

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549  
FORM 10-Q**

**(Mark One)**

**QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**  
For the quarterly period ended September 30, 2022.

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 001-39881

**EMBARK TECHNOLOGY, INC.**

(Exact name of registrant as specified in its charter)

**Delaware**  
(State or other jurisdiction of  
incorporation or organization)

**321 Alabama St,  
San Francisco, California**  
(Address of Principal Executive Offices)

**85-3343695**  
(I.R.S. Employer  
Identification No.)

**94110**  
(Zip Code)

(415) 671-9628

Registrant's telephone number, including area code

**Not Applicable**

(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
Class A common stock, par value \$0.0001 per share	EMBK	The Nasdaq Global Market
Warrants, each whole warrant exercisable for 1/20th share of Class A common stock at an exercise price of \$11.50 per share	EMBKW	The Nasdaq Global Market

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

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate web site, if any, every Interactive Data File required to be submitted and posted 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 and post such files). Yes  No

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

Large accelerated filer	<input type="checkbox"/>	Accelerated filer	<input type="checkbox"/>
Non-accelerated filer	<input checked="" type="checkbox"/>	Smaller reporting company	<input checked="" type="checkbox"/>
		Emerging growth company	<input checked="" 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 Act). Yes  No

As of November 2, 2022, the number of shares of the issuer's Class A common stock outstanding was 19,067,925 and the number of outstanding shares of the issuer's Class B common stock was 4,353,948.

As used in this Quarterly Report on Form 10-Q, unless the context requires otherwise, references to "Embark," the "Company," "we," "us," and "our," and similar references refer to Embark Technology, Inc. and its wholly owned subsidiaries following the Business Combination (as defined herein) and to Embark Trucks, Inc. prior to the Business Combination.

**Forward-Looking Statements**

This Quarterly Report on Form 10-Q contains statements that are forward-looking and as such are not historical facts. This includes, without limitation, statements regarding the financial position, business strategy and the plans and objectives of management for future operations. These statements constitute projections, forecasts and forward-looking statements, and are not guarantees of performance. Such statements can be identified by the fact that they do not relate strictly to historical or current facts. When used in this Quarterly Report on Form 10-Q, words such as "anticipate," "believe," "continue," "could," "estimate," "expect," "intend," "may," "might," "plan," "possible," "potential," "predict," "project," "should," "strive," "would" and similar expressions may identify forward-looking statements, but the absence of these words does not mean that a statement is not forward-looking.

Forward-looking statements in this Quarterly Report on Form 10-Q may include, for example, statements about:

- Embark's public securities' potential liquidity and trading;
- Embark's ability to raise financing in the future;
- Embark's success in retaining or recruiting, or changes required in, its officers, key employees or directors;
- the impact of the regulatory environment and complexities with compliance related to such environment;
- factors relating to the business, operations and financial performance of Embark and its subsidiaries, including:
  - the impact of the COVID-19 pandemic;
  - overall macroeconomic conditions and the impact on the capital markets;
  - the ability of Embark to maintain an effective system of internal controls over financial reporting;

- the nature of autonomous driving as an emerging technology;
  - Embark's limited operating history;
  - the acceptance of Embark's technology by users and stakeholders in the freight transportation industry;
  - the expected success of Embark's business model, including its ability to maintain and develop customer relationships;
  - the ability of Embark to maintain a successful manufacturer-agnostic approach to its technology;
  - the ability of Embark to achieve and maintain profitability in the future; and
- other factors detailed under the section entitled "Risk Factors" in this Quarterly Report on Form 10-Q and the section entitled "Risk Factors" in Embark's Annual Report on Form 10-K for the year ended December 31, 2021,
-

as filed with the U.S. Securities and Exchange Commission (the “SEC”) on March 21, 2022 (the “Annual Report”).

These forward-looking statements are based on information available as of the date of this Quarterly Report on Form 10-Q and current expectations, forecasts and assumptions, and involve a number of judgments, risks and uncertainties. Accordingly, forward-looking statements should not be relied upon as representing Embark’s views as of any subsequent date, and Embark does not undertake any obligation to update forward-looking statements to reflect events or circumstances after the date they were made, whether as a result of new information, future events or otherwise, except as may be required under applicable securities laws.

As a result of a number of known and unknown risks and uncertainties, Embark’s actual results or performance may be materially different from those expressed or implied by these forward-looking statements. You should not place undue reliance on these forward-looking statements.

## TABLE OF CONTENTS

	<u>Page</u>
<b>Part I - FINANCIAL INFORMATION</b>	<b>4</b>
Item 1. <a href="#">Financial Statements (unaudited)</a>	4
<a href="#">Condensed Consolidated Balance Sheets</a>	5
<a href="#">Condensed Consolidated Statements of Operations</a>	6
<a href="#">Condensed Consolidated Statements of Comprehensive Loss</a>	7
<a href="#">Condensed Consolidated Statements of Preferred Stock and Stockholders' Equity</a>	8
<a href="#">Condensed Consolidated Statements of Cash Flows</a>	12
<a href="#">Notes to Condensed Consolidated Financial Statements</a>	13
Item 2. <a href="#">Management's Discussion and Analysis of Financial Condition and Results of Operations</a>	35
Item 3. <a href="#">Quantitative and Qualitative Disclosures About Market Risk</a>	42
Item 4. <a href="#">Controls and Procedures</a>	43
<b>Part II - OTHER INFORMATION</b>	<b>44</b>
Item 1. <a href="#">Legal Proceedings</a>	44
Item 1A. <a href="#">Risk Factors</a>	44
Item 2. <a href="#">Unregistered Sales of Equity Securities and Use of Proceeds</a>	45
Item 3. <a href="#">Defaults Upon Senior Securities</a>	45
Item 4. <a href="#">Mine Safety Disclosures</a>	46
Item 5. <a href="#">Other Information</a>	46
Item 6. <a href="#">Exhibits</a>	47
Signatures	48

**Part I - FINANCIAL INFORMATION**

**Item 1. Financial Statements (unaudited).**

**Embark Technology, Inc.**  
**Condensed Consolidated Balance Sheets**  
*(in thousands, except share and per share data)*  
**(unaudited)**

	September 30, 2022	December 31, 2021
<b>Assets</b>		
Current assets:		
Cash and cash equivalents	\$ 191,040	\$ 264,615
Restricted cash, short-term	65	130
Prepaid expenses and other current assets	9,416	12,746
Total current assets	200,521	277,491
Restricted cash, long-term	812	275
Property, equipment and software, net	17,686	9,637
Operating lease right-of-use assets	22,941	—
Other assets	6,365	3,596
Total assets	<u>\$ 248,325</u>	<u>\$ 290,999</u>
<b>Liabilities and stockholders' equity</b>		
Current liabilities:		
Accounts payable	\$ 2,758	\$ 2,497
Accrued expenses and other current liabilities	9,226	3,142
Current portion of operating lease liabilities	3,251	—
Short-term notes payable	492	358
Total current liabilities	15,727	5,997
Long-term notes payable	1,421	722
Warrant liability	1,621	49,419
Non-current portion of operating lease liabilities	20,090	—
Other long-term liability	110	50
Long-term deferred rent	—	177
Total liabilities	38,969	56,365
Commitments and contingencies (Note 10)		
Stockholders' equity:		
Preferred stock, \$0.0001 par value; 10,000,000 shares authorized, none issued and none outstanding as of September 30, 2022 and December 31, 2021	—	—
Class A common stock, \$0.0001 par value; 4,000,000,000 shares authorized, 18,848,766 shares issued as of September 30, 2022; 4,000,000,000 shares authorized, 18,141,649 shares issued as of December 31, 2021	2	36
Class B common stock, \$0.0001 par value; 100,000,000 shares authorized, 4,353,948 shares issued as of September 30, 2022 and December 31, 2021	—	9
Additional paid-in capital	460,440	417,492
Accumulated deficit	(251,086)	(182,903)
Total stockholders' equity	209,356	234,634
<b>Total liabilities and stockholders' equity</b>	<u>\$ 248,325</u>	<u>\$ 290,999</u>

The accompanying notes are an integral part of these unaudited condensed consolidated financial statements.

**Embark Technology, Inc.**  
**Condensed Consolidated Statements of Operations**  
*(in thousands, except share and per share data)*  
**(unaudited)**

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2022	2021	2022	2021
<b>Operating expenses:</b>				
Research and development	\$ 21,691	\$ 11,481	\$ 59,427	\$ 26,823
General and administrative	16,050	4,593	56,741	11,585
Total operating expenses	37,741	16,074	116,168	38,408
Loss from operations	(37,741)	(16,074)	(116,168)	(38,408)
<b>Other income (expense):</b>				
Change in the fair value of derivative liability	—	(1,010)	—	(5,783)
Change in fair value of warrant liability	1,390	—	47,799	—
Other income (expense)	181	12	(413)	18
Interest income	758	13	931	83
Interest expense	—	(2,058)	(332)	(3,735)
Loss before provision for income taxes	(35,412)	(19,117)	(68,183)	(47,825)
Provision for income taxes	—	—	—	—
Net loss	\$ (35,412)	\$ (19,117)	\$ (68,183)	\$ (47,825)
Net loss attributable to common stockholders, basic and diluted	\$ (35,412)	\$ (19,117)	\$ (68,183)	\$ (47,825)
<b>Net loss per share attributable to common stockholders:</b>				
Basic and diluted, Class A and Class B	\$ (1.53)	\$ (2.69)	\$ (2.98)	\$ (6.73)
<b>Weighted-average shares used in computing net loss per share attributable to common stockholders:</b>				
Basic and diluted	23,145,180	7,111,106	22,880,503	7,111,106

The accompanying notes are an integral part of these unaudited condensed consolidated financial statements.

**Embark Technology, Inc.**  
**Condensed Consolidated Statements of Comprehensive Loss**  
*(in thousands)*  
**(unaudited)**

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2022	2021	2022	2021
Net loss	\$ (35,412)	\$ (19,117)	\$ (68,183)	\$ (47,825)
Other comprehensive loss (net of tax):				
Unrealized losses on available-for-sale securities, net	—	(3)	—	(45)
Comprehensive loss	<u>\$ (35,412)</u>	<u>\$ (19,120)</u>	<u>\$ (68,183)</u>	<u>\$ (47,870)</u>

The accompanying notes are an integral part of these unaudited condensed consolidated financial statements.



**Embark Technology, Inc.**  
**Condensed Consolidated Statements of Preferred Stock and Stockholder's Equity**  
*(in thousands, except number of shares)*  
*(unaudited)*

	Preferred Stock		Founders Preferred Stock		Common Stock		Class A		Class B		Warrants	Additional Paid-in Capital	Accumulated Deficit	Accumulated Other Comprehensive Income (Loss)	Total Stockholders' Equity
	Shares	Amount	Shares	Amount	Shares	Amount	Shares	Amount	Shares	Amount					
<b>Balance at June 30, 2021</b>	13,029,115	\$ 1	24,245	\$ —	7,125,342	\$ —	—	\$ —	—	\$ —	—	\$ 132,182	\$ (87,398)	\$ 3	\$ 44,788
Shares issued upon exercise of stock options	—	—	—	—	18,487	—	—	—	—	—	—	51	—	—	51
Shares repurchased	—	—	—	—	(167)	—	—	—	—	—	—	—	—	—	—
Vesting of early exercised options	—	—	—	—	—	—	—	—	—	—	—	28	—	—	28
Stock-based compensation	—	—	—	—	—	—	—	—	—	—	—	630	—	—	630
Issuance of common stock warrants	—	—	—	—	—	—	—	—	—	—	—	342	—	—	342
Other comprehensive loss	—	—	—	—	—	—	—	—	—	—	—	—	—	(3)	(3)
Net loss	—	—	—	—	—	—	—	—	—	—	—	—	(19,117)	—	(19,117)
<b>Balance at September 30, 2021</b>	<b>13,029,115</b>	<b>\$ 1</b>	<b>24,245</b>	<b>\$ —</b>	<b>7,143,662</b>	<b>\$ —</b>	<b>—</b>	<b>\$ —</b>	<b>—</b>	<b>\$ —</b>	<b>—</b>	<b>\$ 133,233</b>	<b>\$ (106,515)</b>	<b>\$ —</b>	<b>\$ 26,719</b>

The accompanying notes are an integral part of these unaudited condensed consolidated financial statements.

**Embark Technology, Inc.**  
**Condensed Consolidated Statements of Preferred Stock and Stockholder's Equity**  
*(in thousands, except number of shares)*  
*(unaudited)*

	Preferred Stock		Founders Preferred Stock		Common Stock		Class A		Class B		Warrants	Additional Paid-in Capital	Accumulated Deficit	Accumulated Other Comprehensive Income (Loss)	Total Stockholders' Equity
	Shares	Amount	Shares	Amount	Shares	Amount	Shares	Amount	Shares	Amount					
<b>Balance at June 30, 2022</b>	—	\$ —	—	\$ —	—	\$ —	18,654,458	\$ 2	4,353,948	\$ —	23,153,266	\$ 449,197	\$ (215,674)	\$ —	\$ 233,525
Shares issued upon exercise of stock options	—	—	—	—	—	—	70,464	—	—	—	—	156	—	—	156
Shares issued upon vesting of common stock units	—	—	—	—	—	—	13,322	—	—	—	—	—	—	—	—
Shares issued upon vesting of restricted stock units	—	—	—	—	—	—	110,522	—	—	—	—	—	—	—	—
Vesting of early exercised options	—	—	—	—	—	—	—	—	—	—	—	22	—	—	22
Stock-based compensation	—	—	—	—	—	—	—	—	—	—	—	11,065	—	—	11,065
<b>Net loss</b>	—	\$ —	—	\$ —	—	\$ —	—	\$ —	—	\$ —	—	\$ —	\$ (35,412)	\$ —	\$ (35,412)
<b>Balance at September 30, 2022</b>	—	\$ —	—	\$ —	—	\$ —	18,848,766	\$ 2	4,353,948	\$ —	23,153,266	\$ 460,440	\$ (251,086)	\$ —	\$ 209,356

The accompanying notes are an integral part of these unaudited condensed consolidated financial statements.

**Embark Technology, Inc.**  
**Condensed Consolidated Statements of Preferred Stock and Stockholder's Equity**  
*(in thousands, except number of shares)*  
*(unaudited)*

	Preferred Stock		Founders Preferred Stock		Common Stock		Class A		Class B		Warrants	Additional Paid-in Capital	Accumulated Deficit	Accumulated Other Comprehensive Income (Loss)	Total Stockholders' Equity
	Shares	Amount	Shares	Amount	Shares	Amount	Shares	Amount	Shares	Amount					
<b>Balance at December 31, 2020</b>	13,029,115	\$ 1	24,245	\$ —	7,060,822	\$ —	—	\$ —	—	\$ —	—	\$ 129,449	\$ (58,690)	\$ 45	\$ 70,805
Shares issued upon exercise of stock options	—	—	—	—	83,007	—	—	—	—	—	—	149	—	—	149
Shares repurchased	—	—	—	—	(167)	—	—	—	—	—	—	—	—	—	—
Vesting of early exercised options	—	—	—	—	—	—	—	—	—	—	—	39	—	—	39
Stock-based compensation	—	—	—	—	—	—	—	—	—	—	—	1,821	—	—	1,821
Issuance of common stock warrants	—	—	—	—	—	—	—	—	—	—	—	1,775	—	—	1,775
Other comprehensive loss	—	—	—	—	—	—	—	—	—	—	—	—	—	(45)	(45)
Net loss	—	—	—	—	—	—	—	—	—	—	—	—	(47,825)	—	(47,825)
<b>Balance at September 30, 2021</b>	<b>13,029,115</b>	<b>\$ 1</b>	<b>24,245</b>	<b>\$ —</b>	<b>7,143,662</b>	<b>\$ —</b>	<b>—</b>	<b>\$ —</b>	<b>—</b>	<b>\$ —</b>	<b>—</b>	<b>\$ 133,233</b>	<b>\$ (106,515)</b>	<b>\$ —</b>	<b>\$ 26,719</b>

The accompanying notes are an integral part of these unaudited condensed consolidated financial statements.

**Embark Technology, Inc.**  
**Condensed Consolidated Statements of Preferred Stock and Stockholder's Equity**  
*(in thousands, except number of shares)*  
*(unaudited)*

	Preferred Stock		Founders Preferred Stock		Common Stock		Class A		Class B		Warrants	Additional Paid-in Capital	Accumulated Deficit	Accumulated Other Comprehensive Income (Loss)	Total Stockholders' Equity	
	Shares	Amount	Shares	Amount	Shares	Amount	Shares	Amount	Shares	Amount						
<b>Balance at December 31, 2021</b>	—	\$ —	—	\$ —	—	\$ —	18,141,649	\$ —	2	4,353,948	\$ —	23,153,266	\$ 417,535	\$ (182,903)	\$ —	\$ 234,634
Shares issued upon exercise of stock options	—	—	—	—	—	—	446,890	—	—	—	—	1,298	—	—	—	1,298
Shares issued upon vesting of common stock units	—	—	—	—	—	—	26,643	—	—	—	—	—	—	—	—	—
Shares issued upon vesting of restricted stock units	—	—	—	—	—	—	211,084	—	—	—	—	—	—	—	—	—
Vesting of early exercised options	—	—	—	—	—	—	—	—	—	—	—	43	—	—	—	43
Stock-based compensation	—	—	—	—	—	—	—	—	—	—	—	40,898	—	—	—	40,898
Issuance of common stock for services	—	—	—	—	—	—	22,500	—	—	—	—	666	—	—	—	666
Net loss	—	—	—	—	—	—	—	—	—	—	—	—	(68,183)	—	—	(68,183)
<b>Balance at September 30, 2022</b>	—	\$ —	—	\$ —	—	\$ —	18,848,766	\$ —	2	4,353,948	\$ —	23,153,266	\$ 460,440	\$ (251,086)	\$ —	\$ 209,356

The accompanying notes are an integral part of these unaudited condensed consolidated financial statements.

**Embark Technology, Inc.**  
**Condensed Consolidated Statements of Cash Flows**  
*(in thousands)*  
**(unaudited)**

	Nine Months Ended September 30,	
	2022	2021
<b>Cash flows from operating activities</b>		
Net loss	\$ (68,183)	\$ (47,825)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	1,438	756
Amortization expense - right-of-use assets - operating leases	1,841	—
Stock-based compensation, net of amounts capitalized	39,942	1,661
Issuance of warrants for services	—	1,775
Change in fair value of warrants	(47,799)	—
Net amortization of premiums and accretion of discounts on investments	—	265
Amortization of debt discount	—	3,735
Change in the fair value of derivative liability	—	5,783
Loss on sale of property, equipment and software	(147)	—
Issuance of common stock for services	666	—
Changes in operating assets and liabilities:		
Prepaid expenses and other current assets	3,144	(911)
Other assets	(2,769)	(3,229)
Accounts payable	1,055	2,759
Other long-term liabilities	60	49
Accrued expenses and other current liabilities	4,482	2,324
Net cash used in operating activities	(66,270)	(32,858)
<b>Cash flows from investing activities</b>		
Maturities of investments	—	48,239
Proceeds from sale of property, equipment and software	399	—
Purchase of property, equipment and software	(8,201)	(2,380)
Deposit for purchase of trucks	—	(400)
Refund of deposit for trucks	—	47
Net cash provided by (used in) investing activities	(7,802)	45,506
<b>Cash flows from financing activities</b>		
Cash proceeds received from convertible note payable	—	25,001
Payment towards notes payable	(346)	(140)
Proceeds from exercise of stock options	1,319	149
Repurchase of early exercised stock options	(4)	—
Deferred offering costs	—	(827)
Net cash provided by financing activities	969	24,183
Net increase (decrease) in cash, cash equivalents and restricted cash	(73,103)	36,831
Cash, cash equivalents and restricted cash at beginning of period	265,020	11,460
Cash, cash equivalents and restricted cash at end of period	\$ 191,917	\$ 48,291
<b>Supplemental disclosures of cash flow information:</b>		
Cash paid during the period for interest	\$ 18	\$ —
<b>Supplemental schedule of noncash investing and financing activities</b>		
Acquisition of property, equipment and software in accounts payable	\$ 1,038	\$ 71
Acquisition of trucks by assuming notes payable	\$ 1,420	\$ 278
Right-of-use assets obtained in exchange for lease obligations	\$ 24,782	\$ —
Deferred offering costs in accrued liability	\$ —	\$ 3,275
Stock-based compensation capitalized into internally developed software	\$ 1,144	\$ 160
Vesting of early exercised stock options	\$ 43	\$ 39
Issuance of common stock for services	\$ 666	\$ —

The accompanying notes are an integral part of these unaudited condensed consolidated financial statements.

**Notes to Condensed Consolidated Financial Statements (unaudited)****1. DESCRIPTION OF BUSINESS AND BASIS OF PRESENTATION**

Embark Technology, Inc. (“Embark” or the “Company”) was originally incorporated in Delaware on September 25, 2020 under the name Northern Genesis Acquisition Corp. II (“NGA”). The Company was formed for the purpose of effecting a merger, capital stock exchange, asset acquisition, stock purchase, reorganization or similar business combination with one or more businesses. On November 10, 2021 (the “Closing Date”), the Company (at such time named Northern Genesis Acquisition Corp. II) consummated the business combination (the “Business Combination”) pursuant to the Agreement and Plan of Merger, dated June 22, 2021 with the pre-Business Combination company, Embark Trucks, Inc. (“Embark Trucks”). In connection with the consummation of the Business Combination, the Company changed its name from Northern Genesis Acquisition Corp. II to Embark Technology, Inc. and became the parent entity of Embark Trucks.

The Merger was accounted for as a reverse recapitalization with Embark as the accounting acquirer and NGA as the acquired company for accounting purposes. Accordingly, all historical financial information presented in the condensed consolidated financial statements represent the accounts of Embark as if Embark is the predecessor to the Company. The shares and net loss per common share, prior to the Merger, have been retroactively restated as shares reflecting the exchange ratio established in the Merger (approximately 2.98 shares of Company Class A common stock for 1 share of Embark Class A common stock).

The principal activities of Embark Technology, Inc. include design and development of autonomous driving software for the truck freight industry. The Company is headquartered in San Francisco, California and was incorporated in the State of Delaware in 2016. Other than Embark Trucks, the Company has no other subsidiaries as of September 30, 2022.

The Company has devoted substantially all of its resources to develop its autonomous truck technology, to enable and expand its route models - transfer point and direct-to-customer, to expand its partnerships with shippers and carriers and other potential consumers, to raising capital, and providing general and administrative support for these operations. The Company has not generated revenues from its principal operations from inception through September 30, 2022.

Prior to the Merger, NGA ordinary shares and warrants were traded on the New York Stock Exchange under the ticker symbols “NGAB” and “NGAB.WS”, respectively. On the Closing Date, the Company’s Class A common stock and warrants began trading on the NASDAQ under the ticker symbols “EMBK” and “EMBKW”, respectively. One of the primary purposes of the Merger was to provide a platform for Embark Trucks to gain access to the U.S. capital markets.

***Basis of Presentation***

The accompanying financial statements have been prepared in accordance with U.S. generally accepted accounting principles (“GAAP”) and pursuant to the regulations of the SEC. The condensed consolidated financial statements include the accounts of the Company’s wholly-owned subsidiary. All intercompany transactions and balances have been eliminated upon consolidation.

***Unaudited Interim Financial Information***

These interim Unaudited Condensed Consolidated Financial Statements should be read in conjunction with the audited financial statements and notes thereto contained in Embark’s Annual Report. The condensed consolidated balance sheet at December 31, 2021, has been derived from the audited financial statements at that date, but does not include all disclosures, including notes, required by GAAP for complete financial statements. In management’s opinion, the unaudited interim financial statements have been prepared on the same basis as the annual financial statements and include all adjustments, which include only normal recurring adjustments, necessary for the fair presentation of the Company’s financial position as of September 30, 2022 and the Company’s results of operations for the three and nine months ended September 30, 2022 and 2021, and cash flows for the nine months ended September 30, 2022 and 2021. The interim results are not necessarily indicative of the results for any future interim period or for the entire year.

### **Business Combination**

The Company entered into the Merger Agreement with NGA, a special purpose acquisition company, on June 22, 2021. On November 10, 2021, as part of the Business Combination, NGAB Merger Sub Inc., a newly formed subsidiary of NGA (“Merger Sub”), merged with and into Embark Trucks. In connection with the consummation of the Business Combination, the separate corporate existence of Merger Sub ceased; Embark Trucks survived and became a wholly owned subsidiary of NGA, which was renamed Embark Technology, Inc.

The Business Combination was accounted for as a reverse recapitalization, in accordance with GAAP. Under the guidance in ASC 805, Embark was treated as the “acquirer” company for the accounting purposes. Embark Trucks was deemed the accounting predecessor of the combined business, and Embark Technology, Inc., as the parent company of the combined business, was the successor SEC registrant, meaning that Embark’s financial statements for previous periods will be disclosed in the registrant’s periodic reports filed with the SEC. The Business Combination had a significant impact on Embark’s reported financial position and results as a consequence of the reverse recapitalization. The most significant change in Embark’s reported financial position and results was a net increase in cash of \$243.9 million, net of transaction costs for the Business Combination of \$70.2 million.

### **Reverse Stock Split**

On August 15, 2022, the directors of the Company approved an amendment to the Company’s second amended and restated certificate of incorporation (the “Certificate of Incorporation”) to effect a reverse stock split (the “Reverse Stock Split”) of the Company’s outstanding common stock, par value \$0.0001 per share (the “Common Stock”), at the ratio of 1-for-20. Following the close of trading on the Nasdaq Global Market on August 16, 2022 (the “Effective Time”), the Company filed a certificate of amendment to the Certificate of Incorporation (the “Amendment”) with the Secretary of State of the State of Delaware to effect the Reverse Stock Split. All references in these financial statements to number of common shares issued or outstanding, price per share, outstanding equity awards as well as the applicable exercise price, and weighted average number of shares outstanding prior to the 1 for 20 reverse split have been adjusted to reflect the stock split on a retroactive basis as of the earliest period presented, unless otherwise noted. Warrants will be impacted by the same ratio upon exercise.

No fractional shares were issued in connection with the Reverse Stock Split. The Reverse Stock Split did not affect the number of authorized shares of Embark’s common stock, the par value of the common stock, the number of warrants issued and outstanding, or the exercise price of the warrants.

### **Liquidity and Capital Resources**

The Company has incurred losses from operations since inception. The Company incurred net losses of \$68.2 million and \$47.8 million for the nine months ended September 30, 2022 and 2021, respectively, and accumulated deficit amounts of \$251.1 million and \$182.9 million as of September 30, 2022 and December 31, 2021, respectively. Net cash used in operating activities was \$66.3 million and \$32.9 million for the nine months ended September 30, 2022 and 2021, respectively.

The Company’s liquidity is based on its ability to enhance its operating cash flow position, obtain capital financing from equity interest investors, and borrow funds to fund its general operations, research and development activities and capital expenditures. As of September 30, 2022 and December 31, 2021, the Company’s balance of cash and cash equivalents was \$191.0 million and \$264.6 million, respectively.

Based on cash flow projections from operating and financing activities and existing balance of cash and cash equivalents and investments, management is of the opinion that the Company has sufficient funds for sustainable operations, and it will be able to meet its payment obligations from operations and debt related commitments for at least one year from the issuance date of these financial statements. Based on the above considerations, the Company’s financial statements have been prepared on a going concern basis, which contemplates the realization of assets and liquidation of liabilities during the normal course of operations.

The Company’s ability to continue as a going concern is dependent on management’s ability to control operating costs and demonstrate progress against its technical roadmap. This involves developing new capabilities for the Embark Driver software and improving the reliability and performance of the software on public roads. The Company believes demonstrating ongoing technical and commercial progress will enable the Company to obtain funds from outside sources

of financing, including financing from equity interest investors and borrow funds to fund its general operations, research and development activities and capital expenditures.

### **Emerging Growth Company**

The Company is an “emerging growth company,” as defined in Section 2(a) of the Securities Act, as modified by the Jumpstart Our Business Startups Act of 2012 (the “JOBS Act”), and it may take advantage of certain exemptions from various reporting requirements that are applicable to other public companies that are not emerging growth companies including, but not limited to, not being required to comply with the independent registered public accounting firm attestation requirements of Section 404 of the Sarbanes- Oxley Act, reduced disclosure obligations regarding executive compensation in its periodic reports and proxy statements, and exemptions from the requirements of holding a nonbinding advisory vote on executive compensation and shareholder approval of any golden parachute payments not previously approved.

Further, Section 102(b)(1) of the JOBS Act exempts emerging growth companies from being required to comply with new or revised financial accounting standards until private companies (that is, those that have not had a Securities Act registration statement declared effective or do not have a class of securities registered under the Exchange Act) are required to comply with the new or revised financial accounting standards. The JOBS Act provides that a company can elect to opt out of the extended transition period and comply with the requirements that apply to non-emerging growth companies, but any such election to opt out is irrevocable. The Company has elected not to opt out of such extended transition period which means that when a standard is issued or revised and it has different application dates for public or private companies, the Company, as an emerging growth company, can adopt the new or revised standard at the time private companies adopt the new or revised standard. This may make comparison of the Company’s financial statements with another public company that is either a) not an emerging growth company or b) an emerging growth company which has opted out of using the extended transition period difficult or impossible because of the potential differences in accounting standards used.

### **Segment Information**

Under Accounting Standards Codification (“ASC 280”), *Segment Reporting*, operating segments are defined as components of an enterprise where discrete financial information is available that is evaluated regularly by the chief operating decision-maker (“CODM”), in deciding how to allocate resources and in assessing performance. The Company operates in one segment, the truck business unit, which is focused on enhancing self-driving truck software technology. Therefore, the Company’s chief executive officer, who is also the CODM, makes decisions and manages the Company’s operations as a single operating segment for purposes of allocating resources and evaluating financial performance. All long-lived assets are maintained in, and all losses are attributable to, the United States of America.

### **Concentration of Risks**

Embark’s financial instruments that are exposed to concentrations of credit risk consist primarily of cash and cash equivalents and restricted cash. Embark maintains its cash and cash equivalents and restricted cash with high-quality financial institutions with investment-grade ratings. A majority of the cash balances are with U.S. banks and are insured to the extent defined by the Federal Deposit Insurance Corporation.

### **Impact of COVID-19**

The outbreak of the novel coronavirus COVID-19, which was declared a global pandemic by the World Health Organization on March 11, 2020 has led to adverse impacts on the U.S. and global economies and has impacted and continues to impact the Company’s supply chain, and operations. Even though the Company has taken measures to adapt to operating in this challenging environment, the pandemic could further affect the Company’s operations and the operations of, partners, suppliers and vendors due to additional shelter- in-place and other governmental orders, facility closures, travel and logistics restrictions, or other factors as circumstances continue to evolve. In response to this pandemic, many jurisdictions in which the Company operates issued stay-at-home orders and other measures aimed at slowing the spread of the virus. While the Company remains open in accordance with guidance from local authorities, the Company experienced a temporary pause in testing of its research and development truck fleet and operations in response to the stay- at-home orders in calendar year 2021. The impacts from stay-at-home orders and other updated local government indoor operation measures associated with COVID-19 and its variants are not currently impacting the Company’s operations, however, there remains continuing uncertainty around the potential disruptions the pandemic could cause looking forward. The Company has instituted policies across its offices to ensure compliance with the guidelines imposed by the applicable public health



authorities from time to time. At current, these changes have not impacted the Company's operations. In response to recent variants, local governments have updated and may continue to update their guidelines for indoor operations. Therefore, the related financial impact and duration cannot be reasonably estimated at this time.

## 2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

### *Use of Estimates*

The preparation of financial statements in conformity with GAAP requires management to make certain estimates and assumptions. 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 expenses during the reporting period.

The Company's most significant estimates and judgments involve the useful lives of long-lived assets, the recoverability of long-lived assets, the incremental borrowing rate ("IBR") applied in lease accounting, the capitalization of software development costs, the valuation of the Company's stock-based compensation, including the valuation of warrants to purchase the Company's stock and the valuation allowance for income taxes. 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.

### *Cash, Cash Equivalents and Restricted Cash*

The Company considers all highly liquid investments purchased with original maturities of three months or less to be cash equivalents. As of September 30, 2022 and December 31, 2021, the Company had \$191.0 million and \$264.6 million of cash and cash equivalents, respectively.

The Company maintains letters of credit to secure leases of the Company's offices and facilities. A portion of the Company's cash is collateralized in conjunction with the letter of credit and is classified as restricted cash on the Company's condensed consolidated balance sheets. As of September 30, 2022 and December 31, 2021, the Company had \$0.9 million and \$0.4 million in restricted cash, respectively. At the end of each year of the lease, the face amount of the letter of credit is reduced by a fixed amount of approximately \$0.1 million and reclassified into cash and cash equivalents on the Company's condensed consolidated balance sheets. The Company determines short-term or long-term classification based on the expected duration of the restriction.

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 (in thousands):

	As of September 30,		As of December 31,
	2022	2021	2021
Cash and cash equivalents	\$ 191,040	\$ 47,886	\$ 264,615
Restricted cash, short-term	65	65	130
Restricted cash, long-term	812	340	275
<b>Total cash, cash equivalents and restricted cash</b>	<b>\$ 191,917</b>	<b>\$ 48,291</b>	<b>\$ 265,020</b>

### *Fair Value of Financial Instruments*

The Company's financial instruments consist of cash and cash equivalents, restricted cash, prepaid expenses and other current assets, accounts payable and accrued expenses, short-term and long-term notes payable and other current liabilities. The assets and liabilities that were measured at fair value on a recurring basis are cash equivalents and warrant liabilities. The Company believes that the carrying values of the remaining financial instruments approximate their fair values. The Company applies fair value accounting in accordance with ASC 820, *Fair Value Measurements for valuation of financial instruments*. ASC 820 provides a framework for measuring fair value under GAAP that expands disclosures about fair value measurements, establishes a fair value hierarchy, and requires an entity to maximize the use of observable inputs and

minimize the use of unobservable inputs when measuring fair value. The three levels of the fair value hierarchy are summarized as follows:

*Level 1* — Fair value is based on observable inputs such as quoted prices for identical assets or liabilities in active markets.

*Level 2* — Fair value is determined using quoted prices for similar assets or liabilities in active markets or quoted prices for identical or similar assets or liabilities in markets that are not active or are directly or indirectly observable.

*Level 3* — Fair value is determined using one or more significant inputs that are unobservable in active markets at the measurement date, such as an option pricing model, discounted cash flow, or similar technique.

#### **Public and Private Warrants**

As part of NGA's initial public offering on October 13, 2020, NGA issued to third party investors 41.4 million units, consisting of one share of Class A common stock of NGA and one-third of one warrant, at a price of \$10.00 per unit. Each whole warrant entitles the holder to purchase one share of Class A common stock at an exercise price of \$11.50 per share (the "Public Warrants"). Further, NGA completed the private sale of 6.7 million warrants to NGA's sponsor at a purchase price of \$1.50 per warrant (the "Private Placement Warrants" or "Private Warrants"). Following the reverse stock split, each warrant allows the holder to purchase 1/20th of one share of Class A common stock at \$11.50 per share. Subsequent to the Business Combination, 13.8 million Public Warrants and 6.7 million Private Warrants remained outstanding as of September 30, 2022.

Following the Reverse Stock Split effectiveness on August 16, 2022, warrants will be impacted by the same ratio upon exercise. The Reverse Stock Split did not affect the number of warrants issued and outstanding or the exercise price of the warrants. Each whole warrant exercisable is now for 1/20th share of Class A common stock at an exercise price of \$11.50 per share.

The Private Placement Warrants are identical to the Public Warrants underlying the Units sold in the Initial Public Offering, except that the Private Placement Warrants and the Class A common stock issuable upon the exercise of the Private Placement Warrants did not become transferable, assignable or salable until 30 days after the completion of a Business Combination, subject to certain limited exceptions. Additionally, the Private Placement Warrants are exercisable on a cashless basis and are non-redeemable so long as they are held by the initial purchasers or their permitted transferees. If the Private Placement Warrants are held by someone other than the initial purchasers or their permitted transferees, the Private Placement Warrants are redeemable by the Company and exercisable by such holders on the same basis as the Public Warrants.

The Company evaluated the Public and Private Warrants under ASC 815-40, *Derivatives and Hedging-Contracts in Entity's Own Equity*, and concluded that they do not meet the criteria to be classified in stockholders' equity. Since the Public and Private Warrants meet the definition of a derivative under ASC 815, the Company recorded these warrants as liabilities on the balance sheet at fair value upon the closing of the Business Combination, with subsequent changes in their respective fair values recognized in the condensed consolidated statements of operations and comprehensive income (loss) at each reporting date.

**Property, Equipment and Software**

Property, equipment and software is stated at cost less accumulated depreciation. Repair and maintenance costs are expensed as incurred. Depreciation and amortization are recorded on a straight-line basis over each asset's estimated useful life.

<b>Property, Equipment and Software</b>	<b>Useful life (years)</b>
Machinery and equipment	5 years
Electronic equipment	3 years
Vehicles and vehicle hardware	3 – 7 years
Leasehold improvements	Shorter of useful life or lease term
Furniture and fixtures	7 years
Developed software	2 – 4 years

**Leases**

The Company determines if a contract contains a lease at inception of the arrangement based on whether the Company has the right to obtain substantially all of the economic benefits from the use of an identified asset and whether the Company has the right to direct the use of an identified asset in exchange for consideration, which relates to an asset which the Company does not own. Right of use ("ROU") assets represent the Company's right to use an underlying asset for the lease term and lease liabilities represent the Company's obligation to make lease payments arising from the lease. ROU assets are recognized as the lease liability, adjusted for lease incentives received. Lease liabilities are recognized at the present value of the future lease payments at the lease commencement date. The interest rate used to determine the present value of the future lease payments is the Company's IBR, because the interest rate implicit in most of its leases is not readily determinable. The IBR is a hypothetical rate based on the Company's understanding of what its credit rating would be to borrow and resulting interest we would pay to borrow an amount equal to the lease payments in a similar economic environment over the lease term on a collateralized basis. Lease payments may be fixed or variable; however, only fixed payments or in-substance fixed payments are included in the Company's lease liability calculation. Variable lease payments may include costs such as common area maintenance, utilities, real estate taxes or other costs. Variable lease payments are recognized in operating expenses in the period in which the obligation for those payments are incurred.

Operating leases are included in operating lease ROU assets, operating lease liabilities, current and operating lease liabilities, non-current on the Company's condensed consolidated balance sheets. For operating leases, lease expense is recognized on a straight-line basis in operations over the lease term. The Company elected the practical expedient not to separate non-lease components from lease components, therefore, the Company accounts for lease and non-lease components as a single lease component. The Company also elected the short-term lease recognition practical expedient for all leases that qualify.

**Impairment of Long-Lived Assets**

The Company reviews its long-lived assets for impairment annually, or whenever events or circumstances indicate that the carrying amount of an asset may not be fully recoverable. The Company assesses the recoverability of these assets by comparing the carrying amount of such assets or asset group to the future undiscounted cash flows it expects the assets or asset group to generate. The Company recognizes an impairment loss if the sum of the expected long-term undiscounted cash flows that the long-lived asset is expected to generate is less than the carrying amount of the long-lived asset being evaluated.

**Income Taxes**

The Company accounts for income taxes using the asset and liability method, under which deferred tax assets and liabilities are recognized for the expected future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases.

A valuation allowance is provided when it is more likely than not that some portion or all of a deferred tax asset will not be realized. Due to the Company's lack of earnings history, the net deferred tax assets have been fully offset by a valuation allowance as of September 30, 2022 and December 31, 2021. Uncertain tax positions taken or expected to be

taken in a tax return are accounted for using the more likely than not threshold for financial statement recognition and measurement.

#### ***Stock-based Compensation***

Stock-based compensation expense related to stock option awards, restricted stock units (“RSUs”) and performance stock units (“PSUs”) granted to employees, directors and non-employees are accounted for based on estimated grant-date fair values. For stock option awards and RSUs with service conditions, the Company uses the straight-line method to recognize compensation expense over the requisite service period, which is generally the vesting period, and estimates the fair value of share-based awards using the Black-Scholes option-pricing model. The Black-Scholes model requires the input of subjective assumptions, including expected volatility, expected dividend yield, expected term, risk-free rate of return and the stock price of the underlying common shares on the date of grant. The fair value of each RSU is based on the fair value of the Company’s common stock on the date of grant. Stock-based compensation for RSUs granted with a performance condition is recognized on a graded vesting basis. Stock-based compensation for PSUs, is recognized on a graded vesting basis, as the PSUs are associated with market conditions over the holder’s derived service period. The fair value of the PSUs are estimated using the Monte Carlo simulation. The Company accounts for the effect of forfeitures as they occur.

#### ***Internal Use Software***

The Company capitalizes certain costs associated with creating and enhancing internally developed software for the Company’s technology infrastructure and such costs are recorded within property, equipment and software, net. These costs include personnel and related employee benefit expenses for employees directly associated with and who devote time to software development projects. Software development costs that do not qualify for capitalization are expensed as incurred and recorded in research and development expense in the condensed consolidated statements of operations.

Software development activities typically consist of three stages: (1) the planning phase; (2) the application and infrastructure development stage; and (3) the post implementation stage. Costs incurred in the planning and post implementation phases, including costs associated with training and repairs and maintenance of the developed technologies, are expensed as incurred. The Company capitalizes costs associated with software developed when the preliminary project stage is completed, management implicitly or explicitly authorizes and commits to funding the project and it is probable that the project will be completed and perform as intended. Costs incurred in the application and infrastructure development phases, including significant enhancements and upgrades, are capitalized. Capitalization ends once a project is substantially complete, and the software is ready for its intended purpose. Software development costs are depreciated using the straight-line method over the estimated useful life, commencing when the software is ready for its intended use. The straight-line recognition method approximates the manner in which the expected benefit will be derived. Internal use software is tested for impairment in accordance with the Company’s long-lived assets impairment policy.

#### ***Research and Development Expense***

Research and development expense consist of outsourced engineering services, allocated facilities costs, depreciation, internal engineering and development expenses, materials, labor, and stock-based compensation related to development of the Company’s products and services. Research and development costs are expensed as incurred except for amounts capitalized to internal-use software.

#### ***General, and Administrative Expenses***

General, and administrative expense consist of personnel costs, allocated facilities expenses, depreciation and amortization, travel, and business development costs.

#### ***Change in fair value of warrant liability***

Change in fair value of warrant liability represents the change in fair value of Public, Private, Working Capital and Forward Purchase Agreement (“FPA”) Warrants. For each reporting period, Embark will determine the fair value of the warrant liability, and record a corresponding non-cash benefit or non-cash charge, due to a decrease or increase in fair value, respectively, of the calculated warrant liability.

### **Other Income**

As part of the Company's research and development activities, we contract with shippers and freight carriers to transfer freight between the Company's transfer hubs in return for cash consideration. Transferring freight with the Company's research and development truck fleet are not and will not be considered an output of the Company's anticipated ordinary revenue-generating activities. Consideration received from such arrangements is presented as other income in the Company's condensed consolidated statement of operations.

### **Interest Income**

Interest income primarily consists of investment and interest income from marketable securities, long-term investments and the Company's cash and cash equivalents.

### **Interest Expense**

Interest expense consisted primarily of interest on the Company's various truck financing arrangements.

### **Net Loss Per Share**

Prior to the Merger and prior to effecting the recapitalization, the Company had one class of common stock. Subsequent to the Merger, the Company has two classes of common stock: Class A common stock and Class B common stock. The rights of the holders of Class A common stock and Class B common stock are identical, including the liquidation and dividend rights, except with respect to electing members of the Board of Directors and voting rights. As the liquidation and dividend rights are identical, undistributed earnings and losses are allocated on a proportionate basis and the resulting net loss per share attributable to common stockholders are the same for both Class A common stock and Class B common stock on an individual and combined basis.

Basic and diluted net loss per share attributable to common stockholders is presented in conformity with the two-class method required for participating securities. Net loss is attributed to common stockholders and participating securities based on their participation rights. Net loss attributable to common stockholders is not allocated to the redeemable convertible preferred stock as the holders of the redeemable convertible preferred stock do not have a contractual obligation to share in any losses. No dividends were declared or paid for the three or nine months ended September 30, 2022. No preferred stock was outstanding as of September 30, 2022.

Under the two-class method, basic net loss per share attributable to common stockholders is computed by dividing the net loss attributable to common stockholders by the weighted-average number of shares of common stock outstanding during the period.

Diluted earnings per share attributable to common stockholders adjusts basic earnings per share for the potentially dilutive impact of redeemable convertible preferred stock, stock options, and warrants. As the Company has reported losses for all periods presented, all potentially dilutive securities including preferred stock, stock options, and warrants, are antidilutive and accordingly, basic net loss per share equals diluted net loss per share.

### **Comprehensive Loss**

Comprehensive loss is defined as the total change in stockholders' equity during the period other than from transactions with stockholders. Comprehensive loss consists of net loss and other comprehensive loss. Other comprehensive loss is comprised of unrealized losses on investments classified as available-for-sale and losses on foreign currency revaluations.

### **Recently Adopted Accounting Pronouncements**

In February 2016, the FASB issued ASU 2016-02, *Leases (Topic 842)*, which requires lessees to recognize leases on-balance sheet and disclose key information about leasing arrangements. The Company adopted "ASC 842" on January 1, 2022, using the modified retrospective transition method, specifically the "Comparatives under ASC 840 approach", and used the effective date as the date of initial application. The Company elected the "package of practical expedients," which permits Embark not to reassess under ASC 842 its prior conclusions about lease identification, lease classification and initial direct costs. The Company also elected the use of hindsight in determining the lease term and in assessing

impairment of the entity's right-of-use assets. Upon adoption of the new leasing standard on January 1, 2022, the Company recognized right-of-use assets of \$4.4 million and lease liabilities of \$4.5 million, respectively, which are related to its various operating leases. The difference between the right-of-use assets and lease liabilities is primarily attributed to the elimination of deferred rent. There was no adjustment to the opening balance of accumulated deficit as a result of the adoption of ASC 842.

In December 2019, the FASB issued ASU 2019-12, *Income Taxes (Topic 740): Simplifying the Accounting for Income Taxes*, which is intended to simplify various aspects related to accounting for income taxes. The adoption of ASU 2019-12 is effective for the Company beginning January 1, 2022. The adoption of this standard did not have a material impact to its financial statements.

In May 2021, the FASB issued ASU 2021-04, *Modification of equity-classified written call options*. ASU 2021-04 provides clarification and reduces diversity in an issuer's accounting for certain modifications or exchanges of freestanding equity-classified written call options, such as warrants, that remain equity classified after modification or exchange. The adoption of ASU 2021-04 was effective for the Company beginning January 1, 2022. The adoption of this standard did not have a material impact to its financial statements.

#### **Recently Issued Accounting Pronouncements**

As an emerging growth company ("EGC"), the JOBS Act allows the Company to delay adoption of new or revised accounting pronouncements applicable to public companies until such pronouncements are applicable to private companies. The Company has elected to use this extended transition period under the JOBS Act until such time the Company is no longer considered to be an EGC. The adoption dates discussed below reflect this election.

In June 2016, the FASB issued ASU 2016-13, *Financial Instruments — Credit Losses (Topic 326): Measurement of Credit Losses of Financial Instruments*, which, together with subsequent amendments, amends the requirement on the measurement and recognition of expected credit losses for financial assets held. ASU 2016-13 is effective for the Company beginning January 1, 2023, with early adoption permitted. The Company is currently in the process of evaluating the effects of this pronouncement on the Company's financial statements and does not expect it to have a material impact on its consolidated financial statements.

In August 2020, the FASB issued ASU 2020-06, *Debt with Conversion and Other Options (Subtopic 470-20) and Derivatives and Hedging — Contracts in Entity's Own Equity (Subtopic 815-40): Accounting for convertible instruments and contracts in an entity's own equity*. The ASU simplifies accounting for convertible instruments by removing certain separation models required under current GAAP. The ASU also removes certain settlement conditions that are required for equity contracts to qualify for the derivative scope exception, and it revises the guidance in ASC 260, Earnings Per Share, to require entities to calculate diluted earnings per share for convertible instruments by using the if-converted method. The amendments are effective for the Company beginning January 1, 2024, including interim periods within those fiscal years. Early adoption is permitted, but no earlier than fiscal years beginning after December 15, 2020, including interim periods within those fiscal years. The Company is currently assessing the impact of this standard on its consolidated financial statements.

In October 2021, the FASB issued ASU 2021-08, "Business Combinations (Topic 805): Accounting for Contract Assets and Contract Liabilities from Contracts with Customers." This standard requires an acquirer to apply Accounting Standards Codification Topic 606 to recognize and measure contract assets and contract liabilities in a business combination. ASU 2021-08 is effective for fiscal years beginning after December 15, 2022 and interim periods within those fiscal years. Early adoption is permitted. The Company is currently assessing the impact of this standard on its consolidated financial statements.

In June 2022, the FASB issued ASU 2022-03 to clarify the guidance on the fair value measurement of an equity security that is subject to a contractual sale restriction, and require specific disclosures for equity securities that are subject to such restrictions. The amendments are effective in periods beginning after December 15, 2023 and interim periods within those fiscal years. Early adoption is permitted. The Company is currently assessing the impact of this standard on its consolidated financial statements.

In September 2022, the FASB issued ASU 2022-04, "Liabilities - Supplier Finance Programs (Subtopic 405-50)." ASU 2022-04 is intended to establish disclosures that enhance the transparency of a supplier finance program used by an entity in connection with the purchase of goods and services. Supplier finance programs, which also may be referred to as

reverse factoring, payables finance or structured payables arrangements, allow a buyer to offer its suppliers the option for access to payment in advance of an invoice due date, which is paid by a third-party finance provider or intermediary. Under the guidance, a buyer in a supplier finance program would disclose qualitative and quantitative information about its supplier finance programs. The new guidance is effective for fiscal years beginning after December 15, 2022, including interim periods within those fiscal years, except for the amendment on rollforward information, which is effective for fiscal years beginning after December 15, 2023. Early adoption is permitted. The Company is currently evaluating the impact of the new guidance.

### 3. BALANCE SHEET COMPONENTS

#### *Prepaid Expenses and Other Current Assets*

Prepaid expenses and other current assets consisted of the following as of September 30, 2022 and December 31, 2021, respectively (in thousands):

	September 30, 2022	December 31, 2021
Prepaid insurance	\$ 2,732	\$ 7,459
Prepaid software	4,430	2,564
Income tax receivable	494	494
Short-term deposits	650	448
Prepaid salary	561	279
Other prepaid expenses	427	936
Other current assets	122	566
Total prepaid expenses and other current assets	<u>\$ 9,416</u>	<u>\$ 12,746</u>

#### *Property, Equipment and Software*

Property, equipment and software consist of the following as of September 30, 2022 and December 31, 2021, respectively (in thousands):

	September 30, 2022	December 31, 2021
Machinery and equipment	\$ 522	\$ 344
Electronic equipment	1,453	413
Vehicles and vehicle hardware	9,727	6,268
Leasehold improvements	553	258
Developed software	9,421	5,184
Other	27	26
Property, equipment and software, gross	<u>21,703</u>	<u>12,493</u>
Less: accumulated depreciation and amortization	(4,017)	(2,856)
Total property, equipment and software, net	<u>\$ 17,686</u>	<u>\$ 9,637</u>

Depreciation and amortization expense for the three months ended September 30, 2022 and 2021 was \$0.6 million and \$0.3 million, respectively. Depreciation and amortization expense for the nine months ended September 30, 2022 and 2021 was \$1.4 million and \$0.8 million, respectively.

#### Other Assets

Other assets consist of the following as of September 30, 2022 and December 31, 2021, respectively (in thousands):

	September 30, 2022	December 31, 2021
Intangible assets	\$ —	\$ 4
Long-term prepaid insurance and deposits	6,365	3,592
<b>Total Other Assets</b>	<b>\$ 6,365</b>	<b>\$ 3,596</b>

#### Accrued Expenses and Other Current Liabilities

Accrued expenses and other current liabilities consisted of the following as of September 30, 2022 and December 31, 2021, respectively (in thousands):

	September 30, 2022	December 31, 2021
Accrued payroll expenses	\$ 5,496	\$ 823
Accrued legal expenses	827	124
Accrued other professional expenses	1,212	380
Accrued transaction costs	—	1,092
Accrued software	386	—
Other	1,305	723
<b>Total accrued expenses and other current liabilities</b>	<b>\$ 9,226</b>	<b>\$ 3,142</b>

#### 4. FAIR VALUE MEASUREMENTS

The carrying value and fair value of the Company's financial instruments as of September 30, 2022 and December 31, 2021, respectively, are as follows (in thousands):

	As of September 30, 2022 (in thousands)			
	Level 1	Level 2	Level 3	Total
	(unaudited)			
<b>Assets</b>				
Cash equivalents:				
United States money market funds	\$ 1,369	\$ —	\$ —	\$ 1,369
<b>Liabilities</b>				
Warrant liabilities - FPA warrants	47	—	—	47
Warrant liabilities - public warrants	966	—	—	966
Warrant liabilities - working capital warrants	—	—	140	140
Warrant liabilities - private warrants	—	—	468	468



	As of December 31, 2021 (in thousands)			
	Level 1	Level 2	Level 3	Total
<b>Assets</b>				
Cash equivalents:				
United States money market funds	\$ 22,349	\$ —	\$ —	\$ 22,349
<b>Liabilities</b>				
Warrant liabilities - FPA warrants	1,337	—	—	1,337
Warrant liabilities - public warrants	27,669	—	—	27,669
Warrant liabilities - working capital warrants	—	—	4,700	4,700
Warrant liabilities - private warrants	—	—	15,714	15,714

As of September 30, 2022, there were no transfers made among the three levels in the fair value hierarchy. As of December 31, 2021, transfers from Level 2 to Level 3 of the fair value hierarchy were \$15.5 million for Private and Public Warrants.

The fair value of the above liability classified Public, Private, Working Capital and FPA Warrants have been measured based on the listed market price of such warrants on November 10, 2021. The FPA warrants and Public Warrants were valued using the public price as of September 30, 2022 and December 31, 2021. The Private and Working Capital Warrants were fair valued using the Black Scholes Option Pricing Model as of September 30, 2022 and December 31, 2021. For the three and nine months ended September 30, 2022, the Company recognized income in the condensed consolidated statement of operations resulting from a change in the fair value of warrants of approximately \$1.4 million and \$47.8 million, respectively, presented as other income (expense) on the accompanying condensed consolidated statement of operations.

## 5. STOCKHOLDERS' EQUITY

### *The Reverse Stock Split*

The Reverse Stock Split did not affect the number of authorized shares of Embark's common stock or the par value of the common stock.

Following the Reverse Stock Split effectiveness on August 16, 2022, all references in these financial statements to number of common shares issued or outstanding, price per share and weighted average number of shares outstanding prior to the 1 for 20 reverse split have been adjusted to reflect the stock split on a retroactive basis as of the earliest period presented, unless otherwise noted.

### *Shares Authorized and Issued*

As of September 30, 2022, the Company had authorized a total of 4,110,000,000 shares for issuance with 4,000,000,000 shares designated as Class A common stock, 100,000,000 shares designated as Class B common stock and 10,000,000 shares designated as preferred stock.

As of September 30, 2022, the Company had 18,848,766 shares issued as Class A common stock and 4,353,948 shares issued as Class B common stock.

### *Preferred Stock*

As of September 30, 2022, the Company had no shares of preferred and founders preferred stock issued or outstanding. The Company's preferred stock, as of September 30, 2022, does not contain any mandatory redemption features, nor are they redeemable at the option of the holder.

### ***Class A and Class B Common Stock***

The Company's Board of Directors has authorized two class of common stock, Class A common stock and Class B common stock. Holders of Class A common stock and Class B common stock are not entitled to preemptive or other similar subscription rights to purchase any of Embark's securities.

Class A common stock is neither convertible nor redeemable. Class B common stock is convertible into Class A common stock. Unless Embark's board of directors determines otherwise, Embark will issue all of its capital stock in certificated form. Embark's founders, Alex Rodrigues and Brandon Moak (the "Founders"), held, and continue to hold, all outstanding shares of Class B common stock upon consummation of the Business Combination.

In connection with the merger with NGA on November 10, 2021, the Embark Founders exchanged 4,353,948 shares of Founder's common stock, which were entitled to one vote per share, into the same number of shares of Class B common stock, which are entitled to ten votes per share. The Company recorded the incremental value of \$13.6 million associated with this transaction as stock-based compensation in general and administrative expenses.

The significant rights, privileges and preferences of common stock as of September 30, 2022 are as follows:

#### ***Liquidation Preference***

If Embark is involved in voluntary or involuntary liquidation, dissolution or winding up of Embark's affairs, or a similar event, each holder of Embark Common Stock will participate pro rata in all assets remaining after payment of liabilities, subject to prior distribution rights of Embark preferred stock, if any, then outstanding.

#### ***Dividends***

Each holder of shares of Embark Common Stock is entitled to the payment of dividends and other distributions as may be declared by the Board from time to time out of Embark's assets or funds legally available for dividends or other distributions. These rights are subject to the preferential rights of the holders of Embark's Preferred Stock, if any, and any contractual limitations on Embark's ability to declare and pay dividends.

#### ***Voting***

Each holder of Class A common stock is entitled to one vote per share on each matter submitted to a vote of stockholders, as provided by the Second Amended and Restated Certificate of Incorporation of Northern Genesis Acquisition Corp. II (the "Charter"). Each holder of Class B common stock is entitled to ten votes per share on each matter submitted to a vote of stockholders, as provided by the Embark Charter. Following the Business Combination, holders of Class B common stock have the ability to control the business affairs of Embark. Embark's Amended and Restated Bylaws (the "Bylaws") provide that the holders of a majority of the capital stock issued and outstanding and entitled to vote thereat, present in person or represented by proxy, will constitute a quorum at all meetings of the stockholders for the transaction of business. When a quorum is present, the affirmative vote of a majority of the votes cast is required to take action, unless otherwise specified by law, the Bylaws or the Charter, and except for the election of directors, which is determined by a plurality vote. There are no cumulative voting rights.

#### ***Stock purchase agreement***

On May 31, 2022, the Company entered into a Common Stock Purchase Agreement (the "Purchase Agreement") and a Registration Rights Agreement, each with CF Principal Investments LLC ("Cantor"). Pursuant to the Purchase Agreement, the Company has the right to sell to Cantor up to the lesser of (i) 1,500,000 of newly issued shares of the Company's Class A common stock, par value \$0.0001 per share, and (ii) the Exchange Cap (as defined in the Purchase Agreement), from time to time during the 36-month term of the Purchase Agreement. Sales of Class A common stock pursuant to the Purchase Agreement, and the timing of any sales, are solely at the option of the Company, and the Company is under no obligation to sell any securities to Cantor under the Purchase Agreement. The total number of shares to be sold to Cantor is limited to the extent that shares sold to Cantor would not result in Cantor and its affiliates having shares in excess of the Beneficial Ownership Limitation. The purchase price of shares sold to Cantor will be equal to 97% of the volume weighted average price on the trading day the shares are put to Cantor. The Company determined that the right to sell shares of the Company's Class A common stock to Cantor pursuant to the Purchase Agreement represents a freestanding put option under ASC 815, Derivatives and Hedging. The fair value of the put option was determined to be zero as the shares to be

issued and the purchase price is settled within one business day. During the three months ended September 30, 2022, the Company did not sell shares of Class A common stock to Cantor pursuant to the Purchase Agreement.

As consideration for Cantor's commitment to purchase shares of Class A common stock at the Company's direction upon the terms and subject to the conditions set forth in the Purchase Agreement, the Company agreed to issue 22,500 shares of Class A common stock (the "Commitment Shares") to Cantor at the time of execution of the Purchase Agreement. On May 31, 2022, the Company issued the Commitment Shares to Cantor with a fair value of \$0.7 million. The fair value associated with the Commitment Shares was recorded as a component of other expense in the Company's condensed consolidated statement of operations and a component of common stock and additional paid-in capital in the company's condensed consolidated balance sheet.

## 6. WARRANTS

As of September 30, 2022, the following warrants were issued and outstanding:

Description	Classification	Issue Date	Warrants Outstanding	Fair Value Price Per Share	Exercise Price per Share	Expiration
FPA warrants <sup>(1)</sup>	Liability	November 10, 2021	666,663	\$ 0.07	\$ 11.50	November 10, 2026
Public warrants	Liability	November 10, 2021	13,799,936	\$ 0.07	\$ 11.50	November 10, 2026
Private warrants	Liability	November 10, 2021	6,686,667	\$ 0.07	\$ 11.50	November 10, 2026
Working capital warrants	Liability	November 10, 2021	2,000,000	\$ 0.07	\$ 11.50	November 10, 2026

(1) FPA are the "Forward Purchase Agreements" entered into, or amended and restated, by NGA on April 21, 2021

The Company determined the FPA, Public, Private and Working Capital warrants to be classified as a liability and fair valued the warrants on the issuance date using the publicly available price for the warrants, of \$41.2 million. The fair value of the FPA and Public warrants are remeasured as of the reporting date with the change in value reflected as part of other income (expense).

The fair value of \$1.6 million of Private and Working Capital warrants was determined using the Black-Scholes option valuation model using the following assumptions for values as of September 30, 2022:

Risk-free interest rate	4.14%
Expected term (in years)	4.11
Expected dividend yield	0%
Expected volatility	105.0%

The Company estimates the volatility of its warrants based on a combination of volatility from the Company's traded warrants and from historical volatility of select peer company's common stock that matches the expected remaining life of the warrants. The risk-free interest rate is based on the U.S. Treasury zero-coupon yield curve on the grant date for a maturity similar to the expected remaining life of the warrants. The expected life of the warrants is assumed to be equivalent to their remaining contractual term. The dividend rate is based on the historical rate, which the Company anticipates remaining at zero.

### Reverse Stock Split

Following the Reverse Stock Split effectiveness on August 16, 2022, warrants will be impacted by the same ratio upon exercise. The Reverse Stock Split did not affect the number of warrants issued and outstanding or the exercise price of the warrants. Each whole warrant exercisable is now for 1/20th share of Class A common stock at an exercise price of \$11.50 per share.

**7. STOCK-BASED COMPENSATION EXPENSE****Stock Option Plan**

In connection with the Business Combination, the Company adopted the 2021 Incentive Award Plan (the “2021 Plan”), under which the Company grants cash and equity incentive awards to directors, employees (including named executive officers) and consultants in order to attract, motivate and retain the talent for which the Company competes. The Company terminated the 2016 Stock Plan, provided that the outstanding awards previously granted under the 2016 Plan continue to remain outstanding under the 2016 Plan. Under the 2021 Plan, as of September 30, 2022, the Company has authorized the issuance of a maximum number of 3,843,688 shares of Class A common stock, with annual increases that began on January 1, 2022 and ending on and including January 1, 2031 of 5% of the aggregate number of shares of Class A common stock outstanding on the last day of the preceding calendar year. As of September 30, 2022, the Company issued 1,169,670 shares of restricted stock units under the 2021 Plan.

Embark Trucks adopted the 2016 Stock Plan in October 2016 (the “2016 Plan”). The 2016 Plan authorized the grant of incentive stock options, non-statutory stock options, and restricted stock awards to employees, directors, and consultants. The 2016 Plan also initially reserved 993,542 shares of common stock (8,941,878 shares post-split in June 2018) for issuance and designated forfeited option shares to be returned to the option reserve. Options may be early exercised and are exercisable for a term of 10 years from the date of grant. As of September 30, 2022, the Company had registered 3,937,824 shares to be reserved for option grants, RSUs and PSUs previously issued under the 2016 Plan. The Company will not issue additional awards under the 2016 Plan.

**Stock Option Valuation**

The Company utilizes the Black-Scholes option pricing model for estimating the fair value of options granted, which requires the input of highly subjective assumptions.

The Company calculates the fair value of each option grant on the grant date using the following assumptions:

*Expected Term* — The Company uses the simplified method when calculating expected term due to insufficient historical exercise data.

*Expected Volatility* — As the Company’s shares are not actively traded, the volatility is based on a benchmark of comparable companies within the automotive and energy storage industries.

*Expected Dividend Yield* — The dividend rate used is zero as the Company does not have a history of paying dividends on its common stock and does not anticipate doing so in the foreseeable future.

*Risk-Free Interest Rate* — The interest rates used are based on the implied yield available on U.S. Treasury zero-coupon issues with an equivalent remaining term equal to the expected life of the award.

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2022	2021	2022	2021
Risk-free interest rate	n/a	0.55 - 1.09%	n/a	0.55– 1.09%
Expected term (in years)	n/a	5.47 - 6.07	n/a	5.47 – 6.07
Expected dividend yield	n/a	—%	n/a	—%
Expected volatility	n/a	36.88 -51.52%	n/a	36.88 – 51.52%

The Company did not grant any stock options for the three and nine months ended September 30, 2022

### Option Activity

Changes in stock options are as follows:

	Number of Outstanding Options	Weighted Average Exercise Price Per Share	Weighted Average Remaining Contractual Term (years)	Aggregate Intrinsic (in thousands)
Outstanding at December 31, 2021	1,267,911	\$ 4.09	6.9	\$ 215,093
Exercised	(446,890)	\$ 2.29		
Cancelled	(46,468)	\$ 8.42		
Outstanding at September 30, 2022	774,553	\$ 4.74	6.0	\$ 3,293
Vested and exercisable as of September 30, 2022	587,942	\$ 3.20	5.4	\$ 3,040

The aggregate intrinsic value in the above table is calculated as the difference between the estimated fair value of the Company's common stock price and the exercise price of the stock options. The company did not grant any stock options for the nine months ended September 30, 2022. The weighted average grant date fair value per share for the stock option grants during the nine months ended September 30, 2021 was \$37.60. As of September 30, 2022, the total unrecognized compensation related to unvested stock option awards granted was \$3.40 million, which the Company expects to recognize over a weighted-average period of approximately 2.1 years.

### Restricted Stock Units

Prior to the Business Combination, Embark Trucks also granted employees RSUs which are subject to performance and service-based vesting conditions. As the Company went public upon the completion of the Business Combination in November 2021, the performance condition had been met. The RSUs generally vest over either a four year period with 25% of the awarded vesting after the first-year anniversary and one-thirty sixth of the remainder of the award vesting monthly thereafter or over a four year period with a 40/30/20/10 monthly schedule. Vesting is contingent upon such employee's continued service on such vesting date. RSUs are generally subject to forfeiture if employment terminates prior to the release of vesting restrictions. The Company may grant RSUs with different vesting terms from time to time.

For the three and nine months ended September 30, 2021, the Company granted 423,823 shares of RSUs under the 2016 Equity Plan. The weighted average grant date fair value per share for the RSUs granted for the three and nine months ended September 30, 2021 was \$167.22. For the three and nine months ended September 30, 2022, the Company granted 223,810 and 1,169,670 shares of RSUs under the 2021 Equity Plan, respectively. The weighted average grant date fair value per share for the RSUs grants during the three and nine months ended September 30, 2022 was \$8.88 and \$21.36, respectively. As of September 30, 2022 there was \$41.1 million unrecognized stock-based compensation expense related to outstanding RSUs granted to employees, with a weighted-average remaining vesting period of 3.0 years.

A summary of the Company's RSU activities and related information is as follows:

	Number of Shares	Weighted Average Grant date Fair Value Per Share
Balance as of December 31, 2021	480,838	\$ 168.79
Granted	1,169,670	21.36
Forfeited	(165,012)	53.07
Vested	(267,260)	106.60
Balance as of September 30, 2022	1,218,236	\$ 56.26

### Performance Stock Units

During 2021, Embark Trucks granted PSUs to its founders. The PSUs are subject to certain market and performance-based conditions which require the Company to become a registered public company and meet market conditions that are

based on the Company achieving six different valuation tranches as derived from the achievement of escalating share price thresholds of \$400.00, \$700.00, \$1000.00, \$1300.00, \$1600.00 and \$2000.00 (calculated based on the 90-day volume weighted average price or, in the event of a change in control, the fair market value based on the terms of such change in control) following the first anniversary of the consummation of the Business Combination. The market condition can be achieved over ten years in relation to the pre-money valuation prior to the Business Combination. Once the performance condition has been achieved or is considered probably of being achieved, the related stock-based compensation is recognized based on a graded attribution method.

As of September 30, 2022, there was \$75.7 million unrecognized stock-based compensation expense related to outstanding PSUs granted to employees, with a weighted-average remaining vesting period of 7.4 years.

The Company's PSUs activity for the nine months ended September 30, was as follows:

	Number of Shares	Weighted Average Grant date Fair Value Per Share
Balance as of December 31, 2021	2,235,780	\$ 39.37
Granted	—	—
Forfeited	—	—
Vested	—	—
Balance as of September 30, 2022	<u>2,235,780</u>	<u>\$ 39.37</u>

**Common Stock Units**

The Company is obligated to issue shares of Class A common stock upon the vesting of certain restricted stock awards that resulted from Embark Trucks warrants that were issued prior to the Business Combination. Pursuant to the terms of these warrant awards, the restricted stock awards were issued for services at the time of consummation of the Business Combination, and are subject to service vesting terms, with the shares being subject to cancellation. The pre-Business Combination warrants were exercised in their entirety on a cashless basis, with the unvested shares being excluded from the stockholders' equity and becoming subject to the service vesting condition going forward. Early exercises are reclassified to additional paid-in capital as the Company's cancellation right lapses. The number of unvested shares of Class A common stock were 54,071 as of September 30, 2022.

As of September 30, 2022, there was \$3.0 million unrecognized stock-based compensation expense related to outstanding Common Stock Units ("CSUs") granted to non-employees, with a weighted-average remaining vesting period of 1.8 years.

The Company's CSUs activity for the nine months ended September 30, 2022 was as follows:

	Number of Shares	Weighted Average Grant date Fair Value Per Share
Balance as of December 31, 2021	74,054	\$ 49.66
Vested	<u>(19,983)</u>	49.66
Balance as of September 30, 2022	<u>54,071</u>	<u>\$ 49.66</u>

**Overview**

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, 2022 and 2021 respectively (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2022	2021	2022	2021
Research and development	\$ 4,483	\$ 315	\$ 12,202	\$ 966
General, and administrative	6,436	247	27,740	695
Total stock-based compensation expense	\$ 10,919	\$ 562	\$ 39,942	\$ 1,661

Total stock-based compensation that was capitalized into internally developed software asset was \$0.2 million and \$0.1 million during the three months ended September 30, 2022 and 2021, respectively. Total stock-based compensation that was capitalized into internally developed software asset was \$1.1 million and \$0.2 million during the nine months ended September 30, 2022 and 2021, respectively.

The following table presents the impact of stock-based compensation expense by award type for the three and nine months ended September 30, 2022 and 2021 respectively (in thousands):

Award Type	Three Months Ended September 30,		Nine Months Ended September 30,	
	2022	2021	2022	2021
Options	436	630	1,703	1,821
RSUs	7,529	—	29,993	—
PSUs	2,659	—	7,892	—
CSUs	507	—	1,497	—
Total stock-based compensation expense	\$ 11,131	\$ 630	\$ 41,085	\$ 1,821
SBC capitalized into internally developed software	(212)	(68)	(1,143)	(160)
Total stock-based compensation expense, net	\$ 10,919	\$ 562	\$ 39,942	\$ 1,661

For the three or nine months ended September 30, 2021, the Company did not recognize any stock-based expense associated with PSUs, RSUs, and CSUs as the performance condition had not been satisfied until November 10, 2021 or with respect to CSUs, the vested portion of which remained unexercised as of November 10, 2021.

## 8. RETIREMENT SAVINGS PLAN

The Company sponsored a savings plan available to all eligible employees, which qualifies under Section 401(k) of the Internal Revenue Code. Employees may contribute to the plan amounts of their pre-tax salary subject to statutory limitations. The Company does not currently offer a match and has not provided a match as of September 30, 2022.

## 9. NOTES PAYABLE

Since inception, the Company has entered into multiple financing agreements to finance the purchase of trucks that the Company utilizes for research and development purposes, (collectively, the "Notes Payable"). The Notes Payable comprise multiple loans between \$0.1 million and \$0.5 million that accrue interest at rates between 6.01% and 8.39% per annum, with terms of 60 months. The Company makes equal monthly installment payments over the terms of the Notes Payable, which are allocated between interest and the principal balances. Notes payable as of September 30, 2022 and December 31, 2021 are \$1.9 million and \$1.1 million, respectively.

The following table presents future payments of principal as of September 30, 2022 (in thousands):

Years Ended December 31,	Amounts
2022 (remaining three months)	\$ 124
2023	492
2024	403
2025	379
2026 and thereafter	515
Total future payments	\$ 1,913

## 10. COMMITMENTS AND CONTINGENCIES

### **Legal Proceedings**

The Company is subject to legal and regulatory actions that arise from time to time in the ordinary course of business. 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. In the opinion of management, all such matters are not expected to have a material effect on the financial position, results of operations or cash flows of the Company. However, the outcome of litigation is inherently uncertain.

On April 1, 2022, Tyler Hardy filed, a putative securities class action lawsuit against Embark, certain of our executive officers, and former executive officers of Northern Genesis Acquisition Corp., captioned *Hardy v. Embark Technology, Inc., et al.*, Case No. 3:22-cv-02090-JSC, in the United States District Court for the Northern District of California (“Hardy Action”). Hardy brought the action purportedly on behalf of a class consisting of those who purchased or otherwise acquired Embark common stock between January 12, 2021 and January 5, 2022. The complaint alleges that defendants made false and/or misleading statements in violations of Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder. On July 7, 2022, the Court appointed Tyler Hardy as lead plaintiff in the case, and his counsel at Pomerantz LLP as lead counsel.

On August 25, 2022, pursuant to Court-approved stipulation, Plaintiff Hardy filed a consolidated amended complaint, naming an additional plaintiff, Danny Rochefort, and additional individual defendants that formerly served as directors of Northern Genesis Acquisition Corp. prior to its business combination with Embark. The amended complaint alleges that defendants committed violations of Sections 11 and 15 of the Securities Act of 1933 (“Securities Act Claims”) and Sections 14(a) and 20(a) of the Securities Exchange Act of 1934 (“Exchange Act Claims”) through the inclusion of allegedly inaccurate and misleading statements in the Form S-4 registration statement and proxy statement/prospectus filed in connection with the business combination. Plaintiffs do not quantify any damages in the complaint, but in addition to attorneys’ fees and costs, seek to recover damages on behalf of two classes: 1) a class that acquired shares traceable to the registration statement at issue in the Securities Act Claims and 2) a class that voted in favor of the business combination based on the information in the proxy statement/prospectus at issue in the Exchange Act Claims and purportedly suffered financial harm as a result.

On October 24, 2022 Embark moved to dismiss the amended complaint pursuant to Rules 9 and 12(b)(6) of the Federal Rules of Civil Procedure as well as under the Private Securities Litigation Reform Act on the grounds that the Amended Complaint fails to plead facts sufficient to state a claim against Defendants. Embark intends to defend the matter vigorously, and believes that the claims are without merit. Legal and regulatory proceedings, including the above-referenced matter, may be based on complex claims involving substantial uncertainties and unascertainable damages. Accordingly, it is not possible to determine the probability of loss or estimate damages for the above-referenced matter, and therefore, Embark has not established reserves for this proceeding. If Embark determines that a loss is both probable and reasonably estimable, Embark will record a liability, and, if the liability is material, will disclose the amount of the liability reserved. Given that such proceedings are subject to uncertainty, there can be no assurance that legal proceedings individually or in the aggregate will not have a material adverse effect on our business, results of operations, financial condition or cash flows.

On September 23, 2022, Josh Luberisse filed a purported derivative action against current and former directors and against Embark as a nominal defendant captioned *Luberisse v. Ian Robertson et al.*, Case No. 3:22-cv-05455 in the United States District Court for the Northern District of California (the “Derivative Action”). The Derivative Action complaint alleges violations of Section 14(a) of the Securities Exchange Act and for alleged common law claims including breach of fiduciary duties, unjust enrichment, abuse of control, gross mismanagement and for contribution under Section 11(f) of the Securities Act of 1933 and Section 21D of the Securities Exchange Act of 1934 arising from allegedly wrongful conduct including the wrongful conduct alleged in the original and amended complaint in the Hardy Action. In addition to fees and costs, the Derivative Action seeks damages and restitution to Embark from the named individual defendants as well as certain injunctive relief. Embark cannot determine the probability of loss or estimate damages at this stage of the proceeding.

### **Operating leases**

The Company’s leases primarily include corporate offices. The lease term of operating leases vary from less than a year to seven years. The Company has leases that include one or more options to extend the lease term to a total term of ten



years as well as options to terminate the lease within one year. The Company's lease terms may include options to extend or terminate the lease when it is reasonably certain that it will exercise such options. The Company's lease agreements generally do not contain any residual value guarantees or restrictive covenants.

On August 1, 2022, the Company moved into its new headquarter office, located at 321 Alabama Street in San Francisco California. The Company classifies this lease as an operating lease with a term of 84 months and contains an option to renew and extend the term for 60 months.

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

	<u>Three Months Ended September 30, 2022</u>	<u>Nine Months Ended September 30, 2022</u>
<b>Lease cost</b>		
Operating lease cost	\$ 1,281	\$ 2,491
Short-term lease cost (1)	70	274
<b>Total lease cost</b>	<u>\$ 1,351</u>	<u>\$ 2,765</u>

(1) The Company elected to account for short-term leases in accordance with ASC 842. ASC 842 defines a short-term lease as a lease whose lease term, at commencement, is 12 months or less and that does not include a purchase option whose exercise is reasonable certain. The Company will recognize the lease payments in profit or loss on a straight-line basis over the lease term.

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

	<u>Nine Months Ended September 30, 2022</u>
<b>Other Information</b>	
Cash paid for amounts included in the measurement of lease liabilities:	
Operating cash flows used in operating leases	\$ 2,255
Right-of-use assets obtained in exchange for lease obligations	
Operating lease liabilities	\$ 24,782

Supplemental balance sheet information related to leases was as follows (in thousands, except lease term and discount rate):

	<u>September 30, 2022</u>
<b>Assets</b>	
Operating lease right-of-use assets	\$ 22,941
<b>Liabilities</b>	
Operating lease liability, current	3,251
Operating lease liability, non-current	20,090
Total operating lease liability	<u>\$ 23,341</u>

	<u>September 30, 2022</u>
<b>Weighted Average Lease Term (in years)</b>	
Operating Leases	5.16
<b>Weighted Average Discount Rate</b>	
Operating Leases	10.69 %

Total future minimum lease payments over the term of the lease as of September 30, 2022, are as follows (in thousands):

Years Ended December 31,	Operating leases	
2022 (remaining three months)	\$	1,510
2023		5,506
2024		5,329
2025		4,139
2026		4,855
2027 and thereafter		11,537
Total undiscounted lease payments		32,876
Less: imputed interest	\$	(9,535)
Total lease liabilities	\$	23,341

## 11. NET LOSS PER SHARE

The following table sets forth the computation of the basic and diluted net loss per share attributable to common stockholders for the three and nine months ended September 30, 2022 and 2021, respectively (in thousands, except share and per share data).

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2022	2021	2022	2021
Numerator:				
Net loss	\$ (35,412)	\$ (19,117)	\$ (68,183)	\$ (47,825)
Net loss attributable to common stockholders	\$ (35,412)	\$ (19,117)	\$ (68,183)	\$ (47,825)
Denominator:				
Net loss per share attributable to Class A and Class B common stockholders, basic and diluted	\$ (1.53)	\$ (2.69)	\$ (2.98)	\$ (6.73)
Weighted-average shares used in computing net loss per share attributable to common stockholders, basic and diluted	23,145,180	7,111,106	22,880,503	7,111,106
Class A	18,791,232	n/a*	18,526,555	n/a*
Class B	4,353,948	n/a*	4,353,948	n/a*

\*Prior to the Merger and prior to effecting the recapitalization in 2021, the Company had one class of common stock. Subsequent to the Merger, the Company has two classes of common stock: Class A and Class B common stock.

Since the Company was in a loss position for all periods presented, basic net loss per share is the same as diluted net loss per share for all periods as the inclusion of all potential common shares outstanding would have been anti-dilutive.

The following weighted-average outstanding common stock equivalents were excluded from the computation of diluted net loss per share attributable to common stockholders for the periods presented because including them would have been anti-dilutive.

	For the Nine Months Ended September 30,	
	2022	2021
Founders Preferred shares	—	8,127
Series A-1 convertible preferred shares	—	182,743
Series A-2 convertible preferred shares	—	268,635
Series A-3 convertible preferred shares	—	124,264
Series A-4 convertible preferred shares	—	29,534
Series A-5 convertible preferred shares	—	134,011
Series A-6 convertible preferred shares	—	182,390
Series A-7 convertible preferred shares	—	756,995
Series B convertible preferred shares	—	1,641,730
Series C convertible preferred shares	—	1,047,472
Outstanding options	774,553	569,878
Warrants issued and outstanding	1,157,663	42,857
Restricted stock units	1,218,236	—
Common stock units	54,071	—
Performance stock units	2,235,780	—
Total	5,440,303	4,988,636

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

*You should read the following discussion and analysis of our financial condition and results of operations together with our unaudited condensed consolidated financial statements and the related notes appearing elsewhere in this Quarterly Report on Form 10-Q and the Annual Report. In addition to the historical financial information, this discussion contains forward-looking statements that involve risk, assumptions and uncertainties, such as statements of our plans, objectives, expectations, intentions, forecasts and projections. Our actual results and the timing of selected events could differ materially from those discussed in these forward-looking statements as a result of several factors. Factors that could cause or contribute to these differences include those discussed below and elsewhere in this Quarterly Report on Form 10-Q, particularly in the sections entitled "Forward-Looking Statements" above and "Risk Factors" below, and in the section entitled "Risk Factors" in the Annual Report.*

### Overview

Embark develops technologically advanced autonomous driving software for the truck freight industry and offers a carefully constructed business model that is expected to provide the industry with the most attractive path to adopting autonomous driving. Specifically, Embark has developed a Software as a Service platform designed to interoperate with a broad range of truck OEM platforms, forgoing complicated and logistically challenging truck building or hardware manufacturing operations in favor of focusing on a superior driving technology. At scale, domestic fleets will be able to access Embark technology via a subscription software license selected as an option at the time they specify the build of new semi-trucks.

Headquartered in San Francisco, California, Embark's history as the industry's longest running autonomous truck driving program is replete with technological firsts that include, but are not limited to:

- the first coast-to-coast autonomous truck drive,
- the first to reach 100,000 autonomous miles on public roads,
- the first to successfully open autonomous transfer points for human- autonomous vehicle ("AV") handoff,
- the first to complete on-road autonomous testing in winter conditions, and
- the first to complete a public demonstration of an autonomous truck being pulled over by law enforcement and participating in a routine traffic stop on a public highway.

Embark currently targets and evaluates all sub-segments of the growing truck freight market, which is segmented by, e.g., type of goods, geography and trailer type. Embark will continue to evaluate a variety of different segments within the truck freight industry based on factors including ease of implementation and profitability in order to identify the most favorable opportunities to commercialize AV technology over time.

Embark's founding team includes roboticists and its broader team includes numerous computer scientists, many with advanced degrees and experience at other leading robotics and autonomous vehicle companies and academic programs.

### The Business Combination

Embark entered into the Merger Agreement with NGA, a special purpose acquisition company, on June 22, 2021. On November 10, 2021, pursuant to the Merger Agreement, Embark completed the Business Combination, in which Merger Sub, a newly formed subsidiary of NGA, merged with and into Embark Trucks. In connection with the consummation of the Business Combination, the separate corporate existence of Merger Sub ceased; Embark Trucks survived and became a wholly owned subsidiary of NGA, which was renamed Embark Technology, Inc.

The Business Combination was accounted for as a reverse recapitalization, in accordance with GAAP. Under the guidance in ASC 805, Embark was treated as the "acquired" company for financial reporting purposes. Embark Trucks was deemed the accounting predecessor of the combined business, and Embark Technology, Inc., as the parent company of the combined business, was the successor SEC registrant, meaning that our financial statements for previous periods will be disclosed in the registrant's periodic reports filed with the SEC. The Business Combination had a significant impact on Embark's reported financial position and results as a consequence of the reverse recapitalization. The most significant changes in Embark's reported financial position and results are a net increase in cash of \$243.9 million net of transaction costs for the Business Combination of \$70.2 million.

As a result of the Business Combination, Embark became an SEC-registered and Nasdaq-listed company, which required Embark to hire additional personnel and implement procedures and processes to address public company regulatory requirements and customary practices. Embark incurs additional annual expenses as a public company for, among other things, directors' and officers' liability insurance, director fees, and additional internal and external accounting, legal and administrative resources.

## **Recent Developments Affecting Comparability**

### *Reverse Stock Split*

At a special meeting of stockholders held on August 15, 2022 (the "Special Meeting"), the stockholders of Embark, with 89.7% voting, approved an amendment to the Certificate of Incorporation to effect the Reverse Stock Split of the Company's outstanding Common Stock, with the final ratio to be determined by the Company's board of directors from within a range of between 1-for-15 and 1-for-30. Following the Special Meeting, on August 15, 2022, the Company's board of directors approved the Reverse Stock Split at the ratio of 1-for-20.

Following the close of trading on the Nasdaq Global Market, on the Effective Time, the Company filed the Amendment with the Secretary of State of the State of Delaware to effect the Reverse Stock Split. At the Effective Time, each 20 shares of Class A common stock and Class B common stock outstanding and held of record by each stockholder of the Company were automatically reclassified and combined into one validly issued, fully paid and non-assessable share of Class A common stock or Class B common stock, as applicable, subject to the treatment of fractional shares as described below. Proportional adjustments were made to the number of shares of Class A common stock reserved for issuance under the Company's equity incentive plans and the number of shares of Class A common stock subject to outstanding equity awards and warrants, as well as the applicable exercise price.

No fractional shares were issued in connection with the Reverse Stock Split. Stockholders who would otherwise be entitled to receive fractional shares as a result of the Reverse Stock Split received a cash payment in lieu thereof at a price equal to the fraction to which the stockholder would otherwise be entitled to multiplied by the closing trading price per share of the Class A common stock (on a split-adjusted basis) on the Nasdaq Global Market on August 16, 2022.

### *COVID-19 Impact and the Conflict in Ukraine*

In March 2020, the World Health Organization declared COVID-19 a global pandemic. In the United States, as part of government-imposed restrictions, Embark was forced to temporarily pause fleet testing and operations in 2020. Embark also implemented a work-from-home policy for most of its non-operations team. However, a select group of workers remained on-site to continue advancing testing work for its test fleet. Since then, Embark has resumed its fleet testing and operations and has increased headcount to address its R&D requirements.

The future impact of the COVID-19 pandemic on Embark's operational and financial performance will depend on certain developments, including the duration and end of the pandemic and the occurrence of future outbreaks from new variants, impact on Embark's research and development efforts, and effect on Embark's suppliers, all of which are uncertain and cannot be predicted. Public and private sector policies and initiatives to reduce the transmission of COVID-19 and disruptions to Embark's operations and the operations of Embark's third-party suppliers, along with the related global slowdown in economic activity, may result in increased costs. It is possible that the COVID-19 pandemic, the measures that have been taken or that may be taken by the federal, state, local authorities and businesses affected by government-mandated business closures, vaccination mandates and the resulting economic impact may materially and adversely affect Embark's business, results of operations, cash flows and financial positions.

While we have limited direct business exposure in Russia, Belarus and Ukraine, the Russian military actions and the resulting sanctions could adversely affect the global economy, as well as further disrupt the supply chain. A major disruption in the global economy and supply chain could have a material adverse effect on our business, partners, prospects, financial condition, results of operations, and cash flows. The extent and duration of the military action, sanctions, and resulting market and/or supply disruptions are impossible to predict, but could be substantial.

## **Key Factors Affecting Embark's Operating Performance**

Embark's financial condition, results of operations, and future success depend on several factors that present significant opportunities for Embark but also pose risks and challenges, including those set forth the section entitled "Risk

Factors” in this Quarterly Report on Form 10-Q, in the section entitled “Risk Factors” in the Annual Report, and as set forth below:

*Embark’s Ability to Achieve Key Technical Milestones and Deliver a Commercial Product*

Embark’s growth will depend on the introduction of Embark Driver and Embark Guardian products which will drive demand from potential customers. Embark has developed a platform agnostic interface, Embark Universal Interface, which will serve as the foundation to utilize Embark Driver and Guardian products in trucks manufactured by a broad range of OEMs. Embark’s ability to introduce its products will be driven by a variety of factors including strategic use of the testing capacity of Embark’s research and development fleet capacity, the number of autonomous miles driven (measured as the number of miles driven by Embark’s research & development fleet as well as partner fleet autonomous miles), simulated miles and encounters, and the ability to effectively collect and act upon information gathered from the operation of Embark’s research and development fleet to develop a safe and sustainable solution. Embark develops most key technologies in-house to achieve a rapid pace of innovation and tests it extensively through research and development fleet operations. Embark expects a continuing emphasis in research and development fleet usage in the foreseeable future to allow it to strategically focus on innovations, which it believes will help solidify its overall solution to customers and partners. To date, Embark has not generated any revenue and until its products reach commercialization, autonomous miles driven will be comprised of autonomous miles driven by its research and development fleet and the fleet of its partners. Embark believes that data taken from autonomous miles driven during testing will continually feed improvements to the platform, allowing it to innovate and introduce new products to the market and increase adoption of its products in the future.

*Embark’s Ability to Expand its Coverage Map Across the United States*

Embark’s long-term growth potential will benefit from strategic network expansion across the United States. Network breadth is measured by the number of transfer points on Embark’s coverage map, which are representative of the cities which Embark plans to support. Embark expects to achieve significant network growth by partnering with key real-estate partners which will enable it to quickly bring their properties into its coverage map. Additionally, Embark is partnering with carriers and shippers who currently move, or have in the past moved, a significant amount of freight on Embark’s network to add their properties to the network. Embark believes that expanding its network over the long run will enable it to create a significant and sustainable competitive advantage.

In addition to its United States coverage map expansion, Embark may explore other near-term business opportunities to commercialize its technology in order to develop further technical and operating expertise that may ultimately be applied in furtherance of its United States network expansion efforts. Lastly, Embark believes that the continued growth of its partnerships will improve user experience and drive more users to its platform, which it believes will allow it to further densify its coverage map and reinforce rapid network growth. Embark will apply a highly scalable model nationally, with a tailored approach to each state, driven by the regulatory environment and local market dynamics. Embark believes that this will allow it to expand rapidly and efficiently across different geographies, while maintaining a high level of control over the specific strategy within each state.

*Embark’s Ability to Expand its Partner Network*

An aspect of Embark’s business growth strategy is seeking to drive the adoption of its technical products by deploying them in Embark’s partners’ operations in a collaborative process. This is achieved by working closely with carrier management teams to prepare them to deploy and scale autonomous trucks. In April 2021, Embark formally announced the Embark Partner Development Program (PDP), which serves as the basis of its partnership network. The PDP is comprised of carriers and shippers from across the freight ecosystem working with Embark to refine and scale Embark’s offerings. Most recently, Embark announced the industry-first Truck Transfer Program to place Embark technology in the hands of Knight-Swift drivers. Embark will continue to look for partnership opportunities across all sub-segments of the truck-freight market.

*Adoption and Support of Autonomous Technology in the Freight Industry*

Embark’s business model is supported by a large addressable market that Embark believes will benefit from the introduction of autonomous trucking technology. The freight industry is currently facing significant challenges, notably driver shortages and utilization limitations, which it believes it will address through its product offerings. Embark has

identified participants from across the freight ecosystem who have expressed support for Embark's offerings and the potential solutions they provide to the challenges they are facing.

While Embark has confirmed general market support, the long-term success of its business model is dependent on broad scale adoption and support of autonomous trucking technology. Embark has engaged with notable partners in the freight industry who Embark believes will lead the industry in adopting autonomous vehicle technology. As Embark onboards more partners, it will increase miles driven by partners, which Embark believes will serve to validate its product offerings and generate interest and confidence from other partners. Embark believes customers will be motivated to integrate Embark's technology to be price competitive with other freight participants who have achieved efficiencies with it.

### **Key Components of Embark's Results of Operations**

The following discussion describes certain line items in Embark's unaudited condensed consolidated statements of operations.

#### **Operating Expenses**

Operating expenses consist of research and development expenses and general and administrative expenses. Personnel-related costs are the most significant component of Embark's operating expenses and include salaries, benefits, and stock-based compensation expenses.

Embark's full-time employee headcount in research and development has grown from 172 as of December 31, 2021 to 251 as of September 30, 2022 and employee headcount in general and administrative functions has grown from 59 as of December 31, 2021 to 66 as of September 30, 2022. Embark will continue to ensure its employee base and employee talents are aligned to achieve its objectives.

Embark expects to continue to invest resources in a focused manner to support its growth and anticipates that each of the following categories of operating expenses could increase in absolute dollar amounts for the foreseeable future.

#### *Research and Development Expenses*

Research and development expenses consist primarily of salaries, employee benefits, stock-based compensation expenses and travel expenses related to Embark's engineers performing research and development activities to originate, develop and enhance Embark's products. Additional expenses include consulting charges, component purchases, software licenses and other costs for performing research and development on Embark's software products.

#### *General and Administrative Expenses*

General and administrative expenses consist primarily of salaries, employee benefits, stock-based compensation expenses, and travel expenses related to Embark's executives, finance team, and the administrative employees. They also consists of legal, accounting, consulting, and professional fees, rent and lease expenses pertaining to Embark's offices, business insurance costs and other costs. Embark expects its general and administrative expenses to increase as it puts in the processes and procedures as a public company, including as a result of compliance with the rules and regulations of the SEC, legal, audit, tax, and other administrative and professional services.

## Results of Operations

The results of operations presented below should be reviewed in conjunction with the financial statements and notes included elsewhere in this Quarterly Report on Form 10-Q.

### Comparisons for the three months ended September 30, 2022 and 2021

The following table sets forth Embark's unaudited condensed consolidated results of operations data for the periods presented (in thousands):

	Three Months Ended September 30,		\$	%
	2022	2021		
<b>Operating expenses:</b>				
Research and development	\$ 21,691	\$ 11,481	\$ 10,210	88.9 %
General and administrative	16,050	4,593	11,457	249.4 %
Total operating expenses	37,741	16,074	21,667	134.8 %
Loss from operations	(37,741)	(16,074)	(21,667)	134.8 %
Other income (expense), net	2,329	(3,043)	5,372	(176.5)%
Loss before provision for income taxes	(35,412)	(19,117)	(16,295)	85.2 %
Provision for income taxes	—	—	—	N.M
Net loss	<u>\$ (35,412)</u>	<u>\$ (19,117)</u>	<u>(16,295)</u>	<u>85.2 %</u>

N.M. — Percentage change not meaningful

#### Research and Development Expenses

Research and development expense increased by \$10.2 million in the three months ended September 30, 2022, compared to the three months ended September 30, 2021. The increase was primarily due to \$8.8 million higher headcount expenses including stock-based compensation, salaries and employee benefits, related to the continued expansion of Embark's R&D team and \$0.4 million increase in infrastructure expenditure related to increased R&D activities.

#### General and Administrative Expenses

General and administrative expense increased by \$11.5 million in the three months ended September 30, 2022, compared to the three months ended September 30, 2021. The increase was primarily due to \$8.9 million higher headcount expenses including stock-based compensation, salaries and employee benefits, related to growth in the business, a \$0.3 million increase in insurance expenses, a \$0.3 million increase in fleet operation expenses, a \$0.3 million increase in legal expenses and a \$0.4 million increase in professional services expenses.

#### Other income (expense), net

Other income increased by \$5.4 million in the three months ended September 30, 2022 compared to the three months ended September 30, 2021. The increase was primarily due to a \$0.7 million increase in interest income, a \$1.4 million change in the estimated fair value of Public, Private, Working Capital and FPA Warrants that were issued during the fourth quarter of 2021, a \$2.1 million decrease in interest expense related to convertible notes, which were converted upon consummation of the Business Combination, and a \$1.0 million change in the estimated fair value of derivative liabilities which were derecognized upon consummation of the Business Combination.



**Comparisons for the nine months ended September 30, 2022 and 2021**

The following table sets forth Embark's condensed consolidated results of operations data for the periods presented (in thousands):

	<b>Nine Months Ended September 30,</b>		<b>\$</b>	<b>%</b>
	<b>2022</b>	<b>2021</b>	<b>Change</b>	<b>Change</b>
<b>Operating expenses:</b>				
Research and development	\$ 59,427	\$ 26,823	\$ 32,604	121.6 %
General and administrative	56,741	11,585	45,156	389.8 %
Total operating expenses	116,168	38,408	77,760	202.5 %
Loss from operations	(116,168)	(38,408)	(77,760)	202.5 %
Other income (expense), net	47,985	(9,417)	57,402	(609.6)%
Loss before provision for income taxes	(68,183)	(47,825)	(20,358)	42.6 %
Provision for income taxes	—	—	—	N.M
Net loss	<u>\$ (68,183)</u>	<u>\$ (47,825)</u>	<u>(20,358)</u>	42.6 %

N.M. — Percentage change not meaningful

**Research and Development Expenses**

Research and development expense increased by \$32.6 million in the nine months ended September 30, 2022, compared to the nine months ended September 30, 2021. The increase was primarily due to \$26.2 million higher headcount expenses including stock-based compensation, salaries and employee benefits, related to continued expansion of Embark's R&D team and a \$2.4 million increase in general R&D costs primarily driven by engineering software & subscription costs.

**General and Administrative Expense**

General and administrative expense increased by \$45.2 million in the nine months ended September 30, 2022, compared to the nine months ended September 30, 2021. The increase was primarily due to \$38.4 million higher headcount expenses including stock-based compensation, salaries and employee benefits, related to growth in the business, a \$1.2 million increase in occupancy expenses related to additional leases and a \$1.8 million increase in insurance expenses.

**Other income (expense), net**

Other income increased by \$57.4 million in the nine months ended September 30, 2022 compared to the nine months ended September 30, 2021. The increase was primarily due to a \$47.8 million of Public, Private, Working Capital and FPA Warrants that were issued in the fourth quarter of 2021, a \$3.4 million decrease in interest expense related to convertible notes which were converted upon consummation of the Business Combination, and a \$5.8 million change in the estimated fair value of derivative liabilities which were derecognized upon consummation of the Business Combination .

**Liquidity and Capital Resources**

Since Embark's inception, it has financed its operations primarily through the sale of shares of common stock and preferred stock.

In connection with the Business Combination, a convertible promissory note (the "Convertible Note") issued by Embark in April 2021 was converted in exchange for 188,747 shares of Embark Class A common stock. As of September 30, 2022, Embark had outstanding debt of \$1.9 million from a financing of freight trucks that it utilizes for R&D. Embark makes monthly installment payments on its truck financing arrangements. The truck financings have varying maturities between March 2023 and January 2027. Embark's principal uses of cash in recent periods have been to fund its operations, invest in research and development, repay borrowings, and make investments in accordance with its investments policy.

Embark believes existing cash and other components of working capital will be sufficient to meet its needs for at least the next 12 months. Embark's long-term capital requirements will depend on many factors including timing and extent of spending to support R&D efforts, as well as general and administrative activities for the business. If, at any time, Embark determines it requires more capital to execute upon its business plan, and /or that market conditions are favorable, Embark may seek additional equity or debt financing. Additionally, in the event Embark may in the future enter into arrangements to acquire or invest in related products, technologies, software and services, and Embark may need to seek additional equity or debt financing to support such growth. As of September 30, 2022, there were future minimum lease payments of \$32.9 million.

Embark currently transports shipments using its R&D truck fleet, demonstrating proof of concept and paving the way for commercialization and revenue generating operations in the future. However, Embark has not earned any revenue to date, and had \$191.0 million in cash and cash equivalents and an accumulated deficit of \$251.1 million as of September 30, 2022. To the extent Embark is unable to commercialize its technology as expected, its liquidity may be negatively impacted.

Embark's ability to continue as a going concern is dependent on management's ability to control operating costs and demonstrate progress against its technical roadmap. This involves developing new capabilities for the Embark Driver software and improving the reliability and performance of the software on public roads. Embark believes demonstrating ongoing technical progress will enable Embark to obtain funds from outside sources of financing, including financing from equity interest investors and borrow funds to fund its general operations, research and development activities and capital expenditures.

The following table shows Embark's cash flows from operating activities, investing activities and financing activities for the stated periods (in thousands):

	Nine Months Ended September 30,	
	2022	2021
Net cash (used in) provided by:		
Operating activities	\$ (66,270)	\$ (32,858)
Investing activities	\$ (7,802)	\$ 45,506
Financing activities	\$ 969	\$ 24,183

#### *Operating Activities*

Net cash used in operating activities for the nine months ended September 30, 2022 was \$66.3 million, an increase of \$33.4 million from \$32.9 million for the nine months ended September 30, 2021. The increase was primarily due to an increase of \$20.4 million in net loss for the nine months ended September 30, 2022 compared to the nine months ended September 30, 2021. The increase was also due to \$18.0 million of non-cash adjustments to net loss (comprised of \$47.8 million of change in fair value of warrant liability, \$5.8 million of change in the fair value of the derivative liability, \$1.8 million of change in the fair value of warrants issued for services and \$3.7 million of amortization of debt discounts, which was offset by \$38.3 million of stock-based compensation, depreciation and amortization of \$2.5 million and \$0.7 million of issuance of common stock for services). In addition, the increase was offset further by \$5.0 million net cash decrease by changes in Embark's operating assets and liabilities, which was primarily attributable to prepaid expenses and other current assets, accrued expenses and other current liabilities primarily due to overall growth and timing of payables.

#### *Investing Activities*

Net cash used in investing activities for the nine months ended September 30, 2022 was \$7.8 million, a decrease of \$53.3 million from \$45.5 million of net cash provided by investing activities for the nine months ended September 30, 2021. The decrease was primarily due to a decrease of \$48.2 million in proceeds received from maturities of investments and an increase in purchase of property, equipment, and software of \$5.8 million. The decrease was offset by decrease of \$0.4 million in deposits paid for the purchase of trucks and \$0.4 million in proceeds received from the sale of trucks.

### *Financing Activities*

Net cash provided by financing activities for the nine months ended September 30, 2022, was \$1.0 million, a decrease of \$23.2 million from the \$24.2 million of net cash provided by financing activities for the nine months ended September 30, 2021. The decrease was primarily due to a decrease of \$25.0 million in proceeds received from the Convertible Notes, and a \$0.2 million increase in payments towards notes payable. The decrease was partially offset by \$1.2 million of cash proceeds received from the exercise of stock options and a \$0.8 million decrease in cash paid in relation to deferred offering costs.

### **Financing Arrangements**

There have been no material changes outside the ordinary course of business in Embark's financing arrangements as previously disclosed in Embark's Annual Report.

### **Off-Balance Sheet Arrangements**

Embark did not have any off-balance sheet arrangements as of September 30, 2022.

### **Critical Accounting Policies and Significant Management Estimates**

The preparation financial statements in conformity with generally accepted accounting principles requires management to make judgments, estimates and assumptions in the preparation of Embark's financial statements and accompanying notes. Actual results could differ from those estimates. There have been no material changes to Embark's critical accounting policies or estimates during the three and nine months ended September 30, 2022, from those discussed in Embark's Annual Report.

### **Recent Accounting Pronouncements**

For information on recently issued accounting pronouncements, refer to Note 2, "Summary of Significant Accounting Policies" in Embark's unaudited condensed consolidated financial statements included elsewhere in this Quarterly Report on Form 10-Q.

### **JOBS Act Accounting Election**

Embark is an EGC, as defined in the JOBS Act. Under the JOBS Act, EGCs can delay adopting new or revised accounting standards until such time as those standards apply to private companies. Embark intends to elect to adopt new or revised accounting standards under private company adoption timelines. Accordingly, the timing of Embark's adoption of new or revised accounting standards will not be the same as other public companies that are not emerging growth companies or that have opted out of using such extended transition period.

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

Embark is exposed to certain market risks as part of its ongoing business operations.

#### *Credit Risk*

Embark is exposed to credit risk on its investment portfolio. Investments that potentially subject us to credit risk consist principally of cash and investments in debt securities. Embark places cash and cash equivalents with financial institutions with high credit standing and excess cash in marketable investment grade debt securities.

#### *Interest Rate Risk*

Embark is exposed to interest rate risk on its investment portfolio. Investments that potentially subject Embark to interest rate risk consist principally of cash and investments in debt securities. As of September 30, 2022, Embark has cash and cash equivalents of \$191.0 million, consisting of U.S. Treasury securities and 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 Embark's investments, an immediate 10% change in interest rates would not have a material effect on the fair market value of its cash, cash equivalents, and investments.

*Inflation Risk*

Embark is exposed to impact of wage inflation, and has experienced wage inflation during 2022. As wages have increased during 2022, and the continuing supply chain crisis and geopolitical conflict in Ukraine contributes to ongoing inflation, inflation could have a material effect on its business, results of operations, or financial condition. If Embark's costs were to become subject to more significant inflationary pressures before we commercialize and sell our technology, we will not be able to offset such higher costs through price increases. Embark's inability to do so could harm its business, results of operations, and financial condition.

**Item 4. Controls and Procedures**

**Evaluation of Disclosure Controls and Procedures**

Our management, with the participation of our Chief Executive Officer ("CEO") and Chief Financial Officer ("CFO"), evaluated the effectiveness of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act), as of the end of the period covered by this Quarterly Report on Form 10-Q. Based on that evaluation, our CEO and CFO concluded that, as of September 30, 2022, due to the material weakness described in the Annual Report, our disclosure controls and procedures were not effective.

As disclosed in Part II, Item 9A, "Controls and Procedures" in our Annual Report, we identified a material weakness in our internal control over financial reporting resulting from a lack of sufficient number of qualified personnel within our accounting function who possessed an appropriate level of expertise to effectively perform the following functions:

- identify, select and apply GAAP sufficiently to provide reasonable assurance that transactions were being appropriately recorded; and
- assess risk and design appropriate control activities over information technology systems and financial and reporting processes necessary to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements.

*Status of Remediation Efforts*

In response to the material weaknesses identified and described above, our management, with the oversight of the Audit Committee of our Board of Directors, will continue through 2022 to dedicate significant efforts and resources to further improve our control environment and to take steps to remediate these material weaknesses.

**Changes in Internal Control Over Financial Reporting**

Except for changes in connection with our implementation of the remediation measures or as described above, there were no changes in our internal control over financial reporting as of September 30, 2022, 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

From time to time, Embark may be involved in actions, claims, suits, and other proceedings in the ordinary course of its business. In addition, from time to time, third parties may in the future assert intellectual property infringement claims against Embark in the form of letters and other forms of communication. Litigation or any other legal or administrative proceeding, regardless of the outcome, can result in substantial cost and diversion of its resources, including its management's time and attention. Such matters are subject to uncertainty and there can be no assurance that such legal proceedings will not have a material adverse effect on our business, the results of operations, financial position, or cash flows.

On April 1, 2022, Tyler Hardy filed the Hardy Action, a putative securities class action lawsuit against Embark, certain of our executive officers, and former executive officers of Northern Genesis Acquisition Corp., Hardy brought the action purportedly on behalf of a class consisting of those who purchased or otherwise acquired Embark common stock between January 12, 2021 and January 5, 2022. The complaint alleges that defendants made false and/or misleading statements in violations of Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder. On July 7, 2022, the Court appointed Tyler Hardy as lead plaintiff in the case, and his counsel at Pomerantz LLP as lead counsel.

On August 25, 2022, pursuant to Court-approved stipulation, Plaintiff Hardy filed a consolidated amended complaint, naming an additional plaintiff, Danny Rochefort, and additional individual defendants that formerly served as directors of Northern Genesis Acquisition Corp. prior to its business combination with Embark. The amended complaint alleges that defendants committed the Securities Act Claims, alleged to be violations of Sections 11 and 15 of the Securities Act of 1933 and the Exchange Act Claims, alleged violations of Sections 14(a) and 20(a) of the Securities Exchange Act of 1934 through the inclusion of allegedly inaccurate and misleading statements in the Form S-4 registration statement and proxy statement/prospectus filed in connection with the business combination. Plaintiffs do not quantify any damages in the complaint, but in addition to attorneys' fees and costs, seek to recover damages on behalf of two classes: 1) a class that acquired shares traceable to the registration statement at issue in the Securities Act Claims and 2) a class that voted in favor of the business combination based on the information in the proxy statement/prospectus at issue in the Exchange Act Claims and purportedly suffered financial harm as a result.

On October 24, 2022 Embark moved to dismiss the amended complaint pursuant to Rules 9 and 12(b)(6) of the Federal Rules of Civil Procedure as well as under the Private Securities Litigation Reform Act on the grounds that the Amended Complaint fails to plead facts sufficient to state a claim against Defendants. Embark intends to defend the matter vigorously, and believes that the claims are without merit. Legal and regulatory proceedings, including the above-referenced matter, may be based on complex claims involving substantial uncertainties and unascertainable damages. Accordingly, it is not possible to determine the probability of loss or estimate damages for the above-referenced matter, and therefore, Embark has not established reserves for this proceeding. If Embark determines that a loss is both probable and reasonably estimable, Embark will record a liability, and, if the liability is material, will disclose the amount of the liability reserved. Given that such proceedings are subject to uncertainty, there can be no assurance that legal proceedings individually or in the aggregate will not have a material adverse effect on our business, results of operations, financial condition or cash flows.

On September 23, 2022, Josh Luberisse filed the Derivative Action, a purported derivative action against current and former directors and against Embark as a nominal defendant. The complaint alleges violations of Section 14(a) of the Securities Exchange Act and for alleged common law claims including breach of fiduciary duties, unjust enrichment, abuse of control, gross mismanagement and for contribution under Section 11(f) of the Securities Act of 1933 and Section 21D of the Securities Exchange Act of 1934 arising from allegedly wrongful conduct including the wrongful conduct alleged in the original and amended complaint in the Hardy Action. In addition to fees and costs, the Derivative Action seeks damages and restitution to Embark from the named individual defendants as well as certain injunctive relief. Embark cannot determine the probability of loss or estimate damages at this stage of the proceeding.

### Item 1A. Risk Factors

*Except as set forth herein, there are no other material changes from the risk factors discussed in Embark's Annual Report under the heading "Risk Factors." You should carefully consider these risks, together with management's discussion and analysis of Embark's financial condition and results of operations in conjunction with the unaudited*

*condensed consolidated financial statements and the notes thereto included elsewhere in this Quarterly Report on Form 10-Q. If any of the events contemplated should occur, Embark's business, results of operations, financial condition and cash flows could suffer significantly.*

***Embark's resource-intensive R&D and commercialization activities may require Embark to raise additional funds and these funds may not be available to Embark terms when they are needed. If Embark cannot raise additional funds on attractive terms when it needs them, its strategy, operations and prospects could be negatively affected.***

The continued research & development, marketing and commercialization of Embark's technology is expected to require significant capital expenditures to reach commercial scale. To date, Embark has not generated any revenue and as of September 30, 2022, Embark had cash and cash equivalents of \$191.0 million. Embark may need to raise additional capital to continue to fund its R&D and commercialization activities and to improve its overall liquidity position. Given the current interest rates and capital markets environment, raising additional capital will be challenging, may require acceptance of highly onerous terms or may not be possible at all and as a result, Embark may not be able to achieve the level of commercialization it had previously anticipated by 2024. Embark anticipates that if it is not able to raise additional capital, then it may have to adjust its commercialization plans to explore more limited uses of its technology, alternative services or adjacent markets. As a result of any such strategic adjustment, Embark's financial condition, results of operations, business, and prospects are expected to be materially adversely affected.

***General worldwide economic conditions could adversely affect Embark's operating results, financial condition and/or ability to commercialize its technology.***

The U.S. and global economy are facing growing inflation, higher interest rates and potential recession. Adverse changes in economic conditions, high inflation and increasing geopolitical risks, such as the ongoing conflict in the Ukraine, could harm Embark's operating results and financial conditions. Regional or global economic downturns could adversely affect demand for Embark's technology through an impact on demand for freight shipping, impairment of the profit margins of Embark customers or through other impacts which could adversely affect its operating results. Inflation could also drive increases in Embark's costs of operations, commodities, labor, materials and services, which Embark may not be able to successfully pass along to its customers. If Embark elects to incur indebtedness, higher interest rates could result in significant cash usage to service such indebtedness.

These conditions, should they occur for an extended period of time, could adversely affect Embark and its customers and partners, which ultimately could affect Embark's operating results and financial condition. As a result, Embark is continuing to evaluate key factors such as its commercialization timeline, scope of commercialization, anticipated headcount and operating expenses. In order to best position Embark for success against current and future anticipated commercialization objectives, Embark is considering and may develop new or adjacent business models and markets ancillary to its current commercialization roadmap but there is no assurance that Embark will be able to successfully implement those business models and/or enter into ancillary or adjacent markets

***Embark relies on equity-based compensation to attract, retain and motivate its executives and key employees, which may result in excessive price pressures on Embark's Class A common stock and/or shareholder dilution during periods in which Embark's share price is depressed.***

Embark relies upon equity awards including stock option awards, RSUs and PSUs to attract and retain the key talent it relies upon. During periods in which Embark's share price declines, Embark may be required to issue equity awards covering a larger number of shares than anticipated to meet the current market level of compensation required to retain key executives and employees given the strong demand for talent in the technology industry. As a result, Embark's share price may face incremental downward pressure as employees sell more shares into the market than anticipated. In addition, shareholders may experience additional dilution to the extent Embark is required to seek, and obtains, shareholder approval to expand the size of its employee equity incentive pool in order to maintain a competitive compensation position.

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

None.

## **Item 3. Defaults Upon Senior Securities**

None.

**Item 4. Mine Safety Disclosures**

Not Applicable.

**Item 5. Other Information**

None.

**Item 6. Exhibits**

Exhibit Number	Description	Incorporated by Reference				Filed Herewith
		Form	File No.	Date	Exhibit	
2.1+	<a href="#">Agreement and Plan of Merger, dated as of June 22, 2021, by and among Northern Genesis Acquisition Corp. II, NGAB Merger Sub Inc. and Embark Trucks Inc.</a>	8-K	001-39881	6/23/2021	2.1	
3.1	<a href="#">Second Amended and Restated Certificate of Incorporation of Northern Genesis Acquisition Corp. II.</a>	8-K	001-39881	11/17/2021	3.1	
3.2	<a href="#">Certificate of Amendment to Second Amended and Restated Certificate of Incorporation of Embark Technology, Inc.</a>	8-K	001-39881	8/16/2022	3.1	
3.3	<a href="#">Amended and Restated Bylaws of Embark Technology, Inc.</a>	8-K	001-39881	11/17/2021	3.2	
4.1	<a href="#">Specimen Warrant Certificate of Embark Technology, Inc.</a>	S-4	333-257647	10/13/2021	4.5	
4.2	<a href="#">Specimen Class A Common Stock Certificate of Embark Technology, Inc.</a>	S-4	333-257647	10/13/2021	4.6	
4.3	<a href="#">Warrant Agreement, dated as of January 12, 2021, by and among Northern Genesis Acquisition Corp. II and Continental Stock Transfer &amp; Trust Company, as warrant agent.</a>	8-K	001-39881	1/19/2021	4.1	
31.1	<a href="#">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.</a>					X
31.2	<a href="#">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.</a>					X
32.1**	<a href="#">Certification of Principal Executive Officer and Principal Financial Officer Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.</a>					
10.1	<a href="#">Form of Founder Award Agreement.</a>	S-8	333-262131	1/13/2022	10.1	
10.2	<a href="#">Restricted Stock Unit Award Agreement.</a>					X
101.INS	Inline XBRL Instance Document – the instance document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document.					X
101.SCH	Inline XBRL Taxonomy Extension Schema Document.					X
101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase Document.					X
101.DEF	Inline XBRL Taxonomy Extension Definition Linkbase Document.					X
101.LAB	Inline XBRL Taxonomy Extension Label Linkbase Document.					X
101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase Document.					X
104	Cover Page Interactive Data File - the cover page interactive data file does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL Document.					X

\*\* Furnished herewith. The certification attached as Exhibit 32.1 that accompanies this Quarterly Report on Form 10-Q is deemed furnished and not filed with the SEC and is not to be incorporated by reference into any filing of Embark Technology, Inc. under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended, whether made before or after the date of this Quarterly Report on Form 10-Q, irrespective of any general incorporation language contained in such filing.

+ Schedules and exhibits have been omitted pursuant to Item 601(b)(2) of Regulation S-K. The Registrant agrees to furnish supplementally a copy of any omitted schedule or exhibit to the SEC upon request.



**SIGNATURES**

Pursuant to the requirements of Section 13 or 15(d) of the Securities Act of 1934, the registrant has duly caused this Quarterly Report on Form 10-Q to be signed on its behalf by the undersigned, thereunto duly authorized, on November 8, 2022.

**EMBARK TECHNOLOGY, INC.**

By: /s/ Alex Rodrigues

Name: Alex Rodrigues

Title: Chief Executive Officer  
(Principal Executive Officer)

**EMBARK TECHNOLOGY, INC.**

By: /s/ Richard Hawwa

Name: Richard Hawwa

Title: Chief Financial Officer  
(Principal Financial Officer and Principal Accounting Officer)

## **RESTRICTED STOCK UNIT AWARD AGREEMENT**

Pursuant to the Grant Notice to which this Agreement is attached, the Company has granted to Participant the number of RSUs set forth in the Grant Notice.

### **ARTICLE I.**

#### **GENERAL**

Section 1.1 Defined Terms. Capitalized terms not specifically defined herein shall have the meanings specified in the Plan or the Grant Notice.

Section 1.2 Incorporation of Terms of Plan. The RSUs and the shares of Common Stock issued to Participant hereunder (“Shares”) are subject to the terms and conditions set forth in this Agreement and the Plan, which is incorporated herein by reference. In the event of any inconsistency between the Plan and this Agreement, the terms of the Plan shall control.

### **ARTICLE II.**

#### **AWARD OF RESTRICTED STOCK UNITS**

Section 2.1 Award of RSUs.

(a) In consideration of Participant’s past and/or continued employment with or service to the Company or any Subsidiary and for other good and valuable consideration, effective as of the grant date set forth in the Grant Notice (the “Grant Date”), the Company has granted to Participant the number of RSUs set forth in the Grant Notice, upon the terms and conditions set forth in the Grant Notice, the Plan and this Agreement, subject to adjustment as provided in Article VIII of the Plan. Each RSU represents the right to receive one Share at the times and subject to the conditions set forth herein. However, unless and until the RSUs have vested, Participant will have no right to the payment of any Shares subject thereto. Prior to the actual delivery of any Shares, the RSUs will represent an unsecured obligation of the Company, payable only from the general assets of the Company.

Section 2.2 Vesting of RSUs.

(a) Subject to Participant’s continued employment with or service to the Company or any Subsidiary on each applicable vesting date and subject to the terms of this Agreement, the RSUs shall vest in such amounts and at such times as are set forth in the Grant Notice.

(b) In the event Participant incurs a Termination of Service, except as may be otherwise provided by the Administrator or as set forth in a written agreement between Participant and the Company, Participant shall immediately forfeit any and all RSUs granted under this Agreement that have not vested or do not vest on or prior to the date on which such Termination of Service occurs, and Participant’s rights in any such RSUs that are not so vested shall lapse and expire.

Section 2.3

(a) Distribution or Payment of RSUs. Participant's RSUs shall be distributed in Shares (either in book-entry form or otherwise) on the quarterly settlement date as set forth by the Company in the Bonus and Equity policy, or successor policy setting forth the Company's vesting and settlement dates as of each vesting date of the applicable RSU pursuant to Section 2.2 (but in no event later than March 15 of the calendar year following the year in which such vesting date occurs). Notwithstanding the foregoing, the Company may delay a distribution or payment in settlement of RSUs if it reasonably determines that such payment or distribution will violate federal securities laws or any other Applicable Law, *provided* that such distribution or payment shall be made at the earliest date at which the Company reasonably determines that the making of such distribution or payment will not cause such violation, as required by Treasury Regulation Section 1.409A-2(b)(7)(ii), and *provided further* that no payment or distribution shall be delayed under this Section 2.3(a) if such delay will result in a violation of Section 409A.

(b) All distributions shall be made by the Company in the form of whole Shares, and any fractional share shall be distributed in cash in an amount equal to the value of such fractional share determined based on the Fair Market Value as of the date immediately preceding the date of such distribution.

Section 2.4 Conditions to Issuance of Certificates. The Company shall not be required to issue or deliver any certificate or certificates for any Shares or to cause any Shares to be held in book-entry form prior to the fulfillment of all of the following conditions: (a) the admission of the Shares to listing on all stock exchanges on which such Shares are then listed, (b) the completion of any registration or other qualification of the Shares under any state or federal law or under rulings or regulations of the Securities and Exchange Commission or other governmental regulatory body, which the Administrator shall, in its absolute discretion, deem necessary or advisable, (c) the obtaining of any approval or other clearance from any state or federal governmental agency that the Administrator shall, in its absolute discretion, determine to be necessary or advisable, and (d) the receipt of full payment of any applicable withholding tax in accordance with Section 2.5 by the Company or any applicable Subsidiary with respect to which the applicable withholding obligation arises.

Section 2.5 Tax Withholding. Notwithstanding any other provision of this Agreement:

(a) The Company and Subsidiaries have the authority to deduct or withhold, or require Participant to remit to the Company or any Subsidiary, an amount sufficient to satisfy any applicable federal, state, local and foreign taxes (including the employee portion of any FICA obligation) required by Applicable Law to be withheld with respect to any taxable event arising pursuant to this Agreement. The Company and Subsidiaries may withhold or Participant may make such payment in one or more of the forms specified below:

(i) by cash or check made payable to the Company or any applicable Subsidiary with respect to which the withholding obligation arises;

(ii) by the deduction of such amount from other compensation payable to Participant;

(iii) with respect to any withholding taxes arising in connection with the settlement of the RSUs, with the consent of the Administrator, by requesting that the Company withhold a net number of vested shares of Stock otherwise issuable pursuant to the RSUs having a then current fair market value not exceeding the amount necessary to satisfy the withholding obligation of the Company or the applicable Subsidiary based on the applicable statutory

withholding rates in Participant's applicable jurisdictions for federal, state, local and foreign income tax and payroll tax purposes that are applicable to such taxable income;

(iv) with respect to any withholding taxes arising in connection with the settlement of the RSUs, with the consent of the Administrator, by tendering to the Company vested shares of Stock having a then current fair market value not exceeding the amount necessary to satisfy the withholding obligation of the Company or the applicable Subsidiary based on the applicable statutory withholding rates in Participant's applicable jurisdictions for federal, state, local and foreign income tax and payroll tax purposes that are applicable to such taxable income;

(v) with respect to any withholding taxes arising in connection with the settlement of the RSUs, through the delivery of a notice that Participant has placed a market sell order with a broker acceptable to the Company with respect to shares of Stock then issuable to Participant pursuant to the RSUs, and that the broker has been directed to pay a sufficient portion of the net proceeds of the sale to the Company or the applicable Subsidiary with respect to which the withholding obligation arises in satisfaction of such withholding taxes; *provided* that payment of such proceeds is then made to the Company or the applicable Subsidiary at such time as may be required by the Administrator, but in any event not later than the settlement of such sale; or

(vi) in any combination of the foregoing as authorized by the Administrator.

(b) With respect to any withholding taxes arising in connection with the RSUs, in the event Participant fails to provide timely payment of all sums required pursuant to Section 1.1(a), the Company shall have the right and option, but not the obligation, to treat such failure as an election by Participant to satisfy all or any portion of Participant's required payment obligation pursuant to Section Section 2.5(ii) or Section Section 2.5(iii) above, or any combination of the foregoing as the Company may determine to be appropriate. The Company shall not be obligated to deliver any certificate representing shares of Stock issuable with respect to the RSUs to Participant or his or her legal representative unless and until Participant or his or her legal representative shall have paid or otherwise satisfied in full the amount of all federal, state, local and foreign taxes applicable with respect to the taxable income of Participant resulting from the vesting or settlement of the RSUs or any other taxable event related to the RSUs.

(c) In the event any tax withholding obligation arising in connection with the RSUs will be satisfied under Section Section 2.5(iii), then the Company may elect to instruct any brokerage firm determined acceptable to the Company for such purpose to sell on Participant's behalf a whole number of shares from those shares of Stock then issuable to Participant pursuant to the RSUs as the Company determines to be appropriate to generate cash proceeds sufficient to satisfy the tax withholding obligation and to remit the proceeds of such sale to the Company or the applicable Subsidiary with respect to which the withholding obligation arises. Participant's acceptance of this Award constitutes Participant's instruction and authorization to the Company and such brokerage firm to complete the transactions described in this Section Section 2.5(c), including the transactions described in the previous sentence, as applicable.

(d) Participant is ultimately liable and responsible for all taxes owed in connection with the RSUs, regardless of any action the Company or any Subsidiary takes with respect to any tax withholding obligations that arise in connection with the RSUs. None of the Company or Subsidiaries makes any representation or undertaking regarding the treatment of any tax withholding in connection with the awarding, vesting or payment of the RSUs or the subsequent sale of Shares. None of the Company or Subsidiaries commits and is under no obligation to structure the RSUs to reduce or eliminate Participant's tax liability. The Company may refuse to issue any shares of Stock in settlement of the RSUs to Participant

until the foregoing tax withholding obligations are satisfied, provided that no payment shall be delayed under this Section 2.5(d) if such delay will result in a violation of Section 409A of the Code.

Section 2.6 Rights as Stockholder. Neither Participant nor any Person claiming under or through Participant will have any of the rights or privileges of a stockholder of the Company in respect of any Shares deliverable hereunder unless and until certificates representing such Shares (which may be in book-entry form) will have been issued and recorded on the records of the Company or its transfer agents or registrars and delivered to Participant (including through electronic delivery to a brokerage account). Except as otherwise provided herein, after such issuance, recordation and delivery, Participant will have all the rights of a stockholder of the Company with respect to such Shares, including, without limitation, the right to receipt of dividends and distributions on such Shares.

Section 2.7 Restrictive Covenants; Forfeiture. The Participant hereby acknowledges and agrees that any restrictive covenants or similar written agreements (the “Restrictive Covenant Agreements”), including confidentiality and non-solicitation covenants that such Participant may have in any employment agreement with the Company or any Subsidiary are incorporated herein by reference, and that such agreements, as applicable, remain in full force and effect. In the event the Participant materially breaches the Restrictive Covenant Agreements or any other written covenants between such Participant and the Company or any Subsidiary, the Participant shall immediately forfeit any and all RSUs granted under this Agreement (whether or not vested), and Participant’s rights in any such RSUs shall lapse and expire.

### **ARTICLE III.**

#### **OTHER PROVISIONS**

Section 3.1 Administration. The Administrator shall have the power to interpret the Plan, the Grant Notice and this Agreement and to adopt such rules for the administration, interpretation and application of the Plan, the Grant Notice and this Agreement as are consistent therewith and to interpret, amend or revoke any such rules. All actions taken and all interpretations and determinations made by the Administrator will be final and binding upon Participant, the Company and all other interested Persons. To the extent allowable pursuant to Applicable Law (and without limiting Section 10.7 of the Plan), no member of the Committee or the Board will be personally liable for any action, determination or interpretation made with respect to the Plan, the Grant Notice or this Agreement.

Section 3.2 RSUs Not Transferable. The RSUs may not be sold, pledged, assigned or transferred in any manner other than by will or the laws of descent and distribution, unless and until the Shares underlying the RSUs have been issued, and all restrictions applicable to such Shares have lapsed. No RSUs or any interest or right therein or part thereof shall be liable for the debts, contracts or engagements of Participant or his or her successors in interest or shall be subject to disposition by transfer, alienation, anticipation, pledge, encumbrance, assignment or any other means whether such disposition be voluntary or involuntary or by operation of law by judgment, levy, attachment, garnishment or any other legal or equitable proceedings (including bankruptcy), and any attempted disposition thereof shall be null and void and of no effect, except to the extent that such disposition is permitted by the preceding sentence.

Section 3.3 Adjustments. The Administrator may accelerate the vesting of all or a portion of the RSUs in such circumstances as it, in its sole discretion, may determine. Participant acknowledges that the RSUs and the Shares subject to the RSUs are subject to adjustment, modification and termination in certain events as provided in this Agreement and the Plan, including Article VIII of the Plan.

Section 3.4 Notices. Any notice to be given under the terms of this Agreement to the Company shall be addressed to the Company in care of the Secretary of the Company at the Company’s principal

office, and any notice to be given to Participant shall be addressed to Participant at Participant's last email or physical address reflected on the Company's records. By a notice given pursuant to this Section 3.4, either party may hereafter designate a different address for notices to be given to that party. Any notice shall be deemed duly given when sent via email (to Participant only) or when sent by certified mail (return receipt requested) and deposited (with postage prepaid) in a post office or branch post office regularly maintained by the United States Postal Service.

Section 3.5 Titles. Titles are provided herein for convenience only and are not to serve as a basis for interpretation or construction of this Agreement.

Section 3.6 Governing Law. The laws of the State of Delaware shall govern the interpretation, validity, administration, enforcement and performance of the terms of this Agreement regardless of the law that might be applied under principles of conflicts of laws.

Section 3.7 Conformity to Securities Laws. Participant acknowledges that the Plan, the Grant Notice and this Agreement are intended to conform to the extent necessary with all Applicable Laws, including, without limitation, the provisions of the Securities Act and the Exchange Act, and any and all regulations and rules promulgated thereunder by the Securities and Exchange Commission, and state securities laws and regulations. Notwithstanding anything herein to the contrary, the Plan shall be administered, and the RSUs are granted, only in such a manner as to conform to Applicable Law. To the extent permitted by Applicable Law, the Plan, the Grant Notice and this Agreement shall be deemed amended to the extent necessary to conform to Applicable Law.

Section 3.8 Amendment, Suspension and Termination. To the extent permitted by the Plan, this Agreement may be wholly or partially amended or otherwise modified, suspended or terminated at any time or from time to time by the Administrator, *provided* that, except as may otherwise be provided by the Plan, no amendment, modification, suspension or termination of this Agreement shall adversely affect the RSUs in any material way without the prior written consent of Participant.

Section 3.9 Successors and Assigns. The Company may assign any of its rights under this Agreement to single or multiple assignees, and this Agreement shall inure to the benefit of the successors and assigns of the Company. Subject to the restrictions on transfer set forth in Section 3.2 and the Plan, this Agreement shall be binding upon and inure to the benefit of the heirs, legatees, legal representatives, successors and assigns of the parties hereto.

Section 3.10 Limitations Applicable to Section 16 Persons. Notwithstanding any other provision of the Plan or this Agreement, if Participant is subject to Section 16 of the Exchange Act, the Plan, the RSUs, the Grant Notice and this Agreement shall be subject to any additional limitations set forth in any applicable exemptive rule under Section 16 of the Exchange Act (including any amendment to Rule 16b-3 of the Exchange Act) that are requirements for the application of such exemptive rule. To the extent permitted by Applicable Law, this Agreement shall be deemed amended to the extent necessary to conform to such applicable exemptive rule.

Section 3.11 Not a Contract of Employment. Nothing in this Agreement or in the Plan shall confer upon Participant any right to continue to serve as an employee or other service provider of the Company or any Subsidiary or shall interfere with or restrict in any way the rights of the Company or any Subsidiary, which rights are hereby expressly reserved, to discharge or terminate the services of Participant at any time for any reason whatsoever, with or without Cause, except to the extent (a) expressly provided otherwise in a written agreement between the Company or any Subsidiary and Participant or (b) where such provisions are not consistent with applicable foreign or local laws, in which case such applicable foreign or local laws shall control.

Section 3.12 Entire Agreement. The Plan, the Grant Notice and this Agreement (including any exhibit hereto) constitute the entire agreement of the parties and supersede in their entirety all prior undertakings and agreements of the Company and Participant with respect to the subject matter hereof.

Section 3.13 Section 409A. This Award is intended to be exempt from, or comply with, Section 409A, such that no adverse tax consequences, interest or penalties under Section 409A apply, and it shall be interpreted consistent with such intent. However, notwithstanding anything in the Plan, the Grant Notice or this Agreement to the contrary, the Administrator may, without a Participant's consent, amend this Plan or Awards, adopt policies and procedures, or take any other actions (including amendments, policies and procedures and retroactive actions) as are necessary or appropriate to preserve the intended tax treatment of Awards, including any actions intended to (A) exempt this Plan or any Award from Section 409A, or (B) comply with Section 409A, including regulations, guidance, compliance programs and other interpretive authority that may be issued after the Grant Date. The Company makes no representations or warranties to an Award's tax treatment under Section 409A or otherwise. The Company will have no obligation under this Section 3.13 or otherwise to avoid the taxes, penalties or interest under Section 409A with respect to any Award and will have no liability to any Participant or any other person if any Award, compensation or other benefits under the Plan are determined to constitute noncompliant "nonqualified deferred compensation" subject to taxes, penalties or interest under Section 409A.

Section 3.14 Agreement Severable. In the event that any provision of the Grant Notice or this Agreement is held invalid or unenforceable, such provision will be severable from, and such invalidity or unenforceability will not be construed to have any effect on, the remaining provisions of the Grant Notice or this Agreement.

Section 3.15 Limitation on Participant's Rights. Participation in the Plan confers no rights or interests other than as herein provided. This Agreement creates only a contractual obligation on the part of the Company as to amounts payable and shall not be construed as creating a trust. Neither the Plan nor any underlying program, in and of itself, has any assets. Participant shall have only the rights of a general unsecured creditor of the Company with respect to amounts credited and benefits payable, if any, with respect to the RSUs.

Section 3.16 Counterparts. The Grant Notice may be executed in one or more counterparts, including by way of any electronic signature, subject to Applicable Law, each of which shall be deemed an original and all of which together shall constitute one instrument.

Section 3.17 Broker-Assisted Sales. In the event of any broker-assisted sale of Shares in connection with the payment of withholding taxes as provided in Section 2.5(c): (a) any Shares to be sold through a broker-assisted sale will be sold on or about the day the tax withholding obligation, as applicable, occurs or arises, or as soon thereafter as practicable; (b) such Shares may be sold as part of a block trade with other participants in the Plan in which all participants receive an average price; (c) Participant will be responsible for all broker's fees and other costs of sale, and Participant agrees to indemnify and hold the Company harmless from any losses, costs, damages, or expenses relating to any such sale; (d) to the extent the proceeds of such sale exceed the applicable tax withholding obligation, the Company agrees to pay such excess in cash to Participant as soon as reasonably practicable; (e) Participant acknowledges that the Company or its designee is under no obligation to arrange for such sale at any particular price, and that the proceeds of any such sale may not be sufficient to satisfy the applicable tax withholding obligation; and (f) in the event the proceeds of such sale are insufficient to satisfy the applicable tax withholding obligation, Participant agrees to pay immediately upon demand to the Company or the applicable Subsidiary with respect to which the withholding obligation arises an amount in cash sufficient to satisfy any remaining portion of the Company or the applicable Subsidiary's withholding obligation.

Section 3.18 Claw-back Provisions. The RSUs (including any proceeds, gains or other economic benefit the Participant actually or constructively receives upon distribution of the RSUs or the receipt or resale of any Shares underlying the RSUs) will be subject to any Company claw-back policy as in effect from time to time, including any claw-back policy adopted to comply with Applicable Laws (including the Dodd-Frank Wall Street Reform and Consumer Protection Act and any rules or regulations promulgated thereunder).

\* \* \* \* \*





**CERTIFICATION OF CHIEF EXECUTIVE OFFICER  
PURSUANT TO EXCHANGE ACT RULES 13a-14(a) AND 15d-14(a)  
AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Alex Rodrigues, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Embark Technology, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) 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) Omitted;
  - (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(s) 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 .

By: \_\_\_\_\_ /s/ Alex Rodrigues

**Alex Rodrigues**  
**Chief Executive Officer**  
*(Principal Executive Officer)*

Date: November 8, 2022

**CERTIFICATION OF CHIEF FINANCIAL OFFICER  
PURSUANT TO EXCHANGE ACT RULES 13a-14(a) AND 15d-14(a)  
AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Richard Hawwa, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Embark Technology, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) 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) Omitted;
  - (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(s) 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 .

By: \_\_\_\_\_ /s/ Richard Hawwa

**Richard Hawwa**  
**Chief Financial Officer**

*(Principal Financial Officer and Principal Accounting Officer)*

Date: November 8, 2022

**SECTION 906 CERTIFICATION  
CERTIFICATION OF CHIEF EXECUTIVE OFFICER AND CHIEF FINANCIAL OFFICER  
PURSUANT TO 18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

Pursuant to 18 U.S.C. § 1350, adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, the undersigned officers of Embark Technology, Inc. (the "Company") hereby certify, to such officers' knowledge, that:

- (1) the accompanying Quarterly Report on Form 10-Q of the Company for the quarterly period ended September 30, 2022 (the "Report") fully complies with the requirements of Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934, as amended; and
- (2) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

By:

*/s/ Alex Rodrigues*

---

**Alex Rodrigues**  
**Chief Executive Officer**  
*(Principal Executive Officer)*

Date: November 8, 2022

*/s/ Richard Hawwa*

---

**Richard Hawwa**  
**Chief Financial Officer**  
*(Principal Financial Officer and Principal Accounting Officer)*

Date: November 8, 2022