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

FORM 10-Q

(Mark one)

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

For the quarterly period ended September 30, 2023

OR

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

For the transition period from to

Commission File Number 001-41556

SNAIL, INC.
(Exact name of registrant as specified in its charter)

Delaware (State or other jurisdiction of incorporation or organization)	**88-4146991** (IRS Employer Identification No.)

12049 Jefferson Blvd
Culver City, CA 90230
(Address of principal executive offices) (zip code)
+1 (310) 988-0643
(Registrant's telephone number, including area code)

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

Title of each class	Trading symbol	Name of each exchange on which registered
Class A Common Stock, par value $0.0001 per share	**SNAL**	**The Nasdaq Stock Market LLC**

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

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

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

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

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

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

Indicate the number of shares outstanding of each of the registrant's classes of common stock, as of the latest practicable date.

Class of Common Stock	Outstanding Shares as of November 13, 2023

Class A Common Stock, par value $0.0001 per share	**7,901,145**
Class B Common Stock, par value $0.0001 per share	**28,748,580**

SNAIL, INC. AND SUBSIDIARIES
Form 10-Q
For the Quarter Ended September 30, 2023

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CAUTIONARY STATEMENT REGARDING FORWARD-LOOKING STATEMENTS

This Quarterly Report on Form 10-Q (the "Quarterly Report") contains statements that constitute forward-looking statements. Many of the forward-looking statements contained in this Quarterly Report can be identified by the use of forward-looking words such as "anticipate," "believe," "could," "expect," "should," "plan," "intend," "may," "predict," "continue," "estimate" and "potential," or the negative of these terms or other similar expressions.

Forward-looking statements appear in a number of places in this Quarterly Report and include, but are not limited to, statements regarding our intent, belief or current expectations. These forward-looking statements include information about possible or assumed future results of our business, financial condition, results of operations, liquidity, plans and objectives. Forward-looking statements are based on our management's beliefs and assumptions and on information currently available to our management. Such statements are subject to risks and uncertainties, and actual results may differ materially from those expressed or implied in the forward-looking statements due to various factors, including, but not limited to, those identified described in "Part II, Item 1A. – Risk Factors," of this Quarterly Report. The statements we make regarding the following matters are forward-looking by their nature:

- our ability to re-establish profitable operations, raise additional capital or renegotiate our debt arrangements;
- our growth prospects and strategies;
- launching new games and additional functionality to games that are commercially successful;
- our expectations regarding significant drivers of our future growth;
- our ability to retain and increase our player base and develop new video games and enhance our existing games;
- competition from companies in a number of industries, including other casual game developers and publishers and both large and small, public and private multimedia companies;
- our ability to attract and retain a qualified management team and other team members while controlling our labor costs;
- our relationships with third-party platforms such as Xbox Live and Game Pass, PlayStation Network, Steam, Epic Games Store, the Apple App Store, the Google Play Store, My Nintendo Store and the Amazon Appstore;
- our ability to successfully enter new markets and manage our international expansion;
- protecting and developing our brand and intellectual property portfolio;
- costs associated with defending intellectual property infringement and other claims;
- our future business development, results of operations and financial condition;
- rulings by courts or other governmental authorities;
- our Share Repurchase Program (as defined below), including expectations regarding the timing and manner of repurchases made under the Share Repurchase Program;
- our plans to pursue and successfully integrate strategic acquisitions;
- other risks and uncertainties described in this Quarterly Report, including those described in Item 1A of Part II, "Risk Factors"; and
- assumptions underlying any of the foregoing.

Further information on risks, uncertainties and other factors that could affect our financial results are included in our filings with the United States Securities and Exchange Commission (the "SEC") from time to time, including in Item 1A of Part II, "Risk Factors," of this Quarterly Report and other periodic reports on Form 10-K and 10-Q filed or to be filed with the SEC. You should not rely on these forward-looking statements, as actual outcomes and results may differ materially from those expressed or implied in the forward-looking statements as a result of such risks and uncertainties. All forward-looking statements in this Quarterly Report are based on management's beliefs and assumptions and on information currently available to us as of the date of this filing, and we do not assume any obligation to update the forward-looking statements provided to reflect events that occur or circumstances that exist after the date on which they were made.

PART I

Item 1. Condensed Consolidated Financial Statements (Unaudited)

Snail, Inc. and Subsidiaries
Condensed Consolidated Balance Sheets

	September 30, 2023	December 31, 2022
ASSETS		
Current Assets:		
Cash and cash equivalents	$ 4,948,832	$ 12,863,817
Restricted escrow deposit	1,037,739	1,003,804
Accounts receivable, net of allowances for credit losses of $19,929 and $31,525, respectively	4,083,369	6,758,024
Accounts receivable - related party, net	11,599,229	11,344,184
Loan and interest receivable - related party	103,249	101,753
Prepaid expenses - related party	2,500,000	-
Prepaid expenses and other current assets	11,482,303	10,565,141
Total current assets	35,754,721	42,636,723
Restricted cash and cash equivalents	1,115,084	6,374,368
Prepaid expenses - related party	5,582,500	5,582,500
Property, plant and equipment, net	4,768,715	5,114,799
Intangible assets, net - license - related parties	130,435	1,384,058
Intangible assets, net - other	271,918	272,521
Deferred income taxes	10,902,503	7,602,536
Other noncurrent assets	171,512	198,668
Operating lease right-of-use assets, net	2,738,554	3,606,398
Total assets	$ 61,435,942	$ 72,772,571
LIABILITIES, NONCONTROLLING INTERESTS AND STOCKHOLDERS' EQUITY		
Current Liabilities:		
Accounts payable	$ 9,956,626	$ 9,452,391
Accounts payable - related party	19,669,868	19,918,259
Accrued expenses and other liabilities	2,305,132	1,474,088
Interest payable - related parties	527,770	527,770
Revolving loan	6,000,000	9,000,000
Notes payable	4,358,333	5,416,666
Convertible notes, net of discount	515,217	-
Current portion of promissory note	2,832,231	86,524
Current portion of deferred revenue	5,848,320	4,335,404
Current portion of operating lease liabilities	1,470,718	1,371,227
Total current liabilities	53,484,215	51,582,329
Accrued expenses	311,276	457,024
Promissory note, net of current portion	-	3,221,963
Deferred revenue, net of current portion	5,680,439	5,216,042
Operating lease liabilities, net of current portion	1,814,962	2,930,529
Total liabilities	61,290,892	63,407,887
Commitments and contingencies		
Stockholders' Equity:		
Class A common stock, $0.0001 par value, 500,000,000 shares authorized; 9,251,420 shares issued, 7,901,145 and 8,053,771 shares outstanding as of September 30, 2023 and December 31, 2022, respectively	925	925
Class B common stock, $0.0001 par value, 100,000,000 shares authorized; 28,748,580 shares issued and outstanding as of September 30, 2023 and December 31, 2022, respectively	2,875	2,875
Additional paid-in capital	25,945,549	23,436,942
Accumulated other comprehensive loss	(287,685)	(307,200)
Accumulated deficit	(16,346,691)	(4,863,250)
	9,314,973	18,270,292
Treasury stock at cost (1,350,275 and 1,197,649 shares as of September 30, 2023 and December 31, 2022, respectively)	(3,671,806)	(3,414,713)
Total Snail, Inc. equity	5,643,167	14,855,579
Noncontrolling interests	(5,498,117)	(5,490,895)
Total stockholders' equity	145,050	9,364,684

Total liabilities, noncontrolling interests and stockholders’ equity	$ 61,435,942	$ 72,772,571

See accompanying notes to condensed consolidated financial statements (unaudited).

Snail, Inc. and Subsidiaries
Condensed Consolidated Statements of Operations and Comprehensive Income (Loss)

	Three months ended September 30,		Nine months ended September 30,	
	2023	*2022*	*2023*	*2022*
Revenues, net	$ 8,981,135	$ 15,614,171	$ 32,331,876	$ 59,132,284
Cost of revenues	9,463,086	12,424,067	29,659,788	40,397,396
Gross profit, (loss)	(481,951)	3,190,104	2,672,088	18,734,888
Operating expenses:				
General and administrative	3,452,141	4,478,907	11,915,126	13,525,001
Research and development	1,317,400	116,624	3,892,039	479,630
Advertising and marketing	215,477	198,417	488,318	569,127
Depreciation and amortization	112,914	128,536	346,084	435,644
Total operating expenses	5,097,932	4,922,484	16,641,567	15,009,402
(Loss) income from operations	(5,579,883)	(1,732,380)	(13,969,479)	3,725,486
Other income (expense):				
Interest income	47,147	12,712	98,411	45,789
Interest income - related parties	504	505	1,496	582,128
Interest expense	(370,376)	(261,070)	(961,196)	(613,338)
Interest expense - related parties	-	-	-	(3,222)
Other income	313,156	19,500	321,331	319,153
Foreign currency transaction (loss) gain	(1,394)	16,169	(25,606)	21,679
Total other income (expense), net	(10,963)	(212,184)	(565,564)	352,189
(Loss) income before (benefit from) provision for income taxes	(5,590,846)	(1,944,564)	(14,535,043)	4,077,675
(Benefit from) provision for income taxes	(1,156,675)	(398,998)	(3,044,380)	803,305
Net (loss) income	(4,434,171)	(1,545,566)	(11,490,663)	3,274,370
Net (loss) income attributable to non-controlling interests	(1,539)	(6,828)	(7,222)	56,348
Net (loss) income attributable to Snail, Inc. and Snail Games USA Inc.	**(4,432,632)**	**(1,538,738)**	**(11,483,441)**	**3,218,022**
Comprehensive income statement:				
Other comprehensive income (loss) related to foreign currency translation adjustments, net of tax	(1,512)	5,682	19,515	(76,720)
Total comprehensive (loss) income	**$ (4,434,144)**	**$ (1,533,056)**	**$ (11,463,926)**	**$ 3,141,302**
Net (loss) income attributable to Class A common stockholders:				
Basic	**$ (955,763)**	**$ (1,538,738)**	**$ (2,477,768)**	**$ 3,218,022**
Diluted	**$ (955,763)**	**$ (1,538,738)**	**$ (2,477,768)**	**$ 3,218,022**
Net loss attributable to Class B common stockholders:				
Basic	**$ (3,476,869)**	**$ -**	**$ (9,005,673)**	**$ -**
Diluted	**$ (3,476,869)**	**$ -**	**$ (9,005,673)**	**$ -**
(Loss) income per share attributable to Class A and B common stockholders:				
Basic	**$ (0.12)**	**$ (0.04)**	**$ (0.31)**	**$ 0.09**
Diluted	**$ (0.12)**	**$ (0.04)**	**$ (0.31)**	**$ 0.09**
Weighted-average shares used to compute income per share attributable to Class A common stockholders[(1)]:				
Basic	**7,901,145**	**35,000,000**	**7,909,715**	**35,000,000**
Diluted	**7,901,145**	**35,000,000**	**7,909,715**	**35,000,000**

Weighted-average shares used to compute income per share attributable to Class B common stockholders:				
Basic	**28,748,580**	**-**	**28,748,580**	**-**
Diluted	**28,748,580**	**-**	**28,748,580**	**-**

(1) The shares used for the denominator in the calculation of EPS are the number of shares transferred in the reorganization transaction for comparative purposes. Snail Games USA Inc. did not have Class A common stock as of September 30, 2022.

See accompanying notes to condensed consolidated financial statements (unaudited).

Snail, Inc. and Subsidiaries
Condensed Consolidated Statements of Equity for the Three and Nine Months Ended September 30, 2023 and 2022

	Common Stock - Snail Games USA Inc.		Class A Common Stock		Class B Common Stock		Additional Paid-In-Capital	Due from Shareholder Loan and Interest Receivable	Accumulated Other Comprehensive Loss	Retained Earnings	Treasury Stock		Snail Games USA Inc. Equity	Non controlling interests	Total Equity
	Shares	Amount	Shares	Amount	Shares	Amount					Shares	Amount			
Balance at December 31, 2021	**500,000**	**$ 5,000**	**-**	**$ -**	**-**	**$ -**	**$ 94,159,167**	**$ (94,353,522)**	**$ (266,557)**	**$ 16,045,231**	**-**	**$ -**	**$ 15,589,319**	**$ (5,537,266)**	**$ 10,052,053**
Loan to shareholder	-	-	-	-	-	-	-	(450,681)	-	-	-	-	(450,681)	-	(450,681)
Foreign currency translation	-	-	-	-	-	-	-	-	(51,203)	-	-	-	(51,203)	-	(51,203)
Net income	-	-	-	-	-	-	-	-	-	5,811,057	-	-	5,811,057	(7,290)	5,803,767
Balance at March 31, 2022	**500,000**	**$ 5,000**	**-**	**$ -**	**-**	**$ -**	**$ 94,159,167**	**$ (94,804,203)**	**$ (317,760)**	**$ 21,856,288**	**-**	**$ -**	**$ 20,898,492**	**$ (5,544,556)**	**$ 15,353,936**
Loan to shareholder	-	-	-	-	-	-	-	(130,197)	-	-	-	-	(130,197)	-	(130,197)
Dividend distribution	-	-	-	-	-	-	(81,278,112)	94,934,400	-	(21,856,288)	-	-	(8,200,000)	-	(8,200,000)
Foreign currency translation	-	-	-	-	-	-	-	-	(31,199)	-	-	-	(31,199)	-	(31,199)
Net loss	-	-	-	-	-	-	-	-	-	(1,054,297)	-	-	(1,054,297)	70,466	(983,831)
Balance at June 30, 2022	**500,000**	**5,000**	**-**	**-**	**-**	**-**	**12,881,055**	**-**	**(348,959)**	**(1,054,297)**	**-**	**-**	**11,482,799**	**(5,474,090)**	**6,008,709**
Foreign currency translation	-	-	-	-	-	-	-	-	5,682	-	-	-	5,682	-	5,682
Net loss	-	-	-	-	-	-	-	-	-	(1,538,738)	-	-	(1,538,738)	(6,828)	(1,545,566)
Balance at September 30, 2022	**500,000**	**$ 5,000**	**-**	**$ -**	**-**	**$ -**	**$ 12,881,055**	**$ -**	**$ (343,277)**	**$ (2,593,035)**	**-**	**$ -**	**$ 9,949,743**	**$ (5,480,918)**	**$ 4,468,825**

	Class A Common Stock		Class B Common Stock	Additional Paid-In-Amount	Capital	Accumulated Other Comprehensive Loss	Accumulated Deficit	Treasury Stock		Snail, Inc. Equity	Non controlling interests	Total Equity
	Shares	Amount	Shares					Shares	Amount			
Balance at December 31, 2022	**9,251,420**	**$ 925**	**28,748,580**	**$ 2,875**	**$ 23,436,942**	**$ (307,200)**	**$ (4,863,250)**	**(1,197,649)**	**$ (3,414,713)**	**$ 14,855,579**	**$ (5,490,895)**	**$ 9,364,684**
Stock based compensation related to restricted stock units	-	-	-	-	152,595	-	-	-	-	152,595	-	152,595
Repurchase of common stock	-	-	-	-	-	-	-	(152,626)	(257,093)	(257,093)	-	(257,093)
Foreign currency translation	-	-	-	-	-	2,320	-	-	-	2,320	-	2,320
Net loss	-	-	-	-	-	-	(2,971,378)	-	-	(2,971,378)	(1,219)	(2,972,597)
Balance at March 31, 2023	**9,251,420**	**$ 925**	**28,748,580**	**$ 2,875**	**$ 23,589,537**	**$ (304,880)**	**$ (7,834,628)**	**(1,350,275)**	**$ (3,671,806)**	**$ 11,782,023**	**$ (5,492,114)**	**$ 6,289,909**
Return of dividend distribution tax withholding payment	-	-	-	-	1,886,600	-	-	-	-	1,886,600	-	1,886,600
Stock based compensation related to restricted stock units	-	-	-	-	232,770	-	-	-	-	232,770	-	232,770
Foreign currency translation	-	-	-	-	-	18,707	-	-	-	18,707	-	18,707
Net loss	-	-	-	-	-	-	(4,079,431)	-	-	(4,079,431)	(4,464)	(4,083,895)
Balance at June 30, 2023	**9,251,420**	**$ 925**	**28,748,580**	**$ 2,875**	**$ 25,708,907**	**$ (286,173)**	**$ (11,914,059)**	**(1,350,275)**	**$ (3,671,806)**	**$ 9,840,669**	**$ (5,496,578)**	**$ 4,344,091**
Stock based compensation related to	-	-	-	-	236,642	-	-	-	-	236,642	-	236,642

restricted stock units												
Foreign currency translation	-	-	-	-	-	(1,512)	-	-	-	(1,512)	-	(1,512)
Net loss	-	-	-	-	-	-	(4,432,632)	-	-	(4,432,632)	(1,539)	(4,434,171)
Balance at September 30, 2023	**9,251,420**	**$ 925**	**28,748,580**	**$ 2,875**	**$ 25,945,549**	**$ (287,685)**	**$ (16,346,691)**	**(1,350,275)**	**$ (3,671,806)**	**$ 5,643,167**	**$ (5,498,117)**	**$ 145,050**

See accompanying notes to condensed consolidated financial statements (unaudited).

Snail, Inc. and Subsidiaries
Condensed Consolidated Statements of Cash Flows

For the Nine Month Period Ended September 30,	*2023*	*2022*
Cash flows from operating activities:		
Net (loss) income	$ (11,490,663)	$ 3,274,370
Adjustments to reconcile net income to net cash used in operating activities:		
Amortization - intangible assets - license	-	250,000
Amortization - intangible assets - license, related parties	1,253,623	5,552,938
Amortization - intangible assets - other	603	672
Amortization - loan origination fees and debt discounts	142,656	19,149
Depreciation and amortization - property and equipment	346,084	435,644
Stock-based compensation expense	622,007	-
Gain on lease termination	-	(122,533)
Gain on paycheck protection program and economic injury disaster loan forgiveness	-	(174,436)
Gain on disposal of fixed assets	-	(17,067)
Interest income from shareholder loan	-	(580,878)
Interest income from restricted escrow deposit	(33,935)	-
Deferred taxes	(3,058,738)	-
Changes in assets and liabilities:		
Accounts receivable	2,674,655	7,648,432
Accounts receivable - related party	(255,045)	(3,803,606)
Prepaid expenses - related party	(2,500,000)	(4,875,000)
Prepaid expenses and other current assets	156,450	(2,232,406)
Other noncurrent assets	(2,903)	(15,228)
Accounts payable	846,553	2,905,024
Accounts payable - related party	(248,391)	(1,402,791)
Accrued expenses and other liabilities	134,131	(127,993)
Interest receivable - related parties	(1,496)	-
Interest payable - related parties	-	1,490
Lease liabilities	(148,233)	(103,782)
Deferred revenue	767,883	(7,297,736)
Net cash used in operating activities	(10,794,759)	(665,737)
Cash flows from investing activities:		
Repayment on loan provided by related party	-	(300,000)
Purchases of property and equipment	-	(5,256)
Proceeds from sale of property and equipment	-	19,500
Repayment on Pound Sand note	-	1,496,063
Net cash provided by investing activities	-	1,210,307
Cash flows from financing activities:		
Repayments on promissory note	(59,589)	(57,967)
Repayments on notes payable	(3,750,000)	(3,333,333)
Repayments on revolving loan	(3,000,000)	-
Borrowings on notes payable	2,275,000	-
Borrowings on short-term note	-	10,000,000
Proceeds from issuance of convertible notes	847,500	-
Refund of dividend withholding tax overpayment	1,886,600	-
Payments on paycheck protection program and economic injury disaster loan	-	(90,198)
Refund of payments on paycheck protection program and economic injury disaster loan	-	48,305
Cash dividend declared and paid	-	(8,200,000)
Purchase of treasury stock	(257,093)	-
Payments of offering costs in accounts payable	(342,318)	-
Net cash used in financing activities	(2,399,900)	(1,633,193)
Effect of foreign currency translation on cash and cash equivalents	20,390	(52,810)
Net decrease in cash and cash equivalents, and restricted cash and cash equivalents	(13,174,269)	(1,141,433)
Cash and cash equivalents, and restricted cash and cash equivalents - beginning of period	19,238,185	16,554,115
Cash and cash equivalents, and restricted cash and cash equivalents – end of period	**$ 6,063,916**	**$ 15,412,682**
Supplemental disclosures of cash flow information		
Cash paid during the period for:		
Interest	$ 725,885	$ 594,189
Income taxes	$ 504,581	$ 831,400

Noncash transactions during the period for:		
Loan and interest payable - related parties	$ -	$ 103,890
Loan and interest receivable - related parties	$ -	$ (103,890)
Loan and interest from shareholder	$ -	$ 94,934,400
Dividend distribution	$ -	$ (94,934,400)
Deferred tax assets	$ (241,229)	$ -
Prepaid income taxes	$ 241,229	$ -
Change in deferred revenues due to gain contingency	$ 1,209,430	$ -
Change in other receivables due to gain contingency	$ (1,209,430)	$ -
Noncash finance activity during the period for:		
Issuance of warrants in connection with the equity line of credit	$ (105,411)	-
Gain on paycheck protection program and economic injury disaster loan forgiveness	$ -	$ (174,436)

See accompanying notes to condensed consolidated financial statements (unaudited).

NOTE 1 – PRESENTATION AND NATURE OF OPERATIONS

Snail, Inc. was incorporated under the laws of Delaware in January 2022. The terms “Snail, Inc,” “Snail Games,” “our” and the “Company” are used to refer collectively to Snail, Inc. and its subsidiaries. The Company’s fiscal year end is December 31. The Registrant was formed for the purpose of completing an initial public offering (“IPO”) and related transactions to carry on the business of Snail Games USA Inc. and its subsidiaries. Snail Games USA Inc. was founded in 2009 as a wholly owned subsidiary of Suzhou Snail Digital Technology Co., Ltd. (“Suzhou Snail”) located in Suzhou, China and is the operating entity that continues post IPO. Snail Games USA Inc. is devoted to researching, developing, marketing, publishing, and distributing games, content and support that can be played on a variety of platforms including game consoles, PCs, mobile phones and tablets. The Company is a global developer and publisher of interactive entertainment content and support on video game consoles, personal computers, mobile devices, and other platforms.

On July 13, 2022, Suzhou Snail transferred all of its right, title, and interest to all of the 500,000 shares of common stock of the Company (“Shares”) to Snail Technology (HK) Limited (“Snail Technology”), an entity organized under the laws of Hong Kong, pursuant to the certain Share Transfer Agreement dated July 13, 2022 between Suzhou Snail and Snail Technology. Subsequently, Snail Technology transferred all of its right, title, and interest in the shares to certain individuals per the Share Transfer Agreement. In connection with the reorganization transaction described below the individuals contributed their interest in the Company to Snail, Inc. in return for common stock of Snail, Inc. in connection with Snail, Inc.’s IPO. Because the Company and Suzhou Snail are owned by the same shareholders, Suzhou Snail is considered a related party to the Company.

Reorganization Transaction and IPO

On September 16, 2022, Snail, Inc., filed a Registration Statement on Form S-1 with the United States Securities and Exchange Commission in connection with its IPO. On November 9, 2022, effective as of the IPO pricing, Snail Games USA Inc.’s existing shareholders transferred their 500,000 shares of common stock of Snail Games USA Inc. to Snail, Inc. in exchange for 6,251,420 shares of Class A common stock and 28,748,580 shares of Class B common stock of Snail, Inc., and Snail, Inc. became the parent of Snail Games USA Inc. Because the reorganization transaction was considered a transaction between entities under common control, the financial statements for periods prior to the reorganization transaction and the IPO have been adjusted to combine the previously separate entities for presentation purposes. On November 9, 2022, Snail, Inc. priced its IPO, and on November 10, 2022, Snail, Inc.’s Class A common stock began trading on The Nasdaq Capital Market under the ticker symbol SNAL. In the IPO, Snail, Inc. issued 3,000,000 shares of Class A common stock at $5.00 per share and net proceeds from the IPO were distributed to Snail Games USA Inc. in November 2022 in the amount of approximately $12.0 million, net of the underwriting discount and offering costs of $3.0 million. In connection with the IPO, $1.0 million of the IPO proceeds were remitted to an escrow account which is held to provide a source of funding for certain indemnification obligations of Snail, Inc. to the underwriters. The amount in escrow is reported as a restricted escrow deposit in the consolidated balance sheets for 12 months from the date of the offering, at which time the restrictions will be removed and the balance will be reverted to unrestricted cash.

Basis of Presentation and Consolidation

The accompanying condensed consolidated financial statements have been prepared in accordance with the rules and regulations of the SEC and generally accepted accounting principles as promulgated in the United States of America (“U.S. GAAP”) for interim reporting. Accordingly, certain notes or other information that are normally required by U.S. GAAP have been condensed or omitted if they substantially duplicate the disclosures contained in our annual audited consolidated financial statements. Additionally, the year-end condensed consolidated balance sheet data was derived from audited consolidated financial statements but does not include all disclosures required by U.S. GAAP. Accordingly, the unaudited condensed consolidated financial statements should be read in conjunction with the audited consolidated financial statements and notes thereto for the year ended December 31, 2022 included in the Company’s Annual Report on Form 10-K for the fiscal year ended December 31, 2022, filed on March 29, 2023. The condensed consolidated results of operations for any interim period are not necessarily indicative of the results to be expected for the full year or for any other future annual or interim period.

In the opinion of management, all adjustments considered necessary for the fair presentation of the Company’s financial position and its results of operations in accordance with U.S. GAAP (consisting of normal recurring adjustments) have been included in the accompanying unaudited condensed consolidated financial statements.

Certain comparative amounts have been reclassified to conform with the current period presentation. The common stock of Snail Games USA Inc., as of September 30, 2022, has been reclassified as Class A common stock as the stockholders of the Snail Games USA Inc. common stock had their shares converted to Class A shares of Snail Inc. during the reorganization transaction that occurred amongst a common controlled group. For more information regarding the reorganization transaction see Note 20 - *Equity*.

During the nine months ended September 30, 2023, certain comparative amounts have been reclassified due to immaterial errors identified by the Company in its presentation of certain server hosting costs. During the three months ended June 30, 2023, the Company began reporting all of its server hosting costs as costs of revenue whereas they were previously reported within both cost of sales and general and administrative expenses. The Company has assessed the materiality of these errors on its prior annual and interim financial statements, assessing materiality both quantitatively and qualitatively, in accordance with the SEC's Staff Accounting Bulletin ("SAB") No. 99 and SAB No. 108 and concluded that the errors were not material to those consolidated financial statements. However, to correctly present cost of revenues, gross profit and general and administrative expenses, the reclassifications have been made throughout this report and accompanying note disclosures. The effects on the related captions in the condensed consolidated statements of operations and comprehensive income (loss) for all previously reported periods were as follows:

	For the three months ended September 30, 2022		
	As reported	Adjustment	As adjusted
Cost of revenues	$ 11,468,961	$ 955,106	$ 12,424,067
Gross profit	4,145,210	(955,106)	3,190,104
General and administrative	5,434,013	(955,106)	4,478,907

	For the nine months ended September 30, 2022		
	As reported	Adjustment	As adjusted
Cost of revenues	$ 37,744,863	$ 2,652,533	$ 40,397,396
Gross profit	21,387,421	(2,652,533)	18,734,888
General and administrative	16,177,534	(2,652,533)	13,525,001

	For the twelve months ended December 31, 2022		
	As reported	Adjustment	As adjusted
Cost of revenues	$ 49,507,888	$ 3,613,788	$ 53,121,676
Gross profit	24,936,253	(3,613,788)	21,322,465
General and administrative	22,327,746	(3,613,788)	18,713,958

	For the three months ended March 31, 2023		
	As reported	Adjustment	As adjusted
Cost of revenues	$ 9,816,397	$ 1,044,540	$ 10,860,937
Gross profit	3,642,091	(1,044,540)	2,597,551
General and administrative	5,570,291	(1,044,540)	4,525,751

The condensed consolidated financial statements include the accounts of Snail, Inc. and the following subsidiaries:

Subsidiary Name	Equity % Owned
Snail Games USA Inc.	100%
Snail Innovation Institute	70%
Frostkeep Studios, Inc.	100%
Eminence Corp	100%
Wandering Wizard, LLC	100%
Donkey Crew, LLC	99%
Interactive Films, LLC	100%
Project AWK Productions, LLC	100%
BTBX.IO, LLC	70%

All intercompany accounts, transactions, and profits have been eliminated upon consolidation.

Use of Estimates

The preparation of condensed consolidated financial statements in conformity with U.S. GAAP requires the Company to make estimates and assumptions that affect the amounts reported in our condensed consolidated financial statements and the accompanying notes. Such estimates include revenue recognition, provisions for credit losses, deferred income tax assets and associated valuation allowances, deferred revenue, income taxes, valuation of intangibles, including those with related parties, impairment of intangible assets, stock-based compensation and fair value of warrants. These estimates generally involve complex issues and require management to make judgments, involve analysis of historical and future trends that can require extended periods of time to resolve, and are subject to change from period to period. In all cases, actual results could differ materially from estimates.

Segment Reporting

The Company has one operating and reportable segment. Our operations involve similar products and customers worldwide. Revenue earned is primarily derived from the sale of software titles, which are developed internally or licensed from related parties. Financial information about our segment and geographic regions is included in Note 3 – *Revenue from Contracts with Customers*.

Liquidity and Going Concern

The Company incurred a net loss of $11.5 million and negative cash flows of $13.2 million for the nine months ended September 30, 2023. As of September 30, 2023, the Company had cash and cash equivalents of $4.9 million, restricted cash and cash equivalents of $1.1 million and current debt of $13.7 million.

As of September 30, 2023, the Company's 2021 Revolving Loan (as defined below) and 2022 Short Term Note (as defined below) of $6.0 million and $2.1 million are due in December 2023 and January 2024, respectively. Management intends to renegotiate with the lender to extend the maturity date of the 2021 Revolving Loan. However, there is no guarantee that management will be able to renegotiate the terms of the 2021 Revolving Loan with its lender on terms acceptable to the Company or at all. Additionally, management plans to repay the outstanding amounts under the 2022 Short Term Note pursuant to the terms of the 2022 Short Term Note agreement and to secure an additional debt arrangement. Currently, management expects that the Company will not be in compliance with its quarterly debt covenant for the three months ending December 31, 2023. Management is working with the lender to resolve the expected non-compliance with the debt covenant.

The Company may need to raise additional capital. The need for additional capital depends on many factors, including, among other things, whether the Company can successfully renegotiate the terms of its debt arrangements, the rate at which the Company's business grows, demands for working capital, revenue generated from existing DLCs and game titles and launches of new DLCs and new game titles, and any acquisitions that the Company may pursue. From time to time, the Company could be required, or may otherwise attempt, to seek additional sources of capital, including, but not limited to, equity and/or debt financings. The Company cannot provide assurance that it will be able to successfully access any such equity or debt financings or that the required equity or debt financings would be available on terms acceptable to the Company, if at all, or that any such financings would not be dilutive to its stockholders.

The Company's recent net loss, level of cash used in operations, debt obligations coming due in less than 12 months, potential need for additional capital, and the uncertainties surrounding its ability to raise additional capital and renegotiate its debt arrangements raise substantial doubt about its ability to continue as a going concern. The unaudited condensed consolidated financial statements do not include any adjustments that might be necessary if the Company is unable to continue as a going concern.

In order for the Company to continue operations beyond the next 12 months and be able to discharge its liabilities and commitments in the normal course of business, the Company must re-establish profitable operations in order to generate cash from operations by increasing revenue or controlling or potentially reducing expenses, renegotiate the terms of its debt arrangements, or obtain additional funds when needed.

NOTE 2 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Revenue Recognition

The Company's revenue includes the publishing of software games delivered digitally and through physical discs (e.g., packaged goods). The Company's digital games may include additional downloadable content that are new feature releases to digital full-game downloads. Revenue also includes sales of mobile in-app purchases that require the Company's hosting support in order to utilize the game or related content. Such games include virtual goods that can be purchased by the end users, as desired. When control of the promised products and services is transferred to the customers, the Company recognizes revenue in the amount that reflects the consideration it expects to receive in exchange for these products and services. Revenue from delivery of products is recognized at a point in time when the end consumers download the games and the control of the license is transferred to them.

The Company recognizes revenue using the following five steps as provided by Accounting Standards Codification ("ASC") Topic 606 *Revenue from Contracts with Customers*: 1) identify the contract(s) with the customer; 2) identify the performance obligations in each contract; 3) determine the transaction price; 4) allocate the transaction price to the performance obligations; and 5) recognize revenue when, or as, the entity satisfies a performance obligation. The Company's terms and conditions vary by customers and typically provide net 30 to 75 days terms.

Principal vs. Agent Consideration

The Company offers certain software products via third-party digital storefronts, such as Microsoft's Xbox Live, Sony's PlayStation Network, Valve's Steam, Epic Games Store, My Nintendo Store, Apple's App Store, the Google Play Store, and retail distributors. For sales of our software products via third-party digital storefronts and retail distributor, the Company determines whether or not it is acting as the principal in the sale to the end user, which the Company considers in determining if revenue should be reported based on the gross transaction price to the end user or based on the transaction price net of fees retained by the third-party digital storefront. An entity is the principal if it controls a good or service before it is transferred to the customer. Key indicators that the Company uses in evaluating these sales transactions include, but are not limited to, the following:

- The underlying contract terms and conditions between the various parties to the transaction;
- Which party is primarily responsible for fulfilling the promise to provide the specified good or service; and
- Which party has discretion in establishing the price for the specified good or service.

Based on our evaluation of the above indicators, for sales arrangements via Microsoft's Xbox Live, Sony's PlayStation Network, Valve's Steam, Epic Games Store, My Nintendo Store, and our retail distributor, the digital platforms and distributors have discretion in establishing the price for the specified good or service and the Company has determined it is the agent in the sales transaction to the end user and therefore the Company reports revenue on a net basis based on the consideration received from the digital storefront. For sales arrangements via Apple's App Store and the Google Play Store, the Company has discretion in establishing the price for the specified good or service and it has determined that the Company is the principal to the end user and thus reports revenue on a gross basis and mobile platform fees charged by these digital storefronts are expensed as incurred and reported within cost of revenues.

Contract Balance

The Company records deferred revenue when cash payments are received or due in advance of its performance, even if amounts are refundable.

Deferred revenue is comprised of the transaction price allocable to the Company's performance obligation on technical support and the sale of virtual goods available for in-app purchases, and payments received from customers prior to launching the games on the platforms. The Company categorizes the virtual goods as either "consumable" or "durable." Consumable virtual goods represent goods that can be consumed by a specific player action; accordingly, the Company recognizes revenues from the sale of consumable virtual goods as the goods are consumed and the performance obligation is satisfied. Durable virtual goods represent goods that are accessible to the players over an extended period of time; accordingly, the Company recognizes revenues from the sale of durable virtual goods ratably over the period of time the goods are available to the player and the performance obligation is satisfied, which is generally the estimated service period, 30 to 100 days from date of activation.

The Company has a long-term title license agreement with a platform. The agreement was initially made between the parties in November 2018 and valid through December 31, 2021. The agreement was subsequently amended in June 2020 to extend the *ARK 1* availability on the platform perpetually, effective January 1, 2022 and to put *ARK 2* on the platform for three years upon release. The Company recognized $2.5 million in revenue related to *ARK 1's* perpetual license during the nine months ended September 30, 2022 and deferred $2.3 million related to *ARK 2* that is included in the long-term portion of deferred revenue.

In November 2021, the Company entered an agreement with a platform to make *ARK 1* available on a platform for a period of 5 weeks in exchange for $3.5 million. The platform launched the 5-week program on March 1, 2022 and the Company recognized the full amount of revenue from this contract during the nine months ended September 30, 2022.

The Company entered into a non-exclusive license agreement with a platform in February 2020 to make *ARK 1* available on the platform, exclusive of all available DLC, for a period of 2 weeks in exchange for $8.0 million. During the 2 weeks the platform offered digital rights to *ARK 1* to its end users for free. The platform launched the first free week in June of 2020 and the Company recognized $4.0 million of the advanced payment as revenue during the year ended December 31, 2020. In September 2022, the platform launched the second free week and the Company recognized the remaining $4.0 million of revenue during the nine months ended September 30, 2022.

In July 2023, the Company entered into a distribution agreement with its retail distribution partner for the distribution of *ARK: Survival Ascended* and *ARK II*. The initial term is two years and will renew each subsequent year unless it is cancelled. Upon executing the distribution agreement, the Company received $0.5 million and $1.3 million as prepaid royalties that are reported as current and long-term deferred revenue until the release of *ARK: Survival Ascended* and *ARK II,* respectively.

Estimated Service Period

For certain performance obligations satisfied over time, the Company has determined that the estimated service period is the time period in which an average user plays our software products ("user life") which most faithfully depicts the timing of satisfying our performance obligation.

Shipping, Handling and Value Added Taxes ("VAT")

The distributor, as the principal, is responsible for the shipping of the game discs to retail stores and incurring the shipping and VAT costs. The Company is paid the net sales amount after deducting shipping costs, VAT and other related expenses by the distributor.

Cost of Revenues

Cost of revenues include software license royalty fees, merchant fees, server and database center costs, game localization costs, game licenses, engine fees and amortization costs. Cost of revenues for the three and nine months ended September 30, 2023 and 2022 were comprised of the following:

	Three months ended September 30,		Nine months ended September 30,	
	2023	2022	2023	2022
Software license royalties – related parties	$ 2,108,764	$ 3,428,231	$ 6,878,563	$ 13,314,258
Software license royalties	372,666	47,020	979,505	47,020
License and amortization – related parties	4,695,652	6,350,979	14,753,623	19,052,938
License and amortization	201	224	603	250,672
Game localization	-	840	-	840
Merchant fees	215,635	602,814	1,023,911	1,856,371
Engine fees	292,127	359,263	1,009,252	1,575,942
Internet, server and data center	1,777,894	1,490,505	4,929,631	4,155,164
Costs related to advertising revenue	147	144,191	84,700	144,191
Total:	$ 9,463,086	$ 12,424,067	$ 29,659,788	$ 40,397,396

General and Administrative Costs

General and administrative costs include rent, salaries, stock-based compensation, legal and professional expenses, internet and server, contractor costs, insurance expense, licenses and permits, other taxes and travel expenses. These costs are expensed as they are incurred. For the three months ended September 30, 2023 and 2022, general and administrative expenses totaled $3,452,141 and $4,478,907, respectively. For the nine months ended September 30, 2023 and 2022, general and administrative expenses were $11,915,126 and $13,525,001, respectively. Stock-based compensation of $220,231 and $589,532 was incurred during the three and nine months ended September 30, 2023, respectively; no such compensation was incurred in the three and nine months ended September 30, 2022.

Advertising and Marketing Costs

The Company expenses advertising and marketing costs as incurred. For the three months ended September 30, 2023 and 2022, advertising and marketing expenses totaled $215,477 and $198,417, respectively. For the nine months ended September 30, 2023 and 2022, advertising and marketing expenses were $488,318 and $569,127, respectively.

Research and Development

Research and development costs are expensed as incurred. Research and development costs include travel, payroll, and other general expenses specific to research and development activities. Research and development costs for the three months ended September 30, 2023 and 2022 were $1,317,400 and $116,624, respectively. For the nine months ended September 30, 2023 and 2022, research and development costs were $3,892,039 and $479,630, respectively. Stock-based compensation of $16,411 and $32,475 was incurred during the three and nine months ended September 30, 2023, respectively; no stock-based compensation was incurred in the three and nine months ended September 30, 2022.

Non-controlling Interests

Non-controlling interests on the condensed consolidated balance sheets and condensed consolidated statements of operations and comprehensive income (loss) include the equity allocated to non-controlling interest holders. As of September 30, 2023 and December 31, 2022, there were non-controlling interests with the following subsidiaries:

Subsidiary Name	Equity % Owned	Non-Controlling %
Snail Innovative Institute	70%	30%
BTBX.IO, LLC	70%	30%
Donkey Crew, LLC	99%	1%

Cash and Restricted Cash and Cash Equivalents

Cash is available for use in current operations or other activities such as capital expenditures and business combinations. Restricted cash and cash equivalents are time deposits, that are currently provided as a standby letter of credit to landlords.

Restricted Escrow Deposits

Our restricted deposits held in escrow are to provide a source of funding for certain indemnification obligations of Snail, Inc. to our underwriters in connection with our IPO. The deposit and related interest earnings are restricted for one year from the IPO date.

Accounts Receivable

The Company generally records a receivable related to revenue when it has an unconditional right to invoice and receive payment. Accounts receivable are carried at original invoice amount less an allowance made for credit losses. The Company uses a combination of quantitative and qualitative factors to estimate the allowance, including an analysis of the customers' creditworthiness, historical experience, age of current accounts receivable balances, changes in financial condition or payment terms of our customers, and reasonable forecasts of the collectability of the accounts receivable. The Company evaluates the allowance for credit losses on a periodic basis and adjusts it as necessary based on the risk factors mentioned above. Any increase in the provision for credit losses is recorded as a charge to general and administrative expense in the current period. Any amounts deemed uncollectible are written off against the allowance for credit losses. Management judgment is required to estimate our allowance for credit losses in any accounting period. The amount and timing of our credit losses and cash collection could change significantly because of a change in any of the risk factors mentioned above.

Fair Value Measurements

The Company follows Financial Accounting Standards Board ("FASB") ASC Topic 820, Fair Value Measurements. ASC 820 defines fair value, establishes a framework for measuring fair value under generally accepted accounting principles and enhances disclosures about fair value measurements. Fair value is defined under ASC 820 as the exchange price that would be received for an asset or paid to transfer a liability in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants.

ASC 820 establishes a hierarchy of valuation inputs based on the extent to which the inputs are observable in the marketplace. Observable inputs reflect market data obtained from sources independent of the reporting entity and unobservable inputs reflect the entity's own assumptions about how market participants would value an asset or liability based on the best information available. Valuation techniques used to measure fair value under ASC 820 must maximize the use of observable inputs and minimize the use of unobservable inputs. The standard describes a fair value hierarchy based on three levels of inputs, of which the first two are considered observable and the last unobservable, that may be used to measure fair value.

The following describes the hierarchy of inputs used to measure fair value and the primary valuation methodologies used by the Company for financial instruments measured at fair value.

The three levels of inputs are as follows:

- **Level 1**: Quoted prices in active markets for identical assets or liabilities that the Company has an ability to access as of the measurement date.
- **Level 2**: Inputs that are observable, either directly or indirectly, such as quoted prices for similar assets or liabilities, quoted prices in markets that are not active, or other inputs that are observable or can be corroborated by observable market data for substantially the same term of the assets or liabilities.
- **Level 3**: Unobservable inputs that are supported by little or no market activity and that are significant to the fair value of the assets or liabilities.

A financial instrument's categorization within the valuation hierarchy is based upon the lowest level of input that is significant to the fair value measurement. Our financial instruments include cash and cash equivalents, restricted cash and cash equivalents, short-term financial instruments, derivative instruments, short-term loans, accounts receivable and accounts payable. The carrying values of these financial instruments approximate their fair value due to their short maturities. The carrying amount of our debt approximates fair value because the interest rates on these instruments approximate the interest rate on debt with similar terms available to us for a similar duration except for the Company's promissory note which has a fixed rate for 5 years, then a floating rate that approximates the Wall Street Journal Prime Rate plus 0.50%. The Company considers the carrying amount of the loan to approximate fair value as the discounted cost in comparison to market rates would not be materially different than the cost to acquire a loan with similar terms. The Company's warrant liability and derivative instruments are valued at fair value, using level 3 inputs and the Monte-Carlo pricing model. The Company does not have any other assets or liabilities measured at fair value on a recurring or non-recurring basis as of September 30, 2023 and December 31, 2022.

Amortizable Intangibles and Other Long-lived Assets

The Company's long-lived assets and other assets consisting of property, plant and equipment and purchased intangible assets, are reviewed for impairment in accordance with the guidance of FASB Topic ASC 360, Property, Plant, and Equipment. Intangible assets subject to amortization are carried at cost less accumulated amortization and amortized over the estimated useful life in proportion to the economic benefits received. The Company evaluates the recoverability of definite-lived intangible assets and other long-lived assets in accordance with ASC Subtopic 360-10, which generally requires the assessment of these assets for recoverability when events or circumstances indicate a potential impairment exists. The Company considers certain events and circumstances in determining whether the carrying value of identifiable intangible assets and other long-lived assets, other than indefinite lived intangible assets, may not be recoverable including, but not limited to: significant changes in performance relative to expected operating results; significant changes in the use of the assets; significant negative industry or economic trends; and changes in the Company's business strategy. If the Company determines that the carrying value may not be recoverable, the Company estimates the undiscounted cash flows to be generated from the use and ultimate disposition of the asset group to determine whether an impairment exists. If an impairment is indicated based on a comparison of the asset groups' carrying values and the undiscounted cash flows, the impairment loss is measured as the amount by which the carrying amount of the asset group exceeds its fair value. Fair value is determined through various valuation techniques including discounted cash flow models, quoted market values and third-party independent appraisals, as considered necessary. There can be no assurance, however, that market conditions will not change or demand for the Company's products under development will continue. Either of these could result in future impairment of long-lived assets. Actual useful lives and cash flows could be different from those estimated by management which could have a material effect on our consolidated reporting results and financial positions.

Income Taxes

Income taxes are provided for the tax effects of transactions reported in the condensed consolidated financial statements and consisted of taxes currently due and deferred taxes. Deferred taxes are recognized for the differences between the basis of assets and liabilities for financial statement and income tax purposes.

The Company follows FASB Topic ASC 740, Income Taxes, which requires the recognition of deferred tax assets and liabilities for the expected future tax consequences of events that have been included in the condensed consolidated financial statements or tax returns.

Under this method, deferred income taxes are recognized for the tax consequences in future years of differences between the tax bases of assets and liabilities and their financial reporting amounts at each period end based on enacted tax laws and statutory tax rates, applicable to the periods in which the differences are expected to affect taxable income. Valuation allowances are established, when necessary, to reduce deferred tax assets to the amount expected to be realized.

FASB ASC 740-10-25 provides criteria for the recognition, measurement, presentation, and disclosure of uncertain tax positions. The Company must recognize the tax benefit from an uncertain tax position only if it is more likely than not that the tax position will be sustained on examination by the taxing authorities, based on the technical merits of the position. The tax benefits recognized in the condensed consolidated financial statements from such a position are measured based on the largest benefit that has a greater than 50% likelihood of being realized upon ultimate resolution. The Company recognizes liabilities for uncertain tax positions pursuant to FASB ASC 740-10-25. Such amounts are included in the current and long-term accrued expenses on the accompanying condensed consolidated balance sheets in the amount of $384,150 and $457,024 as of September 30, 2023 and December 31, 2022, respectively. The Company accrues and recognizes interest and penalties related to unrecognized tax benefits in operating expenses.

Concentration of Credit Risk and Significant Customers

The Company maintains cash balances at several major financial institutions. While the Company attempts to limit credit exposure with any single institution, balances often exceed insurable amounts. As of September 30, 2023 and December 31, 2022, the Company had deposits of $5,089,118 and $17,929,308, respectively, that were not insured by the Federal Deposit Insurance Corporation and are included in the cash and cash equivalents, restricted escrow deposit and restricted cash and cash equivalents, in the accompanying condensed consolidated balance sheets.

The Company extends credit to various digital resellers and partners. Collection of trade receivables may be affected by changes in economic or other industry conditions and may, accordingly, impact our overall credit risk. The Company performs ongoing credit evaluations of customers and maintains reserves for potentially uncollectible accounts. As of September 30, 2023 and December 31, 2022, the Company had two customers who accounted for approximately 57% and 57% of consolidated gross receivables, respectively. Among the two customers as of September 30, 2023 and December 31, 2022, each customer accounted for 35% and 22% as of September 30, 2023, and 29% and 28% as of December 31, 2022 of the consolidated gross receivables outstanding. During the three months ended September 30, 2023 and 2022, approximately 60% and 43%, respectively, of net revenue was derived from these customers. During the nine months ended September 30, 2023 and 2022, approximately 52% and 56%, respectively, of net revenue was derived from these customers. The loss of these customers or declines in the forecasts of their accounts receivable collectability would have a significant impact on the Company’s financial performance.

As of September 30, 2023 and December 31, 2022, the Company had three vendors who accounted for approximately 75% and two vendors who accounted for approximately 55% of consolidated gross payables, respectively. Among the three vendors as of September 30, 2023 and December 31, 2022, each vendor accounted for 51%, 13% and 11% as of September 30, 2023, and 43% and 12% as of December 31, 2022 of our consolidated gross payables outstanding. The loss of these vendors could have a significant impact on the Company’s financial performance and regulatory compliance.

The Company had one vendor, SDE Inc. (“SDE”), a related party, that accounted for 45% and 43% of the Company’s combined cost of revenues and operating expenses during the three months ended September 30, 2023 and 2022, respectively. During the nine months ended September 30, 2023 and 2022, SDE accounted for 49% and 47% of the Company’s combined cost of revenues and operating expenses, respectively. Amounts payable to SDE are netted with receivables from them and presented as accounts receivable - related party in the condensed consolidated balance sheets as of September 30, 2023 and December 31, 2022. The loss of SDE as a vendor would significantly and adversely affect the Company’s core business.

Recently Issued Accounting Pronouncements

In June 2016, the FASB issued ASU 2016-13, *Financial Instruments – Credit Losses*, which replaces the incurred loss impairment methodology in current US GAAP with a methodology that requires the reflection of expected credit losses and also requires consideration of a broader range of reasonable and supportable information to determine credit loss estimates. It also eliminates the concept of other-than-temporary impairment and requires credit losses related to available-for-sale debt securities to be recorded through an allowance for credit losses rather than as a reduction in the amortized cost basis of the securities. For most financial instruments, the standard requires the use of a forward-looking expected loss model rather than the incurred loss model for recognizing credit losses, which generally results in the earlier recognition of credit losses on financial instruments. The Company adopted ASC 2016-13 on January 1, 2023. The impact of adopting the new standard did not have a material impact on the Company’s condensed consolidated financial statements.

In August 2020, the FASB issued ASU 2020-06, *Contracts in Entity’s Own Equity (Subtopic 815-40) – Accounting for Convertible Instruments and Contracts in an Entity’s Own Equity*, to simplify the application of GAAP for certain financial instruments with characteristics of liabilities and equity. The FASB decided to eliminate certain accounting models to simplify the accounting for convertible instruments, reduce complexity for preparers and practitioners, and improve the decision usefulness and relevance of the information provided to financial statement users. The GASB also amended the guidance for derivatives scope exception for contracts in an entity’s own equity to reduce form-over-substance-based accounting conclusion and amended the related earnings per share guidance. The Company has elected to delay implementation of this standard until January 1, 2024 based on its emerging growth status. The impact of adopting the new accounting standard is being evaluated.

Employee Savings Plans

The Company maintains a 401(k) for its United States based employees. The plan is offered to all eligible employees to make voluntary contributions. Employer contributions to the plan are reported under general and administrative costs in the amounts of $26,003 and $17,587 for the three months ended September 30, 2023 and 2022, and $77,391 and $44,683 for the nine months ended September 30, 2023 and 2022, respectively.

Stock-Based Compensation

The Company recognizes compensation cost for stock-based awards to employees based on the awards' estimated grant-date fair value using a straight-line approach over the service period for which such awards are expected to vest. The Company accounts for forfeitures as they occur. The Company issued restricted stock units ("Restricted Stock Units" or "restricted stock units") during the year ended December 31, 2022. The fair value of Restricted Stock Units is determined based on the quoted market price of our common stock on the date of grant.

The Company's 2022 Omnibus Incentive Plan (the "2022 Plan") became effective upon the consummation of the IPO. The 2022 Omnibus Incentive allows us to grant options to purchase our common stock and to grant stock options, stock appreciation rights, restricted stock, restricted stock units and performance awards and other cash-based awards and other stock-based awards to our employees, officers, and directors, up to a maximum of 5,718,000 shares. Stock options may be granted to employees and officers and non-qualified options may be granted to employees, officers, and directors, at not less than the fair market value on the date of grant. The number of shares of common stock available for issuance under the 2022 Plan will be increased annually on the first day of each fiscal year during the term of the 2022 Plan, beginning with the 2023 fiscal year, by an amount equal to the lesser of (a) 5,718,000 shares, (b) 1% of the shares of the Company's Class B common stock outstanding (on a fully diluted basis) on the final day of the immediately preceding calendar year or (c) such smaller number of shares as determined by the Company's board of directors. As of September 30, 2023, there were 4,523,237 shares reserved for issuance under the 2022 Plan.

Restricted Stock Units

The Company granted restricted stock units under our 2022 Omnibus Incentive Plan to employees and directors. Restricted stock units are unfunded, unsecured rights to receive common stock upon the satisfaction of certain vesting criteria. Upon vesting, a number of shares of common stock equivalent to the number of restricted stock units is typically issued net of required tax withholding requirements, if any. Restricted stock units are subject to forfeiture and transfer restrictions. For the nine months ended September 30, 2023 and 2022, stock-based compensations expenses amounted to $622,007 and $0, respectively. For the three months ended September 30, 2023 and 2022, stock-based compensation expenses amounts to $236,642 and $0, respectively.

Warrants

In connection with the IPO, offering costs related to legal, accounting, and underwriting costs were net with the proceeds and recorded as a reduction in additional paid in capital, in the stockholders' equity section of the condensed consolidated balance sheets. The Company also issued Underwriters Warrants (as defined below) for services provided during the IPO to purchase 120,000 shares of Class A common stock. The Underwriters Warrants are accounted for as equity instruments and are included in the stockholders' equity section of the condensed consolidated balance sheets. The fair value of the Underwriters Warrants has been estimated using the Black-Scholes option pricing model.

On August 24, 2023, the Company issued warrants in connection with its convertible debt for the purchase of 714,285 shares (the "convertible note warrants"). The convertible note warrants are accounted for as a liability and are included in the accrued expenses and other liabilities in the condensed consolidated balance sheets. The fair value of the convertible note warrants has been estimated using the Monte-Carlo pricing model. For more information regarding convertible notes and related warrants see Note 20 - *Equity*.

On August 24, 2023, the Company issued a warrant to an investor (the "equity line warrant") for the purchase of 367,647 shares of Class A common stock in consideration of the investor's commitment to purchase Class A common stock. The fair value of the equity line warrant is recorded as a warrant liability and is included in the accrued expenses and other liabilities in the Company's condensed consolidated balance sheet. The fair value of the equity line warrants has been estimated using the Monte-Carlo pricing model. For more information regarding equity line and related warrants see Note 20 – *Equity.*

Share Repurchase Program

On November 10, 2022, the Company's board of directors authorized a share repurchase program under which the Company may repurchase up to $5 million of outstanding shares of Class A common stock of the Company, subject to ongoing compliance with the Nasdaq listing rules. The program does not have a fixed expiration date. Repurchased shares are accounted for at cost and reported as a reduction of equity in the condensed consolidated balance sheets under treasury stock. No treasury stock was sold during the three and nine months ended September 30, 2023. As of September 30, 2023, 1,350,275 shares of Class A common stock were repurchased pursuant to the Share Repurchase Program for an aggregate purchase price of approximately $3.7 million. The average price paid per share was $2.72 and approximately $1.3 million aggregate amount of shares of Class A common stock remain available for repurchase under the Share Repurchase Program.

Earnings (Loss) Per Share

Earnings (loss) per share ("EPS") is calculated by dividing the net income (loss) that is applicable to the common stockholders for the period by the weighted average number of shares of common stock during that period. The diluted EPS for the period is calculated by dividing the net income (loss) applicable to common stockholders for the period by the weighted average number of shares of common stock and common stock equivalents outstanding during the period. The Company's common stock equivalents are measured using the treasury stock method and represent unvested restricted stock units and warrants. The Company issues two classes of common stock with differing voting rights, and as such, reports EPS using the dual class method. For comparative purposes, the Company has presented EPS for the three and nine months ended September 30, 2022 using the number of shares exchanged in the reorganization of the Company as the denominator. For more information see Note 19 – *Earnings (Loss) Per Share.*

Dividend Restrictions

Our ability to pay cash dividends is currently restricted by the terms of our credit facilities.

NOTE 3 – REVENUE FROM CONTRACTS WITH CUSTOMERS

Disaggregation of revenue

Geography

The Company attributes net revenue to geographic regions based on customer location. Net revenue by geographic region for the three and nine months ended September 30, 2023 and 2022 were as follows:

	Three months ended September 30,		Nine months ended September 30,	
	2023	**2022**	**2023**	**2022**
United States	$ 8,615,877	$ 14,767,182	$ 28,757,507	$ 55,025,810
International	365,258	846,989	3,574,369	4,106,474
Total revenue from contracts with customers:	$ 8,981,135	$ 15,614,171	$ 32,331,876	$ 59,132,284

Platform

Net revenue by platform for the three and nine months ended September 30, 2023 and 2022 were as follows:

	Three months ended September 30,		Nine months ended September 30,	
	2023	**2022**	**2023**	**2022**
Console	$ 3,862,923	$ 3,750,029	$ 13,262,988	$ 27,157,380
PC	3,717,627	9,315,721	12,097,176	22,943,193
Mobile	1,400,585	2,161,624	4,626,820	7,346,822
Other	-	386,797	2,344,892	1,684,889
Total revenue from contracts with customers:	$ 8,981,135	$ 15,614,171	$ 32,331,876	$ 59,132,284

Distribution channel

Our products are delivered through digital online services (digital download, online platforms, and cloud streaming), mobile, and retail distribution and other. Net revenue by distribution channel for the three and nine months ended September 30, 2023 and 2022 was as follows:

	Three months ended September 30,		Nine months ended September 30,	
	2023	**2022**	**2023**	**2022**
Digital	$ 7,580,550	$ 13,065,750	$ 25,360,164	$ 50,100,573
Mobile	1,400,585	2,161,624	4,626,820	7,346,822
Physical retail and other	-	386,797	2,344,892	1,684,889
Total revenue from contracts with customers:	$ 8,981,135	$ 15,614,171	$ 32,331,876	$ 59,132,284

Deferred Revenue

The Company records deferred revenue when payments are due or received in advance of the fulfillment of our associated performance obligations; reductions to deferred revenue balance were primarily due to the recognition of revenue upon fulfillment of our performance obligations, which were in the ordinary course of business. As of September 30, 2023, the balance of deferred revenue was $11,528,759, of which $5.7 million is due to non-refundable payments. The Company is expecting to recognize $2.1 million of the $5.7 million in the next 12 months through the platform releases of certain DLCs and *ARK: Survival Ascended,* and the remaining $3.6 million in the next 24 months through the release of *ARK 2*. The Company expects to recognize $5.8 million of current deferred revenues and $5.7 million of long term deferred revenue as revenue over the next 12 to 60 months. The revenue will be recognized primarily on a straight-line basis, based on our estimates of technical support obligations, the usage of consumable virtual goods and upon the activation of durable virtual goods. Activities in the Company's deferred revenue as of September 30, 2023 and December 31, 2022 were as follows:

	2023	2022
Deferred revenue, beginning balance in advance of revenue recognition billing	$ 9,551,446	$ 20,280,934
Revenue recognized	(5,223,331)	(18,832,396)
Revenue deferred	7,200,644	8,102,908
Deferred revenue, ending balance	11,528,759	9,551,446
Less: current portion	(5,848,320)	(4,335,404)
Deferred revenue, long term	$ 5,680,439	$ 5,216,042

NOTE 4 – CASH AND CASH EQUIVALENTS, AND RESTRICTED CASH AND CASH EQUIVALENTS

Cash equivalents are valued using quoted market prices or other readily available market information. The Company has restricted cash and cash equivalents of $1,115,084 and $6,374,368 as of September 30, 2023 and December 31, 2022, respectively. The amounts of restricted cash and cash equivalents held as of September 30, 2023, are to secure the standby letter of credit with landlords and the amounts of restricted cash and cash equivalents as of December 31, 2022, are held as security for the debt with a financial institution (see Note 15 — *Revolving Loan, Short Term Note, and Long-Term Debt*) and to secure standby letters of credit with landlords. On June 21, 2023, the Company amended its revolving loan and $5,273,391 of restricted cash and cash equivalents was released. The following table summarizes the components of the Company's cash and cash equivalents, and restricted cash and cash equivalents as of September 30, 2023 and September 30, 2022:

	2023	2022
Cash and cash equivalents	$ 4,948,832	$ 9,044,666
Restricted cash and cash equivalents	1,115,084	6,368,016
Cash and cash equivalents, and restricted cash and cash equivalents	$ 6,063,916	$ 15,412,682

NOTE 5 – ACCOUNTS RECEIVABLE – RELATED PARTY

Accounts receivable — related party represents receivables in the ordinary course of business attributable to certain mobile game revenues that, for administrative reasons, are collected by a related party and that the related party has not remitted back to the Company. The accounts receivable is offset by payables due to the related party for royalties, internet data center ("IDC") and marketing costs. Accounts receivable — related party is non-interest bearing and due on demand. The related party is 100% owned and controlled by the wife of the Founder, Chief Strategy Officer and Chairman of the Company. As of September 30, 2023 and December 31, 2022, the outstanding balance of net accounts receivable from related party was as follows:

	2023	2022
Accounts receivable – related party	$ 13,578,520	$ 13,519,409
Less: Accounts payable – related party	(1,979,291)	(2,175,225)
Accounts receivable – related party, net	$ 11,599,229	$ 11,344,184

NOTE 6 – DUE FROM SHAREHOLDER

Other receivables from related party consisted of monies that the Company loaned to the Company's Founder, Chief Strategy Officer and Chairman, who is also the majority shareholder of Suzhou Snail. The loan bore 2.0% per annum interest. On April 26, 2022, the Company, with approval from its Board of Directors and in accordance with applicable laws and regulations, assigned the other receivables – related party (the "Shi Loan") of $94,934,400 outstanding including interest, to Suzhou Snail, which assumed the loan as creditor. Simultaneously, the Company declared and paid Suzhou Snail an in-kind dividend with an aggregate amount equal to $94,934,400 on April 26, 2022; see Note 7 – *Dividend Distribution*. As of December 31, 2022, the other receivable was $0 and no longer reflected on the Company's consolidated balance sheets. The loan did not accrue interest during the three months ended September 30, 2023 and 2022, respectively. During the nine months ended September 30, 2023 and 2022, the loan accrued interest of $0 and $580,878, respectively. The earned interest is reported in interest income – related parties in the Company's condensed consolidated statements of operations and comprehensive income (loss).

NOTE 7 – DIVIDEND DISTRIBUTION

On April 26, 2022, the Company declared an in-kind dividend of $94,934,400 for the assignment of the Shi Loan and a cash dividend of $8,200,000 to pay the related withholding taxes; see Note 6 – *Due from Shareholder.* There were no such distributions during the nine months ended September 30, 2023. In April 2023, the Company filed its annual withholding tax return Form 1042 and recognized a refund receivable related to the withholding taxes paid in the amount of $1,886,600. The refund was received in August 2023 and is reported in additional paid-in capital in the accompanying condensed consolidated balance sheets as of September 30, 2023 and the condensed consolidated statements of equity for the nine months ended September 30, 2023.

NOTE 8 – PREPAID EXPENSES - RELATED PARTY

On March 10, 2023, the Company amended its exclusive software license agreement with SDE relating to the *ARK* franchise. For DLC's, the Company plans to release during the term of the agreement, the Company will now have the option to pay the $5.0 million DLC payment in whole or in part, when paid in advance; or in full, upon the DLC release. No payment for any DLC under this agreement will exceed $5.0 million.

During the nine months ended September 30, 2023, the Company prepaid $2,500,000 for exclusive license rights for an *ARK 1* DLC to SDE. During the year ended December 31, 2022, the Company prepaid $5,000,000 for exclusive license rights to *ARK 2* to SDE. Prepaid expenses — related party consisted of the following as of September 30, 2023 and December 31, 2022:

	2023	2022
Prepaid royalties	$ 582,500	$ 582,500
Prepaid licenses	7,500,000	5,000,000
Prepaid expenses - related party, ending balance	8,082,500	5,582,500
Less: short-term portion	(2,500,000)	—
Total prepaid expenses - related party, long-term	$ 5,582,500	$ 5,582,500

NOTE 9 – PREPAID EXPENSES AND OTHER CURRENT ASSETS

The Company's other receivables consist of litigation receivables, which were received in October 2023. Prepaid expenses and other current assets consisted of the following as of September 30, 2023, and December 31, 2022:

	2023	2022
Prepaid income taxes	$ 9,655,160	$ 9,822,603
Other receivable	1,500,000	—
Deferred offering costs	105,411	—
Other prepaids	106,236	80,271
Other current assets	115,496	662,267
Total prepaid expenses and other current assets	$ 11,482,303	$ 10,565,141

NOTE 10 – PROPERTY, PLANT AND EQUIPMENT, NET

Property, plant and equipment, net consisted of the following as of September 30, 2023 and December 31, 2022:

	2023	2022
Building	$ 1,874,049	$ 1,874,049
Land	2,700,000	2,700,000
Building improvements	1,010,218	1,010,218
Leasehold improvements	1,537,775	1,537,775
Autos and trucks	178,695	178,695
Computer and equipment	1,821,819	1,821,819
Furniture and fixtures	411,801	411,801
	9,534,357	9,534,357
Accumulated depreciation	(4,765,642)	(4,419,558)
Property, plant and equipment, net	$ 4,768,715	$ 5,114,799

Depreciation and amortization expense was $112,914 and $128,536 for the three months ended September 30, 2023 and 2022, respectively. Depreciation and amortization expense was $346,084 and $435,644 for the nine months ended September 30, 2023 and 2022, respectively. The Company did not have any disposals during the nine months ended September 30, 2023. During the nine months ended September 30, 2022, the Company disposed of $11,615 in computer equipment with an accumulated depreciation of $9,182; and sold a vehicle for $19,500 that was purchased for $88,398 and fully depreciated at the time of sale. The total gain resulting from the disposal of the assets amounted to $17,067. The Company's subsidiary, Donkey Crew, LLC, held net property, plant and equipment outside of the United States in the amount of $5,166 and $13,569, as of September 30, 2023 and December 31, 2022, respectively.

NOTE 11 – INTANGIBLE ASSETS

Intangible assets consist of game licenses, game software underlying intellectual property rights, game trademarks and other branding items. The Company amortizes the intangible assets over its useful life.

The following tables reflect all the intangible assets presented on the condensed consolidated balance sheets as of September 30, 2023 and December 31, 2022:

	September 30, 2023				
	Gross Carrying Amount	Accumulated Amortization	Impairment Loss	Net Book Value	Weighted Average Useful Life
License rights from related parties	$ 136,665,000	$ (136,534,565)	$ —	$ 130,435	3 - 5 years
License rights	$ 3,000,000	$ (3,000,000)	$ —	$ —	5 years
Intangible assets - other:					
Software	$ 51,784	$ (51,784)	$ —	$ —	3 years
Trademark	10,745	(9,713)	—	1,032	12 years
In-progress patent	270,886	—	—	270,886	
Total:	$ 333,415	$ (61,497)	$ —	$ 271,918	

	December 31, 2022				
	Gross Carrying Amount	Accumulated Amortization	Impairment Loss	Net Book Value	Weighted Average Useful Life
License rights from related parties	$ 136,665,000	$ (135,280,942)	$ —	$ 1,384,058	3 - 5 years
License rights	$ 3,000,000	$ (3,000,000)	$ —	$ —	5 years
Intangible assets - other:					
Software	$ 51,784	$ (51,784)	$ —	$ —	3 years
Trademark	10,745	(9,110)	—	1,635	12 years
In-progress patent	270,886	—	—	270,886	
Total:	$ 333,415	$ (60,894)	$ —	$ 272,521	

Amortization expense was $195,853 and $1,851,203 for the three months ended September 30, 2023 and 2022, respectively. Amortization expense was $1,254,226 and $5,803,610 for the nine months ended September 30, 2023 and 2022, respectively. These amounts are included in cost of revenues in the accompanying condensed consolidated statements of operations and comprehensive income (loss). The weighted average remaining useful life for which amortization expense will be recognized is 0.3 years as of September 30, 2023. Future amortization expense of intangible assets is as follows:

Years ending December 31,	Amount
Remainder of 2023	$ 130,636
2024	804
2025	27
2026	—
2027	—
Thereafter	270,886
	$ 402,353

NOTE 12 – ACCOUNTS PAYABLE — RELATED PARTY

Accounts payable due to related party represents payables in the ordinary course of business primarily for purchases of game distribution licenses and also the royalties due to Suzhou Snail. As of September 30, 2023 and December 31, 2022, the Company had $19,669,868 and $19,918,259, respectively, as accounts payable due to Suzhou Snail. During the three months ended September 30, 2023 and 2022, the Company incurred $58,661 and $94,836, respectively as license costs due to Suzhou Snail and included in cost of revenues. During the nine months ended September 30, 2023 and 2022, the Company incurred $201,609 and $316,869, respectively as license costs due to Suzhou Snail and included in cost of revenues. During the nine months ended September 30, 2023 and 2022, respectively, there were $450,000 and $1,719,660 in payments to Suzhou Snail for royalties. There were no royalty payments made to Suzhou Snail during the three months ended September 30, 2023. During the three months ended September 30, 2022 there were $1,275,397 in payments to Suzhou Snail for royalties.

NOTE 13 – LOAN AND INTEREST RECEIVABLE — RELATED PARTY

In February 2021, the Company loaned $200,000 to a wholly owned subsidiary of Suzhou Snail, the loan bears 2.0% per annum interest, interest and principal are due in February 2022. In February 2022, Suzhou Snail signed an agreement with this subsidiary and assumed the loan and related interest for a total of $203,890. Subsequently, $103,890 was offset against the loan and interest payable owed to Suzhou Snail on a separate note. Please refer to Note 14 — *Loan Payable and Interest Payable — Related Parties*. The total amount of loan and interest receivable — related parties was $103,249 and $101,753, as of September 30, 2023 and December 31, 2022, respectively. The Company earned $504 and $505 in interest on the related party loans receivable during the three months ended September 30, 2023 and 2022, respectively. Interest earned on the related party loans receivable during the nine months ended September 30, 2023 and 2022, was $1,496 and $1,249, respectively.

NOTE 14 – LOAN PAYABLE AND INTEREST PAYABLE — RELATED PARTIES

The Company had a loan amount due to related parties of $400,000 bearing 2.0% per annum interest. $300,000 of the loan is from a wholly owned subsidiary of Suzhou Snail and due in June 2022, and $100,000 is from Suzhou Snail and due in December 2023. The $100,000 loan along with $3,890 interest payable to Suzhou Snail was offset by the loan receivable Suzhou Snail assumed in February 2022. Please refer to Note 13 — *Loan and Interest Receivable — Related Party*. In July 2022, the Company paid off the outstanding principal balance of $300,000.

As of September 30, 2023 and December 31, 2022, the total loan payable — related parties amounted to $0 and total unpaid interest amounted to $527,770, as of September 30, 2023 and December 31, 2022. There was no interest expense for the loans payable to related parties during the three months ended September 30, 2023 and 2022, respectively. During the nine months ended September 30, 2023 and 2022, the interest expenses for the loans payable to related parties were $0 and $3,222, respectively.

NOTE 15 – REVOLVING LOAN, SHORT TERM NOTES AND LONG - TERM DEBT

	September 30, 2023	December 31, 2022
2021 Revolving Loan - On June 21, 2023, the Company amended its revolving loan agreement ("amended revolver") and decreased the maximum balance to $6,000,000. The amended revolver matures on December 31, 2023 and has an annual interest rate equal to the prime rate less 0.25%. At September 30, 2023, the interest rate on this loan was 8.25%. The revolver was secured by certificate of deposit accounts held with the financial institution and that were released in accordance with the 2023 amendment. Debt covenants of this loan require the Company to maintain a minimum debt service coverage ratio of at least 1.5 to 1. The Company was not in compliance with the debt service coverage ratio for the twelve month period ended September 30, 2023 and received a waiver from the lender.	$ 6,000,000	$ 9,000,000
2021 Promissory Note - On June 17, 2021, the Company amended its loan agreement to reduce the principal amount with financial institution for 10 years, annual interest rate of 3.5% for the first 5 years, and then floating at Wall Street Journal rate from years 6 to 10, the loan is secured by the Company's building and matures on June 30, 2031. The note is subject to a prepayment penalty. Debt covenants of this loan require the Company to maintain a minimum debt service coverage ratio of at least 1.5 to 1. The Company was not in compliance with the debt service coverage ratio for the twelve month period ended September 30, 2023 and received a waiver from the lender.	2,832,231	2,891,820
2022 Short Term Note - On January 26, 2022, the Company amended its revolving loan and long-term debt agreements to obtain an additional note with a principal balance of $10,000,000 which was originally set to mature on January 26, 2023. Interest shall be equal to the higher of 3.75% or the Wall Street Journal Prime Rate plus 0.50%. The loan is secured by the Company's assets. In the event of a default, all outstanding amounts under the note will bear interest at a default rate equal to 5% over the note rate. Debt covenants of this loan require the Company to maintain a minimum debt service coverage ratio of at least 1.5 to 1 and will be measured quarterly. The Company was not in compliance with the debt service coverage ratio for the twelve month period ended September 30, 2023 and received a waiver from the lender. In November 2022, the maturity was extended to January 26, 2024 and the interest rate amended to the higher of the Wall Street Journal Prime Rate less 0.25%, or 5.75%. At September 30, 2023, the interest rate on this loan was 8.25%.	2,083,333	5,833,333
2023 Convertible Notes – On August 24, 2023, the Company issued convertible notes at a 7.4% discount and a principal balance of $1,080,000. The notes have an interest rate of 7.5%, will be paid in consecutive monthly installments beginning February 24, 2024 and will mature on May 24, 2024. In the event of a default the interest rate will be increased to the lower of 16% per annum or the highest amount permitted by applicable law. The Company has the option to prepay the notes at any time and the note holders have the option to convert the notes, in whole or in part, any time after November 24, 2023. The Company recognized a discount of $678,254 on the notes to account for the stated discount, the fair value of the warrants issued in connection with the notes and the costs of issuance. The discount is amortized using the effective interest rate of 109.7%.	515,217	-
2023 Note Payable – In July 2023, the Company entered into a cooperation agreement with its internet, server and datacenter vendor. The Company agreed to make the vendor the official server host of *Ark: Survival Evolved* and future iterations and sequels of the game for a period of 7 years. In return the vendor has agreed to provide the Company with funds in cash of up to $3.0 million without discount and free of charges and costs to the Company. The funds are to be repaid in monthly installments starting in November 2023 and are to be based on 20% of the gross monthly Ark Survival revenues. The Company has imputed interest at 8.0% on draws made. If in default, the interest rate levied on outstanding balances at a rate of 12.0% per annum.	2,275,000	-
Total debt of $14,270,565, net of discount of $564,784	13,705,781	17,725,153
Less: current portion of promissory note	2,832,231	86,524
Less: revolving loan	6,000,000	9,000,000
Less: notes payable	4,358,333	5,416,666
Less: convertible notes, net of discount	515,217	-
Total long-term debt	$ -	$ 3,221,963

Total interest expense for the above debt and revolver loan amounted to $348,898 and $254,480 for the three months ended September 30, 2023 and 2022, respectively. Total interest expense for the above debt and revolver loan amounted to $937,893 and $594,171 for the nine months ended September 30, 2023 and 2022, respectively. Amortization of loan origination expenses and loan discounts of $121,930 and $6,590 are included as part of interest expense for the three months ended September 30, 2023 and 2022, respectively. Amortization of loan origination expenses loan discounts of $142,656 and $19,149, are included as part of interest expense for the nine months ended September 30, 2023 and 2022, respectively. As a result of the amendment to the revolving loan on June 21, 2023, the Company recognized $2,903 as additional amortization of loan origination expenses during the nine months ended September 30, 2023. The Company is in compliance with, or received waivers for, its debt covenants as of September 30, 2023 and December 31, 2022.

The following table provides future minimum payments of its long-term debt as of December 31:

Years ending December 31,		Amount
Remainder of 2023	$	9,968,601
2024		1,579,415
2025		86,013
2026		89,115
2027		92,329
Thereafter		2,455,092
	$	14,270,565

NOTE 16 – INCOME TAXES

The Company recognized an income tax benefit of $1,156,675 and $398,998 for the three months ended September 30, 2023 and 2022, respectively. The income tax benefit of $3,044,380 and income tax expense of $803,305 for the nine months ended September 30, 2023 and 2022, reflects an effective tax rate of 21% and 20%, respectively. As of September 30, 2023 the Company's effective tax rate did not differ from the federal statutory rate of 21%.

The Company assesses all positive and negative evidence in determining if, based on the weight of such evidence, a valuation allowance is required to be recorded against the deferred tax assets as of September 30, 2023. The Company has concluded that the positive evidence of reversing taxable temporary differences, indefinite lived nature of certain available tax attributes, level of historical taxable income, projections of future taxable income and cumulative pre-tax book income on a rolling twelve-quarter basis to outweigh the negative evidence of recent losses. Accordingly, the Company has not provided for additional valuation allowance as of September 30, 2023. The realization of the deferred tax assets is contingent upon the Company's upcoming new game releases to generate sufficient future taxable income. In the event that negative evidence outweighs positive evidence in future periods, the Company may need to record additional valuation allowance, which could have a material impact on our financial position.

The Company and its subsidiaries currently file tax returns in the United States (federal and state) and Poland. The statute of limitations for its consolidated federal income tax returns are open for tax years ended December 31, 2019 and after. The statute of limitations for its consolidated state income tax returns are open for tax years ended December 31, 2018 and after. All tax periods for its Polish subsidiary are currently subject to examination since its inception in 2018. While the Company has historically only filed a state tax return in California, management has accrued income tax liabilities for additional states as of September 30, 2023 and December 31, 2022, respectively and is also undergoing the Voluntary Disclosure Agreement process in additional states.

NOTE 17 – OPERATING LEASE RIGHT-OF-USE ASSETS

The Company's right-of-use assets represent arrangements related primarily to office facilities used in the ordinary business operations of the Company and its subsidiaries. In April, 2018, a commercial bank issued an irrevocable standby letter of credit on behalf of the Company to the landlord for $1,075,000 to lease office space. The standby letter of credit was valid for a one-year term and was amended in January 2021 to extend to January 31, 2026. As of September 30, 2023 and December 31, 2022, the Company's net operating lease right-of-use assets amounted to $2,738,554 and $3,606,398, respectively. The Company had variable lease payments of approximately $58,071 and $22,713 during the three months ended September 30, 2023 and 2022, respectively. Variable lease payments were $97,875 and $49,730 during the nine months ended September 30, 2023 and 2022, respectively, which consisted primarily of common area maintenance charges and administrative fees. During the nine months ended September 30, 2022 the Company terminated one of its lease contracts and recognized a gain on the lease termination of $122,533. There was no such termination during the nine months ended September 30, 2023. The effect of the termination on the related lease asset and liability were as follows:

	Right of Use Asset	Accumulated Amortization	Lease Liability – Current	Lease Liability – Long Term	Gain on Termination
Lease Terminations	$ (1,301,571)	$ 907,370	$ 442,704	$ 74,030	$ 122,533

Operating lease costs included in the general and administrative expenses in our condensed consolidated statements of operations and comprehensive income (loss) for the three and nine months ended September 30, 2023 and 2022, are as follows:

	For the three months ended September 30,		For the nine months ended September 30,	
	2023	**2022**	**2023**	**2022**
Operating lease costs	$ 419,605	$ 397,428	$ 1,198,467	$ 1,213,386

Supplemental information related to operating leases for lease liabilities as of September 30, 2023 and September 30, 2022 is as follows:

	2023	**2022**
Cash paid for amounts included in the measurement of lease liabilities	$ 1,155,759	$ 1,120,111
Weighted average remaining lease term	2.2 years	3.2 years
Weighted average discount rate	5.00%	5.00%

Future undiscounted lease payments for operating leases and a reconciliation of these payments to our operating lease liabilities as of September 30, 2023 are as follows:

Years ending December 31,	**Future lease payments**	**Imputed Interest Amount**	**Lease Liabilities**
Remainder of 2023	$ 393,129	$ 37,978	$ 355,151
2024	1,610,844	105,810	1,505,034
2025	1,453,785	28,290	1,425,495
Thereafter	—	—	—
Total future lease payments	$ 3,457,758	$ 172,078	$ 3,285,680

NOTE 18 – COMMITMENTS AND CONTINGENCIES

Litigation

The Company is subject to claims and contingencies related to lawsuits and other matters arising out of the normal course of business. In addition, the Company may receive notifications alleging infringement of patent or other intellectual property rights. The Company has elected to expense legal costs associated with legal contingencies as incurred.

On December 1, 2021, the Company and Studio Wildcard sent a notice of claimed infringement (the "DCMA Takedown Notice") to Valve Corporation, which operates the Steam platform, pursuant to the Digital Millennium Copyright Act ("DCMA"). The DCMA Takedown Notice concerned a videogame titled *Myth of Empires*, which was developed by Suzhou Angela Online Game Technology Co., Ltd. ("Angela Game") and published by Imperium Interactive Entertainment Limited ("Imperium").

On December 9, 2021, Angela Game and Imperium sued the Company and Studio Wildcard in the United States District Court for the Central District of California (the “District Court”) in response to the DCMA Takedown Notice. The lawsuit sought a declaratory judgment on non-liability for copyright infringement and non-liability for trade secret misappropriation, as well as unspecified damages for alleged misrepresentations in the DCMA Takedown Notice. Angela Game and Imperium also filed an application for a temporary restraining order asking the court to order us and Studio Wildcard to rescind the DCMA Takedown Notice so that Steam could reinstate Myth of Empires for download. On December 20, 2021, the Company and Studio Wildcard filed an answer to the complaint, which included counterclaims against Angela Game and Imperium and a third-party complaint against Tencent seeking unspecified damages resulting from the alleged copyright infringement and misappropriation of trade secrets in connection with the ARK: Survival Evolved source code.

On September 8, 2023, the Company entered into a settlement agreement with Angela Game. The settlement agreement includes an upfront payment from Angela Game to the Company plus ongoing payments. The upfront payment was recorded as deferred revenue, with a portion of the payment included in “other income” and the remaining amount to be recognized upon the satisfaction of certain performance obligations and future revenue sharing.

On March 14, 2023, Bel Air Soto, LLC (“Plaintiff”) filed suit in the Superior Court of California, County of Los Angeles, against Snail Games USA Inc. and INDIEV, Inc. (“INDIEV”), an affiliate company that is owned by Mr. Hai Shi, the Company’s Founder, Chief Strategy Officer, and Chairman, for breach of contract and related claims arising out of a commercial lease for premises located in Los Angeles County. Plaintiff alleges that the defendants exercised an option to extend the lease and was harmed when defendants instead terminated the lease and vacated the premises. The complaint seeks damages in excess of $3 million. Snail Games USA Inc. disputes the allegations and the amount of damages. The Company has responded to the complaint with an answer and cross-complaint. The cross-complaint seeks return for the $130,000 security deposit. The landlord has answered and denied the allegations of the cross-complaint. The Company intends to vigorously defend against the claims asserted.

On April 21, 2023, Snail Games USA Inc. entered into an indemnity and reimbursement agreement with INDIEV, dated as of April 1, 2023, pursuant to which INDIEV agrees to assume all obligations and liabilities pursuant to the lease and indemnify and reimburse Snail Games USA Inc. for any amounts, damages, expenses, costs or other liability incurred by Snail Games USA Inc. arising under or pursuant to the lease or relating to the premises.

In October 2023, INDIEV has filed for bankruptcy and the Company does not expect to recover its costs from INDIEV. At this time, the Company is unable to quantify the magnitude of the potential loss should the plaintiffs’ lawsuit succeed and accordingly no accrual for loss has been recorded in the accompanying financial statements.

NOTE 19 – EARNINGS (LOSS) PER SHARE

The Company uses the two class method to compute its basic earnings (loss) per share ("Basic EPS") and diluted earnings per share ("Diluted EPS"). The following table summarizes the computations of basic EPS and diluted EPS. The allocation of earnings between Class A and Class B shares is based on their respective economic rights to the undistributed earnings of the Company. Basic EPS is computed as net income (loss) divided by the weighted-average number of common shares outstanding for the period. Diluted EPS reflects the potential dilution that could occur using the treasury stock method. The restricted stock units, underwriters warrants and warrants issued in connection with the convertible debt and equity line of credit were excluded from the treasury stock method computation of diluted shares as their inclusion would have had an antidilutive effect for the three and nine months ended September 30, 2023. The convertible notes were excluded from the if-converted method computation of diluted shares as their inclusion would have had an antidilutive effect for the three and nine months ended September 30, 2023. There were no such exclusions made in the 2022 calculation. For the three and nine months ended September 30, 2022, the Company has used the number of shares transferred in the reorganization transaction for the denominator in the EPS calculation. The following table provides a reconciliation of the weighted average number of shares used in the calculation of basic and diluted EPS.

	For the three months ended September 30,		For the nine months ended September 30,	
	2023	2022	2023	2022
Basic Earnings Per Share:				
Net (loss) income attributable to Class A common stockholders	$ (955,763)	$ (1,538,738)	$ (2,477,768)	$ 3,218,022
Net (loss) attributable to Class B common stockholders	(3,476,869)	-	(9,005,673)	-
Total net (loss) income attributable to Snail Inc and Snail Games USA Inc.	$ (4,432,632)	$ (1,538,738)	$ (11,483,441)	$ 3,218,022
Class A weighted average shares outstanding - basic	7,901,145	35,000,000	7,909,715	35,000,000
Class B weighted average shares outstanding - basic	28,748,580	-	28,748,580	-
Class A and B basic earnings per share	$ (0.12)	$ (0.04)	$ (0.31)	$ 0.09
Diluted Earnings Per Share:				
Net (loss) income attributable to Class A common stockholders	$ (955,763)	$ (1,538,738)	$ (2,477,768)	$ 3,218,022
Net (loss) attributable to Class B common stockholders	$ (3,476,869)	$ -	$ (9,005,673)	$ -
Class A weighted average shares outstanding - basic	7,901,145	35,000,000	7,909,715	35,000,000
Dilutive effects of common stock equivalents	-	-	-	-
Class A weighted average shares outstanding - diluted	7,901,145	35,000,000	7,909,715	35,000,000
Class B weighted average shares outstanding - basic	28,748,580	-	28,748,580	-
Dilutive effects of common stock equivalents	-	-	-	-
Class B weighted average shares outstanding - diluted	28,748,580	-	28,748,580	-
Diluted (loss) earnings per Class A and B share	$ (0.12)	$ (0.04)	$ (0.31)	$ 0.09

NOTE 20 – EQUITY

The Company has authorized two classes of common stock, Class A and Class B. The rights of the holders of both Class A and Class B common stock will be identical, except with respect to voting, conversion and transfer restrictions applicable to the Class B common stock. Each share of Class A common stock will be entitled to one vote. Each share of Class B common stock will be entitled to ten votes and will be convertible into one share of Class A common stock automatically upon transfer, subject to certain exceptions. Holders of Class A common stock and Class B common stock will vote together as a single class on all matters unless otherwise required by law.

On November 9, 2022, in connection with the IPO, the Company entered into an underwriting agreement (the "Underwriting Agreement" with the underwriters (the "Underwriters"), pursuant to which the Company agreed to issue and sell 3,000,000 shares of Class A common stock (the "Firm Shares") at a purchase price of $4.675 per share to the Underwriters and granted the Underwriters an option (the "Over-Allotment Option") to purchase up to 450,000 additional shares of Class A common stock (the "Option Shares") at a purchase price of $4.675 per share. The Underwriters had the right to exercise the Over-Allotment Option at any time in whole, or from time to time in part, on or before the forty-fifth day following the effectiveness of the IPO. The Over-Allotment Option was not exercised by the Underwriters prior to its expiration.

In connection with the Underwriting Agreement, on November 9, 2022, the Company also issued to the Underwriters warrants to purchase such number of shares of the Company's Class A common stock in an amount equal to four percent of the total number of shares of Class A common stock sold in the IPO, or 120,000 shares of Class A common stock (the "Underwriters Warrants"). The Underwriters Warrants may be exercised at a price per share equal to 125% of the IPO price, or $6.25 per share. The Underwriters Warrants are exercisable, in whole or in part, commencing on November 9, 2022, and expiring on the three-year anniversary thereof. The Underwriters Warrants have not been exercised as of the filing of this Quarterly Report.

The Underwriters Warrants and Over-Allotment Option are legally detachable and separately exercisable from each other and from the Firm Shares; therefore, they meet the definition of freestanding and are not considered embedded in the Firm Shares.

The Underwriters Warrants are considered indexed to the Company's own stock. Additionally, the Company concludes that the Underwriters Warrants meet all requirements for equity classification. Because the Underwriters Warrants are issued to the Underwriters for their services and can be exercised immediately (subject to certain transfer conditions) they will be measured at their fair value on their date of issuance and recorded within stockholders' equity. As long as the Underwriters Warrants remain classified as equity, they shall not be revalued. The fair value of the Underwriters Warrants was determined using the Black-Scholes model. The key assumptions used in the valuation were an average expected volatility of 53%, discount rate of 4.49% and remaining term of 3 years.

The Company allocates all the issuance costs to the firm shares as a reduction of proceeds.

Convertible Debt

In August 2023, pursuant to a securities purchase agreement (the "SPA"), the Company issued to two accredited investors (the convertible debt "Investors") convertible notes with an aggregate principal amount of $1,080,000 (the "Convertible Notes") and warrants to purchase up to an aggregate of 714,285 shares of the Company's Class A common stock for gross proceeds of $1,000,000 (the "Convertible Notes Financing").

In connection with the Convertible Notes Financing, the Company also entered into a registration rights agreement with the Investors. So long as the Company complies with certain conditions set forth in the SPA and the registration rights agreement, the Company will sell and the Investors will purchase, an additional $1,080,000 of aggregate principal amount of notes and warrants in the second tranche of the Convertible Note Financing. The second tranche closing has not yet taken place.

The Convertible Notes carry an original issue discount of approximately 7.4%, bear interest at a rate of 7.5% per annum (16% per annum in case of an event of default), are repayable in equal consecutive monthly installments beginning February 24, 2024 and mature on May 24, 2024 (the "Maturity Date").

The Convertible Notes may be prepaid by the Company upon giving the Investors a fifteen-trading day notice by paying an amount equal to the then outstanding balance. If the Company enters into a qualifying financing it may be required by the Investors to repay part or all of the Convertible Notes at a 112.5% premium (limited to 10% of the proceeds of the qualified financing, if such financing results in gross proceeds to the Company at least $5,000,000). In event of default or change of control, the Investors may require the Company to prepay the Convertible Notes at a 120% premium.

Subject to certain ownership limitations, starting three months after their issuance, the Convertible Notes can be converted at the option of the holder at any time into shares of the Company's Class A common, at a conversion price equal 90% (85% in case of an event of default) of the average of the three the lowest daily volume weighted average price ("VWAP") of the Class A common stock during the ten (10) trading days period prior the receipt of the notice of conversion. The conversion price may be adjusted if the Company issues a qualifying security at a lower price than the then conversion price.

If, upon receipt of conversion notice, the Company cannot issue shares of Class A common stock for any reason, then it is required to issue as many shares of Class A common stock as it is able to issue and, with respect to the unconverted portion, the Noteholder may elect for the Company to pay for each shares of Class A common stock that could not be issued at a price equal to the higher of the then conversion price or the VWAP as of the date of the conversion notice.

The Company determined that the Convertible Notes included features that required bifurcation from the debt host and met the criteria to be accounted for as a derivative liability that is accounted for at fair value. On the date of issuance, the compound derivative had an estimated fair value that was not significant due to the remoteness of the events that would trigger the redemption features. The derivative liability uses level 3 inputs, is to be measured at fair value each reporting date with change in fair value being reported in other income. The change in fair value during the three and nine months ended September 30, 2023, was not significant and as such, not recorded.

On the date of issuance, the Company allocated the proceeds between the instruments issued using fair value for the derivative liability with the residual amounts allocated to the convertible notes and warrants using relative fair value as follows:

Convertible notes	$	554,246
Derivative liability		-
Warrants		445,754
Total proceeds	$	1,000,000

The difference of $525,754 between the allocated proceeds to the Convertible Notes and the aggregate principal amount will be accreted during the life of the notes. Additionally, $152,500 of transaction costs incurred by the Company were recorded as debt discount.

The following is a summary of the Convertible Notes as of September 30, 2023:

				Fair value	
	Principal Amount	Unamortized debt discount and issuance costs	Net carrying amount	Amount	Levelling
Convertible Notes	$ 642,204	$ (126,987)	$ 515,217	$ 557,000	Level 3

The debt discount is being amortized to interest expense over the maturity period using the effective interest method. For the three and nine months ended September 30, 2023, the Company recognized $121,796 of interest expense related to the Convertible Notes, comprising of $8,325 of contractual interest expense, $87,958 in accretion and $25,513 of amortization of debt discount and issuance costs.

Warrants

The convertible note warrants allow the Investors to purchase an aggregate of 714,285 shares of the Company's Class A common stock at an exercise price of $1.89. The warrants can be exercised, subject to certain ownership limitations, in whole or in part during the exercise period commencing on November 24, 2023 and ending on the date that is five years thereafter.

The exercise price and the number of shares of the warrants are subject to adjustment for standard anti-dilution provisions and also for subsequent issuance at a price lower than the then exercise price and adjustments to the strike price of other equity-linked instruments to a lower price than the then exercise price.

Due to their adjustment provisions, the warrants are classified as a liability on the condensed consolidated balance sheet. The fair value of the warrants at issuance has been estimated using a Monte-Carlo model and the following significant inputs:

	Issuance date	September 30, 2023
Stock price	$ 1.35	$ 1.14
Exercise price	$ 1.89	$ 1.89
Contractual term (years)	5.0	4.9
Volatility	60.0%	45.0%
Risk-free rate	4.39%	5.51%

The warrant liability, which uses level 3 inputs, is to be measured at fair value each reporting period with the change in fair value being recognized in other income (expense). At September 30, 2023, the fair value of the warrant liability was $452,351 and the changes in fair value during the three months ended September 30, 2023, amounted to a charge of $6,597 included in other income in our condensed consolidated statements of operations and comprehensive income (loss).

Equity Line Purchase Agreement

On August 24, 2023, the Company entered into a common stock purchase agreement (the “Equity Line Purchase Agreement”) and a registration rights agreement (the “Registration Rights Agreement”) with an investor, pursuant to which the investor has committed to purchase up to $5,000,000 in shares of the Company’s Class A common stock, subject to certain limitations and conditions set forth in the Equity Line Purchase Agreement. The Company shall not issue or sell any shares of common stock under the Equity Line Purchase Agreement which, when aggregated with all other shares of common stock beneficially owned by the investor, would result in beneficial ownership of more than 9.99% of the Company’s outstanding shares of common stock.

Under the terms of the Equity Line Purchase Agreement, the Company has the right, but not the obligation, to sell to the investor, shares of Class A common stock over the period commencing on the execution date of the Equity Line Purchase Agreement and ending on the earlier of (i) December 31, 2025, or (ii) the date on which the investor shall have purchased Securities pursuant to the Equity Line Purchase Agreement for an aggregate purchase price of the $5,000,000, provided that a registration statement covering the resale of shares of Class A common stock that have been and may be issued under the Equity Line Purchase Agreement is declared effective by the SEC.

The registration statement covering the offer and sale of up to 8,913,312 shares of Class A common stock was declared effective on October 30, 2023, and an amendment increasing the registered shares to 15,093,768 was filed on October 10, 2023. The purchase price will be calculated as 92% of the volume weighted average prices of the Company’s common stock during normal trading hours for five business days prior to the closing date with respect of a purchase notice.

Concurrently with the signing of the Equity Line Purchase Agreement, the Company issued the equity line warrant to purchase 367,647 shares of its Class A common stock to the investor as a commitment fee. The total fair value, at the date of issuance, of the equity line warrant of approximately $105,411 was recorded as a liability and deferred offering cost and is included in other assets on our condensed consolidated balance sheet.

Warrants

In connection with the equity line of credit the Company issued to the Investors warrants to purchase an aggregate 367,647 shares of the Company’s Class A common stock for an exercise price of $1.50. The warrants can be exercised, subject to certain ownership limitations, in whole or in part during the exercise period commencing on August 24, 2023 and ending on the date that is five years thereafter.

The exercise price and the number of shares of the warrants are subject to adjustment for standard anti-dilution provisions, for subsequent common share issuance at a price lower than the then exercise price of the warrants and adjustments to the strike price of other equity-linked instruments to a lower price than the then exercise price of the warrants.

Due to their adjustment provision, the warrants are classified as a liability on the consolidated balance sheet. The fair value of the warrants at issuance has been estimated using a Monte-Carlo model and the following significant inputs:

	.Issuance date	September 30, 2023
Stock price	$ 1.35	$ 1.14
Exercise price	$ 1.89	$ 1.89
Contractual term (years)	5.0	4.90
Volatility	40.0%	40.0%
Risk-free rate	5.49%	4.61%

The warrant liability, which uses level 3 inputs, is to be measured at fair value at each reporting period and with the change in fair value being recognized in earnings. At September 30, 2023, the fair value of the warrant liability was $76,346 and the changes in fair value during the three and nine months ended September 30, 2023 amounted to an income of $29,065.

Restricted Stock Units (“RSUs”)

RSUs granted to directors vest based on the directors’ continued employment with us through each applicable vest date, which is generally over one year. If the vesting conditions are not met, unvested RSUs will be forfeited. The following table summarizes our RSU units activity with directors for the nine months ended September 30, 2023. There were no activities during the nine months ended September 30, 2022.

	Restricted Stock Units	**Weighted-Average Grant-Date Fair Values**
Outstanding as of January 1, 2023	24,000	$ 5.00
Granted	—	—
Vested	—	—
Forfeited or cancelled	—	—
Outstanding as of September 30, 2023	24,000	$ 5.00

The grant date fair value of RSUs granted to directors is based on the quoted market price of our common stock on the date of grant.

Our RSUs granted to employees vest upon the achievement of pre-determined performance-based milestones as well as service conditions ("PSUs"). The pre-determined performance-based milestones are based on specified percentages of the PSUs that would vest at each of the first five anniversaries of the IPO date if the Company's average annual growth rate ("AAGR") is calculated to be at a target percentage or above during the period between the Company's IPO Date and the annual revenue for each of the anniversary year. If these performance-based milestones are not met but service conditions are met, the PSUs will not vest, in which case any compensation expense the Company has recognized to date will be reversed. Generally, the total aggregate measurement period of our PSUs is 5 years, with awards cliff-vesting after each annual measurement period during the total aggregate measurement period.

Each quarter, the Company updates our assessment of the probability that the performance milestones will be achieved. The Company amortizes the fair values of PSUs over the requisite service period. Each performance-based milestone is weighted evenly and the number of shares that vest based on each performance-based milestone is independent from the other.

The following table summarizes our PSU activity with employees, presented with the maximum number of shares that could potentially vest, for the nine months ended September 30, 2023. There were no activities during the nine months ended September 30, 2022.

	Restricted Stock Units	Weighted-Average Grant-Date Fair Values
Outstanding as of January 1, 2023	1,197,552	$ 5.00
Granted	—	—
Vested	—	—
Forfeited or cancelled	(26,789)	5.00
Outstanding as of September 30, 2023	1,170,763	$ 5.00

The grant date fair value of PSUs granted to employees is based on the quoted market price of our common stock on the date of grant.

Repurchase Activity

All share repurchases settled in the nine months ended September 30, 2023 were open market transactions. As of September 30, 2023, 1,350,275 shares of Class A common stock were repurchased pursuant to the Share Repurchase Program for an aggregate purchase price of approximately $3.7 million. The average price paid per share was $2.72 and approximately $1.3 million aggregate amount of shares of Class A common stock remain available for repurchase under the Share Repurchase Program.

Stock-Based Compensation Expense

Stock-based compensation expense resulting from RSUs and PSUs of $220,231 and $589,532 are recorded under general and administrative expenses included in our condensed consolidated statements of operations and comprehensive income (loss) for the three and nine months ended September 30, 2023, respectively. Stock-based compensation expense resulting from PSUs of $16,411 and $32,475 are recorded under research and development expenses included in our condensed consolidated statements of operations and comprehensive income (loss) for the three and nine months ended September 30, 2023, respectively. There were no stock-based compensation expenses incurred during the three and nine months ended September 30, 2022.

During the three months ended September 30, 2023 and 2022, the Company recognized approximately $48,308 and $0 respectively, of deferred income tax benefit related to our stock-based compensation expense. During the nine months ended September 30, 2023 and 2022, the Company recognized approximately $131,185 and $0 respectively, of deferred income tax benefit related to our stock-based compensation expense.

As of September 30, 2023, our total unrecognized compensation cost related to RSUs and PSUs was approximately $1.3 million and is expected to be recognized over a weighted-average service period of 2.6 years.

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

The following discussion and analysis should be read in conjunction with our unaudited condensed consolidated financial statements and the related notes included elsewhere in this Quarterly Report on Form 10-Q (the "Quarterly Report"). This discussion and analysis contains forward-looking statements that involve certain risks and uncertainties. Our actual results could differ materially from those discussed in these statements. Factors that could cause or contribute to these differences include those discussed below and elsewhere in this Quarterly Report, particularly under "Risk Factors," in Part II, Item 1A of this Quarterly Report, and the "Cautionary Statement Regarding Forward-Looking Statements" section of this Quarterly Report.

Overview

Our mission is to provide high-quality entertainment experiences to audiences around the world. We are a leading, global independent developer and publisher of interactive digital entertainment for consumers around the world. We have built a premier portfolio of premium games designed for use on a variety of platforms, including consoles, PCs, and mobile devices. *ARK: Survival Evolved* has been a top-25 selling game on the Steam platform by gross revenue in each year we released an *ARK* DLC. Our expertise in technology, in-game ecosystems and monetization of online multiplayer games has enabled us to assemble a broad portfolio of intellectual property across multiple media formats and technology platforms. Our flagship franchise from which we generate the substantial majority of our revenues, *ARK: Survival Evolved*, is a leader within the sandbox survival genre with 88.4 million console and PC installs through September 30, 2023. See "— Key Performance Metrics and Non-GAAP Measures." In the three and nine months ended September 30, 2023, *ARK: Survival Evolved* averaged a total of 231,337 and 249,170 daily active users ("DAUs") on the Steam and Epic platforms as compared to 339,884 and 319,013 DAUs in the three and nine months ended September 30, 2022, respectively. We define "daily active users" as the number of unique users who play any given game on any given day. For the three months ended September 30, 2023 and 2022, we generated 86.4% and 89.6%, respectively, of our revenues from *ARK: Survival Evolved*. For the nine months ended September 30, 2023 and 2022, we generated 86.9% and 91.7%, respectively, of our revenues from *ARK: Survival Evolved*.

Our dedication to providing audiences with high-quality entertainment experiences utilizing the latest gaming technology has produced strong user engagement, continued revenue growth, and increased cash flows. Through September 30, 2023, our *ARK* franchise game has been played for 3.4 billion hours with an average playing time per user of more than 162 hours and with the top 21.0% of all players spending over 100 hours in the game, according to data from the Steam platform. For the three months ended September 30, 2023 and 2022, our net revenue was $9.0 million and $15.6 million, respectively. For the nine months ended September 30, 2023 and 2022, our net revenue was $32.3 million and $59.1 million, respectively. During the three months ended September 30, 2023, approximately 43.0% of our revenue came from consoles, 41.4% from PC and 15.6% from mobile platforms. During the nine months ended September 30, 2023, approximately 41.1% of our revenue came from consoles, 37.4% from PC and 14.3% from mobile platforms. We had a net loss of $4.4 million for the three months ended September 30, 2023 as compared to a net loss of $1.5 million for the three months ended September 30, 2022. For the nine months ended September 30, 2023 we had a net loss of $11.5 million, as compared to net income of $3.3 million for the nine months ended September 30, 2022.

Key Factors Affecting Our Business

There are a number of factors that affect the performance of our business, and the comparability of our results from period to period, including:

Investments in our content strategy

We continuously evaluate and invest in content strategy to improve and innovate our games and features and to develop current technological platforms. We are currently actively investing in expanding our gaming pipeline as well as developing media and eSports content related to our gaming intellectual property. We also continue to invest to grow our micro-influencer platform, *NOIZ*, by attracting new influencers and brand customers.

Growth of user base

We have experienced significant growth in our number of downloads over the last several years. We have sold 42.8 million units between January 1, 2016 and September 30, 2023. We sold 1.2 million units during both of the three month periods ended September 30, 2023 and 2022. During the nine months ended September 30, 2023 and 2022, we sold 3.9 million units and 4.2 million units, respectively. Our video games provide highly engaging, differentiated entertainment experiences where the combination of challenge and progress drives player engagement, high average player times, and long-term franchise value. The success of our franchise hinges on our ability to keep our current players engaged while also growing our user base by innovating our platform and monetizing on new offerings. The degree to which gamers are willing to engage with our platform is driven by our ability to create interactive and unique content that will enhance the game-play experience. We sell DLCs which are supplementary to our master games and expand the gaming universe to continuously evolve the game and retain players. Our master games are the base versions of a specific title, for example, *Ark: Survival Evolved* is our master game and *Ark: Genesis* is a DLC.

While we believe we have a significant opportunity to grow our user base, we anticipate that our overall user growth rate will fluctuate over time as we continue to release new master games and companion DLCs. Download rates and user engagement may increase or decrease based on other factors such as growth in console, PC and mobile games, ability to release content, market effectively and distribute to users.

Investments in our technology platform

We are focused on innovation and technology leadership in order to maintain our competitive advantage. We spend a portion of our capital on our research and development platform to continuously improve our technological offerings and gaming platform. Our proprietary video game technology includes a versatile game engine, development pipeline tools, advanced rendering technology and advanced server and network operations. Continued investment in improving the technology behind our existing gaming platforms as well as developing new software tools for new product offerings is important to maintaining our strategic goals, developer and creator talent, and financial objectives. For us to continue providing cutting-edge technology to our users and bringing digital interactive entertainment to market, we must also continue to invest in developmental and creative resources. For our users, we regularly invest in user-friendly features and enhance user experience in our games and platforms. As our industry moves towards increased use of cloud gaming and gaming as a service technology, our ability to bring interactive technologies to market will be an increasingly important part of our business.

Ability to release content, market effectively through cross media and expand the gaming group

Establishing and maintaining a loyal network of players for our premium games is vital for our business and drives revenue growth. To grow and maintain our player base, we invest in developing new games to attract and engage players, and in providing existing audiences with proven content in the form of new DLCs. In the near-term, we may increase spending on original content creation with new studios, and on sales and marketing as a percentage of revenue to grow our player network. The scale of our player base is determined by a number of factors, including our ability to strengthen player engagement by producing content that players play regularly and our effectiveness in attracting new players, both of which may in turn affect our financial performance.

Strategic relationship with developers, Studio Wildcard & Suzhou Snail

We have grown and expect to continue to grow our business by collaborating with game studios that we believe can benefit from our team's decades of experience developing successful games. We have strategic relationships with many developer studios that create original content for us. The relationships allow for valuable knowledge sharing between Suzhou Snail, a related party, and the developer studios. We enjoy a long-term relationship with Studio Wildcard, a related party, which develops our *ARK* franchise. We have an exclusive license with Studio Wildcard for rights to *ARK*, and we work with them and our other studio developer partners to provide ongoing support across numerous aspects of game development. Our financial results may be affected by our relationship with game studios, including Studio Wildcard, and our ability to create self-developed titles.

Relationship with third party distribution platforms

We derive nearly all of our revenue from third-party distribution platforms, such as Xbox Live and Game Pass, PlayStation Network, Steam, Epic Games Store, the Apple App Store, the Google Play Store, My Nintendo Store and the Amazon Appstore. These digital distribution platforms have policies that may impact our reachability to our potential audience, including the discretion to amend their terms of service, which could affect our current operations and our financial performance. As we expand to new markets, we anticipate similar relationships with additional distribution partners that could similarly impact our performance.

Seasonality

We experience fluctuations in quarterly and annual operating results as a result of the timing of the introduction of new titles, variations in sales of titles developed for particular platforms, market acceptance of our titles, development and promotional activities relating to the introduction of new titles, releases of expansion packs and DLCs, and to coincide with the global holiday season in the fourth and first quarters of each year. Seasonality in our revenue also tends to coincide with promotional cycles on platforms, typically on a quarterly basis.

Key Performance Metrics and Non-GAAP Measures

Units Sold

We monitor Units Sold as a key performance metric in evaluating the performance of our console and PC game business. We define Units Sold as the number of game titles purchased through digital channels by an individual end user. Under this metric, the purchase of a standalone game, DLC, Season Pass or bundle on a specific platform are individually counted as a unit. For example, an individual who purchases a standalone game and DLC on one platform, a Season Pass on another platform, and a bundle on a third platform would count as four Units Sold. Similarly, an individual who purchases three standalone game titles on the same platform would count as three Units Sold.

Units Sold may be impacted by several factors that could cause fluctuations on a quarterly basis, such as game releases, our promotional activities, which most often coincide with the global holiday season in the fourth and first quarters of each year, promotional sales on digital platforms, console release cycles and new digital platforms. Future growth in Units Sold will depend on our ability to launch new games and features and the effectiveness of marketing strategies.

	Three months ended September 30,				Nine months ended September 30,			
	2023	2022	Change	% Change	2023	2022	Change	% Change
	(in millions)							
Units Sold[1]	1.2	1.2	(0.0)	-0.1%	3.9	4.2	(0.3)	-6.9%

(1) Units Sold include master games, DLCs, season pass and bundles and excludes skins, soundtracks and other items.

Units Sold remained consistent in the three months ended September 30, 2023, as compared to the three month period ended September 30, 2022 where the Company sold 1.2 million units. The Company was able to maintain sales across fiscal years due to a sales promotion that was typically ran in the month of April by a significant platform partner of the Company, but in 2023 it did not begin until the end of June. Units Sold decreased by 0.3 million, or 6.9%, in the nine months ended September 30, 2023, as compared to the nine month period ended September 30, 2022, due to the anticipated release of *ARK: Survival Ascended*.

Bookings & EBITDA

In addition to our financial results determined in accordance with U.S. generally accepted accounting principles (“U.S. GAAP” or “GAAP”), we believe Bookings and EBITDA, as non-GAAP measures, are useful in evaluating our operating performance. Bookings and EBITDA, as used in this Quarterly Report on Form 10-Q, are non-GAAP financial measures that are presented as supplemental disclosures and should not be construed as alternatives to net income (loss) or revenue as indicators of operating performance, as determined in accordance with GAAP.

We supplementally present Bookings and EBITDA because they are key operating measures used by our management to assess our financial performance. Bookings adjusts for the impact of deferrals and, we believe, provides a useful indicator of sales in a given period. Management believes Bookings and EBITDA are useful to investors and analysts in highlighting trends in our operating performance, while other measures can differ significantly depending on long-term strategic decisions regarding capital structure, the tax jurisdictions in which we operate and capital investments. Management uses Bookings and EBITDA to supplement GAAP measures of performance in the evaluation of the effectiveness of our business strategies, to make budgeting decisions, and to compare our performance against other peer companies using similar measures. We evaluate Bookings and EBITDA in conjunction with our results according to GAAP because we believe it provides investors and analysts a more complete understanding of factors and trends affecting our business than GAAP measures alone. Bookings and EBITDA should not be considered as alternatives to net income (loss), as measures of financial performance or any other performance measure derived in accordance with GAAP.

Bookings

Below is a reconciliation of total net revenue to Bookings, the closest GAAP financial measure.

Bookings is defined as the net amount of products and services sold digitally or physically in the period. Bookings is equal to revenues excluding the impact from deferrals.

	Three months ended September 30,				Nine months ended September 30,			
	2023	2022	$ Change	% Change	2023	2022	$ Change	% Change
	(in millions)							
Total net revenue	$ 9.0	$ 15.6	$ (6.6)	-42.5%	$ 32.3	$ 59.1	$ (26.8)	-45.3%
Change in deferred net revenue	1.5	(4.3)	5.8	-135.9%	0.8	(7.3)	8.1	-110.5%
Bookings	$ 10.5	$ 11.3	$ (0.8)	-7.3%	$ 33.1	$ 51.8	$ (18.7)	-36.1%

For the three months ended September 30, 2023, bookings decreased by $0.8 million, or 7.3%, compared to the three months ended September 30, 2022, primarily as a result of a decrease in *ARK* revenues and in-game purchases which contributed to $2.0 million of the decrease, a decrease in the sales of the Company's other games of $0.4 million during the three months ended September 30, 2023 and $4.0 million in deferred revenue recognized during the three months ended September 30, 2022 for obligations met during the period.

For the nine months ended September 30, 2023, bookings decreased by $18.7 million, or 36.1%, compared to the nine months ended September 30, 2022, primarily as a result of decreased *ARK* revenues in 2023 due to decreased average selling prices ("ASPs") and in-game purchases which contributed to $10.3 million of the decrease, a decrease in the sales of the Company's other games of $1.7 million and no one-time contract payments during the nine months ended September 30, 2023 while there was $8.5 million in one-time contract payments and $6.5 million in one-time deferred contract revenue recognized during the nine months ended September 30, 2022. These were partially offset by a decrease in the change in deferred revenue of $8.1 million.

EBITDA

Below is a reconciliation of net income (loss) to EBITDA, the closest GAAP financial measure. We define EBITDA as net income (loss) before (i) interest income, (ii) interest expense, (iii) provision for (benefit from) income taxes, and (iv) depreciation and amortization expense, of property and equipment.

EBITDA as calculated herein may not be comparable to similarly titled measures reported by other companies within the industry and is not determined in accordance with GAAP. Our presentation of EBITDA should not be construed as an inference that our future results will be unaffected by unusual or unexpected items. We may also incur expenses that are the same, or similar to, some of the adjustments in this presentation.

	Three months ended September 30,				Nine months ended September 30,			
	2023	2022	$ Change	% Change	2023	2022	$ Change	% Change
	(in millions)							
Net (loss) income	$ (4.4)	$ (1.5)	$ (2.9)	-186.9%	$ (11.5)	$ 3.3	$ (14.8)	-450.9%
Interest income and interest income – related parties	-	-	-	260.5%	(0.1)	(0.6)	0.5	84.1%
Interest expense and interest expense – related parties	0.4	0.3	0.1	41.9%	1.0	0.6	0.4	55.9%
(Benefit from) provision for income taxes	(1.2)	(0.4)	(0.8)	-189.9%	(3.0)	0.8	(3.8)	-479.0%
Depreciation and amortization expense, property and equipment	0.1	0.1	-	-12.2%	0.3	0.4	(0.1)	-20.6%
EBITDA	$ (5.1)	$ (1.5)	$ (3.6)	-228.7%	$ (13.3)	$ 4.5	$ (17.8)	-396.0%

EBITDA decreased by $3.6 million, or 228.7%, due primarily to a reduction in net income of $2.9 million and a decrease in the income tax provision of $0.8 million during the three months ended September 30, 2023 as compared to three months ended September 30, 2022. During the nine months ended September 30, 2023, EBITDA decreased by $17.8 million, or 396.0%, due to a reduction in net income of $14.8 million and a decrease in the income tax provision of $3.8 million; which was partially offset by a decrease in interest income and interest income - related parties of $0.5 million as compared to the nine months ended September 30, 2022.

Components of Results of Operations

Revenues

We primarily derive revenue from the sale of our games through various gaming platforms. Through these platforms, users can download our games and, for certain games, purchase virtual items to enhance their game-playing experience. We offer certain software products through third-party digital storefronts, such as Xbox Live and Game Pass, PlayStation Network, Steam, Epic Games Store, the Apple App Store, the Google Play Store, My Nintendo Store and the Amazon Appstore, and certain retail distributors. For sales arrangements through Xbox Live and Game Pass, PlayStation Network, Steam, Epic Game Stores, My Nintendo Store and retail distributors, the digital platforms and distributors have discretion in establishing the price for the specified good or service, and we have determined we are the agent in the sales transaction to the end user and therefore report revenue on a net basis based on the consideration received from the digital storefront. For sales arrangements through the Apple App Store and the Google Play Store, we have discretion in establishing the price for the specified good or service and have determined that we are the principal to the end user and therefore report revenue on a gross basis. Mobile platform fees charged by these digital storefronts are expensed as incurred and reported within cost of revenue as merchant fees.

We record deferred revenue when payments are due or received in advance of the fulfillment of our associated performance obligations.

Our net revenues through our top four platform providers as a proportion of our total net revenue for the three and nine months ended September 30, 2023 and 2022 were as follows:

	Three months ended September 30,				Nine months ended September 30,			
	2023	**2022**	**$ Change**	**% Change**	**2023**	**2022**	**$ Change**	**% Change**
	(in millions)							
Platform 1	$ 3.6	$ 5.1	$ (1.5)	-30.5%	$ 11.5	$ 17.9	$ (6.4)	-35.4%
Platform 2	1.8	1.6	0.2	11.4%	5.4	15.2	(9.8)	-64.5%
Platform 3	0.8	1.1	(0.3)	-26.0%	3.0	7.7	(4.7)	-60.6%
Platform 4	0.7	0.3	0.4	121.4%	2.6	1.1	1.5	138.9%
All Other Revenue	2.1	7.5	(5.4)	-71.8%	9.8	17.3	(7.5)	-43.6%
Total	**$ 9.0**	**$ 15.6**	**$ (6.6)**	**-42.5%**	**$ 32.3**	**$ 59.2**	**$ (26.9)**	**-45.3%**

We expect changes in revenue to correlate with trends in the use and purchase of our games. The decrease in net revenues of Platform 1 and Platform 3 during the three month periods ended September 30, 2023 and 2022 was due to the decreased ASP of the *ARK 1* franchise in the 2023 period. The increase in net revenues of Platform 4 was due to the remastered version of *ARK 1* being released in the first quarter of 2023 and the increase in net revenue in Platform 2 is due to the free download promotions occurring in the six months prior to the three month period ended September 30, 2022 resulting in many end users opting to obtain the title during the free download promotion.

The decrease in net revenues of Platform 1 during the nine month period ended September 30, 2023 and 2022 was due to the decreased ASP of the *ARK 1* franchise in the 2023 period. The decrease in net revenues of Platform 2 and Platform 3 were due to one off payments and deferred revenues recognized in the 2022 period, in addition to reduced ASP's. The increase in net revenues of Platform 4 was due to the release of a remastered and upgraded version of *ARK 1* on the platform during the nine month period ended September 30, 2023.

Cost of revenues

Cost of revenues includes license royalty fees, merchant fees, engine fees, server and database cost centers, game licenses and license right amortization. For a description of our licensing arrangements, please see Note 2 – *Summary of Significant Accounting Policies* to the unaudited condensed consolidated financial statements. We generally expect cost of revenues to fluctuate proportionately with revenues.

General and administrative

General and administrative expenses include rent expense, salaries, stock-based compensation, legal and professional expenses, internet and server expenses, contractor costs, insurance expenses, licenses and permits, other taxes and travel expenses. We expect salaries and wages to increase in a manner that is proportional with the added expenses and expertise of operating as a public company. We also expect salaries and wages to increase as we increase headcount as we expand our product offerings. Future stock-based compensation will be recorded within research and development and general and administrative expense. We also record legal settlement expenses as components of general and administrative expenses. We expect general and administrative expenses will increase in absolute dollars due to the additional administrative and regulatory burden of becoming and operating as a public company.

Research and development

Research and development consists primarily of consulting expenses and salaries and wages devoted towards the development of new games and related technologies. We do not fund or enter into arrangements relating to the research and development activities from third-party developers from whom we license games. We expect our research and development to increase as we develop new content, games or technologies.

Advertising and marketing

Advertising and marketing consists of costs related to advertising and user acquisition efforts, including payments to third-party marketing agencies. We occasionally offer our early access trial, through which we sell our games that are in development and testing. The early access trial allows us to both monetize and receive feedback on how to improve our games over time. We plan to continue to invest in advertising and marketing to retain and acquire players. However, sales and marketing expenses may fluctuate as a percentage of revenues depending on the timing and efficiency of our marketing efforts.

Interest expense and other, net

Interest expense consists of interest incurred under our term loans, 2021 Revolving Loan, promissory notes and the amortization of debt discounts. We expect to continue to incur interest expense under our debt instruments, although with respect to certain instruments, our interest expense will fluctuate based upon the underlying variable interest rates.

(Benefit from) provision for income taxes

The (benefit from) provision for income taxes consists of current income taxes in the various jurisdictions where we are subject to taxation, primarily the United States, as well as deferred income taxes reflecting the net tax effects of temporary differences between the carrying amounts of assets and liabilities in each of these jurisdictions for financial reporting purposes and the amounts used for income tax purposes. Under current U.S. tax law, the federal statutory tax rate applicable to corporations is 21%. Our effective tax rate of 21% did not differ from the federal rate of 21%.

Results of Operations

Comparison of the three months ended September 30, 2023 versus the three months ended September 30, 2022

	Three months ended September 30,			
	2023	2022	$ Change	% Change
	(in millions)			
Revenues, net	$ 9.0	$ 15.6	$ (6.6)	(42.5)%
Cost of revenues	9.5	12.4	(2.9)	(23.8)%
Gross profit, (loss)	(0.5)	3.2	(3.7)	(115.1)%
Operating expenses:				
General and administrative	3.5	4.5	(1.0)	(22.9)%
Research and development	1.3	0.1	1.2	1,029.6%
Advertising and marketing	0.2	0.2	—	8.6%
Depreciation and amortization	0.1	0.1	—	(12.2)%
Total operating expenses	5.1	4.9	0.2	3.6%
Loss from operations	**$ (5.6)**	**$ (1.7)**	**$ (3.9)**	**(222.1)%**

Revenues

Net revenues for the three months ended September 30, 2023 decreased by $6.6 million, or 42.5%, compared to the three months ended September 30, 2022. The decrease in net revenues was due to a one time contract revenue payment recognized from deferred revenue for a free week promotion in the amount of $4.0 million that occurred in the three months ended September 2022 but not in 2023 and a decrease in sales of *ARK*, due to lower ASP's. *ARK* sales and in-game purchases decreased by $2.0 million. Sales of the Company's smaller titles decreased by a collective $0.4 million.

Cost of revenues

Cost of revenues for the three months ended September 30, 2023 decreased by $2.9 million, or 23.8%, compared to the three months ended September 30, 2022.

Cost of revenues for the three months ended September 30, 2023 and 2022 comprised the following:

	Three months ended September 30,			
	2023	2022	$ Change	% Change
	(in millions)			
Software license royalties - related parties	$ 2.1	$ 3.4	$ (1.3)	(38.5)%
Software license royalties	0.4	—	0.4	100.0%
License and amortization - related parties	4.7	6.4	(1.7)	(26.1)%
Merchant fees	0.2	0.6	(0.4)	(64.2)%
Engine fees	0.3	0.4	(0.1)	(18.7)%
Internet, server and data center	1.8	1.5	0.3	19.3%
Costs related to advertising revenue	—	0.1	(0.1)	(99.9)%
Total:	**$ 9.5**	**$ 12.4**	**$ (2.9)**	**(23.8)%**

The decrease in cost of revenues for the three months ended September 30, 2023 was due to a decrease in *ARK* related royalties of $1.0 million, a decrease in merchant fees of $0.4 million, commensurate with the decrease in *ARK* sales, and a decrease in engine fees of $0.1 million. The Company also reported a decrease in license and amortization cost of $1.7 million due to a lower amortizable base that is the result of the age of certain licenses. These were offset by increased internet, server and data center costs of $0.3 million, primarily driven by increased server hosting rates.

General and administrative expenses

General and administrative expenses for the three months ended September 30, 2023 decreased by $1.0 million, or 22.9%. The decrease in general and administrative expenses was primarily due to a decrease in legal and professional expenses of $1.0 million, a decrease in salaries and wages of $0.2 million and a decrease in internet and administrative server costs of $0.2 million, offset by increased public company expenses of $0.1 million and increased insurance expenses of $0.2 million during the three months ended September 30, 2023.

Research and development expenses

Research and development expenses for the three months ended September 30, 2023 increased by $1.2 million, or 1,029.6%. The increase in research and development expenses was primarily due to increases in personnel advancing the development of the Company's *Atlas*, *Last Oasis* and *Agartha* and future titles, in addition to the salaries of personnel developing future titles under the Company's subsidiary, Donkey Crew, LLC, during the three months ended September 30, 2023.

Other Factors Affecting Net Income

	Three months ended September 30,			
	2023	2022	$ Change	% Change
	(in millions)			
Interest expense	$ (0.4)	$ (0.3)	$ (0.1)	41.9%
Other income	0.3	-	0.3	1,505.9%
Benefit from income taxes	(1.2)	(0.4)	(0.8)	189.9%

Interest expense

Interest expense is primarily related to our outstanding indebtedness with third-party lenders. Interest expense increased by $0.1 million for the three months ended September 30, 2023 as a result of rising interest charges on the Company's floating rate debt and amortization of debt discounts which did not occur in the 2022 period.

Other income

Other income was $0.3 million, and $0.0 million for the three months ended September 30, 2023 and 2022, respectively. The increase was due to a litigation settlement.

Benefit from income taxes

The Company had an income tax benefit of $1.2 million and $0.4 million for the three months ended September 30, 2023 and 2022, respectively, representing a decrease of $0.8 million. Our effective income tax rate was 21% for both of the three month periods ended September 30, 2023 and 2022, respectively.

Comparison of the nine months ended September 30, 2023 versus the nine months ended September 30, 2022

	Nine months ended September 30, 2023	Nine months ended September 30, 2022	$ Change	% Change
		(in millions)		
Revenues, net	$ 32.3	$ 59.1	$ (26.8)	(45.3)%
Cost of revenues	29.7	40.4	(10.7)	(26.6)%
Gross profit	2.6	18.7	(16.1)	(85.7)%
Operating expenses:				
General and administrative	11.9	13.5	(1.6)	(11.9)%
Research and development	3.9	0.5	3.4	711.5%
Advertising and marketing	0.5	0.6	(0.1)	(14.2)%
Depreciation and amortization	0.3	0.4	(0.1)	(20.6)%
Total operating expenses	16.6	15.0	1.6	10.9%
(Loss) income from operations	**$ (14.0)**	**$ 3.7**	**$ (17.7)**	**(475.0)%**

Revenues

Net revenues for the nine months ended September 30, 2023 decreased by $26.8 million, or 45.3%, compared to the nine months ended September 30, 2022. The decrease in net revenues was due to a decrease in sales of *ARK*, a result of lower ASP's as unit sales decreased by approximately 6.2%, additional deferred revenue and one-time payments related to contracts with certain platforms. *ARK* sales and in game purchases decreased by $10.3 million, deferred revenue from contracts decreased by $6.5 million, and one-off payments decreased by $8.5 million. Sales of the smaller titles decreased by a collective $1.7 million. These decreases in the Company's smaller titles were partially offset by an increase of $0.2 million in revenue related to *West Hunt*.

Cost of revenues

Cost of revenues for the nine months ended September 30, 2023 decreased by $10.7 million, or 26.6%, compared to the nine months ended September 30, 2022.

Cost of revenues for the nine months ended September 30, 2023 and 2022 comprised the following:

	Nine months ended September 30, 2023	Nine months ended September 30, 2022	$ Change	% Change
		(in millions)		
Software license royalties – related parties	$ 6.9	$ 13.3	$ (6.4)	(48.3)%
Software license royalties	1.0	—	1.0	1,983.2%
License and amortization – related parties	14.8	19.1	(4.3)	(22.6)%
License and amortization	—	0.3	(0.3)	(99.8)%
Merchant fees	1.0	1.9	(0.9)	(44.8)%
Engine fees	1.0	1.6	(0.6)	(36.0)%
Internet, server and data center	5.0	4.1	0.9	18.6%
Costs related to advertising revenues	-	0.1	(0.1)	(41.3)%
Total:	**$ 29.7**	**$ 40.4**	**$ (10.7)**	**(26.6)%**

The decrease in cost of revenues for the nine months ended September 30, 2023 was due to a decrease in *ARK* related royalties of $5.5 million, a decrease in merchant fees of $0.9 million, commensurate with the decrease in *ARK* sales, and a decrease in engine fees of $0.6 million. The Company also reported a decrease in license and amortization cost of $4.6 million due to a lower amortizable base that is the result of the age of certain licenses. These decreases were partially offset by an increase in internet, server and data center costs of $0.9 million, driven by increased server hosting costs.

General and administrative expenses

General and administrative expenses for the nine months ended September 30, 2023 decreased by $1.6 million, or 11.9%. The decrease in general and administrative expenses was primarily due to a decrease in legal and professional expenses of $2.3 million, a decrease in salaries and wages of $0.3 million, a decrease in internet and administrative server costs of $0.3 and a decrease in contractor related costs of $0.2 million. These decreases were partially offset by increased public company expenses of $0.8 million and an increase in insurance related expenses of $0.6 million during the nine months ended September 30, 2023.

Research and development expenses

Research and development expenses for the nine months ended September 30, 2023 increased by $3.4 million, or 711.5%. The increase in research and development expenses was primarily due to additional development of the Company's *ARK 1, Atlas, Last Oasis* and *Agartha* titles during the nine months ended September 30, 2023.

Other Factors Affecting Net Income

	Nine months ended September 30,			
	2023	**2022**	**$ Change**	**% Change**
		(in millions)		
Interest income – related parties	$ -	$ 0.6	$ (0.6)	(99.7)%
Interest expense	(1.0)	(0.6)	(0.4)	56.7%
Other income	0.3	0.3	-	0.7%
(Benefit from) provision for income taxes	(3.0)	0.8	(3.8)	(479.0)%

Interest income

Interest income — related parties was $0.0 million, and $0.6 million for the nine months ended September 30, 2023 and 2022, respectively. The decrease was due to the distribution of the Shi Loan to Suzhou Snail in April 2022.

Interest expense

Interest expense is primarily related to our outstanding indebtedness with third-party lenders. Interest expense increased by $0.4 million for the nine months ended September 30, 2023 as a result of increased interest charges on the Company's floating rate debts and the short-term note issued in January 2022 and the amortization of the discount on the Company's convertible notes.

Other income

Other income was $0.3 million, and $0.3 million for the nine months ended September 30, 2023 and 2022, respectively.

(Benefit from) provision for income taxes

The Company had an income tax benefit of ($3.0) million for the nine months ended September 30, 2023 and a provision for income taxes of $0.8 million for the nine months ended September 30, 2022 representing a decrease of $3.8 million. Our effective income tax rate was 21% and 20% for the nine months ended September 30, 2023 and 2022, respectively.

Liquidity and Capital Resources

Capital spending

We incur capital expenditures in the normal course of business and perform ongoing enhancements and updates to our social and mobile games to maintain their quality standards. Cash used for capital expenditures in the normal course of business is typically made available from cash flows generated by operating activities. We may also pursue acquisition opportunities for additional businesses or games that meet our strategic and return on investment criteria. Capital needs for investment opportunities are evaluated on an individual opportunity basis and may require significant capital commitments.

Liquidity and Going Concern

Our primary sources of liquidity are the cash flows generated from our operations and increased financing activities in the period ended September 30, 2023, that are currently available unrestricted cash. Our unrestricted cash was $4.9 million and $12.9 million as of September 30, 2023 and December 31, 2022, respectively.

Our restricted cash and cash equivalents were $1.1 million and $6.4 million as of September 30, 2023 and December 31, 2022, respectively. Our restricted cash primarily consists of time deposits and is used as security for certain of our debt instruments and to secure standby letters of credit with certain of our landlords.

As of September 30, 2023, our 2021 Revolving Loan and 2022 Short Term Note of $6.0 million and $2.1 million are due in December 2023 and January 2024, respectively. On August 24, 2023, the Company issued convertible notes at a 7.4% discount and a principal balance of $1,080,000. The notes have an interest rate of 7.5%, will be paid in consecutive monthly installments beginning February 24, 2024 and if the note is not converted, it will mature on May 24, 2024. We intend to renegotiate with the lender to extend the maturity dates of the 2021 Revolving Loan and the 2022 Short Term Note. However, there is no guarantee that we will be able to renegotiate the terms of the 2021 Revolving Loan or the 2022 Short Term Note with the lender at terms acceptable to us or at all. Additionally, we plan to repay the outstanding amounts under the 2022 Short Term Note pursuant to the terms of the 2022 Short Term Note agreement. Currently, we expect that we will not be in compliance with its quarterly debt covenant for the three months ending December 31, 2023. We are working with the lender to resolve the expected non-compliance with the debt covenant.

The Company raised additional capital during the three months ended September 30, 2023 in the form of the convertible notes, short term financing arrangement with the Company's IDC vendor, and the distribution agreement entered into with our retail partner which provided advanced royalties. We may need to raise additional capital and issue registered shares to draw on an equity line of credit if needed. The need for additional capital depends on many factors, including, among other things, whether we can successfully renegotiate the terms of our debt arrangements, the rate at which our business grows, demands for working capital, revenue generated from existing DLCs and game titles and launches of new DLCs and new game titles, and any acquisitions that we may pursue. From time to time, we could be required, or may otherwise attempt, to seek additional sources of capital, including, but not limited to, equity and/or debt financings. We cannot provide assurance that we will be able to successfully access any such equity or debt financings, that the required equity or debt financings would be available on terms acceptable to us, if at all, or that any such financings would not be dilutive to our stockholders.

Our recent net loss, level of cash used in operations, debt obligations coming due in less than 12 months, potential need for additional capital, and the uncertainties surrounding our ability to raise additional capital and renegotiate our debt arrangements raise substantial doubt about our ability to continue as a going concern. The unaudited condensed consolidated financial statements do not include any adjustments that might be necessary if we are unable to continue as a going concern.

In order for us to continue operations beyond the next 12 months and be able to discharge our liabilities and commitments in the normal course of business, we must re-establish profitable operations in order to generate cash from operations by increasing revenue or controlling or potentially reducing expenses, renegotiate the terms of its debt arrangements, or obtain additional funds when needed. Our current goal is to improve our financial condition and ultimately improve our financial results by increasing revenues through increased sales of existing DLCs and game titles, launches of new DLCs and game titles and reduced expenses.

Cash flows

The following tables present a summary of our cash flows for the periods indicated (in millions):

	Nine months ended September 30,			
	2023	**2022**	**$ Change**	**% Change**
		(in millions)		
Net cash flows used in operating activities	$ (10.8)	$ (0.7)	$ (10.1)	(1,521.5)%
Net cash flows provided by investing activities	—	1.2	(1.2)	(100.0)%
Net cash flows used in financing activities	(2.4)	(1.6)	(0.8)	(46.9)%
Net decrease in cash and cash equivalents and restricted cash and cash equivalents	$ (13.2)	$ (1.1)	$ (12.1)	(1,112.1)%

Operating activities

Net cash flows provided by operating activities for the nine months ended September 30, 2023 decreased $10.1 million as compared to the nine months ended September 30, 2022, which resulted primarily from a period-over-period decrease in net income of $14.8 million and a decrease of $6.1 million in non-cash reconciling items, a decrease in accounts payable and accounts payable – related party of a $0.9 million, a $1.4 million decrease in net accounts receivable and accounts receivable – related party, offset by a $9.3 million increase from changes in deferred revenues, an increase of $0.3 million in accrued expenses and a decrease in the cash flows from prepaid expenses and other current assets of $3.6 million.

Net loss was $11.5 million for the nine months ended September 30, 2023 as compared to a net income of $3.3 million for the nine months ended September 30, 2022, representing a decrease of $14.8 million. The decrease was primarily due to a decrease in revenue of $26.8 million, an increase in research and development expense of $3.4 million, a net decrease in interest income – related party of $0.6 million, an increase in interest expense of $0.4 million, an increase of $0.8 million in internet server and data center costs; offset by a decrease in royalties of $5.5 million, a decrease in license cost and license right amortization of $4.5 million, a decrease in merchant and engine fees of $1.4 million, a decrease in general and administrative expenses of $1.6 million, and a decrease in the Company's tax provision of $3.8 million.

Non-cash reconciling items were ($0.7) million and $5.4 million for the nine months ended September 30, 2023 and 2022, respectively, representing a decrease of $6.1 million. The decrease in the non-cash reconciling items was primarily due to a decrease of $4.4 million in amortization, an increase in deferred taxes of $3.1 million, partially offset by decrease in the interest income from shareholder loan of $0.5 million, an increase in stock based compensation of $0.6 million and a decrease in gains recognized of $0.3 million for the lease termination and paycheck protection program loan forgiveness.

The increase in our net operating assets and liabilities between the nine months ended September 30, 2023 and 2022 of $10.7 million was primarily the result of a net increase in prepaid expenses — related party and prepaid expenses and other current assets of $3.5 million primarily driven by timing of payments of federal and state taxes, the litigation receivable and DLC development costs and an increase in accrued expenses of $0.3 million, an increase in deferred revenue of $9.3 million, partially offset by a decrease in accounts payable and accounts payable — related party of $0.9 million resulting from decreased vendor accruals near the end of the period and lower royalties payable due to lower revenues, net decrease in accounts receivable and accounts receivable — related party of $1.4 million due to timing of receipts and payments from customers and a related party.

Our accounts receivable — related party represent revenues attributable to certain mobile games that, for administrative reasons, were collected on our behalf by SDE Inc. (“SDE”), an affiliated entity. SDE no longer collects such payments on our behalf; all such payments are received directly from the platforms through which we offer the relevant games. As of September 30, 2023 and December 31, 2022, the net outstanding balances of receivables due from SDE were $11.5 million and $11.3 million, respectively. We expect accounts receivables owed to us by SDE will be repaid within a commercially reasonable period of time. In the event we do not receive timely remittance from SDE, we may hold back amounts owed to SDE from future licensing costs payable to SDE pursuant to our existing contractual relationship. See Note 5 — *Accounts Receivable — Related Party* to our condensed consolidated financial statements included in this Quarterly Report.

Investing activities

Cash provided by investing activities for the nine months ended September 30, 2023 decreased $1.2 million compared to the nine months ended September 30, 2022 due to receipt by the Company of $1.5 million on the Pound Sand note, partially offset by the repayments of a $0.3 million related party loan in 2022.

Financing activities

Net cash flows used in financing activities for the nine months ended September 30, 2023 were $2.4 million compared to net cash flows used in financing activities of $1.6 million for the nine months ended September 30, 2022. Financing activities for the nine months ended September 30, 2023 included repayments of $3.8 million on a short term note, repayment of $3.0 million on the revolving loan, the purchases of treasury stock in the amount of $0.3 million, payments of offering costs included in the Company’s payables of $0.3 million, partially offset by borrowings under a note payable of $2.3 million, proceeds received for the issuance of convertible debt of $0.9 million and the refund of a $1.9 million dividend withholding payment. Financing activities for the nine months ended September 30, 2022 included $10.0 million of borrowings under our term loan, which was offset by repayments on our short term note in the amount of $3.3 million and a cash dividend declared and paid of $8.2 million.

Registered Offerings

In September 2022, we filed a Form S-1 Registration Statement with the SEC in connection with our IPO. As of the effective date of the Registration Statement, we became the parent company of Snail Games USA and a holding company, with our principal asset consisting of all the shares of common stock of Snail Games USA.

In the IPO, we issued 3,000,000 shares of our Class A common stock and net proceeds from the issuance were distributed to Snail Games USA in November 2022 in the amount of $12.0 million. In connection with the IPO, $1.0 million of the net proceeds were remitted to an escrow account which is held to provide a source of funding for our indemnification obligations to the underwriters. The amount in escrow will be reported as a restricted escrow deposit for 12 months from the date of the IPO, at which time the restrictions will be removed and the balance will be reverted to unrestricted cash.

In October 2023, we filed a Form S-1 Registration Statement with the SEC in connection with our issuance of convertible note, an equity line of credit and warrants related to each financing as noted below.

Capital resources

We fund our operations from our net cash flows provided by operating activities. In addition to these cash flows, we have entered into certain debt arrangements to provide additional liquidity and to finance our operations.

Revolving Loan

In December 2018, we entered into a revolving loan and security agreement with a financial institution for a revolving note in the amount of $5.5 million. On June 17, 2021, we amended and restated our revolving loan and security agreement (the “2021 Revolving Loan”) to increase our revolving line of credit to $9.0 million. As amended, the 2021 Revolving Loan matures on December 31, 2023 and bears interest at a rate equal to the prime rate less 0.25%. Interest is due and payable under the 2021 Revolving Loan on a monthly basis. The 2021 Revolving Loan was partially secured by the certificate of deposit accounts held with the financial institution, and reported as restricted cash, in the amounts of $5.3 million as of December 31, 2022. In June 2023, the Company amended its revolving loan and the certificate of deposit accounts securing the loan were released. As September 30, 2023, we had borrowings of $6.0 million outstanding under our 2021 Revolving Loan. We intend to extend the 2021 Revolving Loan prior to its maturity date. There is no guarantee that we will be able to extend the 2021 Revolving Loan on terms acceptable to us in the future, or at all.

Term Loan

In June 2021, we entered into a loan agreement with a financial institution providing for a term loan in an aggregate principal amount of $3.0 million (the “Term Loan”). The Term Loan, which was originally set to mature in June 2031, bears interest at a fixed rate of 3.5% for the first five years and then at a floating rate of the Wall Street Journal prime rate until maturity. The Term Loan is secured by our principal headquarters. The Term Loan replaced and refinanced a previously outstanding $3.0 million promissory note due September 2021.

In January 2022, we amended and restated our 2021 Revolving Loan and we executed a promissory note to obtain an additional long-term loan with a principal balance of $10.0 million which was set to mature on January 26, 2023 (the “2022 Short Term Note”). In November 2022, the maturity date was extended to January 26, 2024. Interest is equal to the higher of 5.75% and the Wall Street Journal prime rate plus 0.50%. The 2022 Short Term Note is secured and collateralized by our existing assets. As of September 30, 2023, we had borrowings of $2.1 million outstanding under the 2022 Short Term Note.

Convertible Notes

On August 24, 2023, the Company issued convertible notes at a 7.4% discount and a principal balance of $1,080,000. The notes have an interest rate of 7.5%, will be paid in consecutive monthly installments beginning February 24, 2024 and will mature on May 24, 2024. In the event of a default the interest rate will be increased to the lower of 16% per annum or the highest amount permitted by applicable law. The Company has the option to prepay the notes at any time and the note holders have the option to convert the notes, in whole or in part, any time after November 24, 2023. The difference of $525,754 between the proceeds allocated to the Convertible Notes and the aggregate principal amount will be accreted over the life of the notes. Additionally, $152,000 of transaction costs incurred by the Company were recorded as a debt discount. The discount is amortized using the effective interest rate of 109.7%. As of September 30, 2023, we had borrowings of $1,080,000, net of a $564,783 discount under the Convertible Notes. The Company has registered shares for potential issuance on exercise of the warrants, or conversion of the note, on Form S-1 that was declared effective on October 30, 2023.

Equity Line Purchase Agreement

On August 24, 2023, the Company entered into a common stock purchase agreement (the “Equity Line Purchase Agreement”) and a registration rights agreement (the “Registration Rights Agreement”) with an investor, pursuant to which the investor has committed to purchase up to $5,000,000 in shares of the Company’s Class A common stock, subject to certain limitations and conditions set forth in the Equity Line Purchase Agreement. The Company shall not issue or sell any shares of common stock under the Equity Line Purchase Agreement which, when aggregated with all other shares of common stock beneficially owned by the investor, would result in beneficial ownership of more than 9.99% of the Company’s outstanding shares of common stock.

Under the terms of the Equity Line Purchase Agreement, the Company has the right, but not the obligation, to sell to the investor, shares of Class A common stock over the period commencing on the execution date of the Equity Line Purchase Agreement and ending on the earlier of (i) December 31, 2025, or (ii) the date on which the investor shall have purchased Securities pursuant to the Equity Line Purchase Agreement for an aggregate purchase price of the $5,000,000, provided that a registration statement covering the resale of shares of Class A common stock that have been and may be issued under the Equity Line Purchase Agreement is declared effective by the SEC. The Company has registered shares for potential issuance on exercise of the warrants, or drawing of the equity line, on Form S-1 that was declared effective on October 30, 2023.

2023 Note Payable

In July 2023, the Company entered into a cooperation agreement with its IDC vendor. The Company agreed to make the vendor the official server host of *Ark: Survival Evolved* and future iterations and sequels of the game for a period of 7 years. In return, the vendor has agreed to provide the Company with funds in cash of up to $3.0 million without discount and free of charges and costs to the Company. The funds are to be repaid in monthly installments starting in November 2023 and are to be based on 20% of the gross monthly Ark Survival revenues. The Company has imputed interest at 8.0% on draws made. As of September 30, 2023, we had borrowings of $2.3 million outstanding under the Note Payable.

Financial covenants

The 2021 Revolving Loan, Term Loan and the 2022 Short Term Note require us to maintain a minimum debt service coverage ratio of 1.5 to 1.0. We were in compliance with, or had waivers for, all covenants under our debt facilities as of September 30, 2023.

For additional information regarding our indebtedness, see Note 15 — *Revolving Loan, Short Term Note and Long-Term Debt* to our unaudited condensed consolidated financial statements included in this Quarterly Report.

Critical Accounting Policies and Estimates

Our discussion and analysis of results of operations, financial condition, and liquidity are based upon our condensed consolidated financial statements, which have been prepared in accordance with U.S. GAAP. The preparation of these condensed consolidated financial statements requires us to make estimates and judgements that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the condensed consolidated financial statements and the reported amounts of revenues and expenses during the reporting period. We based our estimates on historical experience and on various other assumptions that are believed to be reasonable under the circumstances. Actual results may materially differ from these estimates under different assumptions or conditions. On an on-going basis, we review our estimates to ensure that they appropriately reflect changes in our business or new information as it becomes available. For additional information on our significant accounting policies, please refer to Note 2 — *Summary of Significant Accounting Policies* to our unaudited condensed consolidated financial statements included in this Quarterly Report. We believe that the following critical accounting policies and estimates have the greatest potential impact on our unaudited condensed consolidated financial statements.

Intangible Assets

The Company's publishing and development business requires significant investments in intangible assets such as licensing rights. The carrying values of these intangibles are periodically reviewed and adjusted, as appropriate, based on estimates of their useful lives, futures cash flows and fair values. Estimates of futures cash flows may vary from period to period depending on market factors such as media and gaming trends and current sales trends. If these estimates result in a reduction in cash flows the Company may recognize an impairment loss on the intangible asset. The Company did not have any material changes in these estimates during the nine months ended September 30, 2023 but believe it is reasonably possible that changes may occur in future periods.

Deferred Revenue

The Company recognizes, defers, and classifies the timing of deferred revenues from the sale of its products based on the release date, technical support obligations and timing of its performance obligations. The technical support obligations are estimated based on our estimated service period, as determined below. These estimates will vary by platform and could change from period to period depending on user trends. An increase in use estimate could result in a reclassification of deferred revenues from short term to long term and extend the period over which we would recognize said revenue resulting in a lower net income in future periods. Changes in estimates of our release schedule may also affect the classification of short and long term deferred revenues and the rate at which deferred revenue is recognized, which could have a material impact on the Company’s condensed consolidated financial statements.

Estimated Service Period

We consider a variety of data points when determining and subsequently reassessing the estimated service period for players of our software products. Primarily, we review the weighted average number of days between players’ first and last days played online. When a new game is launched and no history of online player data is available, we consider other factors to determine the user life, such as the estimated service period of other games actively being sold with similar characteristics. We also consider known online trends, the service periods of our previously released software products, and, to the extent publicly available, the service periods of our competitors’ software products that are similar in nature to ours.

We believe this provides a reasonable depiction of the use of games by our customers, as it is the best representation of the period during which our customers play our software products. Determining the estimated service period is subjective and requires significant management judgment and estimates. Future usage patterns may differ from historical usage patterns, and therefore the estimated service period may change in the future. The estimated service periods for virtual goods are generally approximately 30 to 100 days.

Deferred Income Taxes

The Company recognizes deferred income taxes based on estimates of future taxable income and the utilization of tax loss carryforwards. Changes in tax laws or the level of future taxable income could affect the realizability of deferred income tax assets. The Company’s deferred income tax assets reflect the net tax effects of temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for income tax purposes. The Company’s estimates of deferred income taxes are based on its assessment of the likelihood of realizing the benefits of the tax assets and are reviewed annually. Changes in these estimates may have a material impact on the Company’s unaudited condensed consolidated financial statements.

Recently Issued Accounting Pronouncements

For a description of recently issued and adopted accounting pronouncements, including the respective dates of adoption and expected effects on our results of operations and financial condition, please see Note 2 - *Summary of Significant Accounting Policies* to our unaudited condensed consolidated financial statements included in this Quarterly Report.

Emerging Growth Company and Smaller Reporting Company Status

We are an “emerging growth company,” as defined in the JOBS Act. As such, we are eligible for exemptions from various reporting requirements applicable to other public companies that are not emerging growth companies, including, but not limited to, not being required to comply with the auditor attestation requirements of Section 404 of the Sarbanes-Oxley Act, reduced disclosure obligations regarding executive compensation, and an exemption from the requirements to obtain a non-binding advisory vote on executive compensation or golden parachute arrangements. We have elected to take advantage of certain of the reduced disclosure obligations and may elect to take advantage of other reduced reporting requirements in our future filings with the SEC. As a result, the information that we provide to our stockholders may be different than you might receive from other public reporting companies in which you hold equity interests.

In addition, an emerging growth company can take advantage of an extended transition period for complying with new or revised accounting standards. This provision allows an emerging growth company to delay the adoption of certain accounting standards until those standards would otherwise apply to private companies. We have elected to avail ourselves of this provision of the JOBS Act. As a result, we will not be subject to new or revised accounting standards at the same time as other public companies that are not emerging growth companies. Therefore, our condensed consolidated financial statements may not be comparable to those of companies that comply with new or revised accounting pronouncements as of public company effective dates.

We will remain an emerging growth company until the earliest of: (a)(i) the last day of the fiscal year following the fifth anniversary of the closing of our initial public offering; (ii) the last day of the fiscal year in which we have total annual gross revenue of at least $1.235 billion; or (iii) the last day of the fiscal year in which we are deemed to be a “large accelerated filer” as defined in Rule 12b-2 under the Exchange Act, which would occur if the market value of our common stock held by non-affiliates exceeded $700.0 million as of the last business day of the second fiscal quarter of such year and (b) the date on which we have issued more than $1.0 billion in non-convertible debt securities during the prior three-year period.

We are also a “smaller reporting company” as defined in the Exchange Act. We may continue to be a smaller reporting company even after we are no longer an emerging growth company. We may take advantage of certain of the scaled disclosures available to smaller reporting companies and will be able to take advantage of these scaled disclosures for so long as our voting and non-voting common stock held by non-affiliates is less than $250.0 million measured on the last business day of our second fiscal quarter, or our annual revenue is less than $100.0 million during the most recently completed fiscal year and our voting and non-voting common stock held by non-affiliates is less than $700.0 million measured on the last business day of our second fiscal quarter.

Item 3. Quantitative and Qualitative Disclosures About Market Risk.

As a “smaller reporting company” as defined by Item 10 of Regulation S-K, the Company is not required to provide the information required by this item.

Item 4. Controls and Procedures.

Disclosure Controls and Procedures

The Company maintains disclosure controls and procedures (as defined in Rule 13a-15(e) under the Exchange Act) that are designed to ensure that information required to be disclosed in the Company’s reports under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC’s rules and forms, and that such information is accumulated and communicated to the Company’s management, including the Chief Executive Officer and the Chief Financial Officer, as appropriate, to allow timely decisions regarding required disclosure.

Under the supervision and with the participation of our management, including the Chief Executive Officer and Chief Financial Officer, we have 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 September 30, 2023. A material weakness is a deficiency, or combination of deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of our annual and interim financial statements will not be prevented or detected in a timely manner. Based on that evaluation, the Chief Executive Officer and Chief Financial Officer have concluded that our disclosure controls and procedures were not effective as of such date due to a material weakness in the internal control over financial reporting involving failure to properly design and implement controls related to the accounting for income taxes and equity, failure to design and implement sufficient disclosure controls related to certain items in the statement of cash flows, and failure to properly classify certain operating expenses and game server costs as cost of revenues in the consolidated financial statements and deferred taxes in the consolidated footnotes. We have enhanced our financial reporting close control procedures and intend to hire additional personnel with a depth of knowledge and experience to join our accounting and finance organization in order to remediate this material weakness. During the process for preparing the unaudited condensed consolidated financial statements for the nine months ended September 30, 2023, we identified a previously undisclosed related party transaction involving an affiliate of Mr. Hai Shi, our Founder, Chairman, and Chief Strategy Officer. The previously undisclosed related party transaction was a commercial real property lease that was executed by Snail Games USA Inc., our principal operating subsidiary, but was utilized and paid for by an affiliated entity controlled by Mr. Shi. We evaluated the impact of including the previously unreported right of use asset and lease liability related to this lease on our historical consolidated financial statements and concluded it did not have a material impact on our previously filed financial statements. Accordingly, we corrected the reporting in the unaudited condensed consolidated financial statements for the nine months ended September 30, 2023. However, the lack of effective control over the identification of related party transactions gives rise to a material weakness in our internal control over financial reporting. We are in the process of remediating this internal control weakness by inquiring of all executive management and board of directors of any contracts entered into on behalf of the Company, or its subsidiaries, on a quarterly basis. Further, the Company reviews any unusual and recurring significant payments for related contracts. See Part II Item 1A “Risk Factors — General Risk Factors — We identified material weaknesses in our internal control over financial reporting and we may identify additional material weaknesses in the future that may cause us to fail to meet our reporting obligations or result in material misstatements of our financial statements. During the quarter ended September 30, 2023, the Company failed to identify and allocate the consideration received from a settlement between the settlement gain and revenue generating activities. The lack of effective control over the identification and accounting for this significant and unusual transaction give rise to a material weakness in our internal control over financial reporting. We are in the process of evaluating our remediation plan for significant and unusual transactions. If we do not effectively remediate the material weaknesses or if we otherwise fail to maintain effective internal control over financial reporting, we may not be able to accurately and timely report our financial results.”

In light of the material weakness, we performed additional analyses and reconciliations to determine that our unaudited condensed consolidated financial statements are prepared in accordance with U.S. GAAP. Accordingly, the Chief Executive Officer and Chief Financial Officer concluded that the unaudited condensed consolidated financial statements included in this Quarterly Report fairly present in all material respects our financial condition, results of operations and cash flows for the periods presented.

Changes in Internal Control Over Financial Reporting

During the three months ended September 30, 2023, we have identified a material weakness as described above. We have made changes in our internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) which have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting. These changes include, but are not limited to, the implementation of additional reviews over income tax disclosures, equity related disclosures, certain items in the statements of cash flows, and classifications of operating expenses; and additional inquiries of executive management and board members of any contracts entered during each reporting period on behalf of the Company.

Part II OTHER INFORMATION

Item 1. Legal Proceedings

See Item 1 of Part I, “Unaudited Condensed Consolidated Financial Statements — Note 18 *Commitments and Contingencies — Litigation.”*

Item 1A. Risk Factors.

Investing in our securities involves a high degree of risk. Before making an investment decision, you should carefully consider the risk factors described under “Item 1A Risk Factors” in our Annual Report on Form 10-K, and any other periodic or current report filed with the SEC, together with all of the related financial statements and notes thereto. We have not identified any material changes to the risk factors previously disclosed in Part I – Item 1A – “Risk Factors” in our Annual Report on Form 10-K for the year ended December 31, 2022 other than as set forth below:

Risks Related to Our Business and Industry

Due to our recent net loss, negative cash flow from operations, and significant revolving and term debt coming due in less than 12 months, there is substantial doubt about our ability to continue as a going concern.

For the nine months ended September 30, 2023, we incurred a net loss of $11.5 million and had a negative cash flow from operations of $10.8 million. Our 2021 Revolving Loan and 2022 Short Term Note of $6.0 million and $2.1 million are due in December 2023 and January 2024, respectively. We intend to renegotiate with the lender to extend the maturity date of the 2021 Revolving Loan. However, there is no guarantee that we will be able to renegotiate the terms of the 2021 Revolving Loan with the lender at terms acceptable to us or at all. Additionally, we plan to repay the outstanding amounts under the 2022 Short Term Note pursuant to the terms of the 2022 Short Term Note agreement and to renew the debt arrangement. On August 24, 2023, the Company issued convertible notes at a 7.4% discount and a principal balance of $1,080,000. The notes have an interest rate of 7.5%, will be paid in consecutive monthly installments beginning February 24, 2024 and if the note is not converted, it will mature on May 24, 2024.

We may need to raise additional capital. The need for additional capital depends on many factors, including, among other things, whether we can successfully renegotiate the terms of our debt arrangements, the rate at which our business grows, demands for working capital, revenue generated from existing DLCs and game titles and launches of new DLCs and new game titles, and any acquisitions that we may pursue. From time to time, we could be required, or may otherwise attempt, to seek additional sources of capital, including, but not limited to, equity and/or debt financings. We cannot provide assurance that we will be able to successfully access any such equity or debt financings, that the required equity or debt financings would be available on terms acceptable to us, if at all, or that any such financings would not be dilutive to our stockholders.

Our recent net loss, level of cash used in operations, debt obligations coming due in less than 12 months, potential need for additional capital, and the uncertainties surrounding our ability to raise additional capital and renegotiate our debt arrangements raise substantial doubt about our ability to continue as a going concern. For us to continue operations beyond the next 12 months and be able to discharge our liabilities and commitments in the normal course of business, we must re-establish profitable operations, renegotiate the terms of our debt arrangements or raise additional capital when needed. Our current goal is to improve our financial condition and ultimately improve our financial results by increasing revenues through increased sales of existing DLCs and game titles, launches of new DLCs and game titles and reduced expenses. However, if we are unable to do so on a timely basis, we will be required to seek additional sources of capital, including, but not limited to, equity and/or debt financings. There is no guarantee that we will be able to obtain additional capital on terms acceptable to us, if at all. If we are unable to renegotiate the terms of our debt arrangements, raise additional capital or re-establish profitable operations, we will be unable to continue to fund our operations, develop new gaming content, realize value from our assets or discharge our liabilities in the normal course of business. If we are unable to continue as a going concern, we could be required to liquidate our assets, and potentially realize significantly less than the values at which our assets are carried on our unaudited condensed consolidated financial statements, and our stockholders could lose all or part of their investment in our common stock.

Our unaudited condensed consolidated financial statements for the nine months ended September 30, 2023 were prepared on a going concern basis in accordance with GAAP. The going concern basis assumes that we will continue in operation for the next 12 months and will be able to realize our assets and discharge our liabilities and commitments in the normal course of business. Thus, our unaudited condensed consolidated financial statements included in this Quarterly Report do not include any adjustments that might be necessary if we are unable to continue as a going concern.

We are dependent on the future success of our ARK franchise, and we must continue to publish "hit" titles or sequels to such "hit" titles in order to compete successfully in our industry.

ARK is a "hit" product and has historically accounted for a substantial portion of our revenue. The *ARK* franchise contributed 86.9% of our net revenue for the nine months ended September 30, 2023, and our five best-selling franchises (including *ARK*), which may change year over year, in the aggregate accounted for 92.6% of our net revenue for the nine months ended September 30, 2023. If we fail to continue to develop and sell new commercially successful "hit" titles or sequels to such "hit" titles or experience any delays in product releases or disruptions following the commercial release of our "hit" titles or their sequels, our revenue and profits may decrease substantially, and we may incur losses. In addition, competition in our industry is intense and a relatively small number of hit titles account for a large portion of total revenue in our industry. Hit products offered by our competitors may take a larger share of consumer spending than we anticipate, which could cause revenue generated from our products to fall below our expectations. If our competitors develop more successful products or services at lower price points or based on payment models perceived as offering better value, or if we do not continue to develop consistently high-quality and well-received products and services, our revenue and profitability may decline.

We rely on license agreements to publish certain games, including games in our ARK franchise. Failure to renew our existing content licenses on favorable terms or at all or to obtain additional licenses would impair our ability to introduce new games, improvements or enhancements or to continue to offer our current games, which would materially harm our business, results of operations, financial condition and prospects.

We license certain intellectual property rights from third parties, including related parties, and in the future, we may enter into additional agreements that provide us with licenses to valuable intellectual property rights or technology. In particular, we license intellectual property rights related to our *ARK* franchise from SDE, the parent company of Studio Wildcard, which is also an entity that is owned and controlled by the spouse of our Founder, Chief Strategy Officer and Chairman, Mr. Shi. We entered into an original exclusive software license agreement with SDE in November 2015, for the rights to *ARK: Survival Evolved*, and subsequently entered into the amended and restated ARK1 License Agreement. In December 2022, we amended the ARK1 License Agreement. The terms of our license agreements with SDE may differ from those terms which would be negotiated with independent parties. In addition, we may have disputes with SDE that may impact our business, results of operations, financial condition and/or prospects. The *ARK* franchise contributed 86.9% of our net revenue for the nine months ended September 30, 2023. Even if our games that are dependent on third-party license agreements remain popular, any of our licensors could decide not to renew our existing license agreements or not to license additional intellectual property rights to us and instead license to our competitors or develop and publish its own games or other applications, competing with us in the marketplace. Moreover, many of our licensors develop games for other platforms and may have significant experience and development resources available to them should they decide to compete with us rather than license to us. For additional information concerning our license arrangements, including licensing agreements with affiliated third parties, see Item 1 of Part I, "Business — Intellectual Property," included in the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2022.

Failure to maintain or renew our existing material licenses or to obtain additional licenses could impair our ability to introduce new games and new content or to continue to offer our current games, which could materially harm our business, results of operations and financial condition. If we breach our obligations under existing or future licenses, we may be required to pay damages and our licensors may have the right to terminate the license or change an exclusive license to a non-exclusive license. Termination of our license agreements by a material licensor, such as SDE, would cause us to lose valuable rights, such as the rights to our *ARK* franchise, and would inhibit our ability to commercialize future games, which would harm our business, results of operations and financial condition. In addition, certain intellectual property rights may be licensed to us on a non-exclusive basis. The owners of nonexclusively licensed intellectual property rights would be free to license such rights to third parties, including our competitors, on terms that may be superior to those offered to us, which could place us at a competitive disadvantage. Moreover, our licensors may own or control intellectual property rights that have not been licensed to us and, as a result, we may be subject to claims, regardless of their merit, that we are infringing or otherwise violating the licensor's rights. In addition, the agreements under which we license intellectual property rights or technology from third parties and related parties are generally complex, and certain provisions in such agreements may be susceptible to multiple interpretations. The resolution of any contract interpretation disagreement that may arise could narrow what we believe to be the scope of our rights to the relevant intellectual property or technology or increase what we believe to be our financial or other obligations under the relevant agreement. Any of the foregoing could harm our competitive position, business, financial condition, results of operations and prospects.

We rely on third-party platforms, such as Xbox Live and Game Pass, PlayStation Network, Steam, Epic Games Store, the Apple App Store, the Google Play Store, My Nintendo Store and the Amazon Appstore, to distribute our games and collect revenues generated on such platforms and rely on third-party payment service providers to collect revenues generated on our own platforms.

Our games are primarily purchased, accessed and operated through Xbox Live and Game Pass, PlayStation Network, Steam, Epic Games Store, and in the case of our mobile games, the Apple App Store, the Google Play Store and the Amazon Appstore. Substantially all of the games, DLC and in-game virtual items that we sell are purchased using the payment processing systems of these platforms and, for the nine months ended September 30, 2023, 89.7% of our revenues were generated through Xbox Live and Game Pass, PlayStation Network, Steam, Epic Games Store, the Apple App Store, the Google Play Store, My Nintendo Store and the Amazon Appstore. Consequently, our expansion and prospects depend on our continued relationships with these providers, and any other emerging platform providers that are widely adopted by our target players. In addition, having such a large portion of our total net revenues concentrated in a few counterparties reduces our negotiating leverage. We are subject to the standard terms and conditions that these platform providers have for game developers, which govern the content, promotion, distribution, operation of games and other applications on their platforms, as well as the terms of the payment processing services provided by the platforms, and which the platform providers can change unilaterally on short notice or without notice. As such, our business would be harmed if:

- the platform providers discontinue or limit our access to their platforms;
- governments or private parties, such as internet providers, impose bandwidth restrictions, increase charges or restrict or prohibit access to those platforms;
- the platforms increase the fees they charge us;
- the platforms modify their algorithms, communication channels available to developers, respective terms of service or other policies;
- the platforms decline in popularity;
- the platforms adopt changes or updates to their technology that impede integration with other software systems or otherwise require us to modify our technology or update our games in order to ensure players can continue to access our games and content with ease;
- the platforms elect or are required to change how they label free-to-play games or take payment for in-game purchases;
- the platforms block or limit access to the genres of games that we provide in any jurisdiction;
- the platform experiences a bankruptcy or other form of insolvency event; or
- we are unable to comply with the platform providers' terms of service.

Moreover, if our platform providers do not perform their obligations in accordance with our platform agreements or otherwise meet our business requirements, we could be adversely impacted. For example, in the past, some of these platform providers have experienced outages for short periods of time, unexpectedly changed their terms or conditions, or experienced issues with their features that permit our players to purchase games or in-game virtual items. In addition, if we do not adhere to the terms and conditions of our platform providers, the platform providers may take actions to limit the operations of, suspend or remove our games from the platform, and/or we may be exposed to liability or litigation. For example, in August 2020, Epic Games, Inc. ("Epic Games"), attempted to bypass Apple and Google's payment systems for in-game purchases with an update that allowed users to make purchases directly through Epic Games in its game, Fortnite. Apple and Google promptly removed Fortnite from their respective app stores, and Apple filed a lawsuit seeking injunctive relief to block the use of Epic Games' payment system and sought monetary damages to recover funds made while the updated version of Fortnite was active.

If any such events described above occur on a short-term or long-term basis, or if these third-party platforms and online payment service providers otherwise experience issues that impact the ability of players to download or access our games, access social features, or make in-game purchases, it would have a material adverse effect on our brands and reputation, as well as our business, financial condition and results of operations.

Our business is subject to our ability to develop commercially successful products for the current video game platforms, which may not generate immediate or near-term revenues, and as a result, our business and operating results may be more volatile and difficult to predict during console transitions than during other times.

We derive most of our revenue from publishing video games on third-party platform providers, such as Xbox Live and Game Pass, PlayStation Network, Steam, Epic Games Store, the Apple App Store, the Google Play Store, My Nintendo Store and the Amazon Appstore, which, in the aggregate, comprised 89.7% of our net revenue by product platform for the nine months ended September 30, 2023. The success of our business is subject to the continued popularity of these platforms and our ability to develop commercially successful products for these platforms.

Historically, when next generation consoles are announced or introduced into the market, consumers have typically reduced their purchases of products for prior-generation consoles in anticipation of purchasing a next-generation console and products for that console. During these periods, sales of the products we publish may decline until new platforms achieve wide consumer acceptance. Console transitions may have a comparable impact on sales of DLC, amplifying the impact on our revenues. This decline may not be offset by increased sales of products for the next-generation consoles. In addition, as console hardware moves through its life cycle, hardware manufacturers typically enact price reductions, and decreasing prices may put downward pressure on software prices. During console transitions, we may simultaneously incur costs both in continuing to develop and market new titles for prior-generation video game platforms, which may not sell at premium prices, and also in developing products for next-generation platforms, which may not generate immediate or near-term revenues. As a result, our business and operating results may be more volatile and difficult to predict during console transitions than during other times.

Tax law or tax rate changes could affect our effective tax rate and future profitability.

Our effective tax rate was 21% for the nine month period ended September 30, 2023 and 20% for the nine month period ended September 30, 2022. In general, changes in applicable U.S. federal and state and foreign tax laws and regulations, or their interpretation and application, including the possibility of retroactive effect, could affect our tax expense. In addition, taxing authorities in many jurisdictions in which we operate may propose changes to their tax laws and regulations. These potential changes could have a material impact on our effective tax rate, long-term tax planning and financial results.

The Company has debt obligations with short term durations that are coming due within one year.

We have significant debt obligations coming due within one year. Our current revolving loan has a balance of $6.0 million as of September 30, 2023, and is due for repayment on December 31, 2023. Our short-term note has a balance of $2.1 million as of September 30, 2023, and has even monthly debt service payments until the loan is fully repaid in January 2024. On August 24, 2023, the Company issued convertible notes at a 7.4% discount and a principal balance of $1,080,000. The notes have an interest rate of 7.5%, will be paid in consecutive monthly installments beginning February 24, 2024 and if the note is not converted, it will mature on May 24, 2024. The Company intends to extend the revolving loan and renew the short-term note debt arrangement and faces the risk that we will be unable to. If we are unable to extend the revolving loan or renew the debt arrangement, the Company may have significantly reduced unrestricted and restricted cash which could adversely impact our results of operations and ability to invest in the development and acquisition of IP. See Note 15 – *Revolving Loan, Short Term Note and Long-Term Debt* to our unaudited condensed consolidated financial statements included in this Quarterly Report.

Hua Yuan International Limited, a minority stockholder, is indirectly controlled by China-Singapore Suzhou Industrial Park Ventures Co., Ltd., a Chinese state-owned entity, which could subject us to risks involving U.S. -China relations and related risks.

Hua Yuan International Limited, which beneficially owned 8.7% of our common stock and controlled 1.1% of our voting power during the nine month period ended September 30, 2023, is indirectly controlled by China-Singapore Suzhou Industrial Park Ventures Co., Ltd., a Chinese state-owned entity. Recent political and economic tensions between the United States and China have negatively impacted certain public companies with stockholders that are Chinese state-owned entities. For example, in May 2021, three telecommunications companies with controlling stockholders that are Chinese state-owned entities — China Mobile Limited, China Unicom and China Telecom Corp., Ltd. — announced they would be delisted by the New York Stock Exchange pursuant to U.S. investment restrictions enacted in 2020. In addition, the Holding Foreign Companies Accountable Act, enacted in December 2020, requires SEC registrants to disclose whether an issuer is owned or controlled by a governmental entity in a foreign jurisdiction that does not allow inspection by the Public Group Accounting Oversight Board, principally including issuers based in China.

Although Hua Yuan International Limited does not own a controlling interest in us, its investment may subject us to risks related to having an indirect principal stockholder that is a Chinese state-owned entity as well as risks arising from political and economic tensions between the United States and China generally.

A significant portion of our total outstanding shares are restricted from immediate resale but may be sold into the market in the future. This could cause the market price of our Class A common stock to decline, even if our business is doing well.

Sales of a substantial number of shares of our Class A common stock in the public market could occur at any time. These sales, or the perception in the market that the holders of a large number of shares intend to sell their shares, could result in a decrease in the market price of our Class A common stock. As of September 30, 2023, we had 36,649,725 shares of common stock outstanding. This includes 35,000,000 shares that are currently restricted as a result of securities laws but will be able to be sold as described in the section entitled “Shares Eligible for Future Sale” of our Prospectus as filed by us with the SEC on November 10, 2022 pursuant to Rule 424(b)(4) under the Securities Act, relating to our registration statement on Form S-1, as amended. We have also registered, and we intend to continue to register, all shares of common stock that we may issue under our equity compensation plans. Once we register these shares, they can be freely sold in the public market, subject to volume limitations applicable to affiliates.

We cannot guarantee that our share repurchase program will be fully implemented or it will enhance stockholder value, and share repurchases could affect the price of our Class A common stock.

In November 2022, our board of directors authorized a share repurchase program of up to $5 million of our outstanding Class A common stock (the “Share Repurchase Program”), which does not have a fixed expiration date. Share repurchases under the program may be made from time to time through open market transactions, block trades, privately negotiated transactions or otherwise and are subject to market and business conditions, levels of available liquidity, cash requirements for other purposes, regulatory, and other relevant factors, at the discretion of management and in accordance with applicable federal securities laws and other applicable legal requirements and Nasdaq listing rules. The timing, pricing, and size of share repurchases will depend on a number of factors, including, but not limited to, price, corporate and regulatory requirements, and general market and economic conditions. As of September 30, 2023, approximately $1.3 million of the Share Repurchase Program remains available for future repurchases. The Share Repurchase Program does not obligate us to repurchase any dollar amount or number of shares, and the program may be suspended or discontinued at any time, which may result in a decrease in the price of our Class A common stock.

Repurchases under our Share Repurchase Program will decrease the number of outstanding shares of our Class A common stock and therefore could affect the price of our Class A common stock and increase its volatility. The existence of our Share Repurchase Program could also cause the price of our Class A common stock to be higher than it would be in the absence of such a program and could reduce the market liquidity for our Class A common stock. Additionally, repurchases under our Share Repurchase Program will diminish our cash reserves, which could impact our ability to further develop our business and service our indebtedness. There can be no assurance that any share repurchases will enhance stockholder value because the market price of our Class A common stock may decline below the levels at which we repurchased such shares. Any failure to repurchase shares after we have announced our intention to do so may negatively impact our reputation and investor confidence in us and may negatively impact our Class A common stock price. Although our Share Repurchase Program is intended to enhance long-term stockholder value, short-term price fluctuations could reduce the program's effectiveness.

We identified material weaknesses in our internal control over financial reporting and we may identify additional material weaknesses in the future that may cause us to fail to meet our reporting obligations or result in material misstatements of our financial statements. If we do not effectively remediate the material weaknesses or if we otherwise fail to maintain effective internal control over financial reporting, we may not be able to accurately and timely report our financial results.

Our management is responsible for establishing and maintaining adequate internal control over financial reporting designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with GAAP. Our management is likewise required, on a quarterly basis, to evaluate the effectiveness of our internal controls and to disclose any changes and material weaknesses identified through such evaluation in those internal controls. A material weakness is a deficiency, or a combination of deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of our annual or interim financial statements will not be prevented or detected on a timely basis.

Our management identified a material weakness in our internal control over financial reporting involving lack of sufficient financial reporting close controls, including certain disclosure controls, and a material weakness in our internal control over financial reporting involving lack of effective control over the identification of related party transactions, identify and allocate the significant and unusual consideration received from a settlement between the settlement gain and revenue generating activities as of September 30, 2023. See Item 4, "Controls and Procedures," in this Quarterly Report for information regarding the identified material weaknesses and our actions to date to remediate the material weaknesses. As a result of the material weaknesses, our management has concluded that our internal control over financial reporting were not effective as of September 30, 2023.

We are taking steps to remediate the material weakness, which include enhancing control procedures, hiring personnel with the depth of knowledge and experience to join our accounting and finance organization and inquiring of all executive management and board of directors of any contracts entered into on behalf of the Company, or its subsidiaries, on a quarterly basis. Further, the Company intends to review any unusual and recurring significant payments for related contracts. However, our efforts to remediate the material weaknesses may not be effective in preventing a future material weakness or significant deficiency in our internal control over financial reporting. If we do not effectively remediate the material weaknesses or if we otherwise fail to maintain effective internal control over financial reporting, we may not be able to accurately and timely report our financial results, which could cause our reported financial results to be materially misstated, result in the loss of investor confidence and cause the market price of our Class A common stock to decline.

We can give no assurance that the measures we have taken or plans to take in the future will remediate the material weaknesses identified or that any additional material weaknesses or restatements of financial results will not arise in the future due to a failure to implement and maintain adequate internal control over financial reporting or circumvention of these controls.

Risks Related to Convertible Notes and Equity Line Credit Financing

Investors who buy shares in the convertible notes and equity line credit financing offering at different times will likely pay different prices.

Investors who purchase shares of common stock at different times will likely pay different prices, and so may experience different levels of dilution and different outcomes in their investment results. In connection with the Equity Line of Credit Financing, we will have discretion, subject to market demand, to vary the timing, prices, and numbers of shares of common stock sold to the Equity Line Investor. Similarly, the Equity Line Investor may sell such shares of common stock at different times and at different prices. Investors may experience a decline in the value of the shares they purchase from the Equity Line Investor because of sales made by us in future transactions to the Equity Line Investor at prices lower than the prices they paid. Sales to the Equity Line Investor by us could result in substantial dilution to the interests of other holders of our Class A common stock. Additionally, the sale of a substantial number of shares of our Class A common stock to the Equity Line Investor, or the anticipation of such sales, could make it more difficult for us to sell equity or equity-related securities in the future at a time and at a price that we might otherwise wish to effect sales, which could have a materially adverse effect on our business and operations.

Our management will have broad discretion over the use of the net proceeds from our sale of shares of common stock to the Equity Line Investor, and you may not agree with how we use the proceeds and the proceeds may not be invested successfully.

Our management will have broad discretion with respect to the use of proceeds from the sale of any shares of our common stock to the Equity Line Investor. You will be relying on the judgment of our management regarding the application of the proceeds from the sale of any shares of our common stock to the Equity Line Investor. The results and effectiveness of the use of proceeds are uncertain, and we could spend the proceeds in ways that you do not agree with or that do not improve our results of operations or enhance the value of our common stock. Our failure to apply these funds effectively could harm our business, delay the development of our pipeline product candidates and cause the price of our common stock to decline.

We may require additional financing to sustain our operations, without which we may not be able to continue operations, and the terms of subsequent financings may adversely impact our stockholders.

We may direct the Equity Line Investor to purchase up to $5,000,000 worth of shares of our Class A common stock under the Equity Line Purchase Agreement until December 31, 2023, in amounts up to $1,000,000 in shares of our Class A common stock depending on market prices.

Our ability to sell shares to the Equity Line Investor and obtain funds under the Equity Line Purchase Agreement is limited by the terms and conditions in the Equity Line Purchase Agreement, including restrictions on the amounts we may sell to the Equity Line Investor at any one time, and a limitation on our ability to sell shares to the Equity Line Investor to the extent that it would cause the Equity Line Investor to beneficially own more than 9.99% of our outstanding shares of Class A common stock. Additionally, we will only be able to sell or issue to the Equity Line Investor (subject to certain reductions and other adjustments pursuant to the Equity Line Purchase Agreement, the “Exchange Cap”) in total under the Equity Line Purchase Agreement, which is equal to 19.99% of the aggregate number of shares of Class A common stock outstanding prior to execution of the Equity Line Purchase Agreement, unless stockholder approval is obtained to issue in excess of such amount. Therefore, we may not in the future have access to the full amount available to us under the Equity Line Purchase Agreement, depending on the price of our Class A common stock. In addition, any amounts we sell under the Equity Line Purchase Agreement may not satisfy all of our funding needs, even if we are able and choose to sell and issue all of our Class A common stock currently registered.

The extent we rely on the Equity Line Investor as a source of funding will depend on a number of factors including the prevailing market price of our Class A common stock and the extent to which we are able to secure working capital from other sources. If obtaining sufficient funding from the Equity Line Investor were to prove unavailable or prohibitively dilutive, we will need to secure another source of funding in order to satisfy our working capital needs. Even if we sell all $5,000,000 in shares of our Class A common stock under the Equity Line Purchase Agreement to the Equity Line Investor, we may still need additional capital to finance our future plans and working capital needs, and we may have to raise funds through the issuance of equity or debt securities. Depending on the type and the terms of any financing we pursue, stockholders’ rights and the value of their investment in our Class A common stock could be reduced. A financing could involve one or more types of securities including Class A common stock, convertible debt, or warrants to acquire Class A common stock. These securities could be issued at or below the then prevailing market price for our Class A common stock. If the issuance of new securities results in diminished rights to holders of our Class A common stock, the market price of our Class A common stock could be negatively impacted. Should the financing we require to sustain our working capital needs be unavailable or prohibitively expensive when we require it, the consequences could be a material adverse effect on our business, operating results, financial condition, and prospects.

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

Repurchases

Period	Total Number of Shares Purchased	Average Price Paid per Share	Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs	Approximate Dollar Value of Shares that May Yet Be Purchased under the Plans or Programs
	In thousands, except per share amounts			
January 2023	153	$ 1.68	153	$ 1,333
February 2023	—	—	—	—
March 2023	—	—	—	—
April 2023	—	—	—	—
May 2023	—	—	—	—
June 2023	—	—	—	—
July 2023	—	—	—	—
August 2023	—	—	—	—
September 2023	—	—	—	—
Total	153		153	

On November 10, 2022, our board of directors authorized a Share Repurchase Program under which we may repurchase up to $5 million in outstanding shares of our Class A common stock, subject to ongoing compliance with Nasdaq listing rules. The program does not have a fixed expiration date. The share repurchases may be made from time to time through open market transactions, block trades, privately negotiated transactions or otherwise and are subject to market and business conditions, levels of available liquidity, cash requirements for other purposes, regulatory, and other relevant factors. All share repurchases settled in the nine month period ended September 30, 2023 were open market transactions. As of September 30, 2023, 1,350,275 shares of Class A common stock were repurchased pursuant to the Share Repurchase Program for an aggregate purchase price of approximately $3.7 million. The average price paid per share was $2.72 and approximately $1.3 million aggregate amount of shares of Class A common stock remain available for repurchase under the Share Repurchase Program. For more information regarding the Share Repurchase Program refer to Note 2 — *Summary of Significant Accounting Policies* to our unaudited condensed consolidated financial statements included in this Quarterly Report.

Item 3. Defaults Upon Senior Securities

None.

Item 4. Mine Safety Disclosures

Not applicable.

Item 5. Other Information.

During the quarter ended September 30, 2023, no director or officer of the Company adopted or terminated any “Rule 10b5-1 trading arrangement” or “non-Rule 10b5-1 trading arrangement,” as each term is defined in Item 408(a) of Regulation S-K.

Item 6. Exhibits

Exhibit Index

		Incorporation by Reference				
Exhibit Number	**Description**	**Form**	**File No.**	**Exhibit**	**Filing Date**	**Filed Herewith**
4.1	Form of Warrant	8-K	001-41556	4.1	August 30, 2023	
4.2	Form of Equity Line Warrant	8-K	001-41556	4.2	August 30, 2023	
4.3	Form of Note	8-K	001-41556	4.3	August 30, 2023	
10.1	Form of Purchase Agreement	8-K	001-41556	10.1	August 30, 2023	
10.2	Form of Registration Rights Agreement	8-K	001-41556	10.2	August 30, 2023	
10.3	Form of Equity Line Purchase Agreement	8-K	001-41556	10.3	August 30, 2023	
31.1	Certification of Chief Executive Officer of Snail, Inc. pursuant to Rule 13a-14(a)/15d-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.					X
31.2	Certification of Principal Financial Officer Pursuant to Rules 13a-14(a) and 15d-14(a) under the Securities Exchange Act of 1934, as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.					X
32.1*	Certification of Principal Executive Officer Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.					X
32.2*	Certification of Principal Financial Officer Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.					X
101.INS	Inline XBRL Instance Document					
101.SCH	Inline XBRL Taxonomy Extension Schema Document					
101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase Document					
101.DEF	Inline XBRL Taxonomy Extension Definition Linkbase Document					
101.LAB	Inline XBRL Taxonomy Extension Label Linkbase Document					
101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase Document					
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)					

* These certifications are being furnished solely to accompany this Quarterly Report on Form 10-Q pursuant to 18 U.S.C. Section 1350, and are not being filed for purposes of Section 18 of the Securities Exchange Act of 1934 and are not to be incorporated by reference into any filing of Snail, Inc., whether made before or after the date hereof, regardless of any general incorporation language in such filing.

† Indicates management contract or compensatory plan.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, as amended, the Registrant has duly caused this Report to be signed on its behalf by the undersigned, thereunto duly authorized, in Culver City, California, on August 14, 2023.

	Snail, Inc
Date: November 14, 2023	By: */s/ Jim S. Tsai*
	Jim S. Tsai
	Chief Executive Officer
Date: November 14, 2023	By: */s/ Heidy Chow*
	Heidy Chow
	Chief Financial Officer

Exhibit 31.1

OFFICER'S CERTIFICATE
PURSUANT TO SECTION 302

I, Jim S. Tsai, certify that:

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

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

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

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

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

b) [Paragraph intentionally omitted in accordance with SEC Release Nos. 34-47986 and 34-54942];

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

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

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

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

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

Date: November 14, 2023

/s/ Jim S. Tsai

Jim S. Tsai
Chief Executive Officer

Exhibit 31.2

OFFICER'S CERTIFICATE
PURSUANT TO SECTION 302

I, Heidy Chow, certify that:

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

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

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

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

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

b) [Paragraph intentionally omitted in accordance with SEC Release Nos. 34-47986 and 34-54942];

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

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

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

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

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

Date: November 14, 2023

/s/ Heidy Chow

Heidy Chow
Principal Financial Officer

Exhibit 32.1

CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES OXLEY ACT OF 2002
CERTIFICATION

In connection with the Quarterly Report of Snail, Inc. (the “Company”) on Form 10-Q for the period ended September 30, 2023, as filed with the Securities and Exchange Commission on the date hereof (the “Report”), I, Jim S. Tsai, Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to the best of my knowledge:

(1) The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and result of operations of the Company.

/s/ Jim S. Tsai
Jim S. Tsai
Chief Executive Officer
(Principal Executive Officer)

November 14, 2023

Exhibit 32.2

CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES OXLEY ACT OF 2002
CERTIFICATION

In connection with the Quarterly Report of Snail, Inc. (the "Company") on Form 10-Q for the period ended September 30, 2023, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Heidy Chow, Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to the best of my knowledge:

(1) The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and result of operations of the Company.

/s/ Heidy Chow
Heidy Chow
Chief Financial Officer
(Principal Financial Officer)

November 14, 2023