, and reputational harm; the failure to convert LOIs or MOUs into binding orders; the cancellation of orders; the ability to raise sufficient capital to meet our requirements and fund our business; design and manufacturing changes and delays, including shortages in parts and materials and other supply challenges; risks related to the rollout of our hydrogen fueling infrastructure and the timing thereof; construction risks and delays; the availability of access to hydrogen refueling facilities; risks associated with manufacturing batteries and fuel cell power modules; variations in and characteristics of the hydrogen fueling location, including but not limited to fueling hardware and software protocol, fuel amount, and fueling conditions, any of which may affect refueling times; our ability to remain listed on Nasdaq; our history of operating losses; losses; risks that estimates for reserves are insufficient; and general economic, financial,

legal, regulatory, political and business conditions and changes in domestic and foreign markets. These forward-looking statements speak only as of the date hereof. We expressly disclaim any obligation or undertaking to update any forward-looking statements contained herein to reflect any change in our expectations with regard thereto or any change in events, conditions or circumstances on which any such statement is based.

In this report, all references to "Nikola," "we," "us," or "our" mean Nikola Corporation.

Nikola™ and HYLA are trademarks of Nikola Corporation. We also refer to trademarks of other corporations and organizations in this report.

NIKOLA CORPORATION NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (UNAUDITED)

The below discussion should be read in conjunction with Management's Discussion and Analysis of Financial Condition and Results of Operations and the audited consolidated financial statements and notes thereto included in our Annual Report on Form 10-K for the year ended December 31, 2022 December 31, 2023, as amended.

Overview

We are a technology innovator and integrator, working to develop decarbonize the trucking industry by developing innovative energy and transportation solutions. We are pioneering a business model that will enable customers fleets and end users to integrate next-generation truck technology, hydrogen fueling refueling infrastructure, electric vehicle

charging solutions, and related maintenance. By creating this ecosystem, we and our strategic business partners and suppliers hope to build a long-term competitive advantage for clean technology vehicles and **next generation** **next-generation** fueling solutions.

Our expertise lies in design, innovation, and software and engineering. We assemble, integrate, and commission our vehicles in collaboration with our business partners and suppliers. Our approach **has always been** to leverage strategic partnerships to help lower cost, increase capital efficiency and increase speed to market.

We operate in two business units: Truck and Energy. The Truck business unit is **developing and** commercializing FCEV and BEV Class 8 trucks that provide or are intended to provide environmentally friendly, cost-effective solutions to the short, medium and long haul trucking sectors. The Energy business unit is developing hydrogen fueling infrastructure to support our FCEV **customers, trucks.**

Late We commenced commercial production of Tre BEVs in the first quarter of 2022 **we and** commenced commercial production of the Tre BEVs FCEV in the third quarter of 2023, both at our manufacturing facility in Coolidge, Arizona, and commercial production of the Tre FCEV started in the third quarter of 2023. Arizona.

In January 2023, we announced our **new** global brand, HYLA, to encompass our energy products for **producing, procuring**, distributing, and dispensing hydrogen to fuel our trucks. We expect to leverage multiple ownership structures where we either fully or partially own, or do not own, hydrogen production assets. In cases where we are able to source hydrogen supply, without ownership of hydrogen production assets, we **have and expect to continue** to enter into long-term supply contracts where our costs and surety of supply are well-defined.

We intend to continue to develop our business, which includes the following ongoing activities:

- commercialize our heavy-duty trucks and other products;
- expand and maintain manufacturing facilities and equipment;
- invest in servicing our vehicles under warranty including repairs and service parts;
- develop, **deploy, and maintain** hydrogen fueling infrastructure;
- continue to invest in our technology;
- invest in marketing and advertising, sales, and distribution infrastructure for our products and services;
- maintain and improve our operational, financial and management information systems;
- hire and retain personnel;
- obtain, maintain, expand, and protect our intellectual property portfolio; and
- operate as **of a** public company.

Key Factors Affecting Operating Results

We believe that our performance and future success depend on several factors that present significant opportunities for us but also pose risks and challenges, including those set forth in the section entitled "Risk Factors."

We require substantial additional capital to manufacture and validate our products and services and fund operations for the foreseeable future. Until we can generate sufficient revenue and positive gross margins, we expect to finance our operations through a combination of existing cash on hand, sales of stock, debt financings, strategic partnerships, and licensing arrangements. The amount and timing of our future funding requirements will depend on many factors, including the pace and results of our development and validation efforts, demand for our trucks and hydrogen fuel, and expense levels, among other things.

Truck Production and Shipments

We started commercial production at our Coolidge, Arizona manufacturing facility in March 2022 and began sales of Tre BEV trucks in the second quarter of 2022. Beginning in the third quarter of 2023, production and sales of the Tre BEV was impacted significantly by the voluntary recall of BEV trucks.

The recall was initiated in response to investigations prompted by a battery pack thermal event. To minimize vehicle downtime and maximize end user safety and satisfaction, the battery packs in trucks owned by dealers and their retail customers are being retrofit with battery packs from an alternative supplier. We accrued recall campaign costs of \$65.0 million for the BEV trucks that are expected to be returned to dealers and their customers once the recall is complete, of which \$9.7 million has been incurred through March 31, 2024. The battery replacement commenced in late 2023, with the first truck returned to a retail customer in the first quarter of 2024.

All BEV truck inventory is classified as work in process inventory as of March 31, 2024 as we removed the existing battery packs and plan to retrofit the BEV inventory with alternative battery packs.

The following is a summary of the number of Tre BEV trucks produced and shipped during the three months ending March 31, 2023 through March 31, 2024:

Tre BEVs	Q1 2023	Q1 2024
Produced	63	N/A
Shipped	31	N/A

In 2023, we transitioned the manufacturing line to a mixed model production line and commenced shipments of the Tre FCEV in the fourth quarter of 2023. The following is a summary of the number of Tre FCEV trucks produced and shipped during the three months ended March 31, 2024 and 2023:

Tre FCEVs	Q1 2023	Q1 2024
Produced	N/A	43
Shipped	N/A	40

The hydrogen fuel cell vehicle market and hydrogen infrastructure are early stage markets. As a result, we have and may continue to experience production shortages as a result of new technology supply chain challenges. Additionally, we may experience delays in deliveries of FCEV trucks due to lack of hydrogen infrastructure or supply for end users.

Comparability of Financial Information

On June 30, 2023, we completed the Assignment of Romeo, which was previously consolidated in our financial statements from the date of acquisition, October 14, 2022. As of the Assignment, we are reporting the operating results of Romeo within discontinued operations for the three months ended March 31, 2023. Our results for the periods presented, as discussed in this Management's Discussion and Analysis of Financial Condition and Results of Operations, are presented on an include only results from continuing operations basis, and exclude results related to our discontinued operation.

Key Factors Affecting Operating Results

We believe that our performance and future success depend on several factors that present significant opportunities for us but also pose risks and challenges, including those set forth in the section entitled "Risk Factors."

We sell our trucks to dealers in our network and rely on the dealers to sell them to end users. We have experienced delays in receiving additional purchase orders from our dealers due in part to lack of charging infrastructure. The end users of the Tre BEV will need to continuously assess their charging capacity and may need to build or expand infrastructure prior to ordering or receiving trucks from the dealers.

Truck Production and Shipments

We started commercial production at our Coolidge, Arizona manufacturing facility in March 2022 and began sales of Tre BEV trucks in the second quarter of 2022. During the third quarter of 2023, production and sales of the Tre BEV was impacted significantly by the voluntary recall of BEV trucks.

In August 2023, we placed a temporary hold on all new BEV truck shipments. The recall was initiated in response to investigations prompted by a battery pack thermal event. During these investigations it was discovered that additional process and design changes may be necessary and that cell-level issues may need to be addressed beyond the initially identified coolant manifold replacement. While the inquiries continue to identify the root causes of battery malfunctions, to minimize vehicle downtime and maximize customer safety and satisfaction, the battery packs in existing dealer and customer trucks will be retrofit with battery packs from an alternative supplier. As of September 30, 2023, we accrued recall campaign costs of \$61.8 million for the BEV trucks that are expected to be returned to dealers and customers once the recall is complete. The battery replacement is expected to commence in late 2023, with the first set of trucks expected to be returned to customers starting in the first quarter of 2024, pending supply chain or other issues.

All BEV truck inventory is currently classified as work in process inventory as we are removing the existing battery packs off the trucks and plan to retrofit the BEV inventory with alternative battery packs.

Tre BEVs	Q2 2022	Q3 2022	Q4 2022	Q1 2023	Q2 2023	Q3 2023
Produced	50	75	133	63	33	N/A
Shipped	48	63	20	31	45	3

During the second quarter of 2023, we transitioned the manufacturing line to a mixed model production line in preparation for the commencement of commercial production of the FCEV starting on July 31, 2023. In the third quarter of 2023, six Tre FCEV trucks came off the assembly line and were in final quality review as of September 30, 2023.

We require substantial additional capital to produce and validate our products and services and fund operations for the foreseeable future. Until we can generate sufficient revenue and positive gross margins, we expect to finance our operations through a combination of existing cash on hand, sales of stock, debt financings, strategic partnerships, and licensing arrangements. The amount and timing of our future funding requirements will depend on many factors, including the pace and results of our development and validation efforts, demand for our trucks and expense levels, among other things.

Basis of Presentation

Currently, we conduct business through one operating segment. See Note 2 in our Annual Report on Form 10-K for the year ended December 31, 2022 December 31, 2023, as amended, for more information.

Components of Results of Continuing Operations

Revenues

Truck sales: Truck sales are derived from deliveries of our trucks to dealers.

Service and other: Service and other revenues primarily include sales from delivered Mobile Charging Trailers ("MCTs"), other charging products to dealers and customers, and service parts and labor.

Cost of Revenues

Truck sales: Cost of revenue includes direct parts, material and labor costs, manufacturing overhead, including amortized tooling costs and depreciation of our Coolidge manufacturing facilities, freight and duty costs, reserves for estimated warranty and recall campaign expenses and inventory write-downs.

Service and other: Cost of revenues primarily related to MCT, other charging products, and service part sales primarily include direct materials, outsourced manufacturing services, and fulfillment costs.

Research and Development Expense

Research and development expenses consist primarily of costs incurred for the discovery and development of our vehicles, which include:

- Personnel related expenses, including salaries, benefits, and stock-based compensation expense, for personnel in our engineering and research functions;

- Expenses related to materials, supplies and third-party services, including prototype parts, tooling and non-recurring engineering;
- Fees paid to third parties such as consultants and contractors for outside development and validation activities;
- Depreciation for prototyping equipment and R&D facilities; and
- Expenses related to operating the Coolidge manufacturing facility until the start of commercial production. With the start of commercial production of the Tre BEV late in the first quarter of 2022, manufacturing costs, including labor and overhead, as well as inventory-related expenses related to the Tre BEV trucks, and related facility costs, are no longer recorded in research and development but are reflected in cost of revenues.

During the three and nine months ended September 30, 2023, our research and development expenses were primarily incurred in connection with development and validation of our FCEV trucks. Our research and development costs have decreased and are expected to continue to decrease with the commencement of FCEV serial production on July 31, 2023.

Selling, General, and Administrative Expense

Selling, general, and administrative expenses consist of personnel related expenses for our corporate, executive, finance, and other administrative functions, expenses for outside professional services, including legal, audit and accounting services, as well as expenses for facilities, depreciation, amortization, travel, IT, and marketing costs. Personnel related expenses consist of salaries, benefits, and stock-based compensation.

We expect our selling, general, and administrative expenses to decline as we continue to stay focused on right-scaling the business and cash preservation.

Loss on Supplier Deposits

Loss on supplier deposits consist of losses on deposits for tooling and long-term supply agreements.

Interest Expense, net

Interest expense consists of interest on our debt, financing obligation and finance lease liabilities. Interest income consists primarily of interest received or earned on our cash, cash equivalents and restricted cash and cash equivalents balances.

Revaluation of Warrant Liability

The revaluation of warrant liability includes net gains and losses from the remeasurement of the warrant liability. Warrants recorded as liabilities are recorded at their fair value and remeasured at each reporting period.

Gain on Divestiture of Affiliate

Gain on divestiture of affiliate consists of consideration for the divestiture of Nikola Iveco Europe GmbH and the related License Agreement, in excess of the basis of our investment as of the divestiture date.

Loss on Debt Extinguishment

Loss on debt extinguishment represents the loss on exchange of \$100.0 million of June 2022 Toggle Convertible Notes for the issuance of \$100.0 million April 2023 Toggle Convertible Notes. The loss was calculated as the difference between the carrying value of the June 2022 Toggle Convertible Notes exchanged and the fair value of the \$100.0 million April 2023 Toggle Convertible Notes issued as of the closing date of the exchange.

Other Income (Expense), net

Other income (expense), net consists primarily of other miscellaneous non-operating items, such as government grants, subsidies, merchandising, revaluation gains and losses on derivatives and other instruments recognized at fair value, foreign currency gains and losses, and unrealized gains and losses on investments.

Income Tax Expense

Our income tax provision consists of an estimate for U.S. federal and state income taxes based on enacted rates, as adjusted for allowable credits, deductions, uncertain tax positions, changes in deferred tax assets and liabilities, and changes in the tax law. Due to cumulative losses, we maintain a valuation allowance against our U.S. and state deferred tax assets.

Equity in Net Loss of Affiliates

Equity in net loss of affiliates consists of our portion of net gains and losses from equity method investments, primarily Nikola IVECO Europe GmbH through the date of divestiture.

Results of Continuing Operations

Comparison of Three Months Ended September 30, 2023 March 31, 2024 to Three Months Ended September 30, 2022 March 31, 2023

The following table sets forth our historical operating results from continuing operations for the periods indicated.

Three Months Ended				
September 30,		\$	%	
2023	2022	Change	Change	
(in thousands, except share and per share data)				

(in thousands, except share and per share data)											
Revenues:	Revenues:										
Truck sales											
Truck sales											
Truck sales	Truck sales	\$ (2,368)	\$ 23,853	\$ (26,221)	(110)%	\$ 7,418	\$ 10,055	\$ (2,637)		(26)	
Service and other	Service and other	636	388	248	64%	79	622	622	(543)	(5)	
Total revenues	Total revenues	(1,732)	24,241	(25,973)	(107)%	7,497	10,677	10,677	(3,180)	(3,1)	
Cost of revenues:	Cost of revenues:										
Truck sales											
Truck sales											
Truck sales	Truck sales	122,679	54,080	68,599	127%	61,747	33,020	33,020	28,727	28,727	
Service and other	Service and other	1,092	330	762	231%	3,325	354	354	2,971	2,971	
Total cost of revenues	Total cost of revenues	123,771	54,410	69,361	127%	65,072	33,374	33,374	31,698	31,698	
Gross loss	Gross loss	(125,503)	(30,169)	(95,334)	316%	Gross loss	(57,575)	(22,697)	(22,697)	(34,878)	
Operating expenses:	Operating expenses:										
Research and development	Research and development	41,966	66,683	(24,717)	(37)%						
Research and development											
Selling, general, and administrative	Selling, general, and administrative	57,982	132,865	(74,883)	(56)%	Selling, general, and administrative	48,291	42,697	42,697	5,594	
Total operating expenses											
Total operating expenses											
Total operating expenses	Total operating expenses	100,664	199,548	(98,884)	(50)%	87,788	104,503	104,503	(16,715)	(16,715)	
Loss from operations	Loss from operations	(226,167)	(229,717)	3,550	(2)%	Loss from operations	(145,363)	(127,200)	(127,200)	(18,163)	(18,163)
Other income (expense):	Other income (expense):										
Interest expense, net	Interest expense, net	(52,680)	(7,735)	(44,945)	581%						
Revaluation of warrant liability		—	586	(586)	(100)%						
Interest expense, net											
Interest expense, net							(2,278)		(9,833)	7,555	
Other expense, net	Other expense, net	(146,654)	2,617	(149,271)	(5704)%						
Loss on debt extinguishment											
Loss on debt extinguishment											
Loss on debt extinguishment							(784)			(784)	
Other income, net						Other income, net	860		190	670	
Loss before income taxes	Loss before income taxes					Loss before income taxes and equity in net loss of affiliates	(147,565)	(136,843)	(136,843)	(10,722)	
and equity in net loss of affiliates	and equity in net loss of affiliates	(191,252)									
Loss before income taxes	Loss before income taxes	(425,501)	(234,249)	82%						(10,722)	

Income tax expense	Income tax expense	1	1	—	NM	Income tax expense	—	—	—	—	—	—	—
Loss before equity in net loss of affiliates	Loss before equity in net loss of affiliates					Loss before equity in net loss of affiliates							
Equity in net loss of affiliates	Equity in net loss of affiliates	(425,502)	(234,250)	(191,252)	82%	Equity in net loss of affiliates	(147,565)	(136,843)	(136,843)	(10,722)			(10,722)
Net loss from continuing operations	Net loss from continuing operations	\$ (425,764)	\$ (236,234)	\$ (189,530)	80%	Net loss from continuing operations	\$ (147,722)	\$ (8,408)	\$ (8,408)	8,251			\$ (2,471)
Basic and diluted net loss per share:	Basic and diluted net loss per share:												
Basic and diluted net loss per share:	Basic and diluted net loss per share:												
Net loss from continuing operations	Net loss from continuing operations	\$ (0.50)	\$ (0.54)	\$ 0.04	(7)%	\$ (0.11)	\$ (0.26)	\$ (0.26)	\$ 0.15				(58)
Weighted-average shares outstanding, basic and diluted	Weighted-average shares outstanding, basic and diluted	857,213,992	438,416,393	418,797,599	96%								
Weighted-average shares outstanding, basic and diluted	Weighted-average shares outstanding, basic and diluted					1,335,877,351	549,689,436	549,689,436	786,187,915				

Revenues

Truck sales

Revenues related to truck sales During the three months ended March 31, 2024, we derived revenue from 40 Tre FCEV shipments, compared to sales of 31 Tre BEV trucks BEVs shipped during the three months ended March 31, 2023. Truck sales decreased by \$26.2 million, or 26%, from \$23.9 million during the three months ended September 30, 2022 to negative \$2.4 million during the three months ended September 30, 2023. The decrease is attributed to a hold on new BEV's return reserve for \$8.0 million related to a cancellation of a dealer agreement and an estimated reserve for future returns, partially offset by an increase in truck shipments in connection with the recall during the third quarter and higher pricing of 2023. Additionally, during the third quarter of 2023, we repurchased seven previously sold trucks as a result of us cancelling dealer agreements. our FCEV truck compared to our Tre BEV truck.

Service and other

Revenues related to service Service and other revenue increased revenues include sales from delivered Mobile Charging Trailers ("MCTs"), and other charging products to dealers and fleet customers, hydrogen sales, and service parts and labor. Service and other revenues decreased by \$0.2 million, or 87%, from \$0.4 million during the three months ended September 30, 2022 to \$0.6 million during the three months ended September 30, 2023. The increase is attributed to a decline in MCT and other charging product sales due to the BEV recall initiated in the third quarter of 2023.

Cost of Revenues

Truck sales

Cost of revenues includes direct parts, material and labor costs, manufacturing overhead, including amortized tooling costs and depreciation of our manufacturing facility, freight and duty costs, reserves for estimated warranty expenses including recall campaigns, and inventory write-downs.

Cost of revenues related to truck sales increased by \$68.6 million during the three months ended September 30, 2022 to \$122.7 million during the three months ended September 30, 2023. The increase is attributed to a voluntary recall of BEV trucks in the third quarter of 2023. As a result of the recall, we accrued \$61.8 million for net realizable value reserves, by \$7.0 million for estimated recall campaign warranty driven by the increase in sales volume and higher warranty accrual per truck for FCEV trucks compared to BEV trucks. Additionally, depreciation expense increased by \$3.6 million primarily related to the change in methodology for tooling depreciation, and freight increased by \$3.3 million. The remaining increase was primarily from

manufacturing variances, subcontracting costs, material costs, delivery costs, and reserved \$45.7 million for BEV battery pack and other components deemed excess and obsolete. The increase during the three months ended September 30, 2023 was partially offset by the reduction in trucks delivered compared to the three months ended September 30, 2022.

Service and other

Cost of revenues relate primarily to direct materials, labor, outsourced manufacturing services and fulfillment costs for the sale of the MCTs and other charging products, hydrogen, and service parts and labor.

Cost of revenues related to service and other revenue increased by \$0.8 \$3.0 million, or 231% 839%, from \$0.3 \$0.4 million during the three months ended September 30, 2022 March 31, 2023 to \$1.1 \$3.3 million during the three months ended September 30, 2023 March 31, 2024. The increase was primarily driven by direct materials, outsourced services, material and fulfillment dispensing costs related to sales of service parts associated with hydrogen sales.

Research and Development

Research and development expenses consist primarily of costs incurred for the discovery and development of our vehicles, including personnel-related expenses; fees paid to third parties such as consultants and contractors for outside development and validation activities; expenses related to materials, supplies and third-party services, including prototype parts, tooling and non-recurring engineering; and depreciation for prototyping equipment and R&D facilities.

Research and development expenses decreased by \$24.7 million \$22.3 million, or 37.1% 36%, from \$66.7 million \$61.8 million during the three months ended September 30, 2022 March 31, 2023 to \$42.0 million \$39.5 million during the three months ended September 30, 2023 March 31, 2024. The decrease was primarily due to lower spending on outside development, professional services, expensed components and tooling related to FCEV prototype builds of \$15.8 \$15.0 million, decreases a decrease in stock compensation of \$5.9 \$6.2 million, and a decrease in personnel costs of \$3.7 million \$2.6 million, and decreases in travel and freight of \$1.2 million; partially offset by an increase of \$2.6 million for depreciation, occupancy, and fuel costs.

Selling, General, and Administrative

Selling, general, and administrative expenses decreased consist of personnel related expenses for our corporate, executive, finance, and other administrative functions, expenses for outside professional services, including legal, audit and accounting services, as well as expenses for facilities, depreciation, amortization, travel, marketing, and selling costs. Personnel related expenses consist of salaries, benefits, and stock-based compensation.

Selling, general, and administrative expenses increased by \$74.9 \$5.6 million, or 56.4% 13%, from \$132.9 million \$42.7 million during the three months ended September 30, 2022 March 31, 2023 to \$58.0 million \$48.3 million during the three months ended September 30, 2023 March 31, 2024. The decrease increase was driven by fees related to an equipment purchase cancellation of \$15.6 million during the three months ended March 31, 2024; partially offset by a decrease in stock based compensation of \$77.9 \$9.1 million, primarily due to the acceleration of stock compensation for the market based RSUs that were cancelled in the third quarter of 2022, a decrease in legal expenses of \$5.9 million primarily related to Mr. Milton's indemnification agreement, and a decrease in professional services of \$3.4 million. These decreases were partially offset by an increase in depreciation expense of \$9.2 million primarily related to the reassessment of useful lives for BEV demo trucks, and an increase in other general corporate expenses of \$3.2 \$0.9 million.

Interest Expense, net

Interest expense, net increased decreased by \$44.9 \$7.6 million from \$7.7 million during the three months ended September 30, 2022 to \$52.7 \$9.8 million during the three months ended September 30, 2023 March 31, 2023 to \$2.3 million during the three months ended March 31, 2024. Interest expense, increased net decreased due to interest on Toggle Convertible Notes of \$40.4 million, interest on our Senior Convertible Notes of \$6.6 million, and interest on our financing obligations of \$1.3 million, partially offset by a decrease reduction of interest expense on our Collateralized Promissory the Toggle Convertible Notes, Senior Convertible Notes and collateralized notes of \$0.3 \$5.7 million, and along with an increase of interest income earned on our cash, cash equivalents and restricted cash balances of \$3.7 million. This was partially offset by additional interest expense on our financing obligations and cash equivalents balances finance leases of \$1.9 million.

Loss on Debt Extinguishment

Revaluation of Warrant Liability

The revaluation of warrant liability decreased \$0.6 Loss on debt extinguishment includes a \$0.8 million from a \$0.6 million gain during loss for the three months ended September 30, 2022 March 31, 2024 due to zero extinguishments of 8.25% Convertible Notes converted during the three months ended September 30, 2023, resulting from changes in fair value of our warrant liability period.

Other Income, (Expense), net

Other income, (expense), net decreased net increased by \$149.3 \$0.7 million from \$2.6 \$0.2 million net income during the three months ended September 30, 2022 March 31, 2023 to \$146.7 \$0.9 million net expense income during the three months ended September 30, 2023 March 31, 2024. The decrease increase is primarily related attributed to incremental losses net gains on the revaluation of the bifurcated embedded conversion features on our Toggle Convertible Notes of \$187.2 million, losses from foreign currency translation exchange of \$1.6 \$2.1 million, and losses on disposals of assets of \$1.3 million. Decreases were partially offset by a gain on decrease related to the revaluation of contingent stock consideration financial instruments of \$41.5 \$1.0 million and the write off of a damaged BEV for \$0.3 million.

Income Tax Expense

Income tax expense was immaterial for the three months ended September 30, 2023 March 31, 2024 and 2022, 2023. We have accumulated net operating losses at the federal and state level and maintain a full valuation allowance against our net deferred taxes.

Equity in Net Loss of Affiliates

Equity in net loss of affiliates decreased by \$1.7 \$8.3 million, from \$2.0 \$8.4 million for the three months ended September 30, 2022 March 31, 2023 to \$0.3 \$0.2 million for the three months ended September 30, 2023 March 31, 2024. The decrease was driven by the divestiture of Nikola Iveco Europe GmbH during the second quarter of 2023.

Following the divestiture, we no longer recognize a portion of the joint venture's net gains or losses.

Comparison of Nine Months Ended September 30, 2023 to Nine Months Ended September 30, 2022

The following table sets forth our historical operating results for continuing operations for the periods indicated:

	Nine Months Ended September 30,		\$	%	
	2023	2022			
	(dollar amounts in thousands)				
Revenues:					
Truck sales	\$ 19,693	\$ 41,236	\$ (21,543)	(52)%	
Service and other	4,614	3,026	1,588	52%	
Total revenues	24,307	44,262	(19,955)	(45)%	
Cost of revenues:					
Truck sales	195,902	100,861	95,041	94%	
Service and other	4,236	2,396	1,840	77%	
Total cost of revenues	200,138	103,257	96,881	94%	
Gross loss	(175,831)	(58,995)	(116,836)	198%	
Operating expenses:					
Research and development	168,286	204,346	(36,060)	(18)%	
Selling, general, and administrative	159,443	289,916	(130,473)	(45)%	
Loss on supplier deposits	18,433	—	18,433	NM	
Total operating expenses	346,162	494,262	(148,100)	(30)%	
Loss from operations	(521,993)	(553,257)	31,264	(6)%	
Other income (expense):					
Interest expense, net	(71,262)	(10,754)	(60,508)	563%	
Revaluation of warrant liability	315	3,493	(3,178)	(91)%	
Gain on divestiture of affiliate	70,849	—	70,849	NM	
Loss on debt extinguishment	(20,362)	—	(20,362)	NM	
Other income (expense), net	(152,284)	4,423	(156,707)	(3543)%	
Loss before income taxes and equity in net loss of affiliates	(694,737)	(556,095)	(138,642)	25%	
Income tax expense	1	3	(2)	NM	
Loss before equity in net loss of affiliates	(694,738)	(556,098)	(138,640)	25%	
Equity in net loss of affiliates	(16,287)	(6,074)	(10,213)	168%	
Net loss from continuing operations	\$ (711,025)	\$ (562,172)	\$ (148,853)	26%	
Basic and diluted net loss per share:					
Net loss from continuing operations	\$ (1.01)	\$ (1.32)	\$ 0.31	(23)%	
Weighted-average shares outstanding, basic and diluted	706,325,212	426,382,736	279,942,476	66%	

Revenues

Truck sales

Revenues related to sales of Tre BEV trucks decreased by \$21.5 million, or 52%, from \$41.2 million during the nine months ended September 30, 2022 to \$19.7 million during the nine months ended September 30, 2023. The decrease was primarily driven by a decrease in the number of trucks delivered, a decrease in average selling price and an increase of dealer rebate activity to facilitate sales to end customers. During the nine months ended September 30, 2023 and 2022, we shipped 79 and 111 Tre BEV trucks, respectively, to our dealer network. The decrease in trucks delivered was primarily due to the temporary hold on new BEV truck shipments in connection with the recall during the third quarter of 2023. Additionally, during the third quarter of 2023, we repurchased seven previously sold trucks as a result of us cancelling dealer agreements.

Service and other

Revenues related to service and other revenue increased by \$1.6 million, or 52%, from \$3.0 million during the nine months ended September 30, 2022 to \$4.6 million during the nine months ended September 30, 2023. The increase in service and other sales was driven by deliveries of MCTs, other charging products and service parts and labor.

Cost of Revenues

Truck sales

Cost of revenues related to truck sales increased by \$95.0 million, or 94%, from \$100.9 million during the nine months ended September 30, 2022 to \$195.9 million during the nine months ended September 30, 2023. The increase is attributed to the voluntary recall of BEV trucks in the third quarter of 2023, which we accrued \$61.8 million for estimated recall campaign costs, and reserved \$45.7 million for BEV battery pack and other BEV inventory components deemed excess and obsolete.

With the start of BEV production late in the first quarter of 2022, we relied on expedited air freight to meet production deadlines during the nine months ended September 30, 2022. We have experienced a decrease in freight during the nine months ended September 30, 2023, which coupled with the reduction in number of trucks delivered, partially offset the increases in cost of revenues due to the recall campaign.

Service and other

Cost of revenues related to service and other revenue increased by \$1.8 million, or 77%, from \$2.4 million during the nine months ended September 30, 2022 to \$4.2 million during the nine months ended September 30, 2023. The increase was primarily driven by direct materials, outsourced services, and fulfillment costs related to MCTs and other charging product deliveries and direct materials and labor related to service parts and labor.

Research and Development

Research and development expenses decreased by \$36.1 million, or 17.6%, from \$204.3 million during the nine months ended September 30, 2022 to \$168.3 million during the nine months ended September 30, 2023. This decrease was primarily due to decreased spending on outside development, professional services, freight, tooling, and expensed components related to Tre BEV and FCEV prototype builds of \$36.7 million. Additional decreases were related to stock compensation for \$7.6 million, and travel for \$1.4 million. These decreases were partially offset by an increase in personnel costs of \$6.3 million related to higher labor costs and severance costs incurred related to reorganization in June 2023.

Selling, General, and Administrative

Selling, general, and administrative expenses decreased by \$130.5 million, or 45.0%, from \$289.9 million during the nine months ended September 30, 2022 to \$159.4 million during the nine months ended September 30, 2023. The decrease was driven by stock based compensation expense of \$135.0 million, which decreased primarily due to the acceleration of stock compensation for the market based RSUs that were cancelled in the third quarter of 2022, and a decrease in legal expenses of \$23.5 million, primarily related to Mr. Milton's indemnification agreement. Decreases were partially offset by increases in personnel costs of \$14.1 million related to higher labor costs and severance costs incurred related to reorganization in June 2023, and additional depreciation expense of \$10.8 million primarily related to the reassessment of useful lives for BEV demo trucks. Additional increases included costs related to occupancy, travel, public relations and other general corporate expenses of \$3.5 million.

Loss on Supplier Deposits

Loss on supplier deposits of \$18.4 million during the nine months ended September 30, 2023 was related to losses on deposits for certain tooling and long-term supply agreements.

Interest Expense, net

Interest expense, net increased by \$60.5 million from \$10.8 million during the nine months ended September 30, 2022 to \$71.3 million during the nine months ended September 30, 2023. Interest expense increased due to an increase in interest on our Toggle Convertible Notes of \$52.5 million, an increase in interest on our Senior Convertible Notes of \$11.7 million, an increase in interest on our financing obligation of \$2.6 million, and an increase in interest on our Collateralized Promissory Notes of \$0.4 million, partially offset by an increase in interest income earned on our cash, cash equivalents and restricted cash and cash equivalents balances.

Revaluation of Warrant Liability

The revaluation of warrant liability decreased by \$3.2 million, from a \$3.5 million gain during the nine months ended September 30, 2022 to a \$0.3 million gain during the nine months ended September 30, 2023, resulting from changes in fair value of our warrant liability.

Gain on Divestiture of Affiliate

Gain on divestiture of affiliate was \$70.8 million for the nine months ended September 30, 2023, representing the consideration for the divestiture of Nikola Iveco Europe GmbH and related License Agreement, in excess of the basis of our investment as of the divestiture date.

Loss on Debt Extinguishment

Loss on debt extinguishment was \$20.4 million for the nine months ended September 30, 2023, representing the loss on exchange of \$100.0 million of June 2022 Toggle Convertible Notes for the issuance of \$100.0 million April 2023 Toggle Convertible Notes.

Other Income (Expense), net

Other income (expense), net decreased by \$156.7 million from \$4.4 million net income during the nine months ended September 30, 2022 to \$152.3 million net expense during the nine months ended September 30, 2023. The decrease is primarily related to incremental losses on revaluation of derivative assets and liabilities of \$192.0 million, losses from foreign currency translation of \$6.9 million, losses on sales of asset of \$1.4 million, and decreases of government grant income. Decreases were partially offset by a gain on revaluation of contingent stock consideration of \$44.0 million.

Income Tax Expense

Income tax expense was immaterial for the nine months ended September 30, 2023 and 2022. We have accumulated net operating losses at the federal and state level and maintain a full valuation allowance against our net deferred taxes.

Equity in Net Loss of Affiliates

Equity in net loss of affiliates increased by \$10.2 million, from \$6.1 million for the nine months ended September 30, 2022 to \$16.3 million for the nine months ended September 30, 2023. The increase was driven primarily by additional losses in the current period related to our equity method investments, including most significantly Nikola Iveco Europe GmbH through the divestiture date.

Non-GAAP Financial Measures

In addition to our results determined in accordance with GAAP, we believe the following non-GAAP measures are useful in evaluating operational performance. We use the following non-GAAP financial information to evaluate 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 operating performance.

EBITDA and Adjusted EBITDA

"EBITDA" is defined as net loss from continuing operations before interest income or expense, income tax expense or benefit, and depreciation and amortization. "Adjusted EBITDA" is defined as EBITDA adjusted for stock-based compensation and other items determined by management. Adjusted EBITDA is intended as a supplemental measure of our performance that is neither required by, nor presented in accordance with, GAAP. We believe that the use of EBITDA and Adjusted EBITDA provides an additional tool for investors to use in evaluating ongoing operating results and trends and in 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 Adjusted EBITDA may not be comparable to other similarly titled measures computed by other companies, because all companies may not calculate 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. You should review the reconciliation of net loss **from continuing operations** to EBITDA and Adjusted EBITDA below and not rely on any single financial measure to evaluate our business.

The following table reconciles net loss from continuing operations to EBITDA and Adjusted EBITDA for the three **and nine** months ended **September 30, 2023** **March 31, 2024** and **2022**:

	Three Months Ended September 30,		Nine Months Ended September 30,					
	2023	2022	2023	2022				
	(in thousands)							
Three Months Ended March 31,								
Three Months Ended March 31,								
Three Months Ended March 31,								
2024			2024					
			2023					
(in thousands)								
Net loss from continuing operations	Net loss from continuing operations	\$ (425,764)	\$ (236,234)	\$ (711,025)				
Interest expense, net	Interest expense, net	52,680	7,735	71,262				
Income tax expense		1	1	1				
Depreciation and amortization								
Depreciation and amortization								
Depreciation and amortization	Depreciation and amortization	16,996	6,796	28,758				
EBITDA	EBITDA	(356,087)	(221,702)	(611,004)				
Stock-based compensation	Stock-based compensation	18,659	102,845	68,916				
Loss on supplier deposits		716	—	18,433				
Gain on divestiture of affiliate		—	—	(70,849)				
Loss on debt extinguishment	Loss on debt extinguishment	—	—	20,362				
Loss on disposal of assets		—	—	—				
Equipment purchase cancellation		—	—	—				

Revaluation of financial instruments	Revaluation of financial instruments	145,717	(286)	151,151	(94)
Regulatory and legal matters ⁽¹⁾	Regulatory and legal matters ⁽¹⁾	2,432	11,227	5,673	38,319
Adjusted EBITDA	Adjusted EBITDA	\$ (188,563)	\$ (107,916)	\$ (417,318)	\$ (285,504)

⁽¹⁾ Regulatory and legal matters include legal, advisory, and other professional service fees incurred in connection with the short-seller article from September 2020, and investigations and litigation related thereto.

Non-GAAP Net Loss and Non-GAAP Net Loss Per Share, Basic and Diluted

Non-GAAP net loss and non-GAAP net loss per share, basic and diluted are presented as supplemental measures of our performance. Non-GAAP net loss is defined as net loss from continuing operations, basic and diluted adjusted for stock compensation expense and other items determined by management. Non-GAAP net loss per share, basic and diluted, is defined as non-GAAP net loss divided by weighted average shares outstanding, basic and diluted.

	Three Months Ended March 31,				
	Three Months Ended March 31,				
	Three Months Ended March 31,				
	2024			2024	2023
(in thousands, except share and per share data)					
Net loss from continuing operations					
Stock-based compensation					
	Three Months Ended September 30,			Three Months Ended September 30,	
	2023	2022	2023	2022	
Loss on debt extinguishment					
	(in thousands, except share and per share data)				
Net loss from continuing operations	\$ (425,764)	\$ (236,234)	\$ (711,025)	\$ (562,172)	
Stock-based compensation	18,659	102,845	68,916	211,214	
Loss on supplier deposits	716	—	18,433	—	
Gain on divestiture of affiliate	—	—	(70,849)	—	
Loss on debt extinguishment					
Loss on debt extinguishment	—	—	20,362	—	
Revaluation of financial instruments	Revaluation of financial instruments	145,717	(286)	151,151	(94)
Loss on disposal of assets					
Equipment purchase cancellation					
Regulatory and legal matters ⁽¹⁾	Regulatory and legal matters ⁽¹⁾	2,432	11,227	5,673	38,319
Non-GAAP net loss	Non-GAAP net loss	\$ (258,240)	\$ (122,448)	\$ (517,339)	\$ (312,733)
Non-GAAP net loss					
Non-GAAP net loss					

Non-GAAP net loss per share, basic and diluted					
Non-GAAP net loss per share, basic and diluted					
Non-GAAP net loss per share, basic and diluted	Non-GAAP net loss per share, basic and diluted	\$ (0.30)	\$ (0.28)	\$ (0.73)	\$ (0.73)
Weighted average shares outstanding, basic and diluted	Weighted average shares outstanding, basic and diluted	857,213,992	438,416,393	706,325,212	426,382,736
Weighted average shares outstanding, basic and diluted					
Weighted average shares outstanding, basic and diluted					

⁽¹⁾ Regulatory and legal matters include legal, advisory, and other professional service fees incurred in connection with the short-seller article from September 2020, and investigations and litigation related thereto.

Adjusted Free Cash Flow

We define "Adjusted free cash flow", a non-GAAP financial measure, as net cash flow from operating activities less purchases of property, plant and equipment. Adjusted free cash flow is intended as a supplemental measure of our performance that is neither required by, nor presented in accordance with, GAAP.

Our use of Adjusted free cash flow has limitations as an analytical tool and should not be considered in isolation or as a substitute for an analysis of our results under GAAP. First, Adjusted free cash flow is not a substitute for net cash flow from operating activities. Second, other companies may calculate Adjusted free cash flow or similarly titled non-GAAP financial measures differently or may use other measures to evaluate their performance, all of which could reduce the usefulness of Adjusted free cash flow as a tool for comparison. Additionally, the utility of Adjusted free cash flow is further limited as it does not reflect our future contractual commitments and does not represent the total increase or decrease in our cash balance for a given period. Because of these and other limitations, Adjusted free cash flow should be considered along with net cash flow from operating activities and other comparable financial measures prepared and presented in accordance with GAAP.

The following table presents a reconciliation of net cash flow from operating activities, the most directly comparable financial measure calculated in accordance with GAAP, to Adjusted free cash flow for each of the periods presented.

	Three Months Ended September 30,		Nine Months Ended September 30,								
	2023	2022	2023	2022							
	(in thousands)										
Three Months Ended March 31,											
Three Months Ended March 31,											
Three Months Ended March 31,											
Most comparable GAAP measure:	2024		2024		2023 (in thousands)						
	(in thousands)										
Net cash used for operating activities	Net cash used for operating activities	\$ (91,259)	\$ (157,648)	\$ (378,424)	\$ (431,459)						
Net cash used for investing activities		(115)	(79,600)	(55,642)	(169,943)						

Net cash provided by financing activities	188,119	111,814	512,257	482,951
Net cash used for operating activities				
Net cash used for operating activities				
Net cash provided by (used in) investing activities				
Net cash provided by (used in) financing activities				
Non-GAAP measure:	Non-GAAP measure:			
Non-GAAP measure:				
Non-GAAP measure:				
Net cash used for operating activities				
Net cash used for operating activities				
Net cash used for operating activities				
Net cash used for operating activities	(91,259)	(157,648)	(378,424)	(431,459)
Purchases of property, plant and equipment	Purchases of property, plant and equipment			
	(20,690)	(51,120)	(108,409)	(118,436)
Adjusted free cash flow	Adjusted free cash flow	\$ (111,949)	\$ (208,768)	\$ (486,833)
		<u>\$ (111,949)</u>	<u>\$ (208,768)</u>	<u>\$ (486,833)</u>
				<u>\$ (549,895)</u>

Liquidity and Capital Resources

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 **condensed** consolidated financial statements are issued.

As an early stage growth company, our ability to access capital is critical. Until we can generate sufficient revenue to cover our operating expenses, working capital and capital expenditures, we will need to raise additional capital. Additional stock financing may not be available on favorable terms and could be dilutive to current stockholders. Debt financing, if available, may involve restrictive covenants and dilutive financing instruments. **In addition, we will need authorized but unissued capital stock sufficient to meet our needs. Any increase in our authorized capital stock is subject to stockholder approval, which we may not be able to obtain.**

We intend to employ various strategies to obtain the required funding for future operations such as continuing to access capital through the Equity Distribution Agreement. However, the ability to access the Equity Distribution Agreement is dependent on our common stock trading volume, **and** the market price of our common stock. **stock and availability of unreserved shares.**

If capital is not available to us when, and in the amounts needed, we could be required to delay, scale back, or abandon some or all of our operations and development programs, which would materially harm our business, financial condition and results of operations. The result of our ASC 205-40 analysis, due to uncertainties discussed above, is that there is substantial doubt about our ability to continue as a going concern through the next twelve months from the date of issuance of these **condensed** consolidated financial statements.

Since inception, we financed our operations primarily from the sales of common stock, the **Business Combination**, **business combination**, redemption of warrants, and the issuance of debt. As of **September 30, 2023** **March 31, 2024**, our principal sources of liquidity were our cash and cash equivalents in the amount of **\$362.9** **\$345.6** million.

During 2021, we entered into a **common stock** purchase agreement with Tumim (the "First Tumim Purchase Agreement") allowing us to issue shares of our common stock to Tumim for proceeds of up to \$300.0 million. **During the nine months ended September 30, 2023, we sold 3,420,990 shares of common stock for proceeds of \$8.4 million, under the First Tumim Purchase Agreement.** During the nine months ended September 30, 2022, we sold 17,248,244 shares of common stock for proceeds of \$123.7 million under the **terms of the First Tumim Purchase Agreement.** As of **September 30, 2023** **March 31, 2024**, we sold in aggregate 34,882,732 shares of common stock to Tumim under the terms of

the First Tumim Purchase Agreement for gross proceeds of \$295.9 million, excluding the 155,703 commitment shares issued to Tumim as consideration for its irrevocable commitment to purchase shares of our common stock under the First Tumim Purchase Agreement. The First Tumim Purchase Agreement was terminated in the first quarter of 2023.

Additionally, during 2021, we entered into a second common stock purchase agreement with Tumim (the "Second Tumim Purchase Agreement" and, together with the First Tumim Purchase Agreement, the "Tumim Purchase Agreements") allowing us to issue shares of our common stock to Tumim for proceeds of up to an additional \$300.0 million, provided that certain conditions have been met. As of **September 30, 2023** **March 31, 2024**, we sold to Tumim 28,790,787 shares of common stock for proceeds of \$59.2 million, excluding the 252,040 commitment shares issued to Tumim as a consideration for its irrevocable commitment to purchase shares of our common stock under the Second Tumim Purchase Agreement. The Second Tumim Purchase Agreement was terminated in the third quarter of 2023.

During the second quarter of 2022, we completed a private placement of \$200.0 million aggregate principal amount of the June 2022 Toggle Convertible Notes, which mature on May 31, 2026. Net proceeds from the issuance were \$183.2 million. The June 2022 Toggle Convertible Notes bear See Note 6, **Debt and Finance Lease Liabilities**, for additional details regarding conversions, interest at 8.00% per annum, to the extent paid in cash ("Cash Interest"), and 11.00% per annum, to the extent paid in kind through the issuance of additional June 2022 Toggle Convertible Notes ("PIK Interest"). Interest is payable semi-annually in arrears on May 31 and November 30 of each year, beginning on November 30, 2022. We can elect to make any interest payment through Cash Interest, PIK Interest or any combination thereof. optional redemptions.

The initial conversion rate is 114.3602 shares per \$1,000 principal amount of the June 2022 Toggle Convertible Notes, subject to customary anti-dilution adjustments in certain circumstances, which represented an initial conversion price of approximately \$8.74 per share. During the second quarter of 2023, we exchanged \$100.0 million of June 2022 Toggle Convertible Notes for \$100.0 million principal amount of April 2023 Toggle Convertible Notes. The initial conversion rate for the April 2023 Toggle Convertible Notes is 686.8132 shares per \$1,000 principal amount of the April 2023 Toggle Convertible Notes, subject to customary anti-dilution adjustments in certain circumstances, which represented an initial conversion price of approximately \$1.46 per share. During the third quarter of 2023, the April 2023 Toggle Convertible Notes were converted in full for the issuance of 72,458,789 shares of our common stock.

Prior to February 28, 2026, the June 2022 Toggle Convertible Notes will be convertible at the option of the holders only upon the occurrence of specified events and during certain periods, and will be convertible on or after February 28, 2026, at any time until the close of business on the second scheduled trading day immediately preceding the maturity date of the June 2022 Toggle Convertible Notes.

During the third quarter of 2022, we entered into an Equity Distribution Agreement with Citi, which was subsequently amended and restated during the third quarter of 2023, with Citi pursuant to which we can issue and sell shares of our common stock with an aggregate maximum offering price of \$600.0 million. During the three and nine months ended September 30, 2023 Through March 31, 2024, we sold 27,662,880 and 66,690,443 an aggregate of 113,675,470 shares of common stock respectively, under the Equity Distribution Agreement. During the three Agreement, and nine months ended September 30, 2023, we received \$53.1 approximately \$281.0 million and \$115.6 million, respectively, in net proceeds from the Equity Distribution Agreement, after deduction of commissions and fees to the sales agent. As of **September 30, 2023** **March 31, 2024**, we had approximately \$313.7 \$311.7 million remaining available under the Equity Distribution Agreement.

During the fourth quarter of 2022, we entered into a securities purchase agreement with an investor pursuant to which we can issue and sell up to \$125.0 million in initial principal amount of senior convertible notes (the "First Purchase Agreement Notes") in a registered direct offering. We consummated an initial closing for the sale of \$50.0 million in aggregate principal amount of First Purchase Agreement Notes on December 30, 2022. During 2023, we consummated additional closings of \$52.1 million in aggregate principal amount of First Purchase Agreement Notes. The Purchase Agreement was terminated in the third quarter of 2023. As of **September 30, 2023** **March 31, 2024**, all of the First Purchase Agreement Notes had been converted into common stock.

On April 4, 2023, we sold 29,910,715 shares of our common stock in an underwritten public offering at an offering price of \$1.12 per share, for net proceeds of \$32.2 million after deducting underwriting discounts and commissions.

On March 29, 2023, we entered into a stock purchase agreement with an investor pursuant to which the investor agreed to purchase up to \$100.0 million of shares of our common stock in a registered direct offering, with the actual amount of shares of common stock purchased in the direct offering reduced to the extent of the total number of shares sold in the public offering. The direct offering closed on April 11, 2023, and we sold 59,374,999 shares of common stock at \$1.12 per share to the investor for net proceeds of \$63.2 million.

On August 3, 2023, we obtained stockholder approval to increase our authorized number of shares of common stock from 800,000,000 to 1,600,000,000. As of March 31, 2024, we had approximately 145.2 million shares unreserved and unissued.

During the third quarter of 2023, we entered into a securities purchase agreement with an investor pursuant to which we can issue and sell up to \$325.0 million in initial principal amount of senior convertible notes (the "Second Purchase Agreement Notes" and, together with the Purchase Agreement Notes, the "Senior Convertible Notes") in a registered direct offering. We consummated an initial closing for the sale of \$125.0 million in aggregate principal amount of Second Purchase Agreement Notes on August 21, 2023. Additionally, during the third quarter of 2023, we consummated an additional closing of \$40.0 million in aggregate principal amount of Second Purchase Agreement Notes. Each Second Purchase Agreement Note will accrue interest at a rate of 5% per annum, and will mature on the first anniversary of its date of issuance unless the maturity date is extended at the option of the noteholders in certain instances. As of **September 30, 2023**, \$32.4 million aggregate principal amount **March 31, 2024**, all of the Second Purchase Agreement Notes were outstanding, had been converted into common stock. The amount of additional notes that may be issued pursuant to the Second Purchase Agreement is limited by Nasdaq listing rules limiting the number of shares of common stock issuable upon conversion of the notes and is less than the remaining notional capacity under the agreement.

At any time on or after August 21, 2023, all or any portion of the principal amount of each Second Purchase Agreement Note, plus accrued and unpaid interest, any make-whole amount and any late charges thereon (the "Conversion Amount"), is convertible, in whole or in part, at the noteholder's option, into shares of common stock.

At any time during an Event of Default Redemption Right Period (as defined in the Senior Convertible Note), a noteholder may alternatively elect to convert all or any portion of the Senior Convertible Notes at an alternate conversion rate equal to the quotient of (i) 115% of the Conversion Amount divided by (ii) the Conversion Price.

On **April 4, 2023** December 12, 2023, we sold 29,910,715 133,333,334 shares of our common stock in an underwritten public offering (the "Public Offering") at a public offering price of \$1.12 \$0.75 per share, for net proceeds of \$32.2 \$95.6 million after deducting underwriting discounts and commissions.

On March 29, 2023 December 12, 2023, we entered into a stock purchase agreement with sold \$175.0 million aggregate principal amount of our 8.25% green convertible senior notes due 2026 (the "8.25% Convertible Notes") for net proceeds of \$169.4 million after deducting underwriting discounts and commissions. Through March 31, 2024, holders of the 8.25% Convertible Notes converted an investor (the "Investor") pursuant to which aggregate principal amount of \$161.0 million for the Investor agreed to purchase up to \$100.0 million issuance of 178,879,980 shares of our common stock in a registered direct offering (the "Direct Offering"), with the actual amount of shares of common stock purchased in the Direct Offering reduced to the extent of the total number of shares sold on the Public Offering. The Direct Offering closed on April 11, 2023, and we sold 59,374,999 shares of common stock at the Public Offering price of \$1.12 per share to the Investor for net proceeds of \$63.2 million stock.

On August 3, 2023, we obtained stockholder approval to increase our authorized number of common stock from 800,000,000 to 1,600,000,000, providing us additional share availability, including to continue to utilize the financing sources discussed above. As of September 30, 2023, we had 473.1 million shares remaining available for issuance.

Short-Term Liquidity Requirements

As of September 30, 2023 March 31, 2024, our current assets were \$470.7 million \$469.3 million, consisting primarily of cash and cash equivalents of \$362.9 \$345.6 million and inventory of \$57.0 \$61.3 million, and our current liabilities were \$293.1 million \$271.3 million, primarily comprised of accrued expenses and accounts payables, payable, which includes \$85.5 \$82.5 million related to the SEC settlement and \$62.0 \$61.5 million for warranty reserves related primarily to the BEV recall.

Our short term liquidity will be utilized to execute our business strategy over the next twelve month period including (i) performing recall work and servicing of related to the BEV truck, recall, (ii) expanding and maintaining the Coolidge manufacturing facility, (iii) the roll-out of establishing our initial energy infrastructure, and (iv) scaling the production, distribution, and servicing of the FCEV truck, and BEV trucks. However, actual results could vary materially and negatively as a result of a number of factors, including:

- our ability to manage the costs of manufacturing and servicing the FCEV and BEV trucks and our ability to drive the cost down with our suppliers;
- the amount and timing of cash generated from sales of our FCEV and BEV trucks and hydrogen infrastructure, and our ability to offer our products and services at competitive prices;
- the costs of expanding and maintaining our manufacturing facility, hydrogen refueling assets and equipment;
- our warranty claims experience should actual warranty claims differ significantly from estimates;
- our BEV truck recall campaign costs; costs and timing;
- the scope, progress, results, costs, timing and outcomes of our ongoing validation and demos of our FCEV trucks;
- the costs and timing of development and deployment of our hydrogen distribution dispensing and storage network;
- our ability to attract and retain strategic partners for development and deployment maintenance of our hydrogen distribution dispensing and storage network and the related costs and timing;
- the costs of maintaining, expanding and protecting our intellectual property portfolio, including potential litigation costs and liabilities;
- the costs of additional general and administrative personnel, including accounting and finance, legal and human resources, as well as costs related to litigation, investigations, or settlements;
- our ability to raise sufficient capital to finance our business, and our ability to increase our authorized common stock, which is subject to stockholder approval; and
- other risks discussed in the section entitled "Risk Factors."

For at least the next twelve months, we expect our principal demand for funds will be for our ongoing activities described above. In addition to those activities, our short term liquidity will be utilized to fund the current portion of non-cancellable commitments including leases, debt obligations and purchase commitments. See Note 5, Leases, Note 8, Debt and Finance Lease Liabilities, and Purchase Commitments within Note 14, Commitments and Contingencies, of our Annual Report on Form 10-K for the year ended December 31, 2023, as amended, for additional details.

As of March 31, 2024, we anticipate that our capital expenditures for the remainder of fiscal year 2024 will be approximately \$90.0 million. Actual capital expenditures will also be dependent on availability of capital as well as third party lead times.

Long-Term Liquidity Requirements

Until we can generate sufficient revenue and positive gross margins to cover operating expenses, working capital and capital expenditures, we expect to fund cash needs through a combination of equity and debt financing, including and potentially through lease securitization, strategic collaborations, and licensing arrangements. If we raise funds by issuing equity or equity-linked securities, dilution to stockholders may result. Any equity or equity-linked securities issued may also provide for rights, preferences or privileges senior to those of holders of our common stock. If we raise funds by issuing debt securities, these debt securities would have rights, preferences and privileges senior to those of holders of our common stock. The terms of debt securities or other debt financing agreements could impose significant restrictions on our operations and may require us to pledge certain assets. The credit market and financial services industry have in the past, and may in the future, experience periods of upheaval that could impact the availability and cost of equity and debt financing.

Since the date of our incorporation, we have not engaged in any off balance sheet arrangements, as defined in the rules and regulations of the SEC. For the three and nine months ended September 30, 2023 March 31, 2024, there have been no other material changes to our significant contractual obligations as previously disclosed in our Annual Report on Form 10-K for the year ended December 31, 2022 December 31, 2023, as amended.

As of March 31, 2024, our long-term liquidity requirements include debt repayments, lease arrangements, and long-term purchase commitments. See Note 5, Leases, Note 8, Debt and Finance Lease Liabilities, and Purchase Commitments within Note 14, Commitments and Contingencies, of our Annual Reporting on Form 10-K for the year ended December 31, 2023, as amended, for additional details.

Summary of Cash Flows

The following table provides a summary of cash flow data:

	Nine Months Ended September 30,	
	2023	2022
	(in thousands)	
Net cash used in operating activities	\$ (378,424)	\$ (431,459)
Net cash used in investing activities	(55,642)	(169,943)
Net cash provided by financing activities	512,257	482,951

	Three Months Ended March 31,	
	2024	2023
	(in thousands)	
Net cash used in operating activities	\$ (115,603)	\$ (176,022)
Net cash provided by (used in) investing activities	4,940	(50,517)
Net cash provided by (used in) financing activities	(5,055)	115,916

Cash Flows from Operating Activities

Our cash flows from operating activities are significantly affected by the growth of our business primarily related to manufacturing, research and development and selling, general and administrative activities. Our operating cash flows are also affected by our working capital needs, needs to support personnel-related expenditures and fluctuations in accounts payable and other current assets and liabilities.

Net cash used in operating activities was \$378.4 million \$115.6 million for the nine three months ended September 30, 2023 March 31, 2024. The most significant component of our cash used during this period was net loss from continuing operations of \$711.0 \$147.7 million, which included \$195.1 \$20.0 million for inventory write downs, \$10.6 million related to depreciation and amortization, non-cash expenses of \$8.8 million related to stock-based compensation, \$3.6 million non-cash interest expense, \$0.8 million non-cash net losses on revaluation of financial instruments, gain on divestiture of affiliate of \$70.8 million, non-cash expenses of \$68.9 million related to stock-based compensation, \$64.5 million inventory write downs, \$72.8 million non-cash interest expense, other non-cash charges of \$43.7 million \$3.0 million, \$2.7 million non-cash loss from the disposal of assets, and net cash outflows of \$41.7 million \$17.5 million from changes in operating assets and liabilities primarily driven by an increase increases in inventory, accounts receivable, net and prepaid expenses and other current assets, partially offset by a decrease an increase in accounts receivable, net, payable and accrued expenses.

Net cash used in operating activities was \$431.5 million \$176.0 million for the nine three months ended September 30, 2022 March 31, 2023. The most significant component of our cash used during this period was a net loss from continuing operations of \$562.2 million \$145.3 million, which included non-cash expenses of \$211.2 million \$24.5 million related to stock-based compensation, \$16.6 \$10.0 million inventory write downs, \$16.5 million non-cash interest expense, \$8.4 million equity in depreciation and amortization, net loss affiliates, other non-cash charges of \$15.3 \$8.8 million and net cash outflows of \$128.9 \$82.5 million from changes in operating assets and liabilities primarily driven by an increase in inventory and accounts receivable, partially offset by an increase a decrease in accounts payable and accrued expenses, expenses and an increase in prepaid expenses and other current assets.

Cash Flows from Investing Activities

We continue to experience negative cash flows from investing activities as we expand our business and infrastructure. Cash flows from investing activities primarily relate to proceeds from the sale of assets, partially offset by capital expenditures to support our growth. As of September 30, 2023, we anticipate our capital expenditures for the remainder of fiscal year 2023 to be approximately \$35.0 million, of which a significant portion is related to investments in supplier tooling, the build out of FCEV trucks and FCPM assembly lines in

Coolidge, Arizona, and the development of our hydrogen infrastructure network. Actual capital expenditures will also be dependent on availability of capital as well as third party lead times.

Net cash used in investing activities is expected to continue as we maintain our truck manufacturing facility in Coolidge, Arizona, and develop our hydrogen infrastructure network.

Net cash provided by investing activities was \$55.6 million \$4.9 million for the nine three months ended September 30, 2023 March 31, 2024, which was primarily due to \$108.4 proceeds of \$21.4 million related to the sale of assets, partially offset by \$16.5 million in purchases of and deposits for capital equipment costs of expansion of our facilities, and investments in our hydrogen infrastructure and \$3.0 million in other investing outflows, partially offset by proceeds of \$35.0 million related to the divestiture of Nikola Iveco Europe GmbH and proceeds of \$20.7 million related to the sale of assets, infrastructure.

Net cash used in investing activities was \$169.9 million \$50.5 million for the nine three months ended September 30, 2022 March 31, 2023, which was primarily due related to \$118.4 million in purchases of and deposits for capital equipment, costs of expansion for our facilities, and investments in our hydrogen infrastructure, \$23.0 million in contribution to investments in affiliates, \$21.9 million issuance of senior secured debt and prepaid acquisition-related consideration, and settlement of the second price differential related to WVR for \$6.6 million, infrastructure.

Cash Flows from Financing Activities

Net cash provided by used in financing activities was \$512.3 million \$5.1 million for the nine months ended September 30, 2023 March 31, 2024, which was due to payments on insurance premium financings of \$1.9 million, payments for coupon make whole premiums of \$1.7 million and other net finance outflows of \$1.5 million.

Net cash provided by financing activities was \$115.9 million for the three months ended March 31, 2023, which was due to proceeds from the issuance Tumim Purchase Agreements of Senior Convertible Notes of \$217.1 approximately \$64.7 million, proceeds from the issuance of common stock under the Equity Distribution Agreement of \$115.0 million, proceeds from the Tumim Purchase Agreements of approximately \$67.6 million, proceeds from the Direct Offering of \$63.5 \$30.5 million, proceeds from the issuance of financing obligations of \$53.5 million, proceeds from the Public Offering of \$32.2 million, partially offset by other net finance charges of \$36.7 million.

Net cash provided by financing activities was \$483.0 million for the nine months ended September 30, 2022, which was due to proceeds from the issuance of the June 2022 Toggle additional Senior Convertible Notes net of debt issuance costs, of \$183.5 million, proceeds from the Tumim Purchase Agreements of approximately \$123.7 million, proceeds from the issuance of common stock under the Equity Distribution Agreement of \$100.5 million, proceeds from the issuance of the Collateralized Note of \$54.0 million, proceeds from the issuance of financing obligations of \$44.0 million, proceeds from insurance premium financing of \$6.6 million, and proceeds from the exercise of stock options of \$1.6 million, offset by the repayment of our promissory note for \$28.1 \$25.0 million, and other finance charges of \$2.9 \$4.3 million.

Critical Accounting Policies and Estimates

Our discussion and analysis of our financial condition and results of operations are based upon our financial statements, which have been prepared in accordance with GAAP. These principles require us to make certain estimates and assumptions. These estimates and assumptions affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities, as of the balance sheet date, as well as reported amounts of revenue and expenses during the reporting period. Our most significant estimates and judgments involve valuation of our stock-based compensation including for the fair value of common stock and market-based restricted stock units, the valuation of warrant liabilities, derivative assets and liabilities, estimates related to our lease assumptions warranty and recall campaign reserves, and revenue recognition, contingent liabilities, including litigation reserves, warranty reserves, including inputs and assumptions related to recall campaigns, and inventory valuation. 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, estimates, and the results may be material.

There have been no substantial changes to these estimates, or the policies related to them during the three and nine months ended September 30, 2023 March 31, 2024. For a full discussion of these estimates and policies, see "Critical Accounting Policies and Estimates" in Item 7 of our Annual Report on Form 10-K for the year ended December 31, 2022 December 31, 2023, as amended.

Recent Accounting Pronouncements

See Note 2 to our Unaudited Condensed Consolidated Financial Statements included elsewhere in this Quarterly Report on Form 10-Q for more information about recent accounting pronouncements, the timing of their adoption, and our assessment, to the extent we have made one, of their potential impact on our financial condition and our results of operations.

ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

We are exposed to a variety of market and other risks, including the effects of changes in interest rates, inflation, and foreign currency exchange rates, as well as risks related to regarding the availability of funding sources, hazard hazardous events, and specific asset risks.

Interest Rate Risk

The market risk inherent in our financial instruments and our financial position represents the potential loss arising from adverse changes in interest rates. As of March 31, 2024 and December 31, 2023, we had cash and cash equivalents of \$345.6 million and \$464.7 million, respectively. As of March 31, 2024 and December 31, 2023, we had a cash and cash equivalents balance of \$33.4 million and \$29.8 million, respectively, which consisted of interest-bearing money market accounts for which the fair market value would be affected by changes in the general level of U.S. interest rates. However, due to the short-term maturities and the low-risk profile of our investments, an immediate 10% change in interest rates would not have a material effect on the fair market value of our cash and cash equivalents.

Foreign Currency Risk

For the three months ended September 30, 2023 March 31, 2024 and 2022, 2023, we recorded a gain of \$1.9 \$1.0 million and a gain loss of \$2.6 \$1.1 million, respectively, for foreign currency translation. For the nine months ended September 30, 2023 and 2022, we recorded a gain of \$5.1 million and a gain of \$6.5 million, respectively, for foreign currency translation, exchange adjustments.

ITEM 4. CONTROLS AND PROCEDURES

Evaluation of Disclosure Controls and Procedures

We maintain a system of disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934 (the "Exchange Act")) designed to ensure that the information required to be disclosed by us in the reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the rules and forms of the SEC, and is accumulated and communicated to our management, including our Chief Executive Officer (our principal executive officer) and Chief Financial Officer (our principal financial officer), as appropriate, to allow timely decisions regarding required disclosure.

Our management, with the participation of our Chief Executive Officer and our Chief Financial Officer, has evaluated the effectiveness of our disclosure controls and procedures under the Exchange Act as of September 30, 2023 March 31, 2024, the end of the period covered by this Quarterly Report on Form 10-Q. Based on such evaluation, our Chief Executive Officer and our Chief Financial Officer have concluded that, as of such date, our disclosure controls and procedures were not effective due to material weaknesses in internal control over financial reporting, including a material weakness related to our information technology general controls ("ITGC") that was disclosed in our Annual Report on Form 10-K for the fiscal year ended December 31, 2022 December 31, 2023, as amended.

Additionally, the Company identified a material weakness in internal control over financial reporting in connection with the review of our unaudited consolidated financial statements for the three months ended September 30, 2023. A material weakness is a deficiency, or a combination of deficiencies, in internal control over financial reporting such that it is reasonably possible that a material misstatement of the annual or interim financial statements will not be prevented or detected on a timely basis. The material weakness identified is a result of certain control deficiencies related to the precision of our review for the valuation and remeasurement of the embedded derivative liability of our Toggle

Convertible Notes as of June 30, 2023 and September 30, 2023. In response to this material weakness, we intend to enhance the control execution to ensure the Company's review of the completeness of features included in valuations.

Ongoing Remediation of Previously Identified Material Weakness

The aforementioned material weakness for ITGCs was first identified in 2022. With the oversight of senior management and our Audit Committee, we have identified controls and implemented our remediation plan is underway to address the material weakness related to our ITGCs mentioned above. During the nine months ended September 30, 2023, we have completed the following remedial actions:

- performed a risk assessment over the IT system that supports our financial reporting processes;
- hired consultants and key personnel with internal control experience with our IT system to drive remediation efforts;
- designed, developed, and deployed an enhanced ITGC framework, including the implementation of systems and tools to enable the effectiveness and consistent execution of these controls; and
- developed a training program to address ITGCs and policies, including (i) educating control owners concerning the principles and requirements of each control, with a focus on those related to user access and change management over IT systems impacting financial reporting; (ii) developing and maintaining documentation of

underlying ITGCs to promote knowledge transfer upon personnel and function changes; and (iii) implementing an IT

management review and testing plan to monitor ITGCs with a specific focus on systems supporting our financial reporting processes; and

We intend to continue to strengthen the implemented enhanced system capabilities and business processes to manage and monitor key elements of the control framework. This includes segregation of duties, elevated user access review, change management, user provisioning and deprovisioning, and user access reviews.

We expect these efforts to be complete in the fourth quarter of 2023.

measures described above will remediate the material weakness and strengthen our internal control over financial reporting. However, the ITGC this material weakness will not be considered remediated until the applicable controls operate for a sufficient period of time and management has concluded through testing that these the controls are operating effectively. We anticipate that the applicable remediation will be completed during fiscal year 2024. We are committed to continuing to improve our internal control processes, and, as we continue to evaluate and work to improve our internal control over financial reporting, we may take additional measures to address control deficiencies, or we may modify or enhance certain of the remediation measures described above.

Changes in Internal Control over Financial Reporting

Except for Other than the changes in connection with the new material weakness and from our implementation of the remediation plans above, there were no changes in our internal control over financial reporting, as identified in connection with the evaluation required by Rule 13a-15(d) and Rule 15d-15(d) of the Exchange Act, that occurred during the three months ended September 30, 2023 March 31, 2024 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

PART II - OTHER INFORMATION

ITEM 1. LEGAL PROCEEDINGS

For a description of our material pending legal proceedings, see Note 12, 11, Commitments and Contingencies, to the condensed consolidated financial statements included elsewhere in this Quarterly Report on Form 10-Q and to Note 14 to our audited consolidated financial statements in our Annual Report on Form 10-K for the year ended December 31, 2022 December 31, 2023, as amended, which are incorporated by reference herein.

ITEM 1A. RISK FACTORS

Risks Related to Our Business and Industry

We are an early stage company with a history of losses, expect to incur significant expenses and continuing losses for the foreseeable future, and there is a substantial doubt that we will have sufficient funds to satisfy our obligations through the next 12 months from the date of this report.

We incurred net losses of \$784.2 million, \$966.3 million, \$562.2 million and \$812.7 million for the year ended December 31, 2022 December 31, 2023 and for the nine months ended September 30, 2022 March 31, 2023 and 2023, 2024, respectively, and have an accumulated deficit of approximately \$2.9 billion \$3.2 billion from the inception of Nikola Corporation, a Delaware corporation, prior to the merger with VectolQ, or Legacy Nikola, through September 30, 2023 March 31, 2024. We believe that we will continue to incur operating and net losses each quarter until at least the time we begin to generate significant margin from our trucks, which may not happen. We have determined under our ASC 205-40 analysis, there is a substantial doubt that we will have sufficient funds to satisfy our obligations through the next twelve months from the date of issuance of this Quarterly Report on Form 10-Q.

Our ability to continue as a going concern is dependent on our ability to obtain the necessary financing to meet our obligations and repay our liabilities arising from the ordinary course of business operations when they become due. The outcome of these matters cannot be predicted with any certainty at this time. If we are unable to raise sufficient capital when needed, our business, financial condition and results of operations will be materially and adversely affected, and we will need to significantly modify or terminate our operations and our planned business activities.

We intend to employ various strategies to obtain the required funding for future operations such as continuing to access capital through the amended and restated equity distribution agreement with Citigroup Global Markets Inc., as sales agent. Equity Distribution Agreement. However, the ability to access the equity distribution agreement Equity Distribution Agreement is dependent on our common stock trading volumes, and the market price of our common stock, and availability of unreserved shares, which cannot be assured, and the registration of shares to be sold under the Equity Distribution Agreement, and as a result cannot be included as sources of liquidity for our ASC 205-40 analysis.

Our potential future profitability is dependent upon the successful development and successful commercial introduction and acceptance of our trucks and our hydrogen station solution platform, which may not occur.

We expect the rate at which we will incur losses to be high in future periods as we:

- continue to validate and manufacture our trucks;
- manufacture an available inventory of our FCEV trucks;
- develop and deploy our hydrogen fueling solutions;
- continue to build out equip and equip tool our manufacturing plant in Arizona;
- build up inventories of materials and components for our trucks;
- manufacture an available inventory of our trucks;
- develop and deploy our hydrogen fueling stations; service trucks subject to the recall campaign;
- expand our design, development, maintenance and repair capabilities;
- increase our sales and marketing activities;
- develop our distribution infrastructure; and
- increase our general and administrative functions to support our growing operations.

Because we incur the costs and expenses from these efforts and other efforts before we receive any incremental revenue with respect thereto, if any, our losses in future periods will be significant. In addition, these efforts have and may continue to be more expensive than we currently anticipate and these efforts may not result in sufficient revenue if customers do not purchase or lease our trucks in sufficient volume, which would further increase our losses.

We may be unable to adequately control the costs associated with our operations.

We require significant capital to develop and grow our business. We expect to continue to incur significant expenses which will impact our profitability, including research and development expenses, raw material procurement costs, leases, licenses, and sales and distribution expenses as we build our brand and market our trucks, and general and administrative expenses as we scale our operations. In addition, we expect to continue to incur significant costs in connection with our services, including building our hydrogen fueling stations solutions and honoring our maintenance commitments. We may also have and expect to continue to incur significant costs related to the recall of our battery electric trucks. Our ability to become profitable in the future will not only depend on our ability to successfully market our vehicles and other products and services, but also to control our costs. If we are unable to cost-efficiently design, manufacture, market, sell, distribute and service our trucks and cost-efficiently develop our hydrogen fueling services, solutions, our margins, profitability and prospects would be materially and adversely affected.

We need to raise additional capital, which may not be available to us when we need it. If we cannot raise additional capital when needed, our operations and prospects will be negatively affected.

Our business is capital-intensive. We need to raise additional capital in the short- and long-term to operate our business, scale our manufacturing and roll out our hydrogen fueling stations, solutions, among other activities. We have and may continue to raise additional funds through the issuance of equity, equity related equity-linked or debt securities, strategic partnerships, licensing arrangements, or through obtaining credit from government or financial institutions. This capital will be necessary to fund our ongoing operations, continue research, development and design efforts, improve infrastructure, introduce new vehicles, build hydrogen fueling stations solutions and undertake other business activities. We cannot be certain that additional funds will be available to us on a timely basis, in the amounts needed, on reasonable terms, or terms favorable to us, or at all. If we raise funds by issuing equity or equity-linked securities, dilution to our stockholders could result. Any equity or equity-linked securities issued also may provide for rights, preferences or privileges senior to those of holders of our common stock. The terms of debt securities issued or borrowings, if available, could impose significant restrictions on our operations and may require us to pledge certain assets. If we raise funds through collaborations and licensing arrangements, we might be required to relinquish significant rights to our technologies or products, or grant licenses on terms that are not favorable to us.

If we cannot raise additional funds when we need them, we may have to significantly reduce our spending, delay or cancel our planned business activities or substantially change our corporate structure, and we may not have sufficient resources to conduct our business as planned. As a result, we may be forced to curtail or discontinue our operations, which could materially and adversely affect our financial condition, results of operations, business, and prospects. In addition, sales of a substantial number of shares of our common stock in the public market or the perception that these sales might occur, including pursuant to our amended and restated equity distribution agreement, the Equity Distribution Agreement, could depress the market price of our common stock and could impair our ability to raise capital through the sale of additional equity securities. We also need to increase our authorized common stock, which is subject to stockholder approval, and we may not be able to obtain such approval on a timely basis or at all. See "We may be unable to issue sufficient additional shares to operate our business, including pursuant to existing potential sources of capital, or strategic transactions, unless we obtain stockholder approval to amend our certificate of incorporation to effect a reverse stock split of the issued shares of our common stock, which would result in an increase in the number of authorized shares of our common stock available for issuance."

Our business model has yet to be tested and any failure to commercialize our strategic plans would have an adverse effect on our operating results and business, harm our reputation and could result in substantial liabilities that exceed our resources.

Investors should be aware of the difficulties normally encountered by a new enterprise, many of which are beyond our control, including substantial risks and expenses in the course of establishing or entering new markets, organizing operations and undertaking successful marketing activities. The likelihood of our success must be considered in light of these risks, expenses, complications, delays and the competitive environment in which we operate. Our business plan may not be successful, and we may not be able to generate significant revenue, raise sufficient capital or operate profitably. We will continue to encounter risks and difficulties frequently experienced by early commercial stage companies, including scaling up our infrastructure and headcount, and may encounter unforeseen expenses, difficulties or delays in connection with our growth. In

addition, as a result of the capital-intensive nature of our business, we expect to continue to sustain substantial operating expenses without generating sufficient revenue to cover expenditures. Any investment in our company is therefore highly speculative and could result in the loss of your entire investment.

Our limited operating history makes evaluating our business and future prospects difficult and may increase the risk of your investment.

You must consider the risks and difficulties we face as an early stage company with a limited operating history and a novel business plan. If we do not successfully address these risks, our business, prospects, operating results and financial condition will be materially and adversely harmed. We have a very limited operating history on which investors can base an evaluation of our business, operating results and prospects. We intend to derive substantially all of our revenue from the sale and lease of our vehicle platforms, which are still in the early stages of commercialization. Our revenue will also depend on the sale of hydrogen fuel. There are no assurances that we will be able to secure future business with the major trucking companies or with independent truck drivers.

It is difficult to predict our future revenue and appropriately budget for our expenses, and we have limited insight into trends that may emerge and affect our business. In the event that actual results differ from our estimates or we adjust our estimates in future periods, our operating results and financial position could be materially affected.

We may be unable to issue sufficient additional shares to operate our business, including pursuant to existing potential sources of capital, or strategic transactions, unless we obtain stockholder approval to amend our certificate of incorporation to effect a reverse stock split of the issued shares of our common stock, which will result in an increase in the number of authorized shares of our common stock available for issuance.

We operate in a capital-intensive industry. We do not have sufficient unissued shares of common stock for future issuances to raise funds to execute our business plan. Having additional authorized shares of common stock available is critical to our ability to run our business and our continued efforts to pursue our strategic goals and we will be limited by the number of shares available for future capital raising transactions, including pursuant to the Equity Distribution Agreement, agreements we may enter into in the future, or for business development transactions or acquisitions, unless we obtain stockholder approval of an amendment to our restated certificate of incorporation to effect a reverse stock split of the issued shares of our common stock, which will also have the effect of increasing the number of authorized shares of our common stock available for issuance.

We are soliciting the approval of our stockholders at our 2024 annual meeting of stockholders to amend our restated certificate of incorporation to effect a reverse stock split of the issued shares of our common stock. We have in the past encountered difficulties obtaining stockholder approval of proposals to increase our authorized common stock, and there can be no assurance that our stockholders will approve the foregoing amendments. The reverse stock split would have the effect of increasing the number of shares of our common stock authorized and available for issuance, relative to the number of issued and outstanding shares of our common stock. We believe effecting a reverse stock split is in the Company's and our stockholders' best interests as it would provide us with flexibility to issue shares of common stock to continue to finance our business and for future corporate needs, including possible future financings, joint ventures and acquisitions, as well as under our equity incentive plans and for other general corporate purposes. The reverse stock split is also intended to increase the price of our common stock for purposes of complying with Nasdaq listing rules. See "General Risk Factors—if we fail to satisfy all applicable Nasdaq continued listing requirements, including the \$1.00 minimum closing bid price requirement, our common stock may be delisted from Nasdaq, which could have an adverse impact on the liquidity and market price of our common stock." A delay in securing, or a failure to secure, stockholder approval to amend our restated certificate of incorporation to effect a reverse stock split of the issued shares of our common stock will adversely affect our ability to raise capital to operate our business, and would have a material adverse effect on our business, prospects, operations and financial condition, and our ability to continue as a going concern.

Our future success is dependent upon the trucking industry's market's willingness to adopt FCEV and BEV trucks.

Our success is highly dependent upon the adoption by the trucking industry market of hydrogen fuel cell and electric trucks. If the market for our FCEV and BEV trucks does not develop at the rate or to the extent that we expect, our business, prospects, financial condition and operating results will be harmed. The market for hydrogen fuel cell and electric trucks is new and untested and is characterized by rapidly changing technologies, price competition, numerous competitors or potential competitors, evolving government regulation and industry standards and uncertain customer demands and behaviors.

Factors that may influence the adoption of hydrogen fuel cell and electric vehicles include:

- perceptions about FCEV or BEV truck quality, safety, design, performance and cost, especially if adverse events or accidents occur that are linked to the quality or safety of hydrogen fuel cell or electric vehicles;
- perceptions about vehicle safety in general, including the use of advanced technology, such as vehicle electronics, hydrogen fueling and storage and regenerative braking systems;
- the decline of vehicle efficiency resulting from deterioration over time in the ability of the battery to hold a charge;
- the availability of charging infrastructure and associated costs;
- concerns about the availability of hydrogen stations, solutions, including those we plan to develop and deploy, which could impede our present efforts to promote FCEV trucks as a desirable alternative to diesel trucks;
- improvements in the fuel economy of internal combustion engines;
- the availability of service for hydrogen fuel cell or electric trucks;
- volatility in the cost of energy, oil, gasoline and hydrogen;
- government regulations and economic incentives promoting fuel efficiency and alternate forms of energy;
- the availability of tax and other governmental incentives to purchase and operate hydrogen fuel cell and electric trucks or future regulation requiring increased use of nonpolluting trucks;
- our ability to sell or lease trucks directly to businesses or customers dependent on state by state unique regulations and dealership laws;
- the availability of tax and other governmental incentives to sell hydrogen;

- perceptions about and the cost of hydrogen fuel cell; and
- macroeconomic factors.

Additionally, we may become subject to regulations that may require us to alter the design of our trucks, which could negatively impact customer interest in our products.

Further, we sell our trucks to dealers in our network and rely on the dealers to sell them to end users. We have experienced delays in receiving additional purchase orders from dealers due in part to the lack of availability of charging infrastructure. The end users of the Tre BEV our trucks will need to continually assess their charging capacity and may need to build additional infrastructure prior to ordering or receiving trucks from dealers. In addition, dealers have and may continue to experience delays in receiving proceeds from the California Hybrid Zero Emission Truck and Voucher Incentive Program ("HVIP"), the New York Truck Voucher Incentive Program ("NYTVIP"), the New Jersey Zero-Emission Incentive Program ("NJZIP") or other government incentive programs, which many of our dealers are leveraging for the first time. To qualify for HVIP, NYTVIP or NJZIP, dealers are required to complete extensive training, initiate and complete applications for each sales order, and complete the voucher redemption process upon delivery to the end-user. There can be no assurances that our FCEV or BEV truck trucks will continue to or that our FCEV trucks will, qualify for these or other incentive programs, or that HVIP, NYTVIP and NJZIP incentives will remain in effect. Any reduction, termination or failure to qualify for incentives, or any repeal of, or modification to, HVIP, NYTVIP or NJZIP incentives, would result in increased prices for our trucks, which would harm our business.

The unavailability, reduction or elimination of government and economic incentives could have a material adverse effect on our business, prospects, financial condition and operating results.

We currently, and expect to continue to, benefit from certain government subsidies and economic incentives that support the development and adoption of our vehicles. Any reduction, elimination or discriminatory application of government subsidies and economic incentives because of policy changes, delays in promulgating regulations implementing new legislation, the reduced need for such subsidies and incentives due to the perceived success of the electric vehicle or other reasons may result in the diminished competitiveness of the alternative fuel and electric vehicle industry generally or our FCEV and BEV trucks in particular. This could materially and adversely affect the growth of the alternative fuel automobile markets and our business, prospects, financial condition and operating results.

These incentives include tax credits, rebates and other incentives for alternative energy production, alternative fuel and electric vehicles, including greenhouse gas ("GHG") emissions credits under the U.S. Environmental Protection Agency's GHG Rule, the California Air Resources Board, California Transportation Commission ("CTC"), New York State Energy Research and Development Authority, and New Jersey Economic Development Authority, HVIP, NYTVIP, and NJZIP. There is no guarantee these programs will be available in the future. If these tax incentives and other benefits are not available or are reduced or otherwise limited in the future, our financial position could be harmed.

Additionally, while the Inflation Reduction Act of 2022 (the "IRA") includes certain federal tax credits and other incentives for alternative energy production and alternative fuel, there is no guarantee these programs will be renewed or extended in the future or that we, our customers, our dealers, or their retail customers will qualify for the tax credits or incentives. If the IRA's tax credits and incentives for our trucks are not available to us or truck purchasers in the future, our business, financial viability and prospects could be adversely affected. The IRA, when combined with other state-based incentives, such as HVIP or NYTVIP incentives, could reduce the overall cost of our truck and the fueling thereof, but the repeal or modification of such incentives could discourage potential purchasers from acquiring our trucks. These and other changes to tax laws and regulations, or interpretation thereof, in the United States or other tax jurisdictions in which we do business, could adversely impact our business, financial condition, and results of operations.

If we fail to manage our future growth effectively, we may not be able to market and sell our vehicles successfully.

Any failure to manage our growth effectively could materially and adversely affect our business, prospects, operating results and financial condition. We intend to expand our operations significantly. Our future expansion is expected to include:

- forecasting production and revenue;
- controlling expenses and investments in anticipation of expanded operations;
- establishing or expanding validation, manufacturing, sales and service facilities;
- establishing our hydrogen fueling capabilities;
- implementing and enhancing administrative infrastructure, systems and processes; and
- hiring and training personnel, as production scales.

We may hire additional personnel as production scales, including manufacturing personnel and service technicians for our trucks. Because our trucks are based on a different technology platform than traditional internal combustion engines, individuals with sufficient training in alternative fuel and electric vehicles may not be available to hire, and as a result, we will need to expend significant time and expense training the employees we do hire.

We may face legal challenges in one or more states attempting to sell directly to customers, fleets or end users, which could materially and adversely affect our costs.

Our business plan includes the direct sale of vehicles through to our dealer network, authorized dealers, and potentially, directly to individual customers, fleets or end users. Most, if not all, states require a license to sell vehicles within the state. Many states prohibit manufacturers from directly selling vehicles to customers, end users. In other states, manufacturers must operate a physical dealership within the state to deliver vehicles to customers, end users. As a result, we may not be able to sell directly to customers, end users in each state in the United States.

In many states, it is unclear if, as a manufacturer, we will be able to obtain permission to sell and deliver vehicles directly to customers, end users. For customers, end users located in states in which we are not allowed to sell or deliver vehicles, we may will have to arrange alternate methods of delivery of vehicles. This could include selling to our dealers, who may subsequently sell to the end user, or delivering vehicles to adjacent or nearby states in which we are allowed to directly sell and ship vehicles, and arranging for the customer, end user to transport the vehicles to their home states. These workarounds could add significant complexity and as a result, costs to our business.

We depend on our network of independent dealers for the sale of vehicles, face competition for dealers, and have little control over their activities.

Our primary sales conduit is expected to be through our dealer network. For the year ended December 31, 2023, we sold FCEV and BEV trucks to 10 dealers, with four dealers individually representing sales in excess of 10% of total revenue.

Although we continue to seek to broaden our user base in both quantity and type of truck end users, we may continue to be dependent on a small number of dealers for a significant portion of our sales. The loss of a significant dealer, or a significant reduction in sales to any such dealer, could have a material adverse effect on our financial condition and results of operations.

As we grow, particularly in new jurisdictions, we may need to expand our dealer network. We are subject to competition for the recruitment and retention of dealers from our competitors and we may not be able to recruit new or replacement dealers in the future. Most of our dealers are not restricted in their ability to work with our competitors and are not obligated to continue working with us. The departure of a significant number of our dealers for any reason, the failure to replace departing dealers in the event of such departures, or a substantial deterioration in the quality of our network of dealers could reduce our potential sales opportunities and could have a material adverse effect on our business, financial condition and results of operations.

Misconduct, noncompliance with applicable laws and regulations, fraud or other improper activities by our dealers' employees, affiliates or other representatives could have a significant negative impact on our business, investments and results of operations. Such misconduct could include failures to comply with federal employment laws and regulations, including consumer protection laws. Although we require applicable dealers to comply with laws and regulations which are standard in our industry, we do not control the dealers, nor can we guarantee their compliance with all such laws and regulations. Failure to comply with applicable laws or regulations or acts of fraud or misconduct by dealers could subject us to fines and penalties.

We face risks and uncertainties related to litigation, regulatory actions and government investigations and inquiries.

We are subject to, and are, and may in the future become a party to, a variety of litigation, other claims, suits, regulatory actions and government investigations and inquiries. For example, in 2020, Nikola and our officers, directors and employees received subpoenas from the SEC related to aspects of our business as well as certain matters described in an article published in September 2020 by a short-seller (the "short-seller article"). In addition, Nikola and Trevor R. Milton, our founder and former executive chairman, also received grand jury subpoenas from the U.S. Attorney's Office for the Southern District of New York (the "SDNY") and the N.Y. County District Attorney's Office. On July 29, 2021, the U.S. Attorney for the SDNY

announced the unsealing of a criminal indictment charging Mr. Milton with securities fraud and wire fraud, and the SEC announced charges against Mr. Milton for alleged violations of federal securities laws. On October 14, 2022, Mr. Milton was convicted of securities fraud and wire fraud.

We have incurred and may in the future incur significant expenses as a result of the regulatory and legal matters relating to the short-seller article and Mr. Milton, our founder and former executive chairman. The total cost associated with these matters will depend on many factors, including the duration of these matters and any related finding.

By order dated December 21, 2021, we and the SEC reached a settlement arising out of the SEC's investigation of Nikola. Under the terms of the settlement, without admitting or denying the SEC's findings, we agreed to cease and desist from future violations of the Exchange Act, and Rules 10b-5 and 13a-15(a) thereunder and Section 17(a) of the Securities Act of 1933 (the "Securities Act"), to certain voluntary undertakings, and to pay a \$125 million civil penalty. findings.

Additionally, six multiple putative class action lawsuits were filed against us and certain of our current and former officers and directors, asserting violations of federal securities laws under Section 10(b) and Section 20(a) of the Exchange Act, and, in one case, violations of the Unfair Competition Law under California law, alleging that Nikola and certain of our officers and directors made false and/or misleading statements in press releases and public filings regarding our business plan and prospects. These lawsuits have been consolidated. Separately, three several purported Nikola stockholder derivative actions were filed in the United States District Court, against certain of our current and former directors, alleging breaches of fiduciary duties, violations of Section 14(a) of the Exchange Act, and gross mismanagement, among other claims. We are unable to estimate the potential loss or range of loss, if any, associated with these lawsuits.

We are also subject to certain class action lawsuits and other litigation related to our acquisition in October 2022 of Romeo, and we also may be subject to unforeseen or additional expenditures, costs or liabilities, including costs and potential liabilities associated with litigation, investigations and regulatory actions related to Romeo. In addition, from time to time, we may also be involved in legal proceedings and investigations arising in the ordinary course of business, including those relating to employment matters, relationships with strategic partners, intellectual property disputes, and other business matters. Any such claims or investigations may be time-consuming, costly, divert management resources, or otherwise have a material adverse effect on our business or result of operations.

The results of litigation and other legal proceedings, including the other claims described under Note 12.11, *Commitments and Contingencies*, to the condensed consolidated financial statements included elsewhere in this Quarterly Report on Form 10-Q and in Note 14, *Commitments and Contingencies*, in our Annual Report on Form 10-K for the year ended December 31, 2022 December 31, 2023, as amended, are inherently uncertain and adverse judgments or settlements in some or all of these legal disputes may result in materially adverse monetary damages or injunctive relief against us. Any claims or litigation, even if fully indemnified or insured, could damage our reputation and make it more difficult to compete effectively or obtain adequate insurance in the future. The litigation and other legal proceedings described under Note 12.11, *Commitments and Contingencies*, to the condensed consolidated financial statements included elsewhere in this Quarterly Report on Form 10-Q and in Note 14, *Commitments and Contingencies*, in our Annual Report on Form 10-K for the year ended December 31, 2022 December 31, 2023, as amended, are subject to future developments and management's view of these matters may change in the future.

Product recalls have and may in the future materially and adversely affect our business, prospects, operating results and financial condition.

In 2022, we announced a recall related to the installation of the seat belt shoulder anchorage assembly, and in 2023, we announced a recall related to the towing pack brake module from a supplier.

In August 2023, we announced a voluntary recall of our BEV trucks as a result of the preliminary results of battery pack thermal event investigations. We filed a voluntary recall with the National Highway Traffic Safety Administration on August 15, 2023 and have placed a temporary hold on new BEV truck shipments.

The recall was initiated following a battery pack thermal event that was preliminarily determined to be caused by a defect within components of the existing battery pack. In investigating the root causes of the thermal event, which is ongoing, it was discovered that additional process and design changes may be necessary and that cell-level issues may

need to be addressed beyond the initially identified coolant manifold replacement. While the inquiries continue to identify the root causes of battery malfunctions, We determined that the battery packs in existing dealer and customer end user trucks will at the time of the recall would be retrofit with battery packs from an alternative supplier. The battery replacement is expected to commence commenced in late 2023, with the first set truck was returned to a customer in March 2024. The remainder of the recalled trucks are expected to be returned to

customers starting in end users and dealers by the first quarter end of 2024, the year, pending supply chain or other issues, including the need for additional changes to the recalled trucks. We are in the process of transporting all BEV trucks to our Coolidge manufacturing facility where the BEV trucks will be retrofit with battery packs of another supplier. There can be no guarantee as to when we will be able to repair the BEV trucks previously sold to our dealers, and customer many of which they sold to their end-user customers, or our existing inventory of BEV trucks so that they may be sold or resume production of our BEV trucks. As of September 30, 2023, we We accrued recall campaign costs of \$61.8 million \$65.0 million, of which \$9.7 million has been incurred through March 31, 2024, for the recall of the BEV trucks that are expected to be returned to dealers and customers end users once the recall work is complete, and reserved \$45.7 million for BEV battery pack and other components deemed excess and obsolete. complete. If costs related to these events are higher than we expect, if it takes longer to repair and return the affected trucks, if the needed repairs are more extensive than we currently anticipate, or if we are unable to sell our existing inventory or resume production of our BEV trucks on a timely basis, our business, results of operations and financial condition may be adversely impacted.

Recalls have and may in the future result resulted in significant expenses and involve involved lawsuits and other regulatory actions, and diversion of management attention and other resources, any of which have and may in the future adversely affect affected our brand, business, results of operations, and financial condition and cash flows, condition.

In the future, we may voluntarily or involuntarily initiate a recall if any of our vehicles or electric powertrain components (including the fuel cell or batteries) prove to be defective or noncompliant with applicable federal motor vehicle safety standards. Such recalls involve significant expense, may involve lawsuits and other regulatory actions and diversion of management attention and other resources, which could adversely affect our brand image in our target markets, and reputation, as well as our business, prospects, financial condition and results of operations.

Our success will depend on our ability to economically manufacture our trucks at scale and establish a hydrogen fueling ecosystem to meet our customers' business needs, and our ability to develop and manufacture trucks of sufficient quality and appeal to customers end user fleets on schedule and at scale is unproven. scale.

Our future business depends in large part on our ability to execute our plans to develop, manufacture, market and sell our FCEV and BEV trucks and to deploy the associated hydrogen fueling stations for our FCEV trucks solutions at sufficient capacity to meet the transportation demands of end users of our customers. trucks.

Our continued development of our truck platforms is and will be subject to risks, including with respect to:

- our ability to secure necessary funding;
- our ability to manufacture the vehicles within specified design tolerances;
- long-and long- and short-term durability of our hydrogen fuel cell and electric drivetrain technology related components in the day-to-day wear and tear of the commercial trucking environment;
- compliance with environmental, workplace safety and other applicable regulations;
- securing necessary components on acceptable terms and in a timely manner;
- delays in delivery of final component designs to our suppliers;
- our ability to attract, recruit, hire and train skilled employees;
- quality controls;
- the effects of our recent recall of our BEV trucks, including costs associated with repairs, loss of revenue reputational harm and legal proceedings;
- delays or disruptions in our supply chain, including ongoing supply constraints and shortages; and
- other delays and cost overruns.

We have limited manufacturing experience and no experience to date in high volume manufacturing of our trucks. We do not know whether we will be able to develop efficient, automated, low-cost manufacturing capabilities and processes, and reliable sources of component supply, that will enable us to meet the quality, price, engineering, design and production standards, as well as the production volumes, required to successfully mass market our trucks. Even if we are successful in developing our high volume manufacturing capability and processes and reliably source our component supply, we do not know whether we will be able to do so in a manner that avoids significant delays and cost overruns, including as a result of factors beyond our control such as problems with suppliers and vendors, or in time to meet our vehicle commercialization schedules or to satisfy the requirements of customers. end users. Any failure to develop and maintain such manufacturing processes and capabilities within our projected costs and timelines could have a material adverse effect on our business, prospects, operating results, and financial condition.

We may experience significant delays in the design, validation, manufacture, and financing manufacture of our trucks, including in the build out of our manufacturing plant, which could harm our business and prospects.

Any delay in the financing, design, validation, and manufacture of our trucks including in the expansion of our manufacturing plant in Arizona, could materially damage our brand, business, prospects, financial condition, and operating results. Vehicle manufacturers often experience delays in the design, validation, manufacture and commercial release of new products. To the extent there are delays in the manufacturing of our FCEV trucks, our prospects could be adversely affected as we may fail to grow our market share. Furthermore, we rely on third party suppliers for the provision and development of many of the key components and materials used in our vehicles. vehicles, such as battery products. To the extent our suppliers experience any delays in providing us with or developing necessary components, we could experience delays in delivering on our timelines.

Increases in costs, disruption of supply or shortage of components and raw materials including lithium-ion battery cells, chipsets, and displays, and delays in the manufacturing and servicing of battery-packs for our BEV and FCEV trucks, could harm our business.

We have and may continue to experience increases in the cost or a sustained interruption in the supply or shortage of raw materials and components, including, but not limited to, battery cells and packs, semiconductors, and integrated circuits, which primarily impact our infotainment system hydrogen tanks and controllers, modular fuelers. Any such increase or supply interruption have and may in the future materially negatively impact our business, prospects, financial condition and operating results.

We use various raw materials including aluminum, steel, carbon fiber, non-ferrous metals (such as copper), and cobalt. Prices for these raw materials fluctuate depending on market conditions and global demand and could adversely affect our business and operating results. For instance, we are exposed to multiple risks relating to price fluctuations for lithium-ion cells. These risks include:

- disruption in the supply of cells due to quality issues or recalls by the battery cell manufacturers;
- an increase in the cost of raw materials, such as cobalt, used in lithium-ion cells; and
- the inability or unwillingness of current battery manufacturers to build or operate battery cell manufacturing plants to supply the numbers of lithium-ion cells required to support the growth of the electric vehicle industry as demand for such cells increases.

Any disruption in the supply of battery cells, semiconductors, or integrated circuits, has disrupted the production of our BEV trucks and may in the future, temporarily disrupt production of our BEV or FCEV trucks. For example, we have historically relied on a limited number of suppliers of battery products. The manufacturing process of battery products is complex, highly technical and can be affected by supply chain disruptions and component shortages. Separately, as of August in 2023, one of our battery suppliers is seeking to reorganize under Chapter 11 of the United States Bankruptcy Code, and has since been acquired. We expect to continue sourcing battery products from this supplier while they undergo reorganization. However, we are looking to source from alternative suppliers as well. Battery products are critical to our ability to manufacture and service our BEV and FCEV trucks in the quantities and on the timeframes we expect. If we cannot manufacture sufficient quantities of battery-packs battery packs or source sufficient quantities from alternative manufacturers, we may experience delays in the manufacturing or servicing of our BEV and FCEV trucks. Our commercial production of FCEV trucks in 2023 was also affected by supply chain shortages, including shortages of hydrogen tanks, and these or other shortages have had and may continue to occur.

We rely on complex machinery for our operations and production involves a significant degree of risk and uncertainty in terms of operational performance and costs.

We rely on complex machinery for our operations and our production involves a significant degree of uncertainty and risk in terms of operational performance and costs. Our truck manufacturing plant consists of large-scale machinery combining many components. The manufacturing plant components are likely to suffer unexpected malfunctions from time to time and will depend on repairs and spare parts to resume operations, which may not be available when needed. Unexpected malfunctions of the manufacturing plant components may significantly affect the intended operational efficiency. Operational performance and costs can be difficult to predict and are often influenced by factors outside of our control, such as, but not limited to, scarcity of natural resources, environmental hazards and remediation, costs associated with decommissioning of machines, labor disputes and strikes, difficulty or delays in obtaining governmental permits, damages or defects in electronic systems, industrial accidents, fire, fires, seismic activity and natural disasters. Should operational risks occur, they may result in the personal injury to or death of workers, the loss of production equipment, damage to manufacturing facilities, monetary losses, delays and unanticipated fluctuations in production, environmental damage, administrative fines, increased insurance costs and potential legal liabilities, all of which could have a material adverse effect on our business, results of operations, cash flows, financial condition or prospects.

If our manufacturing plant becomes inoperable, we will be unable to produce our trucks and our business will be harmed.

We produce all of our trucks at our manufacturing plant in Arizona. Our manufacturing plant and the equipment we use to manufacture our trucks would be costly to replace and could require substantial lead time to replace and qualify for use. Our manufacturing plant may be harmed or rendered inoperable by natural or man-made disasters, including earthquakes, flooding, fire, fires, extreme temperatures and power outages, or by health epidemics, such as the COVID-19 pandemic, which may render it difficult or impossible for us to manufacture our trucks for some period of time. The inability to produce our trucks or the backlog that could develop if our manufacturing plant is inoperable for even a short period of time may result in the loss of customers, loss of revenue or harm to our reputation. Although we maintain insurance for damage to our property and the disruption of our business, this insurance may not be sufficient to cover all of our potential losses and may not continue to be available to us on acceptable terms, if at all.

Our plan to build a network of hydrogen fueling stations will require significant cash investments and management resources and may not meet our expectations with respect to additional sales of our FCEV trucks. In addition, we may not be able to open fueling stations in certain states.

Our plan to build a network of hydrogen fueling stations in the United States will require significant cash investments and management resources and may not meet our expectations with respect to sales of our FCEV trucks. This planned construction of hydrogen stations is essential to persuading customers to pay a higher premium for our trucks.

While we have constructed a demonstration station, it is operating at very limited capacity. In addition, we do not have experience in the actual provision of our fueling solutions to users, and providing these services is subject to challenges, which include the logistics of rolling out our network of fueling stations and teams in appropriate areas, inadequate capacity or over capacity in certain areas, security risks, risk of damage to vehicles during charging or fueling and the potential for lack of customer acceptance of our services. We will need to ensure compliance with any regulatory requirements applicable in jurisdictions where our fueling stations will be located, including obtaining any required permits and land use rights, which could take considerable time and expense and is subject to the risk that government support in certain areas may be discontinued or subject to conditions that we may be unable to meet in a cost-efficient manner. In addition, given our lack of experience building and operating fueling stations, there could be unanticipated challenges which may hinder our ability to provide our fueling solutions to customers or make our fueling solutions costlier than anticipated. If we are unable to successfully operate, or experience delays or problems in operating, our network of hydrogen fueling stations, we may be unable to convince customers to buy or lease our FCEV trucks, which may negatively impact our business, prospects, financial condition and operating results.

Our business may be subject to risks associated with construction, cost overruns and delays, and other contingencies that may arise while constructing or servicing a network of hydrogen fueling stations, solutions, and such risks may increase in the future as we expand the scope of such services.

We and our strategic partners expect to construct and service, or invest in the construction and servicing of, hydrogen fueling stations, solutions. We expect to undertake such construction or service with partners or contractors, which will require significant cash investments and may require us and our partners to acquire or lease suitable land, obtain licenses or permits, that may require compliance with additional rules, working conditions, wage requirements and other union requirements, adding costs and complexity to a construction project. Additionally, we and our partners have limited experience in the engineering, procurement, construction and construction operation of hydrogen fueling stations, solutions. If we and our partners are unable to provide timely, cost effective and quality construction-related services related to our hydrogen fueling stations, solutions, there could be material adverse effects on our business, prospects, financial condition and operating results.

In addition, we expect such construction and servicing to be subject to oversight and regulation in accordance with state and local laws and ordinances relating to building codes, accessibility requirements, safety, environmental protection and related matters, and to require various local and other governmental approvals and permits that may vary by jurisdiction. All of the above has and may continue to cause delays or cost-overruns or may prevent construction or servicing of hydrogen fueling stations, solutions. Meaningful delays or cost overruns, the ability to construct or operate fueling stations at desired locations, or the inability to construct or service hydrogen fueling stations, solutions, could have a material adverse effect on our business, prospects, financial condition and operating results.

While we or our partners construct additional hydrogen fueling stations, solutions, we plan to utilize mobile are currently operating modular fueling stations solutions at strategic locations to provide fueling needs to initial FCEV customers, purchasers and demonstrations. However, these mobile modular fueling stations will solutions are also be subject to local laws and regulations, may not function as intended, may not produce sufficient quantity or be available at desired locations, in order to support the fueling needs of our customers.

We, and our partners intend to and other suppliers rely on complex technology to dispense hydrogen, at our planned network of hydrogen fueling stations, which involves a significant degree of risk and uncertainty in terms of operational performance and costs.

We, and our strategic partners intend to and other suppliers rely on complex technology to dispense hydrogen at our planned network of hydrogen fueling stations, hydrogen. Hydrogen dispensing technology is in the early stages and involves a significant degree of uncertainty and risk in terms of operational performance and costs. The dispensing technology may will suffer non-performance or unexpected malfunctions given its maturity level and unproven uptime and will depend on repairs to resume operations, which could will involve significant additional costs and may not be available or may not be available in a timely manner. Non-performance or unexpected malfunctions of the dispensing technology would significantly affect the intended operational efficiency of our or other suppliers' hydrogen fueling stations, solutions. The inability of customers to procure hydrogen from our network of fueling stations due to non-performance or malfunctions of the dispensing technology would severely limit the use of our their FCEV trucks and could have a material adverse effect on our business, prospects, financial condition or operating results.

We may not be able to produce or source the hydrogen needed to establish our planned hydrogen fueling stations, solutions in sufficient volumes or may not be able to produce at favorable prices, or source the hydrogen needed at competitive prices. all.

As a key component of our business model, we intend to establish a series of hydrogen fueling stations, solutions. We expect that hydrogen fuel will be sourced by third-party providers or produced off-site and delivered to fueling stations, solutions. We have established hydrogen supply strategic partnerships intended to provide us with low carbon content hydrogen. To the extent we are unable to produce or source hydrogen, unable to produce or source hydrogen in sufficient volumes, or unable to obtain hydrogen at favorable prices, we may be unable to establish these fueling stations, solutions and severely limit the usefulness of our trucks, or, if we are still able to establish these stations, solutions, we may be forced to sell hydrogen at a loss in order to meet our commitments. We believe that this the provision of hydrogen incentive fueling solutions will be a significant driver for purchases or leases of our trucks, and therefore, the failure to establish and roll out these hydrogen fueling stations, solutions in accordance with our expectations would materially and adversely affect our business.

Reservations for our trucks are cancellable.

Reservations for our FCEV trucks are subject to cancellation by the customer until the customer enters into a lease agreement or, in the case of Anheuser-Busch LLC ("AB"), to the extent our trucks do not meet the vehicle specifications and delivery timelines specified in the contract with AB, as discussed further below. Because all of our reservations are cancellable, it is possible that a significant number of customers who submitted reservations for our trucks may cancel those reservations.

Given the anticipated lead times between customer reservation and delivery of our trucks, there is a heightened risk that customers that have made reservations may not ultimately take delivery of vehicles due to potential changes in customer preferences, competitive developments and other factors. As a result, no assurance can be made that reservations will not be cancelled, or that reservations will ultimately result in the purchase or lease of a vehicle. Any cancellations could harm our financial condition, business, prospects and operating results.

While we currently have a contract with AB to lease up to 800 long-haul sleeper cab FCEV trucks, if we are unable to deliver our trucks according to the vehicle specifications and delivery timelines set forth in the contract, AB has the right to cancel its order for trucks. Moreover, the AB contract specifies lease terms and rental rates that may be difficult for us to meet depending on our ability to develop our trucks and hydrogen fueling network according to current design parameters and cost estimates. Any of these adverse events related to the AB order could harm our financial condition, business, prospects and operating results.

While we do not currently have any leasing arrangements finalized, in the future we We may offer leasing options or other alternative structures to customers which would expose us to credit risk.

While we may offer leasing options of our FCEV trucks or other alternative structures to potential customers through a third-party financing partner, we can provide no assurance that a third-party financing partner would be able or willing to provide the leasing services on terms that we have stated in our published materials, or to provide financing at all. Furthermore, offering a leasing alternative directly to customers fleets will expose us to risks commonly associated with the extension of credit. Credit risk is the potential loss that may arise from any failure in the ability or willingness of the customer counterparty to fulfill their contractual obligations when they become due. Competitive pressure and challenging markets may increase credit risk through leases to financially weak customers, extended payment terms and leases into new and immature markets. This could have a material adverse effect on our business, prospects, financial results and results of operations.

We face significant barriers to produce our trucks, and if we cannot successfully overcome those barriers, our business will be negatively impacted.

The trucking industry has traditionally been characterized by significant barriers to entry, including large capital requirements, investment costs of designing and manufacturing vehicles, long lead times to bring vehicles to market from the concept and design stage, the need for specialized design and development expertise, compliance with regulatory requirements, establishing a brand name and image and the need to establish sales, leasing, fueling and service locations. In addition, our trucks are based on a different technology platform and powered with alternative fuel and electric sources. If we are not able to overcome these barriers, our business, prospects, operating results and financial condition will be negatively impacted and our ability to grow our business will be harmed.

If our trucks fail to perform as expected, our ability to develop, market and sell or lease our alternative fuel and electric trucks could be harmed.

Our trucks have and may in the future contain defects in design and manufacture that may cause them not to perform as expected or may require repair. We currently have a limited frame of reference by which to evaluate the performance of our trucks upon which our business prospects depend. For example, our trucks use a substantial amount of

software to operate which require modification and updates over the life of the vehicle. Software products are inherently complex and often contain defects and errors when first introduced. Our trucks also include components made by third parties. Such components have and may in the future contain defects, and require that we replace affected parts.

There can be no assurance that we will be able to detect and fix any defects in the trucks' hardware or software prior to commencing **customer** sales. We recently announced a recall of our BEV trucks **in August 2023** and may in the future experience recalls, **has which had** and may continue to adversely affect our brand in our target markets and could adversely affect our business, prospects and results of operations. Our trucks may not perform consistent with **customers' end users'** expectations or consistent with other vehicles which may become available. Any additional product defects or any other failure of our trucks to perform as expected could harm our reputation and result in adverse publicity, lost revenue, delivery delays, product recalls, product liability claims and significant warranty and other expenses, and could have a material adverse impact on our business, financial condition, operating results and prospects.

Insufficient warranty reserves to cover warranty claims could materially and adversely affect our business, prospects, financial condition and operating results.

We maintain warranty reserves to cover warranty-related claims. If our warranty reserves are inadequate to cover warranty claims on our vehicles, our business, prospects, financial condition and operating results could be materially and adversely affected. We may become subject to significant and unexpected warranty expenses. There can be no assurances that warranty reserves will be sufficient to cover all claims. Additionally, future warranty reserves for our FCEV trucks may be significant due to parts that utilize new technology and have limited operating history and suppliers that may not warranty these parts.

We face intense competition as a provider of BEV FCEV and FCEV BEV Class 8 trucks, which competition could have an adverse effect on our business.

We face intense competition in FCEV and BEV Class 8 trucks, including from companies in our target markets with greater financial resources, more extensive development, manufacturing, marketing and service capabilities, greater brand recognition and a larger number of managerial and technical personnel. If competitors' trucks are brought to market before **our trucks** or are viewed as superior to or more reliable than our trucks, we may experience a reduction in potential market share.

Many of our current and potential competitors, particularly international competitors, have significantly greater financial, technical, manufacturing, marketing and other resources than we do and may be able to devote greater resources to the design, development, manufacturing, distribution, promotion, sale and support of their products.

We compete in a rapidly evolving and highly competitive industry, and a number of private and public companies have announced plans to offer or are offering FCEV and/or BEV trucks, including, but not limited to, companies such as Daimler, Volvo, Tesla, BYD, Peterbilt, XOS, Lion, **Hylion**, **Hyundai**, **Toyota**, **Navistar**, **Hino** **Hyzon**, and **Hyzon** **others**. Based on publicly available information, a number of these competitors have displayed prototype trucks and have announced target availability and production timelines, while others have launched pilot programs in some markets. In addition, we are aware that **one** **several** potential **competitor**, **BYD**, **is** **competitors** are currently manufacturing and selling a Class 8 BEV **truck**, **trucks**. While some competitors may choose to offer BEV trucks, others such as **Hyundai**, **Toyota** and **Toyota** **Hyzon** have announced they plan to offer FCEV trucks and invest in hydrogen stations for refueling. In addition, our principal competition for our trucks **will also come from** are manufacturers of trucks with internal combustion engines powered by diesel fuel.

We expect competition in our industry to intensify in the future in light of increased demand and regulatory push for alternative fuel and electric vehicles. We cannot provide assurances that our trucks will be among the first to market, or that competitors will not build hydrogen fueling **stations**, **stations** that provide fueling at competitive locations and **prices**. Even if our trucks are among the first to market, we cannot **assure** **you** **ensure** that **customers** **fleets** will choose our vehicles over those of our competitors, or over diesel powered trucks.

Developments in alternative technology or improvements in the internal combustion engine may adversely affect the demand for our trucks.

Significant developments in alternative technologies, such as advanced diesel, ethanol, or compressed natural gas or improvements in the fuel economy of the internal combustion engine, may materially and adversely affect our business and prospects in ways we do not currently anticipate. Other fuels or sources of energy may emerge as **customers'** **fleets** preferred alternative to our truck platform. Any failure by us to develop new or enhanced technologies or processes, or to react to changes in existing technologies, could materially delay our development and introduction of new and enhanced alternative fuel and electric trucks, which could result in the loss of competitiveness of our trucks, decreased revenue and a loss of market share to competitors. Our research and development efforts may not be sufficient to adapt to changes in alternative fuel and electric vehicle technology.

As technologies change, we plan to upgrade or adapt our trucks and introduce new models in order to continue to provide trucks with the latest technology, in particular battery cell technology.

We have limited experience servicing or repairing our vehicles. If we are unable to address the service requirements of our customers, end users, our business will be materially and adversely affected.

Because we recently started commercial production, we have limited experience servicing or repairing our vehicles. Servicing alternative fuel and electric vehicles is different than servicing vehicles with internal combustion engines and requires specialized skills, including high voltage training and servicing techniques. We utilize our dealer network and may decide to partner with a third party to perform some or all of the maintenance on our trucks, and there can be no assurance that we will be able to enter into an acceptable arrangement with any such third-party provider. If we are unable to successfully address the service requirements of **our customers, end users**, our business and prospects will be materially and adversely affected.

In addition, the motor vehicle industry laws in many states require that service facilities be available to service vehicles physically sold from locations in the state. While we anticipate developing a service program that would satisfy regulators in these circumstances, the specifics of our service program are still in development, and at some point may need to be restructured to comply with state law, which may impact our business, financial condition, operating results and prospects.

Collaboration with strategic partners is subject to risks.

We have entered into collaborations and have announced planned collaborations with various parties, including with respect to hydrogen production and sourcing, providing service and maintenance and deployment of hydrogen fueling **stations**, **solutions**. Discussions with our strategic partners are ongoing, **are** a number of collaborations are subject to the parties' entry into definitive documentation, and terms of the agreements are subject to change. Consequently, there can be no assurance that we will enter into agreements on the terms initially contemplated, if at all, or that our agreements with our strategic partners will remain in place. **For example, we sold assets related to the development of a hydrogen production hub to FFI in July 2023, and are currently negotiating an arrangement with FFI for a potential offtake of hydrogen produced at the hub.**

Collaboration with third parties is subject to risks with respect to operations that are outside our control. We could experience delays if our partners do not meet agreed upon timelines or experience capacity constraints. There are risks of potential disputes, disagreements or fallout with partners and failure to perform under contracts or enforce contracts against the other party, and/or the potential terminations, or non-renewals, of such contracts, and the production of our trucks or supply of hydrogen could be disrupted as a result. We may not be able to realize business or financial benefits of our strategic collaborations. We could be affected by adverse publicity related to our partners, whether or not such publicity is related to their collaboration with us, or adverse publicity related to our relationships with our partners. Our ability to successfully build a premium brand could also be adversely affected by perceptions about the quality of our partners' products or by the termination of our agreements with our partners. In addition, in situations where we rely on our partners and third parties to meet our quality standards, there can be no assurance that we will successfully maintain quality standards. In addition, our share of the earnings or losses of a collaborator may adversely affect our financial results, depending on the nature of the collaboration, including the discontinuation thereof.

We may be unable to enter into new agreements or extend existing agreements with strategic partners on terms and conditions acceptable to us and therefore may need to contract with other third parties or significantly add to our own production capacity. There can be no assurance that in such event we would be able to engage other third parties or establish or expand our own production capacity to meet our needs on acceptable terms or at all. The expense and time required to complete any transition, and to assure that vehicles or components manufactured at third party facilities of new manufacturers comply with our quality standards and regulatory requirements, may be greater than anticipated. Any of the foregoing could adversely affect our business, results of operations, financial condition and prospects.

We are or may be subject to risks associated with strategic alliances or acquisitions.

We have entered into, and may in the future enter into additional, strategic alliances, including joint ventures or equity investments with various third parties to further our business purpose. These alliances subject us to a number of risks, including risks associated with sharing proprietary information, non-performance by the third party and increased expenses in establishing new, or maintaining current, strategic alliances, any of which may materially and adversely affect our business. We may have limited ability to monitor or control the actions of these third parties and, to the extent any of these strategic third parties suffer negative publicity or harm to their reputation from events relating to their business, we may also suffer negative publicity or harm to our reputation by virtue of our association with any such third party.

When opportunities arise, we may seek to acquire additional assets, products, technologies or businesses that are complementary to our existing business.

If we make any acquisitions, we may not be able to integrate these acquisitions successfully into our existing business, and we could assume unknown or contingent liabilities. Any future acquisitions by us also could result in significant write-offs or the incurrence of debt and contingent liabilities, any of which could harm our operating results. Integration of an acquired company also may require management resources that otherwise would be available for ongoing development of our existing business. We may not identify or complete these transactions in a timely manner, on a cost-effective basis, or at all, and we may not realize the anticipated benefits of any acquisition.

To finance any acquisitions, we have in the past and may in the future choose to issue shares of our common stock as consideration, which would dilute the ownership of our stockholders. In addition, it may be necessary for us to raise additional funds for acquisitions through public or private financings. Additional funds may not be available on terms that are favorable to us, or at all.

We acquired Romeo in October 2022. On June 30, 2023, pursuant to a general assignment (the "Assignment"), Romeo we transferred ownership of all of Romeo's right, title and interest in and to all of its tangible and intangible assets, subject to certain agreed upon exclusions (collectively, the "Assets") to SG Service Co., LLC, in its sole and limited capacity as Assignee for the Benefit of Creditors of Romeo ("Assignee"), and also designated Assignee to act as the assignee for the benefit of creditors of Romeo, such that, as of June 30, 2023, Assignee succeeded to all of Romeo's right, title and interest in and to the Assets.

We have incurred losses as a result of the Assignment. For example, we recognized a loss of \$24.9 million which is recorded in loss from deconsolidation of discontinued operations in the consolidated statements of operations for the nine

months year ended September 30, 2023 December 31, 2023. The carrying values of the assets and liabilities of Romeo were removed from the condensed consolidated balance sheets as of June 30, 2023. See Note 10.9, *Deconsolidation of Subsidiary Discontinued Operations*, to the condensed consolidated financial statements included elsewhere in this Quarterly Report on Form 10-Q for additional information.

We are currently subject to ongoing litigation related to, among other things, our acquisition of Romeo, and may in the future be subject to additional litigation related to Romeo. While we understand that the Assignee is in the process of winding down Romeo, the commencement of the Assignment does not have the effect of staying such litigation. Litigation and the time, cost and expenses associated with it could negatively impact our financial condition and results of operations.

We may not be able to consume minimum commitments under our "take or pay" agreements, which may have a material adverse impact on our earnings.

We have entered into agreements with certain suppliers of hydrogen that include "take or pay" terms. Take or pay terms obligate us to purchase a minimum quantity of hydrogen within certain time periods or make specified payments in lieu of such purchase. If we fail to secure adequate demand for hydrogen, we have and may continue to not be able to consume minimum commitments under these take or pay contracts, requiring payments to suppliers, which may have a material adverse impact on our business, financial condition and results of operations.

We are dependent on our suppliers, a significant number of which are single or limited source suppliers, and the inability of these suppliers to deliver necessary components of our vehicles at prices and volumes acceptable to us would have a material adverse effect on our business, prospects, and operating results.

While we seek to obtain components from multiple sources whenever possible, many of the components used in our vehicles are or will be purchased by us from a single source, especially with respect to hydrogen fuel cells and batteries. We refer to these component suppliers as our single source suppliers. For example, we entered into an agreement with Robert Bosch LLC ("Bosch"), whereby we committed to purchase certain component requirements for fuel cell power modules from Bosch beginning on June 1, 2023 until December 31, 2030. While we believe that we may be able to establish alternate supply relationships and can obtain or engineer replacement components for our single source components, we may be unable to do so in the short term short-term (or at all) at prices or quality levels that are favorable to us or that meet our requirements.

A significant benefit of our collaborations with manufacturing partners is the ability to leverage their respective existing assortment of parts, thereby decreasing our purchasing expenses. While these relationships give us access to use an existing supplier base with the hopes of accelerating procurement of components at favorable prices, there is no guarantee that this will be the case. In addition, we have and may in the future experience delays if our suppliers do not meet agreed upon timelines or experience capacity constraints.

Our vehicles' anticipated estimated range may not be achievable based on various external conditions, which may negatively influence potential customers' end users' decisions whether to purchase or lease our trucks.

We anticipate estimate the range of our Tre FCEV and Tre BEV vehicles to be up to 500 and 330 miles, respectively, before needing to recharge or refuel, depending on the type of vehicle. Actual range varies with will vary depending on conditions such as external environment, average speed, number of stops, grade of routes, gross combined weight, trailer type, and driver behavior, among others. Range specifications are subject to change. The perceived lack of sufficient range may negatively affect potential customers' end users' decisions to buy or lease our trucks.

The battery efficiency of electric trucks and fuel cell efficiency of FCEV trucks will decline over time, which may negatively influence potential customers' end users' decisions whether to purchase our trucks.

Our vehicles' range will decline over time as the battery or fuel cell, as applicable, deteriorates. Other factors such as usage, time and stress patterns may also impact the ability to hold a charge, which would decrease our trucks' range. Such deterioration and the related decrease in range may negatively influence potential customer end user decisions to purchase our trucks.

Our trucks make use of lithium-ion battery cells, which have been observed to catch fire or vent smoke and flame.

The battery packs within our trucks make use of lithium-ion cells. Lithium-ion cells can rapidly release the energy they contain by venting smoke and flames in a manner that can ignite nearby materials as well as other lithium-ion cells. While the battery pack is designed to contain any single cell's release of energy without spreading to neighboring cells, a field or testing failure of our vehicles or other battery packs that we produce could occur, which could subject us to lawsuits, product recalls, or redesign efforts, all of which would be time consuming and expensive. For example, we recently announced a recall of our BEV trucks in August 2023 as a result of preliminary results of our battery pack thermal event investigation. The investigation was in response to a thermal event caused by a battery pack defect. Subsequent thermal events have also occurred. Also, negative public perceptions regarding the suitability of lithium-ion cells for automotive applications or any future incident involving lithium-ion cells, such as a vehicle or other fire, even if such incident does not involve our trucks, could seriously harm our business, and prospects.

In addition, we store a significant number of lithium-ion cells at our facility. Any mishandling of battery cells may cause disruption to the operation of our facility. While we have implemented safety procedures related to the handling of the cells, a safety issue or fire related to the cells could disrupt our operations. Such Any related damage or injury could lead to adverse publicity and potentially a safety recall. Moreover, any failure of a competitor's electric vehicle or energy storage product may cause indirect adverse publicity for us and our products. Such adverse publicity could negatively affect our brand and harm our business, prospects, financial condition, and operating results.

We may face challenges related to perceptions of safety for commercial electric vehicles, especially if adverse events or accidents occur that are linked to the quality or safety of commercial electric vehicles.

An accident or safety incident involving one of our trucks may expose us to significant liability and a public perception that our trucks are unsafe or unreliable. For example, in June 2023, a fire started in one of our BEV trucks at our headquarters, which spread to other trucks parked nearby. As a result of the fire, all of the trucks affected became inoperable, and subsequent fires have occurred. Any accident or safety incident involving one of our trucks, even if fully insured, could harm our reputation and result in a loss of future customer demand if it creates a public perception that our trucks are unsafe or unreliable as compared to those offered by other manufacturers or other means of transportation. As a result, any accident or safety incident involving our trucks, or commercial electric vehicles of our competitors could directly or indirectly materially and adversely affect our business, prospects, financial condition, and operating results.

Any unauthorized control or manipulation of our vehicles' systems could result in loss of confidence in us and our vehicles and harm our business.

Our trucks contain complex information technology systems and built-in data connectivity to accept and install periodic remote updates to improve or update functionality. We have designed, implemented and tested security measures intended to prevent unauthorized access to our information technology networks, our trucks and related systems. However, bad actors may attempt to gain unauthorized access to modify, alter and use such networks, trucks and systems to gain control of or to change our trucks' functionality, user interface and performance characteristics, or to gain access to data stored in or generated by the truck. Future vulnerabilities could be identified and our efforts to remediate such vulnerabilities may not be successful. Any unauthorized access to or control of our trucks or their systems, or any unauthorized access to or loss of customer end user data, could result in risks to end users or failure of our systems, any of which could result in interruptions in our business, legal claims or proceedings. In addition, regardless of their veracity, reports of unauthorized access to our trucks, systems or data, as well as other factors that may result in the perception that our trucks, systems or data are capable of being hacked could negatively affect our brand and harm our business, prospects, financial condition, and operating results.

Interruption or failure of our information technology and communications systems could impact our ability to effectively provide our services.

We outfit our trucks with in-vehicle services and functionality that utilize data connectivity to monitor performance and timely capture opportunities for cost-saving preventative maintenance. The availability and effectiveness of our services depend on the continued operation of information technology and communications systems. Our systems may be vulnerable to damage or interruption from, among others, fire, terrorist attacks, attacks by computer hackers or other cybersecurity risks, natural disasters, power loss, telecommunications failures, computer viruses, computer denial of service denial-of-service attacks or other attempts to harm our systems. Our data centers could also be subject to break-ins, sabotage and intentional acts of vandalism causing potential disruptions. Some of our systems are not fully redundant, and our disaster recovery planning cannot account for all eventualities. Any problems at our data centers could result in lengthy interruptions in our service. In addition, our trucks are highly technical and complex and may contain errors or vulnerabilities, which could result in interruptions in our business or the failure of our systems.

We are subject to substantial regulation and unfavorable changes to, or failure by us to comply with, these regulations could substantially harm our business and operating results.

Our alternative fuel and electric trucks, and the sale and servicing of motor vehicles in general, are subject to substantial regulation under international, federal, state, and local laws. We have and expect to continue to incur significant costs in complying with these regulations. Regulations related to the electric vehicle industry and alternative energy are currently evolving and we face risks associated with changes to these regulations, including but not limited to:

- increased subsidies for corn and ethanol production, which could reduce the operating cost of vehicles that use ethanol or a combination of ethanol and gasoline; and
- increased sensitivity by regulators to the needs of established automobile manufacturers with large employment bases, high fixed costs and business models based on the internal combustion engine, which could lead them to

pass regulations that could reduce the compliance costs of such established manufacturers or mitigate the effects of government efforts to promote alternative fuel vehicles.

To the extent the laws change, our trucks may not comply with applicable international, federal, state or local laws, which would have an adverse effect on our business. Compliance with changing regulations could be burdensome, time consuming, and expensive. To the extent compliance with new regulations is cost prohibitive, our business, prospects, financial condition, and operating results would be adversely affected.

We are subject to various environmental laws and regulations that could impose substantial costs upon us and cause delays in building operating our manufacturing facilities.

Our operations are subject to federal, state, and/or local environmental laws and regulations, including laws relating to the use, handling, storage, disposal and human exposure to hazardous materials. Environmental and health and safety laws and regulations can be complex, and we expect that we will be affected by future amendments to such laws or other new environmental and health and safety laws and regulations which may require us to change our operations, potentially resulting in a material adverse effect on our business, prospects, financial condition, and operating results. These laws can give rise to liability for administrative oversight costs, cleanup costs, property damage, bodily injury and fines and penalties. Capital and operating expenses needed to comply with environmental laws and regulations can be significant, and violations may result in substantial fines and penalties, third party damages, suspension of production or a cessation of our operations.

Contamination at properties we will own and operate, we formerly owned or operated, or to which hazardous substances were sent by us, may result in liability for us under environmental laws and regulations, including, but not limited to the Comprehensive Environmental Response, Compensation and Liability Act, which can impose liability for the full amount of remediation-related costs without regard to fault, for the investigation and cleanup of contaminated soil and ground water, for building contamination and impacts to human health and for damages to natural resources. The costs of complying with environmental laws and regulations and any claims concerning noncompliance, or liability with respect to contamination in the future, could have a material adverse effect on our financial condition or operating results. We may face unexpected delays in obtaining the required permits and approvals in connection with our manufacturing facilities that could require significant time and financial resources and delay our ability to operate these facilities, which would adversely impact our business, prospects, and operating results.

We are subject to evolving laws, regulations, standards, policies, and contractual obligations related to data privacy and security, and any actual or perceived failure to comply with such obligations could harm our reputation and brand, subject us to significant fines and liabilities, or otherwise affect our business.

In the course of our operations, we collect, use, store, disclose, transfer and otherwise process personal information from our customers, truck end users, employees and third parties with whom we conduct business, including names, accounts, user IDs and passwords, and payment or transaction related information. Additionally, we use our trucks' electronic systems to log information about each vehicle's use in order to aid us in vehicle diagnostics, repair and maintenance. Our customers End users may object to the use of this data, which may increase our vehicle maintenance costs and harm our business and prospects. Possession and use of our customers' end users' information in conducting our business may subject us to legislative and regulatory burdens that could require notification of data breaches, restrict our use of such information and hinder our ability to acquire new customers or market to existing customers. Non-compliance or a major breach of our network security and systems could have serious negative consequences for our business and future prospects, including possible fines, penalties and damages, reduced customer demand for our vehicles, and harm to our reputation and brand. Accordingly, we We are subject to or affected by a number of federal, state, and local laws and regulations, as well as contractual obligations and industry standards, that impose certain obligations and restrictions with respect to data privacy and security and govern our collection, storage, retention, protection, use, processing, transmission, sharing and disclosure of personal information including that of our employees, customers and other third parties with whom we conduct business. These laws, regulations and standards may be interpreted and applied differently over time and from jurisdiction to jurisdiction, and it is possible that they will be interpreted and applied in ways that may have a material and adverse impact on our business, financial condition and results of operations.

The global data protection landscape is rapidly evolving, and implementation standards and enforcement practices are likely to remain uncertain for the foreseeable future. We may not be able to monitor and react to all developments in a timely manner. The European Union adopted the General Data Protection Regulation ("GDPR"), which became effective in May 2018, and California adopted the California Consumer Privacy Act of 2018 ("CCPA"), which became effective in January 2020. Both

the GDPR and the CCPA impose additional obligations on companies regarding the handling of personal data and provide certain individual privacy rights to persons whose data is collected. Compliance with existing, proposed and recently enacted laws and regulations (including implementation of the privacy and process enhancements called for under the GDPR and CCPA) can be costly, and any failure to comply with these regulatory standards could subject us to legal and reputational risks.

Specifically, the CCPA establishes a privacy framework for covered businesses, including an expansive definition of personal information and data privacy rights for California consumers. The CCPA includes a framework with potentially severe statutory damages for violations and a private right of action for certain data breaches. The CCPA requires covered businesses to provide California consumers with new privacy-related disclosures and new ways to opt-out of certain uses and disclosures of personal information. As we expand our operations, particularly in California, the CCPA may increase our compliance costs and potential liability. Some observers have noted that the CCPA could mark the beginning of a trend toward more stringent privacy legislation in the United States. Additionally, effective starting on January 1, 2023, the California Privacy Rights Act ("CPRA") significantly modifies the CCPA, including by expanding California consumers' rights with respect to certain sensitive personal information. The CPRA also creates created a new state agency that will be vested with authority to implement and enforce the CCPA and the CPRA.

Other states have begun to propose similar laws. Compliance with applicable privacy and data security laws and regulations is a rigorous and time-intensive process, and we may be required to put in place additional mechanisms to comply with such laws and regulations, which could cause us to incur substantial costs or require us to change our business practices.

including our data management practices, in a manner adverse to our business. In particular, certain emerging privacy laws are still subject to a high degree of uncertainty as to their interpretation and application. Failure to comply with applicable laws or regulations or to secure personal information could result in investigations, enforcement actions and other proceedings against us, which could result in substantial fines, damages and other liability as well as damage to our reputation and credibility, which could have a negative impact on revenues and profits.

We post publicly privacy policies and other documentation regarding our collection, processing, use and disclosure of personal information. Although we endeavor to comply with our published policies and other documentation, we may at times fail to do so or may be perceived to have failed to do so. Moreover, despite our efforts, we may not be successful in achieving compliance if our employees, contractors, service providers, vendors or other third parties fail to comply with our published policies and documentation. Such failures could carry similar consequences or subject us to potential local, state and federal action if they are found to be deceptive, unfair or misrepresentative of our actual

practices. Claims that we have violated individuals' privacy rights or failed to comply with data protection laws or applicable privacy notices could, even if we are not found liable, be expensive and time-consuming to defend and could result in adverse publicity that could harm our business.

Most jurisdictions have enacted laws requiring companies to notify individuals, regulatory authorities and other third parties of security breaches involving certain types of data. Such laws may be inconsistent or may change or additional laws may be adopted. In addition, our agreements with certain customers or truck end users may require us to notify them in the event of a security breach. Such mandatory disclosures are costly, could lead to negative publicity, penalties or fines, litigation and our customers and truck end users losing confidence in the effectiveness of our security measures and require us to expend significant capital and other resources to respond to or alleviate problems caused by the actual or perceived security breach. Any of the foregoing could materially and adversely affect our business, prospects, operating results and financial condition.

We face risks associated with our international operations, including unfavorable regulatory, political, tax and labor conditions, which could harm our business.

We face risks associated with our international operations, including possible unfavorable regulatory, political, tax and labor conditions, which could harm our business. We Although our operations are currently focused in the U.S., we have international operations and subsidiaries a subsidiary in Germany and Canada that are subject to the legal, political, regulatory and social requirements and economic conditions in these jurisdictions, this jurisdiction. Additionally, as part of our growth strategy, we intend to expand our truck sales, hydrogen supply, truck maintenance and repair services in North America. However, we have limited experience selling and servicing our vehicles in North America, and no experience to date selling and servicing our vehicles outside of the United States and Canada, and such expansion may require us to make significant expenditures, including the hiring of local employees and establishing facilities, in advance of generating any revenue. We are subject to a number of risks associated with international business activities that may increase our costs, impact our ability to sell our alternative fuel and electric trucks and require significant management attention. These risks include:

- conforming our trucks to various international law and regulatory requirements where our trucks are sold, or homologation;
- development and construction of our hydrogen fueling network;
- difficulty in staffing and managing foreign operations;
- difficulties attracting customers and fleets in new jurisdictions;
- foreign government taxes, regulations and permit requirements, including foreign taxes that we may not be able to offset against taxes imposed upon us in the United States, and foreign tax and other laws limiting our ability to repatriate funds to the United States;
- fluctuations in foreign currency exchange rates and interest rates, including risks related to any interest rate swap or other hedging activities we undertake;
- United States and foreign government trade restrictions, tariffs and price or exchange controls;
- foreign labor laws, regulations and restrictions;
- changes in diplomatic and trade relationships;
- political instability, natural disasters, war or events of terrorism, including the current conflict conflicts involving Ukraine and Russia; Russia and in the Middle East; and
- the strength of international economies.

If we fail to successfully address these risks, our business, prospects, operating results and financial condition could be materially harmed.

Our ability to use net operating losses to reduce future tax payments may be limited by provisions of the Internal Revenue Code and may be subject to further limitation as a result of future transactions.

Sections 382 and 383 of the Internal Revenue Code of 1986, as amended (the "Code"), contain rules that limit the ability of a company that undergoes an ownership change, which is generally any cumulative change in ownership of more than 50% of its stock over a three-year period, to utilize its net operating loss and tax credit carryforwards and certain built-in losses recognized in the years after the ownership change. These rules generally operate by focusing on ownership changes involving stockholders who directly or indirectly own 5% or more of the stock of a company and any change in ownership arising from a new issuance of stock by the company. Generally, if an ownership change occurs, the yearly taxable income limitation on the use of net operating loss and tax credit carryforwards is equal to the product of the applicable long-term tax exempt rate and the value of our stock immediately before the ownership change. As a result, we may be unable to offset our taxable income with net operating losses, or our tax liability with credits, before these losses and credits expire.

In addition, it is possible that future transactions (including issuances of new shares of our common stock and sales of shares of our common stock) stock and equity-linked securities will cause us to undergo one or more additional ownership changes. In that event, we may not be able to use our net operating losses from periods prior to this ownership change to offset future taxable income in excess of the annual limitations imposed by Sections 382 and 383, 383 of the Code.

We face risks related to health epidemics, which could have a material adverse effect on our business and results of operations.

We face various risks related to public health issues, including epidemics, pandemics, and other outbreaks. For example, the impact of the COVID-19 pandemic included changes in consumer and business behavior, pandemic fears and market downturns, global supply chain constraints, and restrictions on business and individual activities, created significant volatility in the global economy and led to reduced economic activity. The spread of COVID-19 also created a disruption in the manufacturing, delivery and overall supply chain of vehicle manufacturers and suppliers, including us, and led to a global decrease in vehicle sales in markets around the world.

The pandemic resulted in government authorities implementing numerous measures to try to contain the virus, such as travel bans and restrictions, quarantines, stay-at-home or shelter-in-place orders, and business shutdowns. These measures adversely impacted our employees and operations and the operations of our customers, suppliers, vendors and business partners, and negatively impacted our sales and marketing activities, the construction schedule of our hydrogen fueling stations solutions and our manufacturing plant in Arizona, and the production schedule of our trucks. For example, the headquarters of our former joint venture partner located in Italy was shut down for two months in 2020 due to COVID-19, and as a result, pilot builds for the BEV truck were delayed. In addition, various aspects of our business, manufacturing plant and hydrogen fueling station solutions building process, cannot be conducted remotely. While certain measures by government authorities have been lifted others may be reinstated or remain in place for a significant period of time, which could adversely affect our manufacturing and building plans, sales and marketing activities, business and results of operations.

Specifically, difficult macroeconomic conditions, such as decreases in per capita income and level of disposable income, increased and prolonged unemployment or a decline in consumer confidence due to the acceleration of inflation in the U.S. and the COVID-19 pandemic, as well as reduced spending by businesses, adversely affected the demand for our trucks. Under difficult economic conditions, potential customers may seek to reduce spending by forgoing our trucks for other traditional options, and cancel reservations for our trucks. In addition, in this inflationary environment, customers were less likely to invest time and resources in the necessary considering alternative charging infrastructure, which affected demand for our trucks. Decreased demand for our trucks would negatively affect our business.

There are no comparable recent events which may provide guidance as to the effect of the spread of COVID-19 and a pandemic, and, as a result, the ultimate impact of the COVID-19 pandemic or a similar health epidemic is highly uncertain and subject to change. We do not yet know the full extent of COVID-19's impact on our business, our operations, or the global economy as a whole. However, the effects could have a material impact on our results of operations, and we will continue to monitor the situation closely.

The unavailability, reduction or elimination of government and economic incentives could have a material adverse effect on our business, prospects, financial condition and operating results.

We currently, and expect to continue to, benefit from certain government subsidies and economic incentives that support the development and adoption of our vehicles. Any reduction, elimination or discriminatory application of government subsidies and economic incentives because of policy changes, delays in promulgating regulations implementing new legislation, the reduced need for such subsidies and incentives due to the perceived success of the electric vehicle or other reasons may result in the diminished competitiveness of the alternative fuel and electric vehicle industry generally or our FCEV and BEV trucks in particular. This could materially and adversely affect the growth of the alternative fuel automobile markets and our business, prospects, financial condition and operating results.

These incentives include tax credits, rebates and other incentives for alternative energy production, alternative fuel and electric vehicles, including greenhouse gas ("GHG") emissions credits under the U.S. Environmental Protection Agency's GHG Rule, the California Air Resources Board, California Transportation Commission ("CTC"), New York State Energy Research and Development Authority, and New Jersey Economic Development Authority, HVIP, NYTVIP, and NJZIP. There is no guarantee these programs will be available in the future. If these tax incentives and other benefits are not available or are reduced or otherwise limited in the future, our financial position could be harmed.

Additionally, while the Inflation Reduction Act of 2022 (the "IRA") includes certain federal tax credits and other incentives for alternative energy production and alternative fuel, there is no guarantee these programs will be renewed or extended in the future or that we or our customers will qualify for the tax credits or incentives. If the IRA's tax credits and incentives for our trucks are not available to us or our customers in the future, our business, financial viability and prospects could be adversely affected. The IRA, when combined with other state-based incentives, such as HVIP or NYTVIP incentives, could reduce the overall cost of our truck and the fueling thereof, but the repeal or modification of such incentives could discourage potential customers from purchasing our trucks. These and other changes to tax laws and regulations, or interpretation thereof, in the United States or other tax jurisdictions in which we do business, could adversely impact our business, financial condition, and results of operations.

We may not be able to obtain or agree on acceptable terms and conditions for all or a significant portion of the government grants, loans and other incentives for which we may apply. As a result, our business and prospects may be adversely affected.

We have received and expect to continue applying for federal and state grants, loans and tax incentives under government programs designed to stimulate the economy and support the production of alternative fuel and electric vehicles and related technologies, as well as the sale of hydrogen. We are initially focusing our efforts in California in part because of the incentives that are available. For example, in 2023, the CTC awarded us a \$41.9 million grant under the Trade Corridor

Enhancement Program ("TCEP") to build up to six heavy-duty hydrogen refueling stations across Southern California, subject to compliance with follow on requirements, including timing and completion of certain milestones. We anticipate that in the future there will be new opportunities for us to apply for grants, loans and other incentives from the United States, state and foreign governments. Our ability to obtain funds or incentives from government sources is subject to the availability of funds under applicable government programs, approval of our applications to participate in such programs and, in certain instances, compliance with ongoing requirements. The application process for these funds and other incentives will likely be highly competitive. We cannot assure you that we will be successful in obtaining any additional grants, loans and other incentives or achieving the follow on requirements to receive funding of grants awarded. If we are not successful in obtaining any of these incentives and we are unable to find alternative sources of funding to meet our planned capital needs, our business and prospects could be materially and adversely affected.

Further, accepting funding from governmental entities or in-licensing patent rights from third parties that are co-owned with governmental entities may result in the U.S. government having certain rights, including so-called march-in rights, to such patent rights and any products or technology developed from such patent rights. When new technologies are developed with U.S. government funding, the U.S. government generally obtains certain rights in any resulting patents, including a nonexclusive license authorizing the U.S. government to use the invention for noncommercial purposes. These rights may permit the U.S. government to disclose our confidential information to third parties and to exercise march-in rights to use or to allow third parties to use our licensed technology. The U.S. government can exercise its march-in rights if it determines that action is necessary because we fail to achieve the practical application of government-funded technology, because action is necessary to alleviate health or safety needs, to meet requirements of federal regulations, or to give preference to U.S. industry. In addition, our rights in such inventions may be subject to certain requirements to manufacture products embodying such inventions in the United States. Any exercise by the U.S. government of such rights could harm our competitive position, business, financial condition, results of operations and prospects.

The evolution of the regulatory framework for autonomous vehicles is outside of our control and we cannot guarantee that our trucks will achieve the requisite level of autonomy to enable driverless systems within our projected timeframe, if ever.

There are currently no federal U.S. regulations pertaining to the safety of self-driving vehicles. However, the National Highway Traffic and Safety Administration has established recommended guidelines. Certain states have legal restrictions on self-driving vehicles, and many other states are considering them. This patchwork increases the difficulty in legal compliance for our vehicles should we deploy autonomous driving features. In Europe, certain vehicle safety regulations apply to self-driving braking and steering systems, and certain treaties also restrict the legality of certain higher levels of self-driving vehicles. Self-driving laws and regulations are expected to continue to evolve in numerous jurisdictions in the U.S. and may restrict autonomous driving features that we may deploy.

We may be subject to risks associated with autonomous driving technology.

Our trucks can be designed with connectivity for future installation of an autonomous hardware suite and we plan to partner with a third-party software provider in the future to potentially implement Level 2 ("L2") autonomous capabilities. However, we cannot guarantee that we will be able to identify a third party to provide the necessary hardware and software to enable driverless Level 4 or Level 5 autonomy in an acceptable timeframe, on terms satisfactory to us, or at all. Autonomous driving technologies are subject to risks and there have been accidents and fatalities associated with such technologies. The safety of such technologies depends in part on user interaction and users, as well as other drivers on the roadways, may not be accustomed to using or adapting to such technologies. To the extent accidents associated with our L2 autonomous driving systems occur, we could be

subject to liability, negative publicity, government scrutiny and further regulation. Any of the foregoing could materially and adversely affect our results of operations, financial condition and growth prospects.

Unfavorable publicity, or a failure to respond effectively to adverse publicity, could harm our reputation and adversely affect our business.

As an early stage company, maintaining and enhancing our brand and reputation is critical to our ability to attract and retain employees, partners, customers and investors, and to mitigate legislative or regulatory scrutiny, litigation and government investigations.

Significant negative publicity has adversely affected our brand and reputation and our stock price. Negative publicity has and may in the future give rise to litigation and/or governmental investigations. Unfavorable publicity relating to us or those affiliated with us, including our former executive chairman and our recent vehicle recall in August 2023, has and may in the future adversely affect public perception of the company. Adverse publicity and its effect on overall public perceptions of our brand, or our failure to respond effectively to adverse publicity, could have a material adverse effect on our business.

The negative publicity has made it more difficult for us to attract and retain employees, partners, customers, and customers, end users, reduced confidence in our products and services, harmed investor confidence and the market price of our common stock, invited legislative and regulatory scrutiny and resulted in litigation and governmental investigations and penalties. As a result, customers, potential customers, end users, potential end users, partners and potential partners have failed to award us additional business, or cancelled or sought to cancel existing contracts or otherwise, or direct future business to our competitors, and may in the future take similar actions, and investors may invest in our competitors instead of us. See Note 12, 11, *Commitments and Contingencies*, to the condensed consolidated financial statements included elsewhere in this Quarterly Report on Form 10-Q and to Note 14, *Commitments and Contingencies*, in our Annual Report on Form 10-K for the year ended December 31, 2022 December 31, 2023, as amended, for additional information.

The successful rehabilitation of our brand will depend largely on regaining a good reputation, meeting business milestones, satisfying the requirements of customers and end users, meeting our fueling commitments, maintaining a high quality of service, improving our compliance programs and continuing our marketing and public relations efforts. Expenses related to our brand promotion, reputation building, and media strategies have been significant and our efforts may not be successful. We anticipate that other competitors and potential competitors will expand their offerings, which will make maintaining and enhancing our reputation and brand increasingly more difficult and expensive. If we fail to successfully rehabilitate our brand in the current or future competitive environment or if events similar to the negative publicity occur in the future, our brand and reputation would be further damaged and our business may suffer.

Although we maintain insurance for the disruption of our business and director and officer liability insurance, these insurance policies will not be sufficient to cover all of our potential losses and may not continue to be available to us on acceptable terms, if at all.

Social media platforms present risks and challenges that could cause damage to our brand and reputation, and which could subject us to liability, penalties and other restrictive sanctions.

Social media platforms present risks and challenges that have resulted, and may in the future result in damage to our brand and reputation, and which could subject us to liability, penalties and other restrictive sanctions. Our internal policies and procedures regarding social media have not been, and may not in the future, be effective in preventing the inappropriate use of social media platforms, including blogs, social media websites and other forms of Internet-based communications. These platforms allow individuals access to a broad audience of consumers, investors and other interested persons. The considerable expansion in the use of social media over recent years has increased the volume and speed at which negative publicity arising from these events can be generated and spread, and we may be unable to timely respond to, correct any inaccuracies in, or adequately address negative perceptions arising from such coverage. The use of such platforms by our former officers and employees has adversely impacted, and could in the future adversely impact our costs, and our brand and reputation, and has resulted, and could in the future result in the disclosure of confidential information, litigation and regulatory inquiries. Any such litigation or regulatory inquiries may result in significant penalties and other restrictive sanctions and adverse consequences. In addition, negative or inaccurate posts or comments about us on social media platforms could damage our reputation, brand image and goodwill, and we could lose the confidence of our customers, end users, and partners, regardless of whether such information is true and regardless of any number of measures we may take to address them. We are currently party to litigation and regulatory proceedings related in part to social media statements. See Legal Proceedings in Note 12, 11, *Commitments and Contingencies*, to the condensed consolidated financial statements included elsewhere in this Quarterly Report on Form 10-Q and to Note 14, *Commitments and Contingencies*, in our Annual Report on Form 10-K for the year ended December 31, 2022 December 31, 2023, as amended, for additional information.

Risks Related to Our Intellectual Property

We may need to defend ourselves against patent or trademark infringement, or other intellectual property claims, which may be time-consuming and cause us to incur substantial costs.

Companies, organizations or individuals, including our competitors, may own or obtain patents, trademarks or other proprietary rights that would prevent or limit our ability to make, use, develop or sell our vehicles or components, which could make it more difficult for us to operate our business. We may receive inquiries from patent or trademark owners inquiring whether we infringe their proprietary rights. Companies owning patents or other intellectual property rights relating to battery packs, electric motors, fuel cells or electronic power management systems may allege infringement of such rights. In response to a determination that we have infringed upon a third party's intellectual property rights, we may be required to do one or more of the following:

- cease development, sales, or use of vehicles that incorporate the asserted intellectual property;
- pay substantial damages;
- obtain a license from the owner of the asserted intellectual property right, which license may not be available on reasonable terms or at all; or
- redesign one or more aspects or systems of our trucks.

A successful claim of infringement against us could materially and adversely affect our business, prospects, operating results and financial condition. Any litigation or claims, whether valid or invalid, could result in substantial costs and diversion of resources.

We also have licensed patents and other intellectual property from third parties, including suppliers and service providers, and we may face claims that our use of this licensed technology infringes the intellectual property rights of others. In such cases, we will seek indemnification from our licensors. However, our rights to indemnification may be unavailable or insufficient to cover our costs and losses.

We may also face claims challenging our use of open source software and our compliance with open source license terms. While we monitor our use of open source software and try to ensure that none is used in a manner that would require us to disclose or license our proprietary source code or that would otherwise breach the terms of an open source agreement, such use could inadvertently occur, or could be claimed to have occurred. Any breach of such open source license or requirement to disclose or license our proprietary source code could harm our business, financial condition, results of operations and prospects.

Our business may be adversely affected if we are unable to protect our intellectual property rights from unauthorized use by third parties.

Failure to adequately protect our intellectual property rights could result in our competitors offering similar products, potentially resulting in the loss of some of our competitive advantage, and a decrease in our revenue which would adversely affect our business, prospects, financial condition and operating results. Our success depends, at least in part, on our ability to protect our core technology and intellectual property. To accomplish this, we rely on a combination of patents, trade secrets (including know-how), employee and third-party nondisclosure agreements, copyright, trademarks, intellectual property licenses and other contractual rights to establish and protect our rights in our technology. We cannot guarantee that we have entered into such agreements with each party that may have or have had access to our trade secrets or proprietary information, including our technology and processes. In connection with our collaboration, partnership and license agreements, our rights to use licensed or jointly owned technology and intellectual property under such agreements may be subject to the continuation of and compliance with the terms of those agreements. In some cases, we may not control the prosecution, maintenance or filing of licensed or jointly owned patent rights, or the enforcement of such patents against third parties.

The protection of our intellectual property rights is important to our business and future opportunities. However, the measures we take to protect our intellectual property from unauthorized use by others may not be effective for various reasons, including the following:

- any patent applications we submit may not result in the issuance of patents;
- the scope of our issued patents may not be broad enough to protect our proprietary rights;
- our issued patents may be challenged and/or invalidated by our competitors;
- the costs associated with enforcing patents, confidentiality and invention agreements or other intellectual property rights may make aggressive enforcement impracticable;
- current and future competitors may circumvent our patents; and
- our in-licensed patents may be invalidated, or the owners of these patents may breach our license arrangements.

Patent, trademark, and trade secret laws vary significantly throughout the world. Some foreign countries do not protect intellectual property rights to the same extent as do the laws of the United States. Further, policing the unauthorized use of our intellectual property in foreign jurisdictions may be difficult. Therefore, our intellectual property rights may not be as strong or as easily enforced outside of the United States.

Our patent applications may not issue as patents, which may have a material adverse effect on our ability to prevent others from commercially exploiting products similar to ours.

We cannot be certain that we are the first inventor of the subject matter to which we have filed a particular patent application, or if we are the first party to file such a patent application. If another party has filed a patent application to the same subject matter as we have, we may not be entitled to the protection sought by the patent application. Further, the scope of protection of issued patent claims is often difficult to determine. As a result, we cannot be certain that the patent applications that we file will issue, or that our issued patents will afford protection against competitors with similar technology. In addition, our competitors may design around our issued patents, which may adversely affect our business, prospects, financial condition or operating results.

Risks Related to Our Convertible Indebtedness

Servicing our debt may require a significant amount of cash, and we may not have sufficient cash flow from our business to pay our substantial debt.

As of **September 30, 2023** **March 31, 2024**, **\$119.3 million** **\$123.5 million**, **\$11.5 million**, and **\$14.0 million** in aggregate principal amount of our **June 2022 Toggle Convertible Notes**, **June 2023 Toggle Convertible Notes** and **8.25% Convertible Notes**, respectively, were outstanding. As of **December 31, 2023**, **\$123.5 million**, **\$11.5 million**, and **\$21.6 million** in aggregate principal amount of our **June 2022 Toggle Convertible Notes**, **June 2023 Toggle Convertible Notes** and **8.25% Convertible Notes**, respectively, were outstanding. The terms of **the** **our June 2022 Toggle Convertible Notes** and **June 2023 Toggle Convertible Notes** allow us to issue additional **June 2022 Toggle Convertible Notes** and **June 2023 Toggle Convertible Notes**, respectively, in lieu of paying cash interest thereon.

In August 2023, we entered into a securities purchase agreement under which we may sell up to \$325.0 million in principal amount of senior convertible notes (the "Senior Convertible Notes"). We completed the sale of \$125.0 million principal amount of Senior Convertible Notes in August 2023 and an additional \$40.0 million principal amount of Senior Convertible Notes in September 2023. As of September 30, 2023, \$32.4 million aggregate principal amount of Senior Convertible Notes were outstanding.

Our ability to make scheduled payments of the principal of, to pay interest on or to refinance **the** **our June 2022 Toggle Convertible Notes**, **any unconverted Senior June 2023 Toggle Convertible Notes**, **8.25% Convertible Notes** or any future indebtedness we may incur depends on our future performance, which is subject to economic, financial, competitive and other factors beyond our control. While, in lieu of paying cash interest on **the** **our June 2022 Toggle Convertible Notes** and **June 2023 Toggle Convertible Notes**, we may elect to pay interest in kind, that election will increase the aggregate principal amount of those notes and in the case of **our June 2022 Toggle Convertible Notes**. In addition, while in lieu of paying cash interest on the **Senior Convertible Notes**, we may elect to pay interest through issuance of in kind notes, that election will result in a further dilutive issuance of shares of our common stock. stock if such notes are converted. Our business has not and may not in the future generate cash flow from operations sufficient to service our debt and make necessary capital expenditures, or to repay our outstanding indebtedness. If we are unable to generate adequate cash flow, we may be required to adopt one or more alternatives, such as selling assets, restructuring debt or obtaining additional equity capital on terms that may be onerous or highly dilutive. Our ability to refinance our indebtedness will depend on the capital markets and our financial condition at such time. We may not be able to engage in any of these activities or engage in these activities on desirable terms, which could result in a default on our debt obligations.

We may incur a substantial amount of debt or take other actions which would intensify the risks discussed above, and significant indebtedness may prevent us from taking actions that we would otherwise consider to be in our best interests.

We and our subsidiaries may be able to incur substantial additional debt in the future, subject to the restrictions contained in our debt instruments, some of which may be secured debt. The indentures governing our June 2022 Toggle Convertible Notes, ~~Indentures June 2023 Toggle Convertible Notes and 8.25% Convertible Notes do not restrict us from incurring any unsecured debt; however, the indentures governing our June 2022 Toggle Convertible Notes and June 2023 Toggle Convertible Notes allow us to incur secured debt of up to \$500.0 million.~~

In addition, our indebtedness, combined with our other financial obligations and contractual commitments, could have other important consequences. For example, it could:

- make us more vulnerable to adverse changes in general U.S. and worldwide economic, industry and competitive conditions and adverse changes in government regulation;
- limit our flexibility in planning for, or reacting to, changes in our business and our industry;
- place us at a disadvantage compared to our competitors who have less debt; and
- limit our ability to borrow additional amounts for working capital and other general corporate purposes, including to fund possible acquisitions of, or investments in, complementary businesses, products, services and technologies.

Any of these factors could materially and adversely affect our business, financial condition and results of operations.

We may not have the ability to raise the funds necessary to settle conversions of our convertible notes in cash or to repurchase the convertible notes upon a fundamental change or change in control transaction, and our future debt may contain limitations on our ability to pay cash upon conversion or repurchase of the convertible notes.

Holders of ~~the~~ our June 2022 Toggle Convertible Notes and June 2023 Toggle Convertible Notes have the right to require us to repurchase all or any portion of their ~~the~~ ~~Toggle Convertible Notes~~ notes upon the occurrence of a fundamental change or a change ~~if of~~ control transaction as defined in ~~the~~ ~~Toggle Convertible Notes~~ ~~Indentures~~ ~~those notes~~ at a repurchase price equal to 100% of the capitalized principal amount of ~~such~~ ~~Toggle Convertible Notes~~ ~~the notes~~ to be repurchased, in the case of a fundamental change, or 130% of the capitalized principal amount of ~~such~~ ~~Toggle Convertible Notes~~ ~~the notes~~ to be repurchased, in the case of a change in control transaction, plus accrued and unpaid interest, if any. Holders of ~~the~~ Senior 8.25% Convertible Notes have the right to require us to ~~redeem~~ ~~repurchase~~ all or any portion of their ~~unconverted~~ ~~notes in cash~~ upon the occurrence of a fundamental change or a change of control transaction as defined in ~~those notes~~ at a repurchase price equal to 115% of the greatest 100% of the principal amount of ~~the notes~~ to be ~~redeemed~~, ~~repurchased in the conversion value case of those notes as determined pursuant to those notes, a fundamental change plus accrued and the change of control consideration payable on the underlying shares. unpaid interest, if any.~~ In addition, upon conversion of ~~the~~ our June 2022 Toggle Convertible Notes and June 2023 Toggle Convertible Notes, unless we elect and are permitted at such time, to deliver solely shares of our common stock to the extent permitted under the ~~Toggle Convertible Notes~~ ~~Indentures~~ to settle such conversion (other than paying cash in lieu of delivering any fractional share), we will be required to make cash payments in respect of the ~~Toggle notes~~ being converted. In addition, upon conversion of our 8.25% Convertible Notes, ~~being converted~~, we will be required to deliver to the converting holder in cash a coupon make-whole premium in an amount equal to the present value of all regularly scheduled payments of interest due on each interest payment date of such notes until the maturity date thereof discounted based on United States treasuries plus 50 basis points. However, we may not have enough available cash or be able to obtain financing at the time we are required to make repurchases of ~~convertible~~ notes surrendered ~~therefore~~ for or pay cash upon conversions of the ~~Toggle Convertible Notes~~ ~~notes being converted~~. In addition, our ability to repurchase ~~the~~ our June 2022 Toggle Convertible Notes, ~~redeem~~ the Senior June 2023 Toggle Convertible Notes and 8.25% Convertible Notes, or to pay cash upon conversions of the ~~Toggle Convertible Notes~~ ~~such notes~~ may be limited by law, by regulatory authority or by agreements governing our future indebtedness. Our failure to repurchase ~~the~~ our June 2022 Toggle Convertible Notes, June 2023 Toggle Convertible Notes and 8.25% Convertible Notes at a time when the repurchase is required by the ~~Toggle Convertible Notes~~ ~~Indentures~~ that governs ~~such notes~~ or to pay any cash payable on future conversions of ~~the~~ ~~Toggle Convertible Notes~~ ~~such notes~~ as required by the ~~Toggle Convertible Notes~~ ~~Indentures~~ would constitute a default under ~~indenture that~~ ~~Toggle Convertible Notes~~ ~~Indenture~~. Similarly, our failure to ~~redeem~~ the Senior Convertible Notes when required by the terms of ~~those~~ ~~governs~~ ~~such notes~~ would constitute a default under the ~~indenture governing those notes~~ ~~such indenture~~. A default under the ~~Toggle Convertible Notes~~ ~~Indentures~~ or the any such indenture governing the Senior Convertible Notes or the occurrence of the fundamental change itself could also lead to a default under agreements governing our existing or future indebtedness. If the repayment of the related indebtedness were to be accelerated after any applicable notice or grace periods, we may not have sufficient funds to repay the indebtedness, and repay or ~~redeem~~ the Senior Convertible Notes, ~~repurchase~~ the ~~Toggle Convertible Notes~~ ~~such notes~~ or make cash payments upon conversions of the ~~Toggle Convertible Notes~~ ~~such notes~~.

The conditional conversion feature of ~~the~~ our June 2022 Toggle Convertible Notes and June 2023 Toggle Convertible Notes, if triggered, may adversely affect our financial condition and operating results.

In the event the conditional conversion feature of ~~the~~ each of our June 2022 Toggle Convertible Notes and June 2023 Toggle Convertible Notes is triggered, holders of ~~the~~ ~~Toggle Convertible Notes~~ ~~such notes~~ will be entitled to convert ~~the~~ ~~Toggle Convertible Notes~~ ~~held by them~~ ~~such notes~~ at any time during specified periods at their option. If one or more holders elect to convert ~~their~~ ~~Toggle Convertible Notes~~ ~~such notes~~, unless we elect to satisfy our conversion obligation to the extent permitted by the ~~Toggle Convertible Notes~~ ~~Indentures~~ by delivering solely shares of our common stock (other than paying cash in lieu of delivering any fractional share), we would be required to settle a portion or all of our conversion obligation through the payment of cash, which could adversely affect our liquidity. In addition, even if holders do not elect to convert ~~their~~ ~~Toggle Convertible Notes~~ ~~such notes~~, we could be required under applicable accounting rules to reclassify all or a portion of the outstanding principal of ~~the~~ ~~Toggle Convertible Notes~~ ~~such notes~~ as a current rather than long-term liability, which would result in a material reduction of our net working capital.

Risks Related to Operating as a Public Company

We incur significant increased expenses and administrative burdens as a public company, which could have an adverse effect on our business, financial condition and results of operations.

We incur significant legal, accounting, administrative and other costs and expenses as a public company. The Sarbanes-Oxley Act of 2002 (the "Sarbanes-Oxley Act"), including the requirements of Section 404, as well as rules and regulations subsequently implemented by the SEC, the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 and the rules and regulations promulgated and to be promulgated thereunder, the Public Company Accounting Oversight Board and the securities exchanges, impose additional reporting and other obligations on public companies. Our management and other personnel need to devote a substantial amount of time to these compliance and disclosure obligations. If these requirements divert the attention of our management and personnel from other aspects of our business, they could have a material adverse effect on

our business, financial condition and results of operations. Moreover, these rules and regulations applicable to public companies substantially increase our legal, accounting and financial compliance costs, require that we hire additional personnel and make some activities more time-consuming and costly. It may also be more expensive for us to obtain director and officer liability insurance.

We identified a material weakness in our internal control over financial reporting, reporting, and have identified other material weaknesses in the past. If we are unable to remediate this these material weakness, weaknesses, or if we experience additional material weaknesses or other deficiencies in the future or otherwise fail to maintain an effective system of internal control over financial reporting, we may not be able to accurately or timely report our financial results.

Our management is responsible for establishing and maintaining adequate internal control over financial reporting and for evaluating and reporting on the effectiveness of our system of internal control. As a public company, we are required by Section 404 of the Sarbanes-Oxley Act to evaluate the effectiveness of our internal control over financial reporting. We must also include a report issued by our independent registered public accounting firm based on their audit of our internal controls over financial reporting.

In connection with our year-end assessment of internal control over financial reporting, we determined that, as of December 31, 2022 December 31, 2023, we did not maintain effective internal control over financial reporting because of a material weakness associated with ineffective ITGCs, in the areas of user access and change management for the IT system systems that supports support our financial reporting processes. We believe that these control deficiencies were a result of insufficient training of personnel on the operation and importance of ITGCs and inadequate risk-assessment processes resulting in failure to identify and assess risks in IT environments that could impact internal control over financial reporting. Management also deemed ineffective certain automated and manual business process controls that are dependent on the affected ITGCs, because they could have been adversely impacted to the extent that they rely upon information and configurations from the affected IT system.

We The material weakness for ITGCs was first identified in 2022. With the oversight of senior management and our audit committee, we have taken identified controls and continue implemented our remediation plan to take steps to remediate the control deficiencies contributing to address the material weakness such related to our ITGCs mentioned above. During the year ended December 31, 2023, we have completed the following remedial actions related to this material weakness:

- Performed a risk assessment over the IT system that supports our financial reporting processes;
- Hired consultants and key personnel with internal control experience with our IT system to drive remediation efforts;
- Designed, developed, and deployed an enhanced ITGC framework, including the implementation of systems and tools to enable the effectiveness and consistent execution of these controls are designed, implemented and operating effectively. These remediation actions include: (i) developing and deploying controls;
- Developed a training program regarding the operation and importance of to address ITGCs and policies, including (i) educating control owners concerning the principles and requirements of each control, with a focus on those controls involving related to user access to IT systems and change management of over IT systems that support impacting financial reporting processes; reporting; (ii) developing and maintaining documentation of underlying ITGCs to facilitate promote knowledge transfer in the event of upon personnel and function changes; and (iii) enhancing management's implementing an

IT management review and testing plan to monitor ITGCs with a specific focus on IT systems supporting our financial reporting processes; processes; and

- Implemented enhanced system capabilities and business processes to manage and monitor key elements of the control framework. This includes segregation of duties, elevated user access review, change management, user provisioning and deprovisioning, and user access reviews.

We believe the measures described above will remediate the material weakness and strengthen our internal control over financial reporting. However, this material weakness will not be considered remediated until the applicable controls operate for a sufficient period of time and management has concluded through testing that the controls are operating effectively. Our implementation of the measures described above occurred through the end of 2023, and as a result, there was not a sufficient period of time for the controls to be operating or tested to conclude a full assessment of their effectiveness. Although we have improved our controls intended to remediate this material weakness, we cannot be certain as to when or if remediation will be complete. Further, remediation efforts place a significant burden on management and add increased pressure to our financial and IT resources and processes. As a result, we may not be successful in making the improvements necessary to remediate the material weakness identified by management, be able to do so in a timely manner, or be able to identify and remediate additional control deficiencies, including material weaknesses, in the future. For further discussion of the material weaknesses identified and our remedial efforts, see Item 4. Controls and Procedures, included elsewhere in this Quarterly Report on Form 10-Q, and Item 9A. Controls and Procedures of our Annual Report on Form 10-K for the year ended December 31, 2022 December 31, 2023, as amended, for additional information.

Additionally, We have also identified other material weaknesses in the Company identified a material weakness in internal control over financial reporting past including, most recently in connection with the review of our unaudited condensed consolidated financial statements for the three months ended September 30, 2023. A That material weakness is a deficiency, or a combination of deficiencies, in internal control over financial reporting such that it is reasonably possible that a material misstatement of the annual or interim financial statements will not be prevented or detected on a timely basis. The material weakness identified is was a result of certain control deficiencies related to the precision of our review for the valuation and remeasurement of the embedded derivative liability of our Toggle Convertible Notes as of June 30, 2023 and September 30, 2023. In response to this material weakness, we intend to enhance the control execution to ensure the Company's review of the completeness of features included, and was remediated in valuations.

2023.

Any failure to maintain internal control over financial reporting could severely inhibit our ability to accurately report our financial condition or results of operations. The effectiveness of our controls and procedures may be limited by a variety of factors, including:

- faulty human judgment and simple errors, omissions, or mistakes;
- fraudulent action of an individual or collusion of two or more people;
- inappropriate management override of procedures; and
- the possibility that any enhancements to controls and procedures may still not be adequate to assure timely and accurate financial control.

Our ability to comply with the annual internal control report requirements will depend on the effectiveness of our financial reporting and data systems and controls across our company. We expect these systems and controls to involve significant expenditures and to become increasingly complex as our business grows. To effectively manage this complexity, we will need to continue to improve our operational, financial, and management controls, and our reporting systems and procedures. Our inability to successfully

remediate our existing or any future material weaknesses or other deficiencies in our internal control over financial reporting or any failure to implement required new or improved controls, or difficulties encountered in the implementation or operation of these controls, could harm our operating results and cause us to fail to meet our financial reporting obligations or result in material misstatements in our financial statements, which could adversely affect our liquidity and access to capital markets, our business and investor confidence in us, and our stock price.

Interest in our common stock from our significant base of retail and other individual investors could result in increased volatility in the market price of our common stock, which could have a material adverse impact on the market price of our common stock and your investment.

Retail and other individual investors, which make up a significant segment of our overall stockholder base, have played a significant role in recent market dynamics that have resulted in substantial increases and volatility in the market prices of "meme" stocks. For example, the market prices and trading volumes of the common stock of GameStop Corp., AMC Entertainment Holdings, Inc. and certain other "meme" stocks have recently experienced, and may continue to experience, extreme volatility. The rapid and substantial increases or decreases in the market prices of these "meme" stocks may be unrelated to operating performance, macroeconomic trends or industry fundamentals, and substantial increases in the value of such stocks may obscure the significant risks and uncertainties that the issuer faces. This volatility has been attributed, in part, to strong and atypical retail investor interest, including as may be expressed on financial trading and other social media sites and online forums.

We have in the past and may in the future experience significant interest in our common stock from such investors, and as a result the market price of our common stock has been and may continue to be volatile. There is no guarantee that we will continue to benefit from such retail and individual investor interest, even if our business or financial performance is strong. If investor sentiment changes, this could have a material adverse impact on the market price of our common stock and your investment.

Retail and individual investor sentiment (including as may be expressed on financial trading and other social media sites and online forums) may also influence the amount and status of short interest in our common stock. This has and may in the future increase the likelihood of our common stock being the target of a "short squeeze," particularly because a large proportion of our common stock has been in the past and may in the future be traded by short sellers. A short squeeze and/or focused investor trading in anticipation of a short squeeze has and may in the future lead to volatile price movements in shares of our common stock that may be unrelated or disproportionate to our operating performance or prospects. Or, if investors no longer believe a short squeeze is viable, the market price of our common stock may rapidly decline. Accordingly, investors that purchase shares of our common stock during a short squeeze may lose a significant portion of their investment.

Furthermore, short squeeze and/or other focused trading activity stemming from negative sentiment across our retail investor base could result in declines in the market price of our common stock such that our eligibility to remain listed on The Nasdaq Stock Market ("Nasdaq") may be adversely impacted, which could impair our ability to access the capital markets and otherwise raise capital in the future. See "General Risk Factors—If we fail to satisfy all applicable Nasdaq continued listing requirements, including the \$1.00 minimum closing bid price requirement, our common stock may be delisted from Nasdaq, which could have an adverse impact on the liquidity and market price of our common stock."

General Risk Factors

We have never paid dividends on our capital stock, and we do not anticipate paying dividends in the foreseeable future.

We have never paid dividends on any of our capital stock and currently intend to retain any future earnings to fund the growth of our business. Any determination to pay dividends in the future will be at the discretion of our board of directors, and will depend on our financial condition, operating results, capital requirements, general business conditions and other factors that our board of directors may deem relevant. As a result, capital appreciation, if any, of our common stock will be the sole source of gain for the foreseeable future.

Our stock price is volatile, and you may not be able to sell shares of our common stock at or above the price you paid.

The trading price of our common stock is volatile and has been and may in the future be subject to wide fluctuations in response to various factors, some of which are beyond our control. For example, the trading price of our common stock declined following the release of the short-seller article, which contains certain allegations against us. Other factors that have or may cause our stock price to fluctuate include, but are not limited to:

- our progress on achievement of business milestones and objectives;
- actual or anticipated fluctuations in operating results;
- our ability to increase our authorized common stock;
- our need for additional capital;
- failure to meet or exceed financial estimates and projections of the investment community or that we provide to the public;
- issuance of new or updated research or reports by securities analysts or changed recommendations for our stock or the transportation industry in general;
- announcements by us or our competitors of significant acquisitions, capital commitments or the entrance into or discontinuation of strategic partnerships, joint ventures or collaborations;
- operating and share price performance of other companies that investors deem comparable to us;
- recalls, including our recent BEV truck recall;
- our focus on long-term goals over short-term results;
- the timing and magnitude of our investments in the growth of our business;
- actual or anticipated changes in laws and regulations affecting our business;
- additions or departures of key management or other personnel;
- disputes or other developments related to our intellectual property or other proprietary rights, including litigation;

- our ability to market new and enhanced products and technologies on a timely basis;
- sales of substantial amounts of our common stock, including sales by our directors, executive officers or significant stockholders or the perception that such sales could occur;
- changes in our capital structure, including future issuances of securities or the incurrence of debt;
- the effect of any reverse stock split of our issued shares of common stock; and
- general economic, political and market conditions.

In addition, the stock market in general, and The Nasdaq Stock Market ("Nasdaq") in particular, has experienced extreme price and volume fluctuations that have often been unrelated or disproportionate to the operating performance of those companies.

The closing In September 2020, an entity published an article containing certain allegations against us that we believe has negatively impacted the trading price of our common stock on Nasdaq ranged from \$0.54 to \$8.05 from May 2, 2022 through October 31, 2023. stock. The price of our common stock also decreased substantially following public announcements made by us. In addition, broad market and industry factors, including the COVID-19 pandemic and the war in Ukraine, may seriously affect the market price of our common stock, regardless of our actual operating performance.

Any investment in our common stock is subject to extreme volatility and could result in the loss of your entire investment. In addition, in the past, following periods of volatility in the overall market and the market price of a particular company's securities, securities class action litigation has often been instituted against these companies. This litigation, which has and may in the future be instituted against us, could result in substantial costs and a diversion of our management's attention and resources. See Legal Proceedings in Note 12,11, Commitments and Contingencies, to the condensed consolidated financial statements included elsewhere in this Quarterly Report on Form 10-Q and Note 14, Commitments and Contingencies, in our Annual Report on Form 10-K for the year ended December 31, 2022 December 31, 2023, as amended, for additional information.

If we fail to satisfy all applicable Nasdaq continued listing requirements, including the \$1.00 minimum closing bid price requirement, our common stock may be delisted from Nasdaq, which could have an adverse impact on the liquidity and market price of our common stock.

Our common stock is currently listed on Nasdaq, which has qualitative and quantitative continued listing requirements, including corporate governance requirements, public float requirements, and a \$1.00 minimum closing bid price requirement. Our common stock price has been

On May 24, 2023, we received written notice from Nasdaq notifying us that we are not in the recent past below compliance with the minimum bid price requirements set forth in Nasdaq listing rule 5450(a)(1) for continued listing on Nasdaq resulting in (the "Minimum Bid Price Requirement"). Nasdaq listing rule 5450(a)(1) requires listed securities maintain a delisting notice, minimum closing bid price of \$1.00 per share, and we subsequently regained compliance. If Nasdaq listing rule 5810(c)(3)(A) provides that a failure to meet the minimum closing bid price requirement exists if the deficiency continues for a period of 30 consecutive business days. Based on the closing bid price of our common stock again trades at closing bid prices below \$1.00 for the 30 consecutive business days prior to the date of the written notice, we did not meet the Minimum Bid Price Requirement. To regain compliance, the closing bid price of our common stock needed to be at least \$1.00 per share for a minimum of 10 consecutive business days at any time prior to November 20, 2023. On June 29, 2023, we received notification from Nasdaq that we had regained compliance with the Minimum Bid Price Requirement and, as a result, the matter of our noncompliance with the Minimum Bid Price Requirement had been closed.

On January 19, 2024, we received a subsequent notice from Nasdaq that we did not meet the Minimum Bid Price Requirement. To regain compliance, the closing bid price of our common stock must be at least \$1.00 per share for a minimum of 10 consecutive business days within 180 days of the notice date, or by July 17, 2024, which may be extended if certain conditions are met. Since the date of the second notice letter from Nasdaq, our common stock has failed to maintain a minimum closing bid price of \$1.00 per share for at least 10 consecutive business days.

As described in the future, definitive proxy statement filed with the SEC on April 24, 2024, we have requested that our stockholders approve a reverse stock split of our common stock at our 2024 annual meeting of stockholders, in connection with our failure to satisfy the Minimum Bid Price Requirement. We cannot guarantee that our stockholders will approve this proposal. In addition, although we expect that a reverse stock split will result have the immediate effect of increasing the market price of our common stock to above \$1.00, we cannot guarantee that a reverse stock split will result in the trading price of our common stock remaining above the Minimum Bid Price Requirement, or that a reverse stock split will result in a long-term increase in the market price of our common stock, which would be dependent on many factors, including general economic, market and industry conditions, our business and other factors.

If we do not regain compliance with the minimum bid price requirement, or if we are unable to satisfy any of the other continued listing requirements, Nasdaq may take steps to delist our common stock. Delisting would have an adverse effect on the liquidity of our common stock, decrease the market price of our common stock, result in the potential loss of confidence by investors, suppliers, customers, end users, and employees, and fewer business development opportunities, and adversely affect our ability to obtain financing for our continuing operations. In addition, delisting would constitute an event of default a fundamental change under the indentures that govern our June 2022 Toggle Convertible Notes, Indentures June 2023 Toggle Convertible Notes and other indebtedness and the reasonable prospect of delisting 8.25% Convertible Notes which could result in an equity conditions failure under our senior being required to repurchase such notes. See "Risks Related to Our Convertible Indebtedness - We may not have the ability to raise the funds necessary to settle conversions of convertible notes which could affect in cash or to repurchase the notes upon a fundamental change or change in control transaction, and our future debt may contain limitations on our ability to elect to repay our outstanding indebtedness, pay interest on our senior convertible notes in shares cash upon conversion or repurchase of our common stock and our ability to sell additional notes under the securities purchase agreement. notes."

If we are unable to attract and retain key employees and hire qualified management, technical and engineering personnel, our ability to compete could be harmed.

Our success depends, in part, on our ability to retain our key personnel. The unexpected loss of or failure to retain one or more of our key employees could adversely affect our business. For example, we have experienced a number of changes in management in the past few years.

Our success also depends, in part, on our continuing ability to identify, hire, attract, train and develop other highly qualified personnel, including management, technical and engineering personnel. Qualified individuals are in high demand, particularly in the vehicle technology industry. Competition for individuals with experience designing, manufacturing and servicing electric vehicles is intense, and we may not be able to attract, integrate, train, motivate or retain additional highly qualified personnel in the future. Furthermore, our ability to hire, attract and retain them may depend on our ability to provide competitive compensation. We use equity awards to attract talented employees, but if the value of our common stock declines significantly, as it has in the recent past, and remains depressed, it may prevent us from recruiting and retaining qualified employees. We may not be able to

attract, integrate, train or retain qualified personnel in the future. Additionally, we may not be able to hire new employees quickly enough to meet our needs. Our failure to do so could adversely affect our business and prospects, including the execution of our global business strategy.

Our Certificate certificate of Incorporation incorporation provides, subject to limited exceptions, that the Court of Chancery of the State of Delaware will be the sole and exclusive forum for certain stockholder litigation matters, which could limit our stockholders' ability to obtain a favorable judicial forum for disputes with us or our directors, officers, employees or stockholders.

Our Certificate certificate of Incorporation incorporation requires, to the fullest extent permitted by law, that derivative actions brought in our name, actions against directors, officers and employees for breach of fiduciary duty and other similar actions may be brought in the Court of Chancery in the State of Delaware or, if that court lacks subject matter jurisdiction, another federal or state court situated in the State of Delaware. Any person or entity purchasing or otherwise acquiring any interest in shares of our capital stock shall be deemed to have notice of and consented to the forum provisions in our Certificate certificate of Incorporation incorporation. In addition,

our Certificate certificate of Incorporation incorporation and our amended and restated bylaws ("Bylaws") will provide that the federal district courts of the United States shall be the exclusive forum for the resolution of any complaint asserting a cause of action under the Securities Act and the Exchange Act.

In March 2020, the Delaware Supreme Court issued a decision in *Salzburg et al. v. Sciabacucchi*, which found that an exclusive forum provision providing for claims under the Securities Act to be brought in federal court is facially valid under Delaware law. It is unclear whether this decision will be appealed, or what the final outcome of this case will be. We intend to enforce this provision, but we do not know whether courts in other jurisdictions will agree with this decision or enforce it.

This choice of forum provision may limit a stockholder's ability to bring a claim in a judicial forum that it finds favorable for disputes with us or any of our directors, officers, other employees or stockholders, which may discourage lawsuits with respect to such claims. Alternatively, if a court were to find the choice of forum provision contained in our Certificate certificate of Incorporation incorporation to be inapplicable or unenforceable in an action, we may incur additional costs associated with resolving such action in other jurisdictions, which could harm our business, operating results and financial condition.

If securities or industry analysts issue an adverse recommendation regarding our stock or do not publish research or reports about our company, our stock price and trading volume could decline.

The trading market for our common stock depends in part on the research and reports that equity research analysts publish about us and our business. We do not control these analysts or the content and opinions included in their reports. Securities analysts may elect not to provide research coverage of our company and such lack of research coverage may adversely affect the market price of our common stock. The price of our common stock could also decline if one or more equity research analysts downgrade our common stock, change their price targets, issue other unfavorable commentary or cease publishing reports about us or our business. For example, in September 2020, an entity published an article containing certain allegations against us that we believe has negatively impacted the trading price of our common stock. If one or more equity research analysts cease coverage of our company, we could lose visibility in the market, which in turn could cause our stock price to decline.

Certain of our warrants are accounted for as liabilities and the changes in value of our warrants could have a material effect on our financial results.

We are required to measure the fair value of certain of our warrants at the end of each reporting period and recognize changes in the fair value from the prior period in our operating results for the current period. As a result of the recurring fair value measurement, our financial statements and results of operations may fluctuate quarterly based on factors which are outside our control. We expect that we will recognize non-cash gains or losses due to the quarterly fair valuation of certain of our warrants and that such gains or losses could be material.

ITEM 5. OTHER INFORMATION

(c) Trading Plans

During the quarter ended September 30, 2023 March 31, 2024, no director or officer adopted or terminated any contract, instruction or written plan for the purchase or sale of securities of the Company pursuant to Rule 10b5-1(c) or any non-Rule 10b5-1 trading arrangement (as defined in Regulation S-K Item 408(c)).

ITEM 6. EXHIBITS

Exhibit No.	Description
3.1	Second Amended and Restated Certificate of Incorporation (incorporated by reference to Exhibit 3.1 to the Registrant's Registration Statement on Form S-1 (File No. 333-239185)).
3.2	Certificate of Amendment of the Second Amended and Restated Certificate of Incorporation of Nikola Corporation (incorporated by reference to Exhibit 3.2 to the Registrant's Registration Statement on Form S-4 filed August 29, 2022).
3.3	Certificate of Amendment of the Second Amended and Restated Certificate of Incorporation of Nikola Corporation (incorporated by reference to Exhibit 3.3 to the Registrant's Quarterly Report on Form 10-Q filed November 2, 2023).
3.4 3.4	Amended and Restated Bylaws (as amended as of May 31, 2022February 5, 2024) (incorporated by reference to Exhibit 3.1 to the Registrant's Current Report on Form 8-K filed on June 1, 2022February 9, 2024).
4.1	Indenture by and between Nikola Corporation and Wilmington Savings Fund Society, FSB, as trustee, dated August 21, 2023 (incorporated by reference to Exhibit 4.1 to the Registrant's Current Report on Form 8-K filed on August 21, 2023).
4.2	First Supplemental Indenture (including Form of Note) by and between Nikola Corporation and Wilmington Savings Fund Society, FSB, as trustee, dated August 21, 2023 (incorporated by reference to Exhibit 4.2 to the Registrant's Current Report on Form 8-K filed on August 21, 2023).
4.3	Second Supplemental Indenture (including Form of Series A-2 Senior Convertible Note) by and between Nikola Corporation and Wilmington Savings Fund Society, FSB, as trustee, dated September 22, 2023 (incorporated by reference to Exhibit 4.2 to the Registrant's Current Report on Form 8-K filed on September 22, 2023).
10.1	# Amended and Restated Equity Distribution Executive Employment Agreement by and between Nikola Corporation and Citigroup Global Markets Inc., as sales agent, Dirk Ole Hoefelmann, dated August 4, 2023February 1, 2024 (incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K filed on August 4, 2023February 2, 2024).
10.2	# Securities Purchase Executive Employment Agreement by and between Nikola Corporation and the investors named therein, Thomas B. Okray, dated August 21, 2023 March 1, 2024 (incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K filed on August 21, 2023 March 4, 2024).
10.3	# Termination Agreement dated February 1, 2024 with respect to the Supply Agreement by and between Nel ASA and Nikola Corporation (formerly Nikola Corporation 2020 Stock Incentive Plan, as amended and restated on April 12, 2023 Motor Company, LLC), dated June 28, 2018.
10.4	# Executive Employment Agreement by and between Nikola Corporation and Stephen J. Girsky, dated August 4, 2023.
10.5	# Executive Transition Services Agreement by and between Nikola Corporation and Michael Lohscheller, dated August 4, 2023.
10.6	# Executive Employment Agreement by and between Nikola Corporation and Mary S. Chan, dated September 15, 2023 (incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K filed on September 19, 2023).
10.7	# Executive Employment Agreement by and between Nikola Corporation and Joseph S. Cappello, dated September 15, 2023 (incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K filed on September 21, 2023).
31.1	Certification of Principal Executive Officer Pursuant to Rules 13a-14(a) and 15d-14(a) under the Securities Exchange Act of 1934, as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
31.2	Certification of Principal Financial Officer Pursuant to Rules 13a-14(a) and 15d-14(a) under the Securities Exchange Act of 1934, as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
32.1	^ Certification of Principal Executive Officer Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
32.2	^ Certification of 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.
101.SCH	Inline XBRL Extension Calculation Linkbase.
101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase.

101.DEF	Inline XBRL Taxonomy Extension Definition Linkbase.
101.LAB	Inline XBRL Taxonomy Extension Label Linkbase.
101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase.
104	Cover Page Interactive Data File (formatted as Inline XBRL).

Indicates management contract or compensatory plan or arrangement.

^ In accordance with Item 601(b)(32)(ii) of Regulation S-K and SEC Release No. 34-47986, the certifications furnished in Exhibits 32.1 and 32.2 hereto are deemed to accompany this Quarterly Report on Form 10-Q and will not be deemed "filed" for purposes of Section 18 of the Exchange Act or deemed to be incorporated by reference into any filing under the Exchange Act or the Securities Act except to the extent that the registrant specifically incorporates it by reference.

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.

NIKOLA CORPORATION

By: /s/ Stephen J. Girsky
Stephen J. Girsky
President and Chief Executive Officer
(Principal Executive Officer)

By: /s/ Anastasiya Pasterick Thomas B. Okray
Anastasiya Pasterick Thomas B. Okray
Chief Financial Officer
(Principal Financial and Accounting Officer)

Date: November 2, 2023 May 7, 2024

9981

Exhibit 3.310.3

[*] Indicates that certain information in this exhibit has been excluded because it is both (i) not material and (ii) would be competitively harmful if publicly disclosed.

CERTIFICATE OF AMENDMENT OF TERMINATION AGREEMENT

THE SECOND AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION OF

NIKOLA CORPORATION

Nikola Corporation, a corporation organized and existing under the General Corporation Law of the State of Delaware (the **This TERMINATION AGREEMENT** (this "Corporation Termination Agreement") is made and entered into as of February 1, 2024, hereby certifies as follows:

1. The original Certificate of Incorporation of the Corporation was filed with the Secretary of State of Delaware on January 23, 2018 under the name VectoIQ Acquisition Corp.

2. This amendment to the Second Amended by and Restated Certificate of Incorporation of the Corporation as set forth below has been duly adopted in accordance with the provisions of Section 242 of the General Corporation Law of the State of Delaware by the stockholders and directors of the Corporation.

3. Subsection A of ARTICLE IV of the Second Amended and Restated Certificate of Incorporation of the Corporation as presently in effect is amended and restated to read in its entirety as follows:

"Classes of Stock. The total number of shares of all classes of capital stock that the Corporation shall have authority to issue is one billion seven hundred fifty million (1,750,000,000), of which one billion six hundred million (1,600,000,000) shares shall be Common Stock, \$0.0001 par value per share between Nel ASA ("Common Stock Supplier"), and of which one hundred fifty million (150,000,000) shares shall be Preferred Stock, \$0.0001 par value per share Nikola Motor Company LLC ("Preferred Stock Purchaser"). The number of authorized shares of Common Stock or Preferred Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority of the then outstanding shares of Common Stock, without a vote of the holders of the Preferred Stock, or of any series thereof, unless a vote of any such Preferred Stock holders is required pursuant. Supplier and Purchaser are sometimes referred to the provisions established by the Board of Directors of the Corporation (the "Board of Directors") in the resolution or resolutions providing for the issue of such Preferred Stock, and if such holders of such Preferred Stock are so entitled to vote thereon, then, except as may otherwise be set forth in the certificate of incorporation of the Corporation, the only stockholder approval required shall be the affirmative vote of a majority of the voting power of the Common Stock and the Preferred Stock so entitled to vote, voting together herein individually as a single class. "Party"

4. All other provisions of the Second Amended and Restated Certificate of Incorporation of the Corporation remain in full force and effect.

IN WITNESS WHEREOF, the Corporation has caused this Certificate of Amendment to be signed by its duly authorized Chief Legal Officer this 3rd day of August, 2023.

NIKOLA CORPORATION

By: /s/ Britton M. Worthen
Britton M. Worthen, Chief Legal Officer

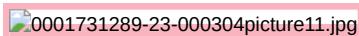


Exhibit 10.4

Stephen J. Girskey

Re: Executive Employment Arrangement

Dear Steve:

I am pleased to offer you the position of President and Chief Executive Officer of Nikola Corporation (the "Company"), reporting to the Company's Board of Directors (the "Board"). Effective as of your employment start date, you will no longer serve as Chairman of the Board, but you will continue to serve as a member of the Board. Your responsibilities include, but are not limited to, such employment duties as are usual and customary for this position and which are commensurate with the duties, authorities, and responsibilities of persons in similar capacities in similar sized companies. At the Company's request, you shall serve the Company and/or its subsidiaries and affiliates in other capacities in addition to the foregoing, consistent with expectations for your position.

The terms of your employment are as follows:

Employment Period. Your anticipated start date is on or about August 4, 2023. Your employment shall continue indefinitely until terminated in accordance with the terms of this Agreement. Notwithstanding the foregoing, your employment is terminable at will by the Company or by you at any time (for any reason or for no reason), subject to the termination provisions of this Agreement.

Relocation. To assist you with your relocation to the greater Phoenix, Arizona area within two months of your start date, the Company will provide a one-time taxable miscellaneous bonus of \$20,000 payable with your first regular paycheck; grossed-up payment for the loading, shipping and unloading of your goods from your current home to your new one after receipts for those services are obtained by the Company; assistance with back-and-forth travel to and from your current residence to the Company's headquarters in Phoenix, Arizona for up to two (2) months from your official start date with the Company, including airfare, lodging and reasonable meal expenses; and home buying or apartment search assistance through a local realty firm. You agree to repay in full all the assistance outlined in this Relocation section if you leave the Company voluntarily (and not pursuant to an Involuntary Termination (as defined below), death or disability) prior to your one-year employment anniversary with the Company.

Annual Salary. Your annual salary will be \$1,000,000, paid bi-weekly less payroll deductions and all required withholdings.

Annual Bonus. You have indicated your interest in declining participation in any annual cash bonus program provided by the Company, without regard to your eligibility in any such program. Your signature on this Agreement confirms your election.

Stock Awards. You will be eligible to receive stock awards under the Company's 2020 Stock Incentive Plan (the "Plan") as in effect from time to time, subject to approval by the Board and in line with your role and the rubric for other named executive officers of the Company. The terms and conditions of each stock award will be set forth in separate award agreements in forms prescribed by the Company (each, an "Award Agreement"), and all shares underlying the respective awards will contain the right to receive dividend equivalents, if any, subject to the

same vesting conditions collectively as the shares underlying the stock awards. The stock awards shall be governed in all respects by the terms and conditions of the Plan and the applicable Award Agreement.

You are eligible to receive the following new hire stock awards, subject to approval by the Board, to be granted no later than August 11, 2023:

- **Restricted Stock Unit Award (RSUs) Parties.** The Company will award you 550,000 RSUs which will vest in equal annual tranches on each of the first two anniversaries of the date you become President and Chief Executive Officer, subject to your continuous "Service" (as defined in the Plan).
- **Performance Stock Unit Award (PSUs).** The Company will award you 1,000,000 PSUs, reflecting the target number of shares assuming achievement at 100% (the "Target Amount"). The number of PSUs that may ultimately be paid out to you will range from 0% to 200% of the Target Amount as determined (i) based upon the Company's achievement of certain performance goals occurring during the Performance Period as outlined in the forthcoming award agreement, and (ii) subject to your continuous Service through the performance period. The performance goals and terms and conditions of the award are consistent with those agreed upon and approved by the Board at the Company's April 2023 board meeting and awarded to all other named executive officers.

In the event of a Change in Control (as defined in the Plan), the achievement of the performance conditions for performance-based stock awards (each a "Performance Award") will be based on the Company's performance through the closing of such Change in Control. The amount of the Performance Award that would have been earned based on this measurement will be converted to time-vested restricted stock units immediately prior to such Change in Control (the "Converted Awards"). If the Converted Awards are assumed, substituted or otherwise continued by the successor corporation (or a parent or subsidiary thereof), all vesting restrictions applicable to the Converted Awards will lapse on the earlier of (i) the final day of the applicable performance period subject to your continued employment with the successor corporation (or a parent or subsidiary thereof) through such date, at which time such Converted Awards will be settled, and (ii) subject to your compliance with the Severance Conditions (as defined below), the date of your Involuntary Termination of employment with the successor corporation (or a parent or subsidiary thereof). All Converted Awards that are not assumed, substituted, or otherwise continued by the successor corporation (or a parent or subsidiary thereof) will fully vest and will be settled immediately prior to the consummation of such Change in Control.

Benefits. You (and your spouse and/or eligible dependents to the extent provided in the applicable plans and programs) are eligible to participate in and be covered under the health, welfare and financial benefit plans and programs maintained by the Company for the benefit of its employees, pursuant to the terms of such plans, on the same terms and conditions as those applicable to similarly situated executives. Detailed descriptions of the Company's benefit plans are available and will be provided to you upon request. Your eligibility to receive such benefits will be subject in each case to the generally applicable terms and conditions for the benefits in question and to the determinations of any person or committee administering such benefits. The Company may modify or terminate any benefits plan or program from time to time in its sole discretion.

Expenses. You are entitled to receive prompt reimbursement for all reasonable business expenses incurred in connection with the performance of your duties in accordance with the policies, practices, and procedures of the Company.

Vacation. You are entitled to paid vacation in accordance with the policies, practices, and procedures of the Company.

Indemnification/Legal Fees. The Company agrees that you will be entitled to the same indemnification rights as the Company grants to other officers of the Company, as in effect from time to time. The Company will maintain a directors and officers liability policy covering you with coverage comparable or equal to that provided to other officers of the Company. In the event of any dispute over your entitlement to payments or benefits hereunder, the Company shall advance you an amount equal to your monthly legal fees incurred in connection with such dispute until there is a final non-appealable decision by a court that you are not entitled to such payment or benefit.

Termination of Employment. In the event of an Involuntary Termination of your employment at any time, and subject to (i) your execution of a general release of claims in favor of the Company in substantially the form attached as Exhibit A (the "Release"), (ii) your non-revocation of the Release and it becoming effective within sixty (60) days following the date of your termination of employment (the "Termination Date"), and (iii) your faithful observance of the terms of such Release (such conditions, the "Severance Conditions"), then you shall be entitled to the following severance benefits (the "Severance Benefits"):

- **Severance Payment.** The Company will pay you a cash lump sum in an amount equal to \$2,600,000, less applicable withholding.
- **Stock Awards.**
 - **Restricted Stock, Restricted Stock Units and Stock Options.** All outstanding restricted stock awards, restricted stock units (other than Performance Awards but including the Converted Awards) and stock options will immediately vest in full. Unexercised stock options will remain exercisable for three years following your Termination Date.
 - **Performance Awards.** Service will be deemed to have been satisfied upon an Involuntary Termination. All outstanding PSUs will vest and be settled at the end of the performance period based on final actual performance.
- **Benefits Continuation.** The Company will pay to you a cash lump sum equal in value to 18 months of COBRA benefits coverage, less applicable withholding.

The cash Severance Benefits will be paid on the first regular payroll date following the date that your Release becomes effective, subject to compliance with Section 409A of the Internal Revenue Code of 1986, as amended ("Section 409A").

For the avoidance of doubt, if you independently and unilaterally decide to end your employment at the Company without Good Reason, or if you are terminated for Cause, or if your employment is terminated due to your death or disability, you will not be entitled to receive any Severance Benefits.

You may terminate your employment with the Company at any time and for any reason whatsoever simply by notifying the Company. Likewise, the Company may terminate your employment at any time, with or without cause or advance notice. Your employment at-will status can only be modified in a written agreement signed by you and by an authorized officer of the Company.

Pro-Ration of 2023 Non-Employee Director Compensation. Pursuant to the terms of the Company's non-employee director program, in your capacity as a non-employee director and as Chairman of the Board, on April 24, 2023, you were granted an award of 175,000 restricted stock units with a grant date fair value of \$350,000 (the "2023 Award") under the Plan and subject to the terms of an award agreements in the form prescribed by the Company. By your signature on this Agreement, you agree that the number of RSUs subject to the 2023 Award will be prorated to reflect your period of service as a non-employee director from April 24, 2023, to August 4, 2023. Except with respect to the number of

restricted stock units subject to the 2023 Award, the 2023 Award will continue to be administered in accordance with the Plan and the terms of the 2023 Award and will vest subject to your continued service with the Company as CEO and President through the first anniversary of the grant date.

Section 409A. Notwithstanding anything to the contrary in this Agreement, no compensation or benefits, including any Severance Benefits, stock awards, consulting payments or other benefits payable due to termination, shall be paid to you during the six-month period following your termination if the Company determines that paying such amounts would be a prohibited distribution under Section 409A. If the payment of any such amounts is so delayed, then on the first day of the seventh month following termination (or such earlier date upon which such amount can be paid under Section 409A without resulting in a prohibited distribution) the Company shall pay to you a lump-sum amount equal to the cumulative amount that would have otherwise been payable during such period. In addition, to the extent required in order to comply with Section 409A, you shall not be considered to have terminated employment with the Company for purposes of this Agreement and no payment of such amounts due pursuant to your termination shall be due until you would be considered to have incurred a "separation from service"

from the Company within the meaning of Section 409A. Each such amount which constitutes deferred compensation subject to Section 409A shall be construed as a separate identified payment for purposes of Section 409A. If the period during which you have discretion to execute or revoke the Release straddles two calendar years, then the Company will make the payment of amounts that are subject to Section 409A and contingent on the effectiveness of such Release starting in the second of such years regardless of which year you actually deliver the Release. You may not, directly or indirectly, designate the calendar year of payment of any amounts subject to Section 409A. The intent of the parties is that the payments and benefits under this Agreement comply with or be exempt from Section 409A and, accordingly, to the maximum extent permitted, this Agreement shall be interpreted to be exempt from or in compliance therewith.

To the extent that any payments or reimbursements provided to you under this Agreement are deemed to constitute compensation to which Treasury Regulation Section 1.409A-3(i)(1)(iv) would apply, such amounts shall be paid or reimbursed reasonably promptly, but not later than December 31 of the year following the year in which the expense was incurred. The amount of any such payments eligible for reimbursement in one year shall not affect the payments or expenses that are eligible for payment or reimbursement in any other taxable year, and your right to such payments or reimbursement of any such expenses shall not be subject to liquidation or exchange for any other benefit.

Work Product. As a condition of employment, you will be expected to abide by Company rules and policies and comply with the Employee Proprietary Information and Inventions Assignment Agreement (PIA), which prohibits unauthorized use or disclosure of Company proprietary information.

Confidentiality. In your work for the Company, you will be expected not to use or disclose any confidential information, including trade secrets, of any former employer or other person to whom you have an obligation of confidentiality. Rather, you will be expected to use only that information which is generally known and used by persons with training and experience comparable to your own, which is common knowledge in the industry or otherwise legally in the public domain, or which is otherwise provided or developed by the Company.

You agree that you will not bring onto Company premises any unpublished documents or property belonging to any former employer or other person to whom you have an obligation of confidentiality. You represent that you have disclosed to the Company any contract you have signed that may restrict your activities on behalf of the Company. You represent further that you have the ability to perform the essential functions of your job with or without reasonable accommodations.

This Agreement, together with its attached exhibits, forms the complete and exclusive statement of your employment agreement with the Company. The employment terms in this Agreement supersede any other agreements or promises made to you by anyone, whether oral or written. Changes in your employment terms, other than those changes expressly reserved to the Company's discretion in this Agreement, require a written modification signed by an authorized officer of the Company and by you.

Successors/Assigns. The Company shall assign this Agreement to any successor to all or substantially all of the business and assets of the Company and the Company shall require successor to expressly assume and agree to in the same manner and to the same extent that the Company would be required to perform it if no such succession had taken place.

Governing Law. The terms of this Agreement and the resolution of any dispute as to the meaning, effect, performance or validity of this Agreement or arising out of, related to, or in any way connected with, this Agreement, your employment with the Company (or termination thereof) or any other relationship between you and the Company (a "Dispute") will be governed by the laws of the State of Arizona, without giving effect to the principles of conflict of laws. To the extent not subject to arbitration as described below, you and the Company consent to the exclusive jurisdiction of, and venue in, the state courts in State of Arizona (or in the event of exclusive federal jurisdiction, the courts of the District of Arizona in connection with any Dispute or any claim related to any Dispute).

Except as prohibited by law, you agree that any Dispute between you and the Company (or between you and any officer, director, employee or affiliates of the Company, each of whom is hereby designated a third party beneficiary of this Agreement regarding arbitration) will be resolved through binding arbitration in Maricopa

County, Arizona under the rules of the American Arbitration Association and the Arbitration Rules set forth in Arizona Rules of Civil Procedure. Nothing in this arbitration provision is intended to limit any right you may have to file a charge with or obtain relief from the National Labor Relations Board or any other state or federal agency. You agree that such arbitration shall be conducted on an individual basis only, not a class, collective or representative basis, and hereby waive any right to bring class-wide, collective or representative claims before any arbitrator or in any forum. THE PARTIES UNDERSTAND THAT BY AGREEING TO ARBITRATE DISPUTES THEY ARE WAIVING ANY RIGHT THEY MIGHT OTHERWISE HAVE TO A JURY TRIAL. This arbitration provision is not intended to modify or limit substantive rights or the remedies available to the parties, including the right to seek interim relief, such as injunction or attachment, through judicial process, which shall not be deemed a waiver of the right to demand and obtain arbitration.

Please sign and date this Agreement if you wish to commence employment at the Company under the terms described above and return it to . For the purposes of this Agreement, a facsimile or electronic signature shall serve as an original.

Certain Definitions. Defined terms in this Agreement are as follows:

Involuntary Termination. Involuntary Termination shall mean a termination of employment by the Company without Cause or by you with Good Reason.

Good Reason. Good Reason shall mean a resignation by you as a result of (i) an adverse change in title, authorities or responsibilities that diminishes your position; (ii) a change in your reporting relationship such that you are no longer reporting to the Board; (iii) a material reduction in your base salary; or (iv) a material breach by the Company of any of its obligations under this Agreement or any other written agreement between the Company and you. A resignation for Good Reason will not be deemed to have occurred unless you give the Company written notice of the condition within ninety (90) days after the condition comes into existence and the Company fails to remedy the condition within thirty (30) days after receiving your written notice.

Cause. Cause shall mean any of the following: (i) your repeated failure to follow the lawful instructions of the Board consistent with your title following written notice of any alleged failure and 15 days to cure such failure; (ii) your material violation of any written Company policy that has been provided to you; (iii) your commission of any act of fraud, embezzlement or any other material misconduct that has caused or is reasonably expected to result in injury to the Company; (iv) your unauthorized use or disclosure of any proprietary information or trade secrets of the Company or any other party to whom you owe an obligation of nondisclosure as a result of your relationship with the Company; or (v) your material breach of any of your material obligations under any written agreement or covenant with the Company."

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

I am delighted to confirm the terms of this Agreement to you on behalf of the Company. We look forward to your favorable reply and to building a successful Company together.

Sincerely,

NIKOLA CORPORATION

BY: /s/ Steven M. Shindler
Name: Steven M. Shindler
For the Board of Directors

Accepted:

/s/ Stephen J. Girskey
Stephen J. Girskey

EXHIBIT A

Severance Agreement and Release RECITALS

1. WHEREAS, Release of Claims. In exchange for receipt of the severance benefits (the "Severance Benefits") described in *<insert name>*'s ("Executive") Employment Supplier and Purchaser entered into that certain Supply Agreement dated [], 2023 (the "Employment Agreement"), Executive hereby releases and discharges and covenants not to sue Nikola Corporation (the "Company"), its subsidiaries, parents, or affiliated corporations, past and present, and each *as of* them, as well as each of its and their assignees, successors, directors, officers, stockholders, partners, representatives, insurers, attorneys, agents or employees, past or present, or any of them (individually and collectively, "Releasees"), from and with respect to any and all claims, agreements, obligations, demands and causes of action, known or unknown, suspected or unsuspected, arising out of or in any way connected with events, acts, conduct, or omissions occurring at any time prior to and including the date Executive signs this release, including without limiting the generality of the foregoing, any claim for severance pay, profit sharing, bonus or similar benefit, equity-based awards and/or dividend equivalents thereon, pension, retirement, life insurance, health or medical insurance or any other fringe benefit, or disability, or any other claims, agreements, obligations, demands and causes of action, known or unknown, suspected or unsuspected resulting from any act or omission by or on the part of Releasees committed or omitted prior to the date of this release, including, without limiting the generality of the foregoing, any claim under Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, or any other federal, state or local law, regulation, constitution, ordinance or common law (collectively, the "Claims"). Notwithstanding the above, however, Executive is not releasing (1) any claims that cannot be waived under applicable state or federal law, (2) rights Executive may have to indemnification (including, without limitation, under the Executive's indemnification agreement with the Company, the Company's by-laws, the Company's D&O insurance and otherwise), (3) vested rights or benefits under Executive's 401k or other plans, (4) Executive's workers' compensation rights and, provided further, that nothing in this Agreement shall prevent Executive from filing, cooperating with, or participating in any proceeding before the Equal Employment Opportunity Commission or Department of Labor, or (5) the Severance Benefits. In addition, nothing in this release shall prevent Executive from challenging its validity in a legal or administrative proceeding.

2. June 28, 2018 ("ADEA Waiver Supply Agreement, ") Executive expressly acknowledges and agrees that by entering into this release, Executive is waiving any and all rights or claims that Executive may have arising under the Age Discrimination in Employment Act of 1967, as amended ("ADEA"), which have arisen on or before the date of execution of this release. Executive further expressly acknowledges and agrees that:

- a. In return for this release, the Executive will receive consideration beyond that which Executive was already entitled to receive before entering into this Release;
- b. Executive is hereby advised in writing by this release to consult with an attorney before signing this release;
- c. Executive was given a copy of this release on [] and informed that Executive had twenty-one (21) days within which to consider the release and that if Executive executes this release prior to the expiration of such 21-day period, Executive acknowledges that Executive will have done so voluntarily and knowing that Executive is waiving Executive's right to have 21 days to consider this release;
- d. Nothing in this release prevents or precludes Executive from challenging or seeking a determination in good faith of the validity of this waiver under the ADEA, nor does it impose any condition precedent, penalties or costs from doing so, unless specifically authorized by federal law; and
- e. Executive was informed that Executive has seven (7) days following the date of execution of this release in which to revoke it, and this release will become null and void if Executive elects revocation during that time. Any revocation must be in writing and must be received by the Company during the seven-day revocation period.

3. **Company Release of Executive.** Company, on its own behalf and on behalf of its divisions, subsidiaries, parents, or affiliated corporations, past and present, and each of them, as well as each of its and their assignees, successors, directors, officers, stockholders, partners, representatives, insurers, attorneys, agents or employees, past or present, or any of them (individually and collectively), hereby releases Executive from and with respect to any and all claims, agreements, obligations, demands and causes of action, known or unknown, suspected or unsuspected, arising out of or in any way connected with events, acts, conduct, or omissions occurring at any time

prior to and including the date Company signs this release; provided, however, that such release shall not include claims for fraud, securities laws violations or intentional criminal acts.

4. Extension of Restrictive Covenants. In exchange for receipt of the Severance Benefits described in the Employment Agreement, the duration of the restrictive covenants included in Section 4(g) (Nonsolicitation of Employees/Contractors), Section 4(h) (No Hire), Section 4(i) (Nonsolicitation of Customers) and Section 4(j) (Noncompete Provision) of Executive's Employee Proprietary Information and Inventions Assignment Agreement ("PIIA") will increase from one (1) year to two (2) years following the date of Executive's termination of employment.

5. Non-Disparagement. Executive will refrain from making any defamatory or disparaging statements about the Company, its board of directors, officers, management, practices, procedures, or business operations to any person or entity. The Company will instruct its officers and the members of the Board to refrain from making any defamatory or disparaging statements about the Executive to any person or entity. Nothing in this paragraph shall prohibit Executive, the Company or its respective officers and directors from providing truthful information in response to a subpoena or other legal or regulatory process. The foregoing requirement under this paragraph will not apply to any statements that Executive makes in response to any defamatory or disparaging statements made by the Company (in its formal public statements), its executive officers and/or its directors regarding Executive or Executive's performance as an employee of the Company so long as Executive's statements are, in the reasonable, good faith judgment of Executive, true and extend no further than addressing such statements by the Company.

6. Forfeiture of Severance Benefits. Executive acknowledges and agrees that any material breach of this Agreement, the Employment Agreement, or the PIIA, including any of the restrictive covenants set forth therein, shall entitle the Company immediately to recover and/or cease providing the Severance Benefits, except as provided by law. All other provisions of this Agreement, the Employment Agreement, and the PIIA shall remain in full force and effect.

7. Waiver of Unknown Claims. Executive and Company understand and agree that the claims released above include not only claims presently known to Executive and Company, but also include all unknown or unanticipated claims, rights, demands, actions, obligations, liabilities, and causes of action of every kind and character that would otherwise come within the scope of the released claims described herein. Executive and Company understand that they may hereafter discover facts different from what they now believe to be true, which if known, could have materially affected their decisions to execute this release, but Executive and Company nevertheless hereby waive any claims or rights based on different or additional facts.

"EXECUTIVE"

<Name>

Date:

"COMPANY"

NIKOLA CORPORATION

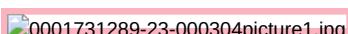
By:

Name:

Title:

Date:

Exhibit 10.5



August 4, 2023

Michael Lohscheller

Re: Executive Transition Services Agreement

Dear Michael:

This letter agreement (the "Letter Agreement") is intended to document our agreements with respect to the terms of your resignation and as an amendment of certain specific terms of the Executive Compensation Agreement, dated February 2, 2022, between you and Nikola Corporation (the "Company"), as first amended effective as of August 9, 2022, and as amended again effective as of April 3, 2023 (as amended, the "Executive Employment Agreement"). In the event of any conflict between this Letter Agreement and the Executive Employment Agreement, this Letter Agreement shall control. Defined terms shall have the meanings specified in the Executive Employment Agreement unless otherwise defined herein.

1. **Resignation as CEO and President as of Transition Date.** Pursuant to your request, we have agreed that you will resign as the Company's President and Chief Executive Officer ("CEO") effective as of August 4, 2023 (the "Transition Date"), and as a member of the Company's Board of Directors, effective as of August 31, 2023, in each case without need for further action. Except as expressly set forth in this Letter Agreement, you formally resign from all offices, positions, titles, and capacities you now hold or have held with Company and its affiliates, effective as of the Transition Date. The Company hereby accepts this resignation. Between the date of this Letter Agreement and the Transition Date, the terms of the Executive Employment Agreement shall remain unmodified.
2. **Transition Period.** Notwithstanding your resignation as President and CEO on the Transition Date, from the Transition Date through September 29, 2023 (the "Transition Period"), you will continue to be an employee of Company as a senior advisor. During the Transition Period, you agree to be available for reasonable periods of time to provide transitional assistance or to work on special projects, all at the discretion of the Board and the new Chief Executive Officer of the Company. For as long as you provide such assistance and work on special projects as requested during the Transition Period, and except as otherwise provided in this Letter Agreement, you will continue to earn and receive your current annual salary, paid bi-weekly less payroll deductions and all required withholdings, and benefits during the Transition Period. Except as otherwise provided in this Letter Agreement, you will continue to be treated as an employee for purposes of all of the Company's benefit plans during the Transition Period. Your employment with the Company will terminate at the end of the Transition Period and you will be entitled to no further compensation or benefits but for those provided by this Letter Agreement.

At the end of the Transition Period or, if earlier, upon request by the Company, you agree to immediately return to Company all documents, records, and materials belonging and/or relating to Company, and all copies of all such materials. At the end of the Transition Period,

or if earlier, upon request by the Company, you further agree to destroy such records maintained by you on your own computer equipment.

For purposes of the Executive Employment Agreement, you agree and acknowledge that your role change from President and CEO to senior advisor is voluntary and shall not be treated as a triggering event for Good Reason under the Executive Employment Agreement.

3. **Stock Awards.** Provided that you remain employed through the Transition Period in accordance with Paragraph 1 above, provide the services requested during the Transition Period in accordance with Paragraph 2 above, and continue to comply with terms of your Employee Proprietary Information and Assignment Agreement ("PIIA").
 - a. The Transition Period will be counted as "Service" (as defined in the Company's 2020 Stock Incentive Plan (the "2020 Plan")) for purposes of determining the vesting of any equity award previously granted under the 2020 Plan that is outstanding and unvested as of the last day of the Transition Period; and
 - b. In recognition of your role in expanding commercial sales of the battery-electric truck, launching the Company's Class 8 hydrogen fuel cell electric truck, advancing the organization's production capabilities in Coolidge, AZ, reducing cash usage, facilitating the sale of the Company's Europe-based joint venture, and launching the Company's global hydrogen energy brand, HYLA, subject to your continued Service through the Transition Period, your Time-Vested Awards that are outstanding, unvested, and scheduled to vest during 2024 shall vest, effective as of the last day of the Transition Period. The settlement of any such vested Time-Vested Awards shall occur following the release of the Company's Q3 earnings in early November 2023 during an open trading window.

Except as set forth in this Paragraph 3, any Time-Vested Awards or Performance Awards that are outstanding and unvested as of the last day of the Transition Period shall be cancelled and forfeited as of such date.

4. **Termination During the Transition Period.** The terms of the Executive Employment Agreement shall remain in place during the Transition Period and the parties retain their rights to terminate the senior advisor relationship prior to the end of the Transition Period. Notwithstanding the foregoing, in the event of an Involuntary Termination of your employment prior to the last day of the Transition Period, subject to your satisfaction of the Severance Conditions set forth in the Executive Employment Agreement, you will continue to receive compensation under Paragraphs 2 and 3 of this Letter Agreement through the last day of the Transition Period. For the avoidance of doubt, in no event shall the Severance Benefits set forth in the Executive Employment Agreement become payable.
5. **Restrictive Covenants.** You acknowledge and agree that you are bound and continue to be bound by the terms of your PIIA through and after the Transition Period. In exchange for receipt of the compensation set forth under Paragraphs 2 and 3, the duration of the restrictive covenants included in

Section 4(g) (Nonsolicitation of Employees/Contractors), Section 4(h) (No Hire), Section 4(i) (Nonsolicitation of Customers) and Section 4(j) (Noncompete Provision) of your PIIA will increase from one (1) year to two (2) years following the last day of the Transition Period.

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6. **Non-Disparagement.** You agree to refrain from making any defamatory or disparaging statements about the Company, its board of directors, officers, management, practices, procedures, or business operations to any person or entity. Nothing in this paragraph shall prohibit you from providing truthful information in response to a subpoena or other legal or regulatory process.

7. **General Provisions.**

- a. **Consistency With Applicable Law.** You acknowledge and agree that nothing in this Agreement prohibits you from reporting possible violations of law to any governmental agency or entity or making other disclosures that are protected under the whistleblower provisions of federal, state or local laws or regulations.
- b. **Severability.** The obligations imposed by, and the provisions of, this Letter Agreement are severable and should be construed independently of each other. If any court of competent jurisdiction determines that any provision of this Letter Agreement is invalid or unenforceable, then such invalidity or unenforceability shall have no effect on the other provisions hereof, which shall remain valid, binding and enforceable and in full force and effect, and such invalid or unenforceable provision shall not affect the validity of any other provision.
- c. **Effect of Breach.** In the event that you breach any provision of this Letter Agreement or any restrictive covenant agreement between the Company and you, you agree that the Company may suspend all payments and benefits to you as a result of this Letter Agreement, recover from you any damages suffered as a result of such breach and recover from you any reasonable attorneys' fees or costs it incurs as a result of such breach. In addition, you agree that the Company shall be entitled to injunctive or other equitable relief, without the necessity of posting bond, as a result of a breach by you of any provision of this Letter Agreement.
- d. **Successors/Assigns.** The Company shall assign this Letter Agreement to any successor to all or substantially all of the business and assets of the Company and the Company shall require successor to expressly assume and agree to in the same manner and to the same extent that the Company would be required to perform it if no such succession had taken place.
- e. **Governing Law.** The terms of this Letter Agreement and the resolution of any dispute as to the meaning, effect, performance or validity of this Agreement or arising out of, related to, or in any way connected with, this Letter Agreement, your employment with the Company (or termination thereof) or any other relationship between you and the Company (a "Dispute") will be governed by the laws of the State of Arizona, without giving effect to the principles of conflict of laws. To the extent not subject to arbitration as described below, you and the Company consent to the exclusive jurisdiction of, and venue in, the state courts in State of Arizona (or in the event of exclusive federal jurisdiction, the courts of the District of Arizona in connection with any Dispute or any claim related to any Dispute).

Except as prohibited by law, you agree that any Dispute between you and the Company (or between you and any officer, director, employee or affiliates of the

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Company, each of whom is hereby designated a third party beneficiary of this Letter Agreement regarding arbitration) will be resolved through binding arbitration in Maricopa County, Arizona under the rules of the American Arbitration Association and the Arbitration Rules set forth in Arizona Rules of Civil Procedure. Nothing in this arbitration provision is intended to limit any right you may have to file a charge with or obtain relief from the National Labor Relations Board or any other state or federal agency. You agree that such arbitration shall be conducted on an

individual basis only, not a class, collective or representative basis, and hereby waive any right to bring class-wide, collective or representative claims before any arbitrator or in any forum. THE PARTIES UNDERSTAND THAT BY AGREEING TO ARBITRATE DISPUTES THEY ARE WAIVING ANY RIGHT THEY MIGHT OTHERWISE HAVE TO A JURY TRIAL. This arbitration provision is not intended to modify or limit substantive rights or the remedies available to the parties, including the right to seek interim relief, such as injunction or attachment, through judicial process, which shall not be deemed a waiver of the right to demand and obtain arbitration.

Except as expressly modified by this Amendment, all of the terms and provisions of the Executive Employment Agreement are and shall remain unchanged and in full force and effect, WHEREAS, on the terms and subject to the conditions set forth therein, in this Termination Agreement, including the specified conditions precedent, the Parties have mutually agreed to terminate to the Supply Agreement effective as of the Termination Date (as defined below);

Please sign and date this

WHEREAS, pursuant to that certain First Amendment to the Equipment Purchase Order (the "Equipment PO Amendment") and that certain First Amendment to the Engineering Services Purchase Order (the "Engineering Services PO Amendment" and collectively with the Equipment PO Amendment, the "PO Amendments") executed contemporaneously with this Termination Agreement, effective as of the Termination Date, that certain Purchase Order dated as of June 3, 2020 (the "Equipment PO"), Nikola reference #1497, by and between Nikola Energy Company LLC ("Nikola Energy") and Nel Hydrogen Inc. ("Nel Hydrogen") and that certain Purchase Order dated as of July 4, 2022, PO No. 2201, by and between Nikola Corporation ("Nikola Corp") and Nel Hydrogen ("Engineering Services PO" and collectively with the Equipment PO, the "Purchase Orders"), in each case issued under and pursuant to the Supply Agreement, shall be amended as contemplated in the PO Amendments;

WHEREAS, the Parties agree to assign all title, rights, interests, and obligations in and to the Purchase Orders as amended by the PO Amendments, including thirty eight (38) electrolyzers and certain related services purchased thereunder by Nikola Energy and Nikola Corp, as applicable, from Nel Hydrogen, to Phoenix Hydrogen Hub, LLC, ("PHH") pursuant to that certain Assignment and Assumption Agreement and Consent Agreement dated as of the date hereof (the "Assignment and Assumption Agreement"), and, in connection therewith, USA Fortescue Future Industries, LLC. has agreed to pay on the date hereof, at the direction of PHH, certain sums to Nel Hydrogen as set forth therein; and

WHEREAS, the Parties have agreed that Purchaser shall purchase and Supplier shall sell and deliver 110 electrolyzers to Purchaser under Supplier's standard terms and conditions as further set forth below in connection with the New Agreement (as defined below).

NOW, THEREFORE, in consideration of the contingencies, reservations and recitals above, which are incorporated by reference into this Termination Agreement, the mutual promises, representations, warranties, covenants, conditions and agreements contained herein, and other good and valuable consideration, the Parties, intending to be legally bound by the terms hereof, covenant and agree as follows:

AGREEMENT

1. **Definitions.** All capitalized terms used herein and not defined herein shall have the meanings ascribed to such terms in the Supply Agreement, which definitions shall continue to apply following the termination of the Supply Agreement as contemplated herein.

2. **Termination of the Supply Agreement.** Subject to the terms described above and return conditions of this Termination Agreement, the Supply Agreement shall terminate effective upon the date (such date the "Termination Date") all of the following conditions have been fulfilled or met (any or all of which may be waived by Supplier in its sole discretion):

- a. the Equipment PO Amendment shall have been entered into by Nikola Energy and Nel Hydrogen;
- b. the Engineering Services PO Amendment shall have been entered into by Nikola Corp and Nel Hydrogen; and
- c. Nikola Energy and Nikola Corp shall have assigned, to PHH the Purchase Orders as amended by the PO Amendments, including the thirty eight (38) electrolyzers and services purchased thereunder, pursuant to that certain Assignment and Assumption Agreement dated as of the date hereof and signed by such parties and by Nel Hydrogen as the consenting party, and all payments required to be made to

Nel Hydrogen under Section 4 of the Assignment and Assumption Agreement shall have been made and received in full by Nel Hydrogen.

3. **Additional Payment.** In addition to the payments contemplated in the Assignment and Assumption Agreement, as consideration for Purchaser's reduced obligation to purchase equipment under the Supply Agreement, Purchaser shall pay Supplier an additional Nine Million One Hundred Eighty-Eight Thousand U.S. Dollars (\$9,188,000) (the "**Additional Payment**") in the following manner:

- a. Nel Hydrogen shall retain the Two Million Five Hundred Thousand U.S. Dollars (\$2,500,000) payment received by Nel Hydrogen under the Equipment PO, and such amount shall be treated as a downpayment of the Additional Payment and shall be deducted from the account of payments made under the Equipment PO; and
- b. Purchaser shall pay Supplier an additional Six Million Six Hundred Eighty-Eight Thousand U.S. Dollars (\$6,688,000) no later than February 9, 2024.

The Additional Payment, for the avoidance of doubt, shall not be a condition precedent to the termination of the Supply Agreement. The Parties acknowledge and agree that the following

[*] and Supplier hereby releases and discharges Purchaser's parents, subsidiaries, affiliates and related entities from any and all claims, disputes, demands, liabilities, controversies, causes of action, damages, costs, expenses and attorneys fees of any kind or nature in connection with the same: [*]

4. **Effect of Termination and Release.** Subject to Section 17, except for (a) any rights and obligations of the Parties that are expressly designated to survive the termination of the Supply Agreement, (b) the rights and obligations of the Parties that, as contemplated herein, come into being or effect upon the termination of the Supply Agreement, (c) the rights and obligations of Nikola Energy (or PHH as assignee under Assignment and Assumption Agreement) and Nel Hydrogen in the Equipment PO as amended by the Equipment PO Amendment, (d) the rights and obligations of Nikola Corp (or PHH as assignee under the Assignment and Assumption Agreement) and Nel Hydrogen in the Engineering Services PO as amended by the Engineering Services PO Amendment and (e) the rights and obligations of the Parties under the New Agreement (as defined below), effective as of the Termination Date (i) the Supply Agreement will be of no further force or effect, and the rights and obligations of each of the Parties thereunder shall terminate and (ii) each Party hereby releases and discharges the other Party and its respective agents, employees, representatives, predecessors, successors, assigns, parents, subsidiaries, related entities, sureties, consultants, advisors, officers, directors, council members, board members, administrators, executors, shareholders, attorneys, and insurers, and each of them from, and relinquishes, extinguishes and waives as to such parties, any and all claims, disputes, demands, liabilities, controversies, causes of action, damages, costs, expenses and attorneys' fees of any kind or nature, whether legal or equitable, in tort or contract, actual or contingent, known or unknown, asserted or unasserted, that such Party ever had, now has, or may have that in any way arise out of or relate, directly or indirectly, to the Supply Agreement and any Products or services provided for or in connection with the Supply Agreement.

Without limiting the preceding releases in this Section 4, Purchaser on its own behalf and on behalf if its affiliates, hereby releases and discharges Supplier and its respective agents, employees, representatives, predecessors, successors, assigns, parents, subsidiaries, related entities, sureties, consultants, advisors, officers, directors, council members, board members, administrators, executors, shareholders, attorneys, and insurers, and each of them from, and relinquishes, extinguishes and waives as to such parties, any and all claims, disputes, demands, liabilities, controversies, causes of action, damages, costs, expenses and attorneys' fees of any kind or nature, whether legal or equitable, in tort or contract, actual or contingent, known or unknown, asserted or unasserted, that Purchaser or its affiliates ever had, now has, or may have that in any way arise out of or relate, directly or indirectly, to (i) that certain Framework Agreement between Supplier and Nikola Motor Company dated November 15, 2017 (including its related contract documents), as it relates to the demonstration station located at Purchaser's headquarters in Phoenix, Arizona (the "**Demonstration Station**") and any equipment with

respect thereto and/or incorporated therein, regardless of whether such equipment was supplied by Supplier, an affiliate of Supplier or a third party (such equipment, the "**Demo Station Equipment**") and/or (ii) the Demonstration Station and the Demo Station Equipment.

5. **Outside Date.** For In the event that the conditions set forth in Section 2 are not fulfilled or met, or otherwise waived by Supplier, on or before February 6, 2024, this Termination Agreement, the Assignment and Assumption Agreement and the PO Amendments shall terminate without any further responsibility or liability for, or release of, either Party or their respective affiliates and the Supply Agreement and the Purchase Orders shall continue to remain in full force and effect.

6. **Demonstration Station.**

- a. No later than December 31, 2023, Purchaser shall, or shall cause one or more of its affiliates to at Purchaser's cost, permanently shut down the Demonstration Station and the two (2) electrolyzers associated therewith supplied by Supplier or its affiliates.
- b. Following Purchaser's permanent shut down of the Demonstration Station and provided flushing of the system is completed, however no later than July 01, 2024, Purchaser shall allow Supplier or one of its affiliates to remove at Supplier's cost the programmable logic controllers ("PLCs") from the Demonstration Station. Purchaser shall notify Supplier when the PLCs are available for removal.
- c. If requested by Purchaser in connection with the permanent shut down of the Demonstration Station and if otherwise mutually agreed by the Parties, Supplier shall provide reasonable assistance to Purchaser or its affiliates in connection with the removal of hydrogen from the Demonstration Station.
- d. To the maximum extent permissible under applicable law, Purchaser agrees to indemnify, defend and hold Supplier and Supplier's affiliates, and their respective officers, employees, directors, and agents harmless from and against any and all third party claims, demands, losses, fees, fines, penalties, liabilities, and expenses, including reasonable attorney's fees, resulting from, arising out of, or in any way connected with the Demonstration Station and/or the two (2) electrolyzers associated therewith, including the permanent shut down and/or removal thereof.

7. **New Agreement.** The Parties agree to negotiate in good faith an agreement (the "**New Agreement**") pursuant to which: (i) Purchaser's ultimate parent company or, subject to Supplier's prior written approval, one or more other affiliates of Purchaser, shall purchase [*]

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and related balance of stack services and equipment on a schedule to be agreed upon by the Parties, but in any event such purchases shall be completed no later than [*]; and (ii) Supplier's standard terms and conditions, attached hereto as Exhibit A shall control, provided, however that Section 17 of the such standard terms and conditions shall be amended to include the following clause:

[*]

(iii) Supplier's scope of work shall be limited to supplying engineering services as well as electrolyser equipment comprised of the Electrolyte System (ES), Electrolyzers (EL), Control Panel (low pressure) (CP) and Gas Analysers (GA); (iv) the purchase price for electrolyzers and the related payment schedule shall be mutually agreed; and (v) compensation rates shall be Supplier's standard rates and be subject to escalation, and costs shall be paid plus ten percent (10%).

8. **Representations and Warranties.** Each Party hereby represents and warrants to the other Party that:

- It has the full right, power, and authority to enter into this Termination Agreement and to perform its obligations hereunder.
- The execution of this Termination Agreement by the individual whose signature is set forth at the end of this Termination Agreement on behalf of such Party, and the delivery of this Termination Agreement by such Party, have been duly authorized by all necessary action on the part of such Party.
- This Termination Agreement has been executed and delivered by such Party and constitutes the legal, valid, and binding obligation of such Party, enforceable against such Party in accordance with its terms.
- It (i) knows of no claims against the other Party relating to or arising out of the Supply Agreement that are not covered by the release contained in Section 4 and (ii) has neither assigned nor transferred any of the claims released herein to any person or entity and no person or entity has subrogated to or has any interest or rights in any claims.

9. **Governing Law.** This Termination Agreement and the rights and duties of the Parties arising out of this Termination Agreement will be governed by, and construed in accordance with, the laws of the State of Delaware, U.S.A., excluding conflict of law rules and choice of law principles that provide otherwise. The United Nations Convention on Contracts for the International Sale of Goods will not apply to this Termination Agreement. All disputes arising out of or in connection with this Termination Agreement shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by three arbitrators appointed in accordance with the said Rules. The place of the arbitration shall be New York. The language of the arbitration shall be English. **EACH OF THE PARTIES HERETO HEREBY WAIVES,**

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TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO TRIAL BY JURY IN RESPECT OF ANY CLAIM, DEMAND, ACTION, OR CAUSE OF ACTION BASED ON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AMENDMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, VERBAL OR WRITTEN STATEMENT OR ACTION OF ANY OTHER PARTY, IN EACH CASE, WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER IN CONTRACT, TORT, EQUITY, OR OTHERWISE.

10. **Cooperation.** Each of the Parties agrees to perform all such acts (including execution and delivering such other instruments and documents) as shall be reasonably requested by the other Party to fully effectuate each and all of the purposes and intent of this Letter Agreement, a facsimile or electronic signature shall serve as an original. Termination Agreement.

Sincerely,^{11.} **Notices.** Any and all notices or other communications permitted or required to be given hereunder shall be given or made in writing and shall be effective: (a) when personally delivered; (b) upon confirmation of successful delivery via email transmission; (c) when delivery by a reputable overnight delivery service has been confirmed by such service; or (d) three (3) business days after deposit in the United States mail, first class, postage prepaid, certified or registered, return receipt requested; addressed as follows:

NIKOLA CORPORATION

BY: /s/ Stephen J. Girskey
Stephen J. Girskey
For the Board of Directors

Accepted:

/s/ Michael Lohscheller
Michael Lohscheller

Aug 4, 2023
Date

If to Purchaser:

Nikola Motor Company LLC

c/o Nikola Corporation
4141 E Broadway Rd
Phoenix, AZ 85018
Attention:
Email:

With a copy to:

Email:

If to Supplier: Nel ASA

PB: 199 Skøyen
0212 Oslo
Attention:
Email:

12. Severability. If any term or other provision of this Termination Agreement is invalid, illegal or incapable of being enforced by any rule of law, or public policy, all other conditions and provisions of this Termination Agreement shall nevertheless remain in full force and effect

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so long as the economic or legal substance of this Termination Agreement is not affected in any manner adverse to any Party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties hereto shall negotiate in good faith to modify this Termination Agreement so as to effect the original intent of the Parties as closely as possible in a mutually acceptable manner.

13. Limitation on Liability. IN NO EVENT SHALL EITHER PARTY OR ITS AFFILIATES BE LIABLE UNDER THIS TERMINATION AGREEMENT (INCLUDING FOR ANY BREACH HEREOF) FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, INDIRECT, PUNITIVE OR EXEMPLARY DAMAGES (INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFIT OR REVENUES, LOSS OF DATA OR LOSS OF USE OR SIMILAR DAMAGES), INCLUDING ANY CLAIMS OF THE OTHER PARTY OR ANY OF ITS AFFILIATES ANY SUCH DAMAGES, WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE; PROVIDED, HOWEVER, THE FOREGOING SHALL NOT APPLY TO (!) ANY BREACH OF THE RELEASES PROVIDED BY THE PARTIES UNDER SECTION 3 AND SECTION 4,

-(II) ANY AMOUNTS REQUIRED TO BE PAID HEREUNDER BY PURCHASER AND/OR ANY OF ITS AFFILIATES TO SUPPLIER AND/OR ANY OF ITS AFFILIATES, OR (III) PURCHASER'S OBLIGATIONS IN SECTION 6.

14. **Counterparts.** This Termination Agreement may be executed in any number of counterparts, each of which, when executed, will be deemed to be an original and all of which together will be deemed to be one and the same instrument. Delivery of an executed counterpart of a signature page to the Termination Agreement by electronic means (e.g., electronic mail or PDF) shall be treated in all respects and for all purposes as an original agreement or instrument and shall have the same binding legal effect as if it were the original signed version thereof.

15. **Amendment.** No amendment to this Amendment will be effective unless made in writing and executed by all Parties.

16. **Entire Agreement.** This Amendment constitutes the entire agreement among the Parties with respect to the subject matter contained herein and supersedes all prior agreements, undertakings and understandings, both written and oral, among or on behalf of the Parties with respect to such subject matter. Further, the Parties each hereby acknowledge and agree that this Amendment embodies the justifiable expectations of sophisticated parties derived from arms' length negotiations, and the Parties specifically acknowledge that no Party has any special relationship with another Party that would justify any expectation beyond that of ordinary parties in an arms' length transaction.

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17. **Effect of Bankruptcy.** In the event that Supplier or any of its affiliates either (i) does not receive a payment that is due under this Termination Agreement from Purchaser or any of its affiliates, or (ii) must rescind, refund or restore any payment received by Supplier or any of its affiliates from Purchaser or any of its affiliates under this Termination Agreement as the result of or during any insolvency, bankruptcy, reorganization, receivership or other debtor relief proceeding involving the Purchaser or any of its affiliates, then this Termination Agreement shall be without effect, including any prior release or discharge under the terms of this Termination Agreement given to Purchaser or any of its affiliates by Supplier or any of its affiliates.

[Signature Page Follows]

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IN WITNESS WHEREOF, this Termination Agreement has been duly executed and delivered by Parties as of the date set forth above.

SUPPLIER:

NEL ASA

By: /s/ Håkon Volldal

Name: Håkon Volldal

Title: CEO

SUPPLIER:

NEL ASA

By: /s/ Kjell Christian BjørnSEN

Name: Kjell Christian BjørnSEN

Title: CFO

PURCHASER:

NIKOLA MOTOR COMPANY LLC

By: Nikola Corporation, its Manager

By: /s/ Stephen J. GirsKY

Name: Stephen J. GirsKY

Title: CEO

PURCHASER:

NIKOLA MOTOR COMPANY LLC

By: Nikola Corporation, its Manager

By: /s/ Britton Worthen

Name: Britton Worthen

Title: CLO

[Signature Page to Termination Agreement]

**CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER PURSUANT TO
SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Stephen J. GirsKY, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Nikola Corporation;
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(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on 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.

/s/ Stephen J. Girskey

Stephen J. Girskey
President and Chief Executive Officer
(Principal Executive Officer)

CERTIFICATION OF PRINCIPAL FINANCIAL OFFICER PURSUANT TO SECTION 302
OF THE SARBANES-OXLEY ACT OF 2002

I, **Anastasiya Pasterick**, **Thomas B. Okray**, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Nikola Corporation;
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(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on 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.

/s/ **Anastasiya Pasterick** **Thomas B. Okray**

Anastasiya Pasterick **Thomas B. Okray**
Chief Financial Officer
(Principal Financial Officer)

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CERTIFICATION 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 Nikola Corporation (the "Company") on Form 10-Q for the quarterly period ended **September 30, 2023** **March 31, 2024**, as filed with the Securities and Exchange Commission (the "Report"), I, Stephen J. Girskey, President and Chief Executive Officer, certify, pursuant to 18 U.S.C. §1350, as added by §906 of the Sarbanes-Oxley Act of 2002, that, to my knowledge:

1. The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: **November 2, 2023** **May 7, 2024**

/s/ Stephen J. Girskey

Stephen J. Girskey

President and Chief Executive Officer

(Principal Executive Officer)

CERTIFICATION 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 Nikola Corporation (the "Company") on Form 10-Q for the quarterly period ended **September 30, 2023** **March 31, 2024**, as filed with the Securities and Exchange Commission (the "Report"), I, **Anastasiya Pasterick**, **Thomas B. Okray**, Chief Financial Officer, certify, pursuant to 18 U.S.C. §1350, as added by §906 of the Sarbanes-Oxley Act of 2002, that, to my knowledge:

1. The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: **November 2, 2023** **May 7, 2024**

/s/ **Anastasiya Pasterick** **Thomas B. Okray**

Anastasiya Pasterick **Thomas B. Okray**

Chief Financial Officer

(Principal Financial Officer)

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