Risk Factors Comparison 2024-04-15 to 2023-03-31 Form: 10-K

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Risks Related to Our **Financial Condition** ~~Business and Operations~~ Our results of operations have not resulted in profitability, and we may not be able to achieve profitability going forward. We had accumulated deficit of $ ~~28~~ **49** . ~~6~~ **2** million as of December 31, ~~2022~~ **2023** . We have incurred a net loss of $ **20. 6 and $** 12. 7 million ~~and $ 14. 6 million,~~ for the years ended December 31, ~~2022~~ **2023** and December 31, ~~2021~~ **2022** , respectively. We may incur significant losses in the future for a number of reasons, including the other risks described in this 10- K report, and we may encounter unforeseen expenses, difficulties, complications, delays and other unknown events. Accordingly, we may not be able to achieve or maintain profitability. Our management is developing plans to alleviate the negative trends and conditions described above and there is no guarantee that such plans will be successfully implemented. Our business plan is focused on providing sustainable and cost-effective solutions to the commercial transportation sector but is still unproven. There is no assurance that even if we successfully implement our business plan, that we will be able to curtail our losses or ever achieve profitable operations. We have yet to achieve positive cash flow and, given our projected funding needs, our ability to generate positive cash flow is uncertain. We have had negative cash flow from operating activities of $ **3. 7 million and $** 14 ~~. 9 million and 12~~ . 9 million for years ended December 31, **2023, and** 2022 ~~, and 2021~~ . We anticipate that we will continue to have negative cash flow from operating and investing activities through the remainder of ~~2023~~ **2024** as we expect to incur research and development, sales and marketing, and general and administrative expenses and make capital expenditures in our efforts to increase sales and ramp up operations. Our business also will at times require significant amounts of working capital to support our growth. An inability to generate positive cash flow for the near term may adversely affect our ability to raise needed capital for our business on reasonable terms, diminish supplier or customer willingness to enter into transactions with us, and have other adverse effects that may decrease our long- term viability. There can be no assurance that we will achieve positive cash flow in the near future or at all. Our audited financial statements included a statement that there is a substantial doubt about our ability to continue as a going concern and a continuation of negative financial trends could result in our inability to continue as a going concern. Our audited financial statements as of and for the year ended December 31, ~~2022~~ **2023** were prepared on the assumption that we would continue as a going concern. As a result of the continuing operating costs as we develop of our EV trucks and Gen 4 as described above, our management has determined that there is a substantial doubt about our ability to continue as a going concern over the next twelve months and our independent auditor have included a " going concern " explanatory paragraph in their report on our financial statements as of and for the year ended December 31, ~~2022~~ **2023** . The reaction of investors to the inclusion of a going concern statement by our independent ~~auditors~~ - **auditor** , and our potential inability to continue as a going concern, could materially adversely affect the price of our common stock. Additionally, if our operating results fail to improve, then our financial condition could render us unable to continue as a going concern. **The Convertible Notes entered into in 2023 contain covenants that have and may in the future restrict our business and financing activities If we are not able to comply with our covenants under the Convertible Notes, we may be in default under the Convertible Notes which may have an immediate adverse effect on our business. The Convertible Notes restrict our ability to, among other things: ● dispose of or sell our assets; ● make material changes in our business or management, or accounting and reporting practices; ● acquire, consolidate, or merge with other entities; ● incur additional indebtedness; ● create liens on our assets; ● pay dividends; ● make investments; ● enter transactions with affiliates; and ● pre- pay other indebtedness. The covenants in the Convertible Notes, and any future financing agreements that we may enter, may restrict our ability to finance our operations, engage in, expand or otherwise pursue our business activities and strategies. Further, if we fail to comply with our debt covenants in the future, there is no assurance that we will be able to obtain any future waivers under the Convertible Notes. If the Convertible Notes were to become immediately due and payable because of such events of default, we may not have sufficient cash available to repay our obligations under the Convertible Notes and meet the working capital needs of our business, which would have an immediate adverse effect on our business and operating results.** We ~~may~~ **would** need **to take further action** to raise additional ~~financing~~ **funds in the capital markets** ~~for~~ - **or otherwise to service our obligations under the Convertible Notes in addition to our** ~~the~~ **other** ~~remainder of 2023, and such financing may~~ **obligations over the period. If we do** not ~~be available to us on acceptable terms or at all. Although we believe we~~ have sufficient **funds or we are unable to arrange for additional financing to repay outstanding debt, we may have to liquidate our assets and may receive less than the value at which those assets are carried on our audited financial statements, and / or seek protection under the United States Bankruptcy Code, and it is likely that investors will lose all or a part of their investment. 6We will require additional** capital ~~resources and capital availability~~ to ~~meet~~ **fund** our **operations** ~~needs for the remainder of 2023~~ , **and if** we ~~expect that~~ **fail to obtain necessary financing,** we ~~will~~ **may** not be able to ~~maintain~~ **complete** the ~~levels~~ **development and commercialization** of **our electric vehicles. The design, manufacture and sale of electric vehicles is a** capital **- intensive business. Our** ~~and operating expenditures necessary to perform our current~~ business plan **to design, produce, sell and service commercial electric buses, vans and trucks** , including **the** ~~launch and ramp of our~~ Gen 4 ~~products unless~~ **, Gen 5, EF- 1 truck and EF- 1 V van, and Transit Buses is expected to require continued capital investment and incur substantial costs including research and development expenses, raw material procurement costs, sales and distribution expenses as** we **build our brand and market our vehicles, and** ~~generate~~ **general** ~~additional cash from~~ **and administrative expenses as we scale our** operations **, identify and commit resources to investigate new areas of demand and incur costs as a public company. Our ability to become profitable in the future will not only**

depend on ~~or~~ **our ability** ~~obtain additional financing. In light of our operating history and the expected schedule~~ to ~~bring~~ **complete the design and development of our vehicles but also to control our capital expenditures and costs. As we expand our product portfolio, including the release of** Gen 4 **and the acquisition of the Proterra Transit Bus business in 2024, we will need** to **manage costs effectively to sell those products at our expected margins. If we are unable to cost efficiently design, manufacture,** market, ~~we expect~~ **sell and distribute and service our vehicles and provide our services, our business, prospects, financial condition, results of operations, and cash flows would be materially and adversely affected. Unlike established EV automotive manufacturers** that ~~it~~ **have greater financial resources than we do, there can be no assurance that we** will ~~be necessary~~ **have access** to ~~obtain additional financing, either through~~ the **capital we need** ~~existing SEPA equity line to issue registered shares, private placement of un- registered shares, or debt financing. We cannot be certain that additional financing will be available to us~~ on favorable terms when required ~~,~~ or at all. ~~Recent turmoil in the capital markets~~ **In addition, future debt financing into which we enter may impose upon us covenants that restrict our operations** , including **limitations on our ability** ~~the tightening of credit and rise of interest rates, may cause us~~ to ~~face higher borrowing costs~~ **incur liens or additional debt** , **pay dividends** ~~less available capital~~ , **redeem our stock** ~~more stringent terms and tighter covenants. In such circumstances~~ , ~~if~~ **make certain investments and engage in certain merger, consolidation or asset sale transactions. If** we ~~cannot~~ **are unable to** raise additional capital ~~,~~ **when required** ~~our~~ - ~~raise additional capital when required~~ or on acceptable terms,we may be required to significantly delay,scale back or discontinue the development or commercialization of one or more of our EV products,restrict our operations or obtain funds by entering into agreements on unattractive terms,which would likely have a material adverse effect on our business,stock price and our relationships with third parties with whom we have business relationships,at least until additional funding is obtained.If we do not have sufficient funds to continue operations,we could be required to seek bankruptcy protection or other alternatives that would likely result in our stockholders losing some or all of their investment in us.In addition,our ability to achieve profitability or to respond to competitive pressures would be significantly limited. ~~We~~ **Risks Related to Our Business and IndustryWe** may experience delays in launching and ramping up production or we may be unable to control our manufacturing costs.We have previously experienced and may in the future experience launch and production ramp- up delays.In addition,we may introduce in the future new or unique manufacturing processes and design features for our products including enhancements under development relating to production assembly efficiency,material component availability,cost reduction and customer feedback.There is no guarantee we will be able to successfully and timely introduce and scale such processes or features.We have limited experience to date in manufacturing electric vehicles at low volumes.To be successful,we will need to implement,maintain,and ramp- up efficient and cost- effective manufacturing capabilities,processes and supply chains,high quality and output rates planned at our Anaheim manufacturing facility.We also need to hire,train,and compensate skilled employees for operations.Bottlenecks and other unexpected challenges such as those experienced in the past may arise during our production ramps,and we must address them promptly while continuing to improve manufacturing processes and reducing costs.If we are not successful in achieving these goals,we could face delays in establishing and / or sustaining our vehicle production ramp- ups or be unable to meet our related cost and profitability targets.Any delay or other complication in ramping up the production of our current products or the development,manufacture,launch and production ramp- ups of our future products,features and services,or in doing so cost- effectively and with high quality,may harm our brand,business,prospects, ~~financial~~ financial condition, **and operating** results ~~of operations, business and prospects could be materially and adversely affected. In addition, if we raise additional capital through issuances of equity, through the SEPA or otherwise, our stockholders could experience dilution~~ . The automotive market is highly competitive, and we may not be successful in competing in this industry. Both the automobile industry generally, and the EV segment in particular, are highly competitive, and we will be competing for customers and sales with both EV manufacturers and traditional automotive companies. Most of our current and potential competitors may have significantly greater financial, technical, manufacturing, marketing, or 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 than we may devote to our products. We expect competition for EVs to intensify due to increased demand and a regulatory push for alternative fuel vehicles. In addition, as fleet operators begin transitioning to EVs on a mass scale, we expect that more well- financed competitors will enter the commercial fleet EV market. Further, as a result of new entrants in the commercial fleet EV market, we may experience increased competition for components and other parts of our vehicles, which may have limited or single- source supply. If we are unable to successfully design, develop, manufacture and sell our Gen 4, Gen 5, EF- 1 truck and EF- 1 V van, **and our Transit Buses,** our business, prospects, financial condition, results of operations, and cash flows could be materially and adversely affected. If ~~we~~ **7we** are able to manufacture and market the Gen 4, Gen 5, EF- 1 truck and EF- 1 V van **, and Transit Buses** , factors affecting competition include product performance and quality, technological innovation, customer experience, brand differentiation, product design, pricing and TCO, and manufacturing scale and efficiency. Increased competition will lead to lower vehicle unit sales and increased inventory, which may result in downward price pressure and adversely affect our business, prospects, financial condition, results of operations, and cash ~~flows~~ - **flow** . Phoenix ~~may face~~ **faces** competition from global automotive manufacturers. We compete with a number of commercial EV manufacturers, including those such as Lightning eMotors and GreenPower Motor Company ~~,~~. In addition to Tesla & Rivian, a number of traditional global automobile manufacturers, including Ford, General Motors, Mercedes Benz, and Nissan- Renault- Mitsubishi- Toyota, **and Chinese based EV manufacturers** have entered the consumer EV business, and a few, including BYD, Ford, General Motors, Tesla and Daimler have begun entry into the commercial EV market. These companies have far greater resources, brand recognition, and distribution channels than Phoenix or the Company does, which could make it difficult for Phoenix to gain widespread market acceptance. There can be no assurance that Phoenix will be able to compete successfully with other market participants, and, if Phoenix cannot, then its business could fail . We will continue to require additional......, financial condition, and operating results . Costs of electric vehicles are high in comparison with those of traditional vehicles powered by internal combustion engines or hybrids. Phoenix' s EVs will not gain wide acceptance unless Phoenix can reduce manufacturing and selling costs. Prices of Phoenix EVs range from $ 165, 000 to $ 225, 000, whereas prices of comparable traditional combustion engine vehicles range from approximately $ 90, 000 to $ 140, 000. **Prices of the recently acquired Transit Bus business, prices range from $ 650, 000 to $ 1, 100, 000.** The cost difference is due to the incremental cost of electric drivetrain, including lithium- ion batteries, motors, inverter and control software, coupled with the relatively low volume of production, leading to higher overheads. In addition, government subsidies and incentives, including those available in California, are important for the cost- competitiveness of Phoenix' s EVs, and Phoenix' s growth and prospects depend in part on the availability and amounts of these subsidies and incentives. Any reduction, elimination or discriminatory application of government subsidies and incentives because of budgetary challenges, policy changes, the reduced need for such subsidies and incentives due to the perceived success of electric vehicles, or other reasons may impair the cost- competitiveness of Phoenix' s EVs. The range of Phoenix' s existing EVs is limited, compared with that of traditional vehicles. Whereas traditional combustion engine medium- duty vehicles may travel from 240 to 350 miles before refueling, Phoenix' s existing EVs have a maximum range of 160 miles and minimum recharging time of five to six hours. Currently, Phoenix' s EVs can be charged only at the owner' s location or select public charging locations using compatible charging equipment, further limiting the EVs to local use. Accordingly, potential customers needing vehicles with longer ranges or quicker turnaround of depleted electric energy supply may find Phoenix' s products relatively less attractive. We may experience significant delays in the design, manufacture, financing, regulatory approval, launch and delivery of our vehicles, which could harm our business, prospects, financial condition, results of operations, and cash flows. Our future business depends in large part on our ability to execute on our plans to develop, manufacture, market and sell our vehicles. Any delay in the financing, design, manufacture, regulatory approval, launch or delivery of our vehicles could materially damage our brand, business, prospects, financial condition, results of operations, and cash flows, and could cause liquidity constraints. ~~7Vehicle~~ - **Vehicle** manufacturers often experience delays in the design, manufacture, and commercial release of new products. To the extent we delay the launch of our vehicles, our growth prospects could be adversely affected as we may fail to establish or grow our market share. Furthermore, we rely on third- party suppliers for the provision and development of the key components and materials used in our vehicles. 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. All of Phoenix' s current range of products are built on Ford' s E- 450 chassis. A decision by Ford to offer an electric version of this chassis, directly, would impact the viability of Phoenix' s current products. Phoenix currently builds all its products on Ford' s E- 450 chassis. Ford does not offer an electric version of this chassis, due to the relatively small market size for medium- duty electric vehicles. As volumes increase, there is a potential risk of Ford' s launching an electric version of Ford' s E- 450 chassis directly from the factory, negating the need for Phoenix' s current range of products. ~~Additionally~~ **8Additionally** , a shortage in the availability of this chassis would impact Phoenix' s capability to produce and fulfill customer' s orders in a timely manner. Our future growth is dependent upon the willingness of operators of commercial vehicle fleets to adopt electric vehicles and upon our ability to produce, sell and service vehicles that meet their needs. If the market for commercial electric vehicles does not develop as we expect, or if it develops slower than we expect, our business, prospects, financial condition and operating results will be adversely affected. Our growth requires adoption of commercial vehicle operators to adopt EVs for their fleets and on our ability to produce, sell and service vehicles that meet their needs. EVs' use in the medium- duty commercial vehicle market is a relatively new development, particularly in the United States, and is characterized by rapidly changing technologies and evolving government regulation, industry standards, and customer views of the merits of using electric vehicles in their businesses. This process has been slow, as, without including the impact of government or other subsidies and incentives, the purchase prices for Phoenix' s EVs currently is higher than those for diesel- fueled vehicles. The relatively low price of oil has also hurt Phoenix' s over the last few years. Phoenix must educate fleet managers regarding the economic benefits that Phoenix believes result over the life of its EVs. Phoenix believes that these benefits depend on the following: ● the difference in the initial purchase prices of commercial electric vehicles and vehicles with comparable gross vehicle weight powered by internal combustion engines or hybrids, both including the effect of government and other subsidies and incentives designed to promote the purchase of electric vehicles; ● the total cost of ownership of the vehicle over its expected life, which includes the initial purchase price and ongoing operating and maintenance costs; ● the availability and terms of financing options for purchases of vehicles and, for commercial electric vehicles, financing options for battery systems; ● the availability of tax and other governmental incentives to purchase and operate electric vehicles and future regulations requiring increased use of nonpolluting vehicles; ● government regulations and economic incentives promoting fuel efficiency and alternate forms of energy; ● fuel prices, including volatility in the cost of diesel fuel; ● cost and availability of other alternatives to diesel fueled vehicles, such as vehicles powered by natural gas or hybrids; ● corporate sustainability initiatives; ● commercial electric vehicle quality, performance and safety (particularly with respect to lithium- ion battery packs); ● the quality and availability of service for the vehicle, including the availability of replacement parts; ~~8~~ ● the range over which commercial electric vehicles may be driven on a single battery charge; ● access to charging stations and related infrastructure costs, and standardization of electric vehicle charging systems; ● electric grid capacity and reliability; and ● macroeconomic factors. If, in weighing these factors, operators of commercial vehicle fleets determine that there is no compelling business justification for purchasing commercial EVs, the market for commercial EVs may not develop as, or may develop more slowly than, Phoenix expects which would adversely affect Phoenix' s business, prospects, financial condition and operating results. ~~Phoenix~~ **9Phoenix** has a limited number of customers, with which Phoenix does not have long- term agreements, and expects that a significant portion of our future sales will be from a limited number of customers. The loss of any of these customers could materially harm Phoenix' s business. A significant portion of Phoenix' s projected future revenue is expected to be generated from a limited number of customers. Phoenix has no contracts with customers that include long- term commitments that ensure future sales of vehicles. The loss of or a reduction in sales or anticipated sales to Phoenix' s most significant customers would have a material adverse effect on our business, prospects, financial condition and operating results. An inability to attract new customers for our Gen 4 products and future generations of products will substantially impact our ability to grow revenue or improve our financial results. Our growth will depend in large part on our ability to attract new customers. As we drive growth in our existing markets, and we anticipate that our sales activities will lead to additional orders and deliveries for our Gen 4 products, and, as a result, increase our base of customers. An inability to attract new customers would substantially impact our ability to grow revenue or improve our financial results. Further, we often receive binding and non- binding purchase orders from customers that are contingent on various factors, such as completing a successful pilot program, obtaining third- party financing or obtaining government grants, such as HVIP. In addition, some customers are interested in future products, not yet in our production. While we continuously strive to expand our product portfolio, developing new products takes a significant amount of time and expense, such as engineering work, sourcing new suppliers, marketing, testing and quality control. In addition, orders may be delayed for a number of reasons, many of which are beyond our control, including supplier delays, which may cause delays in our manufacturing process, or delays in customers obtaining financing. As a result, any such orders may not result in actual revenue in the near term or at all. Accordingly, revenue estimates and the amount and timing of work expected to be performed at the time the estimate of order backlog is developed is subject to change. We may not be able to accurately estimate the supply and demand for our vehicles, which could result in a variety of inefficiencies in our business and hinder our ability to generate revenue. If we fail to accurately predict our manufacturing requirements, we could incur additional costs or experience delays. It is difficult to predict our future revenues and appropriately budget for our expenses, and we may have limited insight into trends that may emerge and affect our business. We will be required to provide forecasts of our demand to our suppliers several months prior to the scheduled delivery of products to our prospective customers. If we overestimate our requirements, our suppliers may have excess inventory, which indirectly would increase our costs. If we underestimate our requirements, our suppliers may have inadequate inventory, which could interrupt manufacturing of our products and result in delays in shipments and revenues. In addition, lead times for materials and components that our suppliers order may vary significantly and depend on factors such as the specific supplier, contract terms and demand for each component at a given time. If we fail to order sufficient quantities of product components in a timely manner, the delivery of vehicles to our customers could be delayed, which would harm our business, financial condition and operating results. We face various challenges in scaling manufacturing, assembling, and converting processes effectively and quickly from low volume production to high volume production for our Gen 4 drivetrain products. We have no experience to date in high volume manufacturing, assembling, and converting to commercial electric vehicles. We do not know whether we will be able to develop efficient, low- cost manufacturing, assembly and converting capability 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 we target. Any failure to develop such manufacturing, assembly and converting processes and capabilities and reliable sources of component supply within our projected costs and timelines could have a material adverse effect on our business, prospects, operating results and financial condition. Even if we are successful in developing our high-volume manufacturing, assembly ~~9and -~~ **and** converting capability and processes, and reliable sources of 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 commercialization schedules or to satisfy the requirements of customers. In addition, certain components we integrate may not be available on a consistent basis or in large quantities. Our business, prospects, financial condition and operating results could be adversely affected if we experience disruptions in our supply chain or if we cannot obtain materials of sufficient quality at reasonable prices. ~~The~~ **10The** complexity in our business is expected to grow as we develop new products and services. We have limited experience in simultaneously designing, testing, manufacturing, upgrading, adapting and selling our electric drivetrains as well as limited experience allocating our available resources among the design and production of multiple electric drivetrains. As we add complexity to our product line and introduce new products and services, we may experience unexpected delays. If we are unable to scale our existing assembly processes and systems quickly while maintaining our current quality level, including as a result of supply chain constraints and inability to manage complexity in our business, we may be unable to meet our customers' vehicle quality and quantity requirements or our forecasted production schedule or lower our cost of sales. As a result, we may not be able to meet our customers' delivery schedules and could face the loss of customers, or be exposed to liability to customers to which we promised delivery, which could adversely affect our business, prospects, financial condition and operating results. If we fail to scale our business operations or otherwise manage future growth effectively as we attempt to rapidly grow our company, we may not be able to produce, market, service and sell our vehicles profitably or successfully. Our future growth depends upon our ability to maintain relationships with our existing suppliers and source suppliers for our critical components, and to complete building out our supply chain, while effectively managing the risks due to such relationships. Our success will be dependent upon our ability to maintain and expand our relationships with suppliers who are critical and necessary to the output and production of our vehicles. We also rely on a small group of suppliers to provide us with the components for our vehicles. The supply agreements we have or may enter into with key suppliers in the future may have provisions where such agreements can be terminated in various circumstances, including potentially without cause. If these suppliers become unable to provide, or experience delays in providing, components, or if the supply agreements we have in place are terminated, it may be difficult to find replacement components. Changes in business conditions, pandemics, governmental changes and other factors beyond our control or that we do not presently anticipate could affect our ability to receive components from our suppliers. Further, we have not secured supply agreements for all of our components. In addition, there is the possibility that finalizing the supply agreements for the parts and components of our vehicles will cause significant disruption to our operations, or such supply agreements could be at costs that make it difficult for us to operate profitably. If we do not enter into long- term supply agreements with guaranteed pricing for our parts or components, we may be exposed to fluctuations in prices of components, materials and equipment. Agreements for the purchase of battery cells typically contain pricing provisions that are subject to adjustment based on changes in market prices of key commodities. Substantial increases in the prices for such components, materials and equipment would increase our operating costs and could reduce our margins, if we cannot recoup the increased costs. Any attempts to increase the announced or expected prices of our vehicles in response to increased costs could be viewed negatively by our potential customers and could adversely affect our business, prospects, financial condition or operating results. We may be unable to adequately control the costs or maintain adequate supply of components associated with our operations. We may be unable to adequately control the costs associated with our operations. We expect to incur significant costs related to procuring raw materials required to manufacture and assemble our vehicles. The prices for these raw materials fluctuate depending on factors beyond our control. Our business also depends on the continued supply of battery packs for our vehicles. We are exposed to multiple risks relating to availability and pricing of quality lithium- ion battery packs. Furthermore, currency fluctuations, tariffs or shortages in petroleum or other raw materials and other economic or political conditions may result in significant increases in freight charges and raw material costs. Substantial increases in the prices for our raw materials or components would increase our operating costs, and could reduce our margins. In addition, a growth in popularity of electric vehicles without a significant expansion in battery cell production capacity could result in shortages, which would result in increased costs in raw materials to us or impact our prospects. ~~10Disruption~~ **11Disruption** of supply or shortage of raw materials could harm our business. Historically, we have experienced significant delivery delays and supply shortage with our BOM components, battery packs in particular. When encountered with supply disruption or shortage, our production plans and delivery schedules to our customers are to a large extent dictated by the timing of receiving these BOM components, or when a different supplier is fully qualified and customized into our product design. For example, COVID- 19 has caused disruptions to and delays in our operations, including shortages and delays in the supply of certain parts, including batteries and chassis. Although we have worked diligently with our suppliers to mitigate the risks, we expect supply chain delays to continue to have a significant impact on our 2023 production and revenue and possibly thereafter. Any such supply interruption or shortage could materially adversely affect our business and operating results. Phoenix EVs use lithium- ion batteries, which, if not appropriately managed and controlled, have caught fire or released smoke and flames. Such events could result in liability under Phoenix' s warranties, for damage or injury, adverse publicity and a potential safety recall, any of which would hurt Phoenix' s prospects. The battery packs in Phoenix' s EVs use lithium- ion cells, which, if not appropriately managed and controlled can rapidly release energy by venting smoke and flames that can ignite nearby materials. Highly publicized incidents of laptop computers and cell phones bursting into flames have focused attention on the safety of these cells. These events also have raised questions about the suitability of lithium- ion cells for automotive applications. There can be no assurance that a field failure of Phoenix' s battery packs will not occur, which would damage the vehicle or lead to personal injury or death that subject Phoenix to lawsuits. Furthermore, there is some risk of electrocution if individuals who attempt to repair battery packs do not follow applicable maintenance and repair protocols. Any such damage or injury would likely lead to adverse publicity and potentially a safety recall. Any such adverse publicity could adversely affect Phoenix' s business, prospects, financial condition and operating results. If our vehicles fail to perform as expected **or have defects** , our ability to develop, market and sell or lease our electric vehicles could be harmed. If our vehicles were to contain defects in design and / or manufacture that cause them not to perform as expected or that require repair, our ability to develop, market and sell or lease our vehicles could be harmed. For example, the operation of our vehicles is highly dependent on software that will require modification and updates over time. Software products are inherently complex and often contain defects and errors when first introduced. We currently have a limited frame of reference by which to evaluate the long- term quality, reliability and performance characteristics of our buses, trucks, and other products. There can be no assurance that we will be able to detect and repair any defects in our products before commencing the sale of our vehicles. Any product defects or any other failure of our vehicles to perform as expected could harm our reputation and result in adverse publicity, lost revenue, delivery delays, product recalls, product liability claims or significant warranty and other expenses, and could have a material adverse impact on our business, financial condition, operating results and prospects. We are relying on third- party suppliers to develop a number of advanced technologies for use in our products. There can be no assurances that our suppliers will be able to meet the technological requirements, production timing and volume requirements to support our business plan. In addition, the technology may not comply with the cost, performance useful life and warranty characteristics we anticipate in our business plan. As a result, our business plan could be significantly impacted and we may incur significant liabilities under warranty claims which could adversely affect our business, prospects and results of operations. We are relying on a limited number of third- party suppliers to provide us with products for our charger and material handling division. Currently we are dependent entirely on third- party suppliers and partners for our chargers and material handling product lines. If these suppliers are not able to provide us with products due to supply chain constrains or other reasons, we do not have the capability or knowledge to produce these products locally. This would result in delays in getting end products to customers and negatively impact our business and results of operations. ~~11Our~~ **12Our** success may be dependent on our development and protection of intellectual property rights. We rely on confidentiality and trade secret protections to protect our proprietary technology. All new EV drivetrain and technical developments by us will be owned by us. Our success will, in part, depend on our ability to obtain patents and trademarks and protect our trade secrets and proprietary technology. We are currently maintaining our engineering under confidentiality agreements and other agreements to preserve our trade secrets and other proprietary technology. Although we have entered into confidentiality agreements with our employees, consultants and contractors, our agreements may not adequately protect our intellectual property, particularly with respect to conflicts of ownership relating to work product generated by our employees, consultants and contractors, and we cannot be certain that others will not gain access to our trade secrets and other proprietary technology. Others may independently develop substantially equivalent proprietary information and techniques or otherwise gain access to our trade secrets. We may not succeed in establishing, maintaining and strengthening our brand, which would materially and adversely affect customer acceptance of our vehicles and components and our business, revenues and prospects. Our business and prospects heavily depend on our ability to develop, maintain and strengthen our brand. If we are not able to establish, maintain and strengthen our brand, we may lose the opportunity to build a larger base of customers. Our ability to develop, maintain and strengthen our brand will depend heavily on the success of our marketing efforts. The automobile industry is intensely competitive, and we may not be successful in building, maintaining and strengthening our brand. Our current and potential competitors, particularly automobile manufacturers headquartered in the United States, Japan, the European Union and China, have greater name recognition, broader customer relationships and substantially greater marketing resources than we do. If we do not develop and maintain a strong brand, our business, prospects, financial condition and operating results will be materially and adversely impacted. Our electric vehicles will compete for market share with vehicles powered by other vehicle technologies that may prove to be more attractive than our vehicle technologies. Our bus and light and medium- duty truck market currently is serviced by many manufacturers with existing customers and suppliers using proven and widely accepted fuel technologies. Additionally, our competitors are working on developing technologies that may be introduced in our target market. If any of these alternative technology vehicles can provide lower fuel costs, greater efficiencies, greater reliability or otherwise benefit from other factors resulting in an overall lower total cost of ownership, this may negatively affect the commercial success of our vehicles or make our vehicles uncompetitive. We may be unable to keep up with changes in electric vehicle technology as new entrants and existing, larger manufacturers enter the electric vehicle space. Our Zeus line of buses and trucks are designed for use with, and is dependent upon, existing electric vehicle technology. As new companies and larger, existing vehicle manufacturers enter the electric vehicle space, we may lose any technological advantage we may have had in the marketplace and suffer a decline in our position in the market. As technologies change, we plan to upgrade or adapt our products to continue to provide products with the latest technology. However, our products may become obsolete or our research and development efforts may not be sufficient to adapt to changes in or to create the necessary technology to effectively compete. As a result, our potential inability to adapt to and develop the necessary technology may harm our competitive position. **The failure to successfully integrate Proterra Transit Business Unit' s business and operations in the expected time frame may adversely affect the combined company' s future results. As previously reported, on January 11, 2024, the Company completed the acquisition of the Proterra transit business unit (the " Transit Business ") pursuant to the asset purchase agreement with Proterra signed on November 13, 2023. The Company believes that the acquisition of the Transit Business will result in certain benefits, including revenue growth, certain cost synergies, drive product innovations, and operational efficiencies. However, to realize these anticipated benefits, the businesses of the Company and the Transit Business must be successfully combined. The success of the asset acquisition will depend on the Company' s ability to realize these anticipated benefits from combining the businesses of the Company and the Transit Business. The Company may fail to realize the anticipated benefits of the asset acquisition for a variety of reasons, including the following: ● failure to successfully manage relationships with Transit Business customers, distributors and suppliers; ● failure of customers to accept new products or to continue as customers of the Company; 13 ● customer and revenue attrition of the Transit Business in excess of anticipated levels; ● failure to qualify the Company' s products as a primary source of supply with OEM customers on a timely basis or at all; ● potential incompatibility of technologies and systems; ● failure to integrate and leverage the increased scale of the Transit Business quickly and effectively; ● potential difficulties preparing financial statements and integrating and harmonizing financial reporting systems; ● the loss of key employees of the Transit Business; ● failure to effectively coordinate sales and marketing efforts to communicate the capabilities of the combined company; and ● failure to combine product offerings and product lines quickly and effectively. ● the risk of entering market segments in which the Company has no or limited direct prior experience and where competitors in such market segments have stronger market segment positions; ● failure to have adequate capital resources to finance the Transit Business operations and businessThe actual integration may result in additional and unforeseen expenses or delays. If the combined company is not able to successfully integrate the Transit Business' s business and operations, or if there are delays in combining the businesses, the anticipated benefits of the asset acquisition may not be realized fully or at all or may take longer to realize than expected.** Phoenix' s business requires highly technically skilled personnel, for whom Phoenix must compete for employment. Phoenix' s manufacturing and research and development require highly skilled electrical, mechanical, and software engineers. Competition for employment of such individuals is intense, and Phoenix' s ability to attract and retained and retaining them is essential to continuing its business. Growth of Phoenix' s business will depend upon its ability to compete for increasing numbers of such employees, and there can be no assurance that Phoenix will be able to do so. Our inability to attract and retain key personnel may materially and adversely affect our business operations. Any failure by our management to effectively anticipate, implement and manage the changes required to sustain our growth would have a material adverse effect on our business, financial condition and results of operations. We will also need to hire and train a significant number of hourly employees to expand our commercial manufacturing operations. Furthermore, in the event employees hired by us seek to join or form a labor union, we could be subject to risks as we engage in an attempt to finalize negotiations with any such union, including potential work slowdowns or stoppages, delays and increased costs. If we are unsuccessful in hiring and training an expanded workforce in a timely and cost-effective manner, our business, financial condition and results of operations could be adversely affected. ~~12We are highly dependent on the services of Liang Lance Zhou, our Chief Executive Officer.~~ We are highly dependent on the services of **Denton Peng** ~~Liang Lance Zhou~~, our Chief Executive Officer **and Interim Chief Financial Officer. We are highly dependent on the services of Denton Peng, our Chief Executive Officer and Interim Chief Financial Officer** . Mr. ~~Zhou~~ **Peng** is the source of many, if not most, of the ideas and execution driving our strategies and supply chains. If Mr. ~~Zhou~~ **Peng** were to discontinue his service to us due to death, disability or any other reason, we would be significantly disadvantaged. Our lack of effective internal controls over financial reporting may affect our ability to accurately report our financial results or prevent fraud, which may affect the market for and price of our Common Stock. To implement Section 404 of the Sarbanes-Oxley Act of 2002, the SEC adopted rules requiring public companies to include a report of management on the company' s internal control over financial reporting. Our management, with the participation of our Chief Executive Officer and Chief Financial Officer, conducted an evaluation of the effectiveness of our Company' s internal control over financial reporting as of December 31, ~~2022~~ **2023** based on criteria established in Internal Control- Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO 2013 Framework). The Company has identified the ~~following~~ **14following** material weaknesses, in the design or operation of internal controls, which could adversely affect the Company' s ability to record, process, summarize and report financial data: (1) failure to maintain an effective control environment of internal control over financial reporting; (2) failure to develop an effective risk assessment process to identify and evaluate at a sufficient level of detail all relevant risks of material misstatement, including business, operational, and fraud risks; (3) ineffective monitoring activities to assess the operation of internal control over financial reporting; and (4) lack of sufficient controls designed and implemented for financial information processing and reporting and lacked resources with requisite skills for the financial reporting under U. S. GAAP. We will be subject to the requirement that we maintain internal controls and that management perform periodic evaluation of the effectiveness of the internal controls. Effective internal control over financial reporting is important to prevent fraud. As a result, our business, financial condition, results of operations and prospects, as well as the market for and trading price of our shares of Common Stock, may be materially and adversely affected if we do not have effective internal controls. Before becoming a public company, we were a private company with limited resources. As a result, we may not discover any problems in a timely manner and current and potential shareholders could lose confidence in our financial reporting, which would harm our business and the trading price of our shares of Common Stock. The absence of internal controls over financial reporting may inhibit investors from purchasing our shares and may make it more difficult for us to raise funds in a debt or equity financing. We intend to implement measures designed to improve our internal control over financial reporting to address the underlying causes of these material weaknesses, including (1) hiring more qualified staff and increasing resources with sufficient knowledge and experience to strengthen financial reporting; (2) setting up a financial and system control framework to ensure proper segregation of duty and review procedures, with formal documentation of polices and controls in place; (3) forming a task force to design and improve processes and controls to monitor operations and record financial data; and (4) devoting proper time by senior management to perform comprehensive review of procedures to assess risks and enforce effective accountability. In addition, we anticipate that the process of building and improving our accounting and financial functions and infrastructure will require significant additional professional fees, internal costs and management efforts. We expect that we will need to implement a new internal system to enhance the management of our financial, accounting, human resources and other functions. However, such a system would likely require us to complete many processes and procedures for the effective use of the system or to run our business using the system, which may result in substantial costs. Any disruptions or difficulties in implementing or using such a system could adversely affect our controls and harm our business. Moreover, such disruption or difficulties could result in unanticipated costs and diversion of management' s attention. Additional material weaknesses or significant deficiencies may be identified in the future. If we identify such issues or if we are unable to produce accurate and timely financial statements, our stock price may decline and we may be unable to maintain compliance with the Nasdaq Listing Rules. ~~13Risks~~ -- **Risks** Related to Ownership of Our Common StockThe market price of our securities may fluctuate and may decline. Fluctuations in the price of our securities could contribute to the loss of all or part of your investment. The trading price of our securities has been volatile and subject to wide fluctuations in response to various factors, some of which are beyond our control. Any of the factors listed below could have a material adverse effect on the market value of our securities. ● actual or anticipated fluctuations in our quarterly financial results or the quarterly financial results of companies perceived to be similar to us; ● changes in the market' s expectations about our operating results; ● success or failure of competitors; ● our operating results failing to meet the expectation of securities analysts or investors in a particular period; ● changes in financial estimates and recommendations by securities analysts concerning us or the market in general; ● operating and stock price performance of other companies that investors deem comparable to us; **15** ~~● operating and stock price performance of SPI Energy, our majority shareholder;~~ ● our ability to market new and enhanced services and products on a timely basis; ● changes in laws and regulations affecting our business; ● commencement of, or involvement in, litigation involving us; ● changes in our capital structure, such as future issuances of securities or the incurrence of additional debt; ● the volume of shares of our common stock available for public sale; ● short selling of our common stock or other securities; ● any announced or anticipated stock or equity linked instrument offering by us; ● any major change in the board of directors or management; ● sales of substantial amounts of common stock by our directors, executive officers or significant stockholders or the perception that such sales could occur; and ● general economic and political conditions such as recessions, interest rates, fuel prices, international currency fluctuations and acts of war or terrorism. Broad market and industry factors may materially harm the market price of our securities irrespective of our operating performance. The stock market in general has experienced price and volume fluctuations that have often been unrelated or disproportionate to the operating performance of the particular companies affected. The trading prices and valuations of these stocks, and of our securities, may not be predictable. A loss of investor confidence in the market for automotive stocks or the stocks of other companies which investors perceive to be similar to us could depress our stock price regardless of our business, prospects, financial condition or results of operations. A decline in the market price of our securities also could adversely affect our ability to issue additional securities and our ability to obtain additional financing in the future. ~~14If~~ **If** we are unable to maintain compliance with the continued listing requirements as set forth in the Nasdaq listing rules, our common stock could be delisted from the Nasdaq, and if this were to occur, then the price and liquidity of our common stock, and our ability to raise additional capital, may be adversely affected. Our common stock is currently listed on the Nasdaq Capital Market, or Nasdaq. Continued listing of a security on the Nasdaq is conditioned upon compliance with certain continued listing requirements and continued listing standards set forth in the Nasdaq listing rules, including a minimum closing bid price of $ 1. 00 per share. There can be no assurance we will continue to satisfy the all the requirements for maintaining a Nasdaq listing. Delisting of our common stock could adversely affect the liquidity of our common stock because alternatives, such as the OTC Bulletin Board and the pink sheets, are generally considered to be less efficient markets. An investor likely would find it less convenient to sell, or to obtain accurate quotations in seeking to buy our common stock on an over- the- counter market. Many investors likely would not buy or sell our common stock due to difficulty in accessing over- the- counter markets, policies preventing them from trading in securities not listed on a national exchange or other reasons. A delisting of our common stock would likely to have an adverse impact on our stock price, inhibit or preclude our ability to rise additional financing, effect strategic acquisitions and may also materially and adversely impact our credit terms with our vendors. Sales of substantial amounts of our common stock in the public markets by our existing stockholders, or the perception that such sales might occur, could cause the market price of our common stock to decline significantly, even if our business is doing well. Sales of a substantial number of shares of our common stock in the public market could occur at any time. If our stockholders sell, or the market perceives that we or our stockholders intend to sell, a substantial amount of our common stock in the public market, the market price of our common stock could decline significantly. ~~The~~ **16The** issuance of additional shares of our common stock in connection with financings, acquisitions, investments, our share incentive plans or otherwise will dilute all other stockholders. Our Second Amended to the Amended Certificate of Incorporate authorizes us to issue up to 450, 000, 000 shares of our common stock and up to 50, 000, 000 shares of preferred stock. We may issue common stock or securities convertible into common stock from time to time in connection with a financing, acquisition, investment, our equity incentive plans or otherwise. Any such issuance could result in substantial dilution to our existing stockholders and cause the market price of our common stock to decline. We do not expect to declare any dividends in the foreseeable future. We do not anticipate declaring any cash dividends to holders of our common stock in the foreseeable future. Consequently, holders of our common stock may need to rely on sales of their shares after price appreciation, which may never occur, as the only way to realize any future gains on their investment. It is not possible to predict the actual number of shares we will sell under the Standby Equity Purchase Agreement (the " SEPA "), or the actual gross proceeds resulting from those sales. Further, we may not have access to the full amount available under the SEPA. On November 22, 2022, we entered into the SEPA with YA II PN, Ltd. (" Yorkville "), pursuant to which Yorkville has committed to purchase up to $ 10, 000, 000 of our common stock, subject to certain limitations and conditions set forth in the SEPA. We have the right to control the timing and amount of any sales of our shares of common stock to Yorkville under the SEPA. **As of December 31, 2023, we sold a total of 1, 576, 545 shares of common stock and the company received $ 1. 9 million in net proceeds from the sales.** Although the SEPA provides that we may sell up to an aggregate of $ 10, 000, 000 of our common stock to Yorkville, only 4, 035, 086 shares of our common stock, including the aggregate amount of 61, 421 Commitment Shares issued to Yorkville, have been registered. If we elect to sell to the Yorkville all of the 4, 035, 086 registered shares of common stock, depending on the market price of our common stock prior to each Advance made pursuant to the SEPA, the actual gross proceeds from the sale of all such shares may be substantially less than the $ 10, 000, 000 available to us, which could materially adversely affect our liquidity. ~~15If~~ **If** it becomes necessary for us to issue and sell to Yorkville under the SEPA more than the 4, 035, 086 shares registered for resale in order to receive aggregate gross proceeds equal to $ 10, 000, 000, we must file with the SEC one or more additional registration statements to register under the Securities Act the resale by Yorkville of any such additional shares of our common stock we wish to sell from time to time under the SEPA, which the SEC must declare effective. Additionally, we would need to obtain stockholder approval to issue shares of common stock in excess of the Exchange Cap under the SEPA in accordance with applicable Nasdaq rules, unless all applicable sales of shares of common stock under the SEPA equal or exceed the " Minimum Price " (as such term is defined in the Nasdaq Rules) or, as to any Advance, the issuance of the common stock pursuant to an Advance Notice would be excluded from the Exchange Cap under Nasdaq rules (or interpretive guidance provided by the Nasdaq with respect thereto), in which case, under applicable Nasdaq rules, the Exchange Cap limitation would not apply to issuances and sales of common stock under the SEPA. Any issuance and sale by us under the SEPA of shares of common stock in addition to the 4, 035, 086 shares of common stock registered for resale by Yorkville could cause additional dilution to our stockholders. We are not required or permitted to issue any shares of common stock under the SEPA if such issuance would breach our obligations under the rules or regulations of the Nasdaq Stock Market LLC. In addition, Yorkville will not be required to purchase any shares of our common stock if such sale would result in their beneficial ownership exceeding 9. 99 % of the then issued and outstanding common stock. Our inability to access a part or all of the amount available under the SEPA, in the absence of any other financing sources, could have a material adverse effect on our business. If we elect to draw down amounts under the SEPA, which will result in the sale of shares of our common stock to Yorkville, any such draw- downs may have a dilutive impact on our existing shareholders. Though we have been advised by Yorkville, and Yorkville represents in the SEPA, that Yorkville is purchasing the shares for its own account, for investment purposes, and without any view or intention to distribute such shares in violation of the Securities Act or any other applicable securities laws, Yorkville may resell some or all of the shares we issue to it pursuant to draw- downs under the SEPA and such sales could cause the market price of our common stock to decline. ~~Risks~~ **17Risks** Relating to Regulation and ClaimsProduct liability or other claims could have a material adverse effect on our business. The risk of product liability claims, product recalls and associated adverse publicity is inherent in the manufacturing, marketing and sale of all vehicles, including electric vehicles. Although we have liability insurance policies in place, that insurance may be inadequate to cover all potential product claims. Any product recall or lawsuit seeking significant monetary damages either in excess of our coverage, or outside of our coverage, may have a material adverse effect on our business and financial condition. We may not be able to secure additional liability insurance coverage on acceptable terms or at reasonable costs when needed or at all. A successful product liability claim against us could require us to pay a substantial monetary award. Moreover, a product recall could generate substantial negative publicity about our products and business and inhibit or prevent commercialization of other future product candidates. We cannot provide assurance that such claims and / or recalls will not be made in the future. Regulatory requirements may have a negative effect upon our business. All vehicles sold must comply with international, federal and state motor vehicle safety standards. In the United States, vehicles that meet or exceed all federally mandated safety standards are certified under the federal regulations. Rigorous testing and the use of approved materials and equipment are among the requirements for achieving federal certification. Our Zeus buses and trucks are subject to substantial regulation under federal, state and local laws and standards. These regulations include those promulgated by the U. S. EPA, the National Highway Traffic Safety Administration (" NHTSA "), the Pipeline and Hazardous Materials Safety Administration (" PHMSA ") and various state boards, and compliance certification is required for each new model year. These laws and standards are subject to change from time to time and we could become subject to additional regulations in the future. In addition, federal, state and local laws and industrial standards for electric vehicles are still developing. Compliance with these regulations could be challenging, burdensome, time consuming and expensive. If compliance results in delays or substantial expenses, our business could be adversely affected. ~~16The~~ -- **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. Any reduction, elimination or discriminatory application of government subsidies and economic incentives because of policy changes, the reduced need for such subsidies and incentives due to the perceived success of the electric vehicle industry or other reasons may result in the diminished competitiveness of the electric vehicle industry generally. This could materially and adversely affect the growth of our business, prospects, financial condition and operating results. While certain tax credits and other incentives for alternative energy production and electric vehicles have been available in the past, there is no guarantee these programs will be available in the future. If current tax incentives are not available in the future, our financial position could be harmed. As federal, state, or local legislation related to electric vehicles or data protection continues to develop, we will likely be required to expend significant additional resources to continue to modify or enhance our products, protective measures and internal processes to comply with such legislation. We may be exposed to liability for infringing upon other companies' intellectual property rights. Our success, in part, is dependent on our ability to operate without infringing on others' proprietary rights. While we are not aware of any patents and trademarks which would cause our products or their use to infringe the rights of any third parties, we cannot be certain that infringement has not or will not occur. We could incur substantial costs, in addition to a great amount of time lost, in defending any patent or trademark infringement suits or in asserting any patent or trademark rights in a suit with another party. We are subject to various environmental laws and regulations that could impose substantial costs upon us and cause delays in building our manufacturing facilities. Our operations are and will continue to be subject to international, federal, state, and / or local environmental laws and regulations, including laws relating to water use; air emissions; use of recycled materials; energy sources; the protection of human health and the environment, natural resources and endangered species; and the use, handling, storage, disposal and human exposure to hazardous materials. ~~Environmental~~ **18Environmental** 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. We have been required to obtain and comply with the terms and conditions of multiple environmental permits, certificates, or registrations, many of which are difficult and costly to obtain and could be subject to legal challenges. Violations of these laws, regulations, and permits, certificates and registrations can give rise to liability for administrative oversight and correction costs, cleanup costs, property damage, bodily injury and fines and penalties. In some cases, violations may result in suspension or revocation of permits, certificates or registrations. 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, and reputational harm. Contamination at properties we currently own or operate, will own or 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 vapor intrusion and other exposure pathways or impacts to human health or the environment 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 planned production facilities that could require significant time and financial resources and delay our ability to operate these facilities, which would adversely impact our business, prospects, financial condition and operating results. ~~17Changes~~ -- **Changes** in laws or regulations, or a failure to comply with any laws and regulations, or any litigation that we may be subject to or involved in may adversely affect our business, investments and results of operations. We are subject to laws, regulations and rules enacted by national, regional and local governments and the Nasdaq Stock Market on which we are applying for our securities to be listed. In particular, we will be required to comply with certain SEC, Nasdaq and other legal and regulatory requirements. Compliance with, and monitoring of, applicable laws, regulations and rules may be difficult, time consuming and costly. Those laws, regulations and rules and their interpretation and application may also change from time to time and those changes could have a material adverse effect on our business, investments and results of operations. In addition, a failure to comply with applicable laws, regulations or rules, as interpreted and applied, could have a material adverse effect on our business and results of operations. We may be compelled to undertake product recalls or take other actions, which could adversely affect our business, prospects, operating results, reputation and financial condition. Any product recall in the future may result in adverse publicity, damage our reputation and adversely affect our business, prospects, operating results and financial condition. In the future, we may, voluntarily or involuntarily, initiate a recall if any of our electric vehicles or components (including our battery packs) prove to be defective or noncompliant with applicable federal motor vehicle safety standards. Such recalls, whether caused by systems or components engineered or manufactured by us or our suppliers, would involve significant expense and diversion of management' s attention and other resources, which could adversely affect our brand image in our target market and our business, prospects, financial condition and operating results. We may not have adequate insurance coverage for possible claims, lawsuits, product recalls or other damages claims made against us. The successful assertion of one or more large claims against us that exceeds our available insurance coverage, or results in changes to our insurance policies, including premium increases or the imposition of large deductible or co- insurance requirements, could have an adverse effect on our business. In addition, we cannot be sure that our existing insurance coverage will continue to be available on acceptable terms or that our insurers will not deny coverage as to any future claim. As a recently public company with limited operating history we may find it difficult to obtain and maintain certain categories of insurance such as adequate D & O insurance, product liability insurance, garage keepers insurance, cybersecurity insurance, etc. ~~Insufficient~~ **19Insufficient** warranty reserves to cover future warranty claims could adversely affect our business, prospects, financial condition and operating results. Our EVs are sold with warranties, and as a result we need to maintain warranty reserves to cover any warranty- related claims. If our warranty reserves are inadequate to cover such future warranty claims, 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 then- existing warranty reserves will be sufficient to cover all claims. General Risk FactorsEconomic conditions could adversely affect our business. Uncertain global economic conditions, in particular in light of the COVID- 19 pandemic, could adversely affect our business. Negative global economic trends, such as decreased consumer and business spending, high unemployment levels and declining consumer and business confidence, pose challenges to our business and could result in declining revenues, profitability and cash flow. Although we continue to devote significant resources to support our brands, unfavorable economic conditions may negatively affect demand for our products. ~~18Litigation~~ -- **Litigation** may adversely affect our business, financial condition and results of operations. From time to time in the normal course of our business operations, we may become subject to litigation that may result in liability material to our financial statements as a whole or may negatively affect our operating results if changes to our business operation are required. The cost to defend such litigation may be significant and may require a diversion of our resources. There also may be adverse publicity associated with litigation that could negatively affect customer perception of our business, regardless of whether the allegations are valid or whether we are ultimately found liable. As a result, litigation may adversely affect our business, financial condition and results of operations. Since inception, the Company has not been a party to any material litigation. We are subject to cyber security risks. If a cyber security incident occurs, we could suffer information theft, data corruption, operational disruption and our business and results of operations could be harmed. Our customers, and our industry generally, have become more dependent on digital and connected technologies to conduct business. We depend on digital and connected technologies to monitor our EVs, perform many of our services and to process and record financial and operating data, among other things. We also expect to increase our dependence on these technologies as we expand our offerings. Ensuring the secure and reliable processing, maintenance and transmission of this data is important to our operations and our customers. As cyber security incidents (including deliberate attacks) have increased in number, scope, and sophistication, energy assets (and related networks) may become the targets of more incidents. Our technologies, systems and networks, and those of our customers, vendors, suppliers and other business partners, may become the target of cyberattacks or information security breaches that could result in the loss or destruction of proprietary and other information, or other disruption of business operations. In addition, while we depend on certain business partners to store certain information regarding our customers and employees, these third parties may be a target of cyberattacks or information security breaches that could result in the unauthorized release, gathering, monitoring, or misuse of sensitive information. Our recourse against these business partners, if any, may be limited. In addition, we, our customers, vendors, and / or business partners may be unable to detect certain breaches (such as unauthorized surveillance) for an extended period of time. Our systems and controls for protecting against cyber security risks, and those used by our business partners, may be insufficient. The loss, misuse, destruction, unauthorized release, gathering, or monitoring of sensitive information result in significant financial losses, loss of customers and business opportunities, reputation damage, litigation (including any damages awarded), regulatory fines, penalties or intervention, reimbursement or other compensatory costs, or otherwise adversely affect our business, financial condition or results of operations. We will likely be required to expend additional resources to continue to modify or enhance our protective measures or to investigate and remediate any vulnerability to cyber security incidents. The reliability and capacity of our systems is critical to our operations. Any difficulties in implementing or integrating new systems or enhancing current systems, or any material disruption in our information technology systems or systems could have an adverse effect on our business and results of operations. Phishing scams could compromise sensitive data, harm our reputation, and lead to financial losses. Phishing scams involve malicious actors attempting to trick our employees into providing sensitive information or accessing malicious links, often through fraudulent emails or websites. If our employees fall victim to these scams, it could result in financial losses, damage to our brand reputation, and compromise of confidential or proprietary information. Despite implementing preventative ~~measures~~ **20measures** and employee training, the risk of phishing scam remains, and a successful attack could cause disruption and have significant negative financial impact to our business. We face risks related to the ongoing Russian invasion of Ukraine and any other conflicts that may arise on a global or regional scale which could adversely affect our business and results of operations. On February 24, 2022, the Russian Federation launched an invasion of Ukraine that has had an immediate impact on the global economy resulting in higher energy prices and higher prices for certain raw materials and goods and services which in turn is contributing to higher inflation in the United States and other countries across the globe with significant disruption to financial markets and supply and distribution chains for certain raw materials and goods and services on an unprecedented scale. The impact of the sanctions has also included disruptions to financial markets, an inability to complete financial or banking transactions, restrictions on travel and an inability to service existing or new customers in a timely manner in the affected areas of Europe. The Russian Federation could resort to cyberattacks and other action that impact businesses across the United States, the European Union and other nations across the globe including those without any direct business ties to the Russian Federation. The Russian invasion of Ukraine has continued to escalate without any resolution of the invasion foreseeable in the near future with the short and long- term impact on financial and business conditions in Europe remaining highly uncertain. ~~19The~~ -- **The** U. S. and the European Union responded to Russia' s invasion of Ukraine by imposing various economic sanctions on the Russian Federation to which the Russian Federation has responded in kind. The United Kingdom, Japan, South Korea, Australia and other countries across the globe have imposed their own sanctions on the Russian Federation. The United States, the European Union and such other countries acting together or separately could impose wider sanctions or take further actions against the Russian Federation if the conflict continues to escalate. Multinational corporations and other corporations and businesses with business and financial ties to the Russian Federation have either reduced or eliminated their ties to the Russian Federation in a manner that often exceeds what is required pursuant to sanctions by these countries. While we do not have any direct business or financial ties to the Russian Federation or Ukraine as part of our own business, the impact of higher energy prices and higher prices for certain raw materials and goods and services resulting in higher inflation and disruptions to financial markets and disruptions to manufacturing and supply and distribution chains for certain raw materials and goods and services across the globe may impact our business in the future. We will assess and respond where appropriate to any direct or indirect impact that the Russian invasion of Ukraine has on the availability or pricing of the raw materials for our products, manufacturing and supply and distribution chains for our products and on the pricing and demand for our products. In addition, any deterioration in credit markets resulting directly or indirectly from the ongoing Russian invasion of Ukraine could limit our ability to obtain external financing to fund our operations and capital expenditures. Adverse economic conditions may also result in a higher rate of losses on accounts receivables that we accrue in the future due to credit defaults. As a result, a downturn in the worldwide economy resulting from the Russian invasion of Ukraine and other conflicts with a global impact that may arise from time to time could have a material adverse effect on our business, results of operations, and / or financial condition. ~~20ITEM~~ **21ITEM** 1 B. Unresolved Staff CommentsNone. ITEM **1 C. CybersecurityCybersecurity risk management is an integral part of our overall enterprise risk management program. We have made significant investments in processes, and technology to protect Phoenix' s connected vehicles, services, confidential business information, and employee and consumer personal data. We have implemented multiple and varied processes and technologies for the avoidance, identification, assessment, mitigation, and remediation of risks from cybersecurity threats and incidents designated to protect against the cybersecurity risk landscape. We are continuously assessing and enhancing our protection, detection, response, and recovery capabilities and regularly engage with the cybersecurity communities, third- party cybersecurity and compliance partners, internal stakeholders, and organizations leading best practices, to support our goals and objectives. At its core, our cybersecurity risk management program integrates multiple teams across the organization, including our operations team, with leadership and oversight by executive management, the Audit Committee of the Board of Directors (" Audit Committee "), and the Board of Directors (" Board "). GovernanceBoard and Committee OversightOur Board has oversight responsibility for our overall enterprise risk management and delegates cybersecurity risk management oversight to the Audit Committee. The Audit Committee oversees Phoenix' s policies and practices with respect to risk assessment and risk management, including discussing with management (i) Phoenix' s major financial, cybersecurity, privacy and other information technology risk exposures; (ii) the steps that have been taken to monitor and control such exposures; and (iii) any material cybersecurity threats or incidents. The Audit Committee and the Board receive regular reporting from Phoenix' s management on the status of our cybersecurity program and ad hoc reporting on material cybersecurity threats and incidents. Management' s RoleAt the management level, our COO and CFO are responsible for leading our cybersecurity risk management program and enterprise cybersecurity matters. The COO and CFO monitor the prevention, detection, mitigation, and remediation of cybersecurity threats and incidents. For potentially material cybersecurity threats and incidents, we escalate these to the CEO, and would raise such threats and incidents to our Audit Committee Chair and, as appropriate, to our Board as they arise. Management of Cybersecurity RiskOur Cybersecurity Risk Management ProcessesOur cybersecurity risk management program provides a framework for handling cybersecurity threats and incidents by escalating risks, issues, and key decisions to management, the Audit Committee, and our Board. Our program is designated to protect our products and services, confidential business information (including intellectual property), and employee and consumer data and includes steps for detecting and monitoring cybersecurity threats and incidents, assessing the severity of such threats or incidents, identifying the source of such threats or incidents, including whether such threats or incidents are associated with a third- party vendor or service provider, implementing cybersecurity countermeasures and mitigation strategies and informing management, the Audit Committee, and our Board of potentially material cybersecurity threats and incidents. In addition, our operations team provides cybersecurity training to employees during the onboarding process and periodic basis thereafter, with specialized training and tabletop exercises for our core incident response teams and executive management on at least an annual basis. 22ITEM** 2. PropertiesOur principal executive offices are located at its headquarters comprising approximately 39, 043 square feet at 1500 Lakeview Loop, Anaheim, California. The lease on the Anaheim facility expires in March 2027. ~~In addition, we have~~ **We currently carry out the production of our electric transit buses from** a **lease facility** ~~fuel cell power systems research and development center comprising approximately 35, 072 square feet located~~ at **1 Whitlee Ct** ~~140 Blue Ravine Road~~ , ~~Folsom~~ **Greenville** , ~~California~~ **South Carolina** . The **Greenville Facility is leased by use at a rent of $ 1. 3 million per year and the** lease on **Greenville** ~~the Folsom facility~~ **Facility** expires in ~~September~~ **June** ~~2027~~ **2026 . We believe that our existing facilities are adequate for our current business operations and we will be able to enter into lease arrangements on commercially reasonable terms for future expansion** . ITEM 3 Legal ProceedingsAs of the date of this report, there are no pending or ongoing legal proceedings that are material to the Company' s operations or financial condition. We regularly review and update our disclosure to reflect any changes in our legal exposures. ITEM 4 Mine Safety DisclosuresNot applicable. ~~21~~ **23**