

Risk Factors Comparison 2023-11-29 to 2022-12-14 Form: 10-K

Legend: **New Text** ~~Removed Text~~ ~~Unchanged Text~~ **Moved Text** **Section**

You should carefully consider the risks and uncertainties described below, together with all of the other information set forth in this Annual Report, including our Consolidated Financial Statements and related notes included herein, which could materially affect our business, financial conditions and future results. The risks described below are not the only risks facing our Company. Additional risks and uncertainties not presently known to us or that we currently deem immaterial may also become important factors that adversely impair our business, financial condition and results of operations, and future prospects. See “Cautionary Statement Regarding Forward-Looking Statements.” Risk Factors Summary. The following is a summary of the principal risks that could adversely affect our business, operations and financial results **and future prospects, plans and objectives of the Company and the trading price of our Class A common stock:**

- our limited operating and revenue history as an independent entity and ~~our the~~ nascent **clean energy** and rapidly evolving industry;
- our history of net losses, we anticipate increasing expenses in the future, and our ability to achieve or maintain **prolonged** profitability;
- ~~our ability to attract new customers and retain existing customers;~~ • risks relating to delays, disruptions, ~~or and~~ quality control problems in our manufacturing operations in part due to our third-party manufacturer concentration;
- **potential difficulties in establishing mass manufacturing capacity** risks associated with construction, utility interconnection, commissioning and **estimating potential installation of our products, inflationary cost overruns savings and efficiencies from anticipated improvements** increased shipping and logistics prices as well as increased prices on raw materials necessary for the production of lithium-ion batteries, and delays, including those related to obtaining government authorizations and permits and other contingencies that may arise in the course of completing installations;
- the interruption of the flow and / or **our manufacturing capabilities** availability of components and materials from international vendors could disrupt our supply chain;
- significant changes in the cost of raw materials and product components;
- risks relating to **dependence on our existing suppliers and** supply chain competition and, in some instances, have entered into long-term supply agreements that could result in insufficient inventory;
- **supplier concentration** risks relating to competition for our offerings from established and new competitors **limited supplier capacity**;
- **a interruption of flow and / or availability of components and materials from international vendors;** • **significant changes in the cost of raw materials and product components;** • **failure by vendors and suppliers to use ethical business practices and comply with applicable laws and regulations;** • loss of one or more of our significant customers ~~or their inability to perform under their contracts~~;
- **risks relating to competition or for their default in payment our offerings from established and new competitors and our ability to attract new customers and retain existing customers**;
- ability to **effectively** manage our recent and future growth **and expansion of effectively,** ability to execute our business **and operations** plan, maintain high levels of customer service, or adequately address competitive challenges;
- ability to maintain and enhance our reputation and brand recognition;
- our growth depends in part on the success of our relationships with third parties;
- ability to attract and retain highly qualified personnel, including senior management;
- risks **associated with construction, utility interconnection, commissioning and installation of our energy storage products, cost overruns, and delays, including those** related to obtaining government authorizations and permits and other contingencies that may arise in the course of completing installations;
- risks related to defects, errors, **vulnerabilities and / or bugs** in our products and technology;
- **risks relating to estimation uncertainty related to our product warranties;** • **risks relating to compromises, interruptions, or shutdowns of our systems, including those managed by third parties, whether intentional or inadvertent;** • **fluctuations in currency exchange rates**;
- risks related to our current and planned foreign operations;
- risks relating to lengthy sales and installation cycle for our products and services and ability to timely close sales;
- amounts included in our pipeline and contracted backlog may not result in actual revenue or translate into profits;
- **potential difficulties in establishing mass manufacturing capacity and estimating potential cost savings and efficiencies from anticipated improvements to our manufacturing capabilities;** • risks related to estimates of useful life for our products and related services or failure by our component OEM suppliers to meet service and performance warranties and guarantees;
- risks related to acquisitions we have made or that we may pursue;
- events and incidents relating to storage, delivery, installation, operation, maintenance and shutdowns of our products;
- actual or threatened health epidemics, pandemics or similar public health threats;
- risks relating to whether renewable energy technologies are suitable for widespread adoption or if sufficient demand for our hardware and software-enabled services does not develop or takes longer to develop than we anticipate;
- estimates on size of our total addressable market;
- barriers arising from current electric utility industry policies and regulations and any subsequent changes;
- **risks relating to the cost of electricity available from alternative sources;** • risk relating to interest rates or a reduction in the availability of tax equity or project debt capital in the global financial markets and corresponding effects on customers’ ability to finance energy storage systems and demand for our products;
- potential changes in tax laws or regulations;
- **risks relating to environmental, health, and safety laws and potential obligations, liabilities and costs thereunder**;
- reduction, elimination, or expiration of government incentives or regulations regarding renewable energy;
- decline in public acceptance of renewable energy, or delay, prevent, or increase in the cost of customer projects;
- **severe weather events;** • restrictions set forth in our revolving **ABL credit Credit facility Agreement (as defined below)**;
- risks relating to uncertain future capital needs and potential need to raise additional funds in the future;
- ability to obtain, maintain and enforce proper **protection for our** intellectual property **protection for, including** our technology rights throughout the world;
- **threat of lawsuits by third parties alleging intellectual property violations**;
- ability to effectively **protect** invest in, implement improvements to and properly maintain the uninterrupted operation and data integrity of our information technology **infrastructure** and other

business systems ; • **use of open- source software** ; • failure to comply with third party license or technology agreements; • inability to license rights to use technologies on reasonable terms; • failure to comply with data privacy and data security laws, regulations and industry standards; • **the impact of our multiple class structure on the market price risks relating to increased attention to, and evolving expectations regarding, ESG matters; • risks related to ownership** of our Class A common stock; • **risks related to us being a “ controlled company ” within the meaning of the NASDAQ rules; • risks relating to the terms of** our amended and restated certificate of incorporation **provides that the doctrine of “ corporate opportunity ” does not apply with respect to any director or stockholder who is not employed by us or our subsidiaries; • risks relating to** potential dilution of stockholder interests through future issuances of additional Class A common stock or **our relationship** common units in connection with our incentive plans, acquisitions or otherwise; • our amended and restated certificate of incorporation limits our Continuing Equity Owners’ and their directors’ and officers’ liability to us or you for breach of fiduciary duty and could also prevent us from benefiting from corporate opportunities that might otherwise have been available to us; • we are controlled by the Continuing Equity Owners, whose interests may differ from those of our public stockholders; • certain of our officers and directors may have actual or potential conflicts of interest because of their positions with our Continuing Equity Owners; • reliance on our access to our Founders’ brands and reputation, some of our Founders’ relationships, and the brands and reputations of unaffiliated third parties; • third parties may seek to hold us responsible for liabilities of our Founders; • we depend on distributions from Fluence Energy, LLC to pay our taxes and expenses and Fluence Energy, LLC’ s ability to make such distributions may be limited or restricted in certain scenarios; • risks arising out of the Tax Receivable Agreement; • unanticipated changes in effective tax rates or adverse outcomes resulting from examination of ~~our income or other~~ tax returns; • risks relating to ~~proper~~ **improper** and ~~effective~~ **ineffective** internal control over ~~financial~~ reporting to comply with the Sarbanes-Oxley Act; ~~and~~ • risks relating to potential future legal proceedings, regulatory disputes, and governmental inquiries ; • **risks relating to changes in accounting principles or their applicable to us; and • risks relating to estimates or judgments relating to our critical accounting policies** . Risks Related to Our Business Our limited operating and revenue history as an independent entity and ~~our the~~ nascent **clean energy** and rapidly- evolving industry **in which we operate make makes** evaluating our business and future prospects difficult. We were established in January 2018 as a joint venture between Siemens and AES. Since then, we have continued to evolve ~~and~~, grow **and expand our business and operations** . We have benefited and continue to benefit from the industry experience and ~~substantial~~ support AES and Siemens **have provided and continue to** provide, but we have a limited history operating our ~~combined~~ business and generating revenue as an independent entity, and therefore a limited history upon which you can base an investment decision. ~~Operating results for future periods are subject to a number of uncertainties and we cannot assure you that we will achieve or sustain profitability.~~ Our prospects must be considered in light of the risks by companies in the ~~early~~ **earlier** stages of development, especially those in ~~new~~ **newer** and rapidly evolving markets. Our **ability to plan for future operations, predict future results of operations, and plan for and model future growth in revenue and expenses and prospects is subject to significant risk and uncertainty as compared to companies with longer and more consistent operating histories and in more stable macroeconomic environments and industries.** **Our potential** future growth in a nascent and rapidly- evolving industry is dependent on a number of factors, including rising demand for clean electric power solutions that can provide electric power with lower carbon emissions and replacement of conventional generation sources and the adoption speed of digital software applications to modernize the efficiency of power assets and the electric grid. Among other renewable energy market trends, we expect our business results to be driven by declines in the cost of generation of renewable power, decreases in the cost of manufacturing battery modules and cells, customer needs for **related** services and digital applications, commercial, legal , ~~regulatory~~ , and political pressure for the reduced use of and reliance on fossil fuels and electric power generation that relies on fossil or other non- renewable fuels , **regulatory and governmental incentives towards reduced use of fossil fuels and increased use of renewable energy and energy storage solutions** , and a rapidly growing energy storage market driven by increasing demand from ~~commercial and industrial~~ **C & I** customers , **IPPs, developers** , utilities, and grid operators. However, predicting future revenues and appropriately forecasting and budgeting for our expenses is difficult, and we have limited insight into trends **or economic conditions** that may emerge and take hold and materially affect our business . ~~In particular, global inflationary pressures in the last year have disrupted the historical trend of declining renewable energy costs and declining battery costs, and it is unclear when, or if, our market segment will return to the historical trend of declining costs.~~ Our future operations and **growth** strategy is therefore subject to all of the risks inherent in light of the expenses, difficulties, complications , and delays frequently ~~encounter~~ **encountered** in connection with the growth of any new business in a nascent industry, as well as those that are specific to our business in particular **as which are further described herein. If our assumptions regarding the risks and uncertainties that we consider in planning and operating our business are incorrect or change, or if we do not address these risks and uncertainties successfully, including due to the lack of historical data from and experience in operating our business at its current scale, as well as the evolution of our business, our results of operations could differ materially from our expectations, and our business and our financial condition could be adversely affected** . We have a history of net losses ~~and~~ we anticipate increasing expenses in the future, and we may not be able to achieve or maintain **prolonged** profitability. We have incurred net losses on an annual basis since our inception. We incurred net losses of \$ **104. 8 million and \$ 289. 2 million during** and \$ **162. 0 million for** the fiscal years ended September 30, **2023 and** 2022 and 2021, respectively. We expect our aggregate costs will increase substantially in the foreseeable future and our losses will continue as we expect **to continue** to invest heavily in increasing our customer base, expanding our operations, and operating as a public company. These efforts may prove more expensive than we currently anticipate, and we may not succeed in increasing our revenue sufficiently to offset these higher expenses. To date, we have financed our operations with equity contributions from AES Grid Stability, Siemens Industry, and ~~QFH QHL~~ , cash and cash equivalents, negative working capital, and short- term borrowings. Our net cash flow from operations was ~~negative~~ **\$ (111. 9) million and \$ (282. 4) million** for each of the fiscal years ended September

30, 2023 and 2022 and 2021, respectively. We may not generate positive cash flow from operations or profitability in the near future or in any given period, and our limited operating history may make it difficult for you to evaluate our current business and our future prospects. **Operating results for future periods are subject to a number of uncertainties and risks and we cannot assure you that we will achieve or sustain prolonged profitability. Our ability to achieve or maintain prolonged profitability in the future depends on a number of factors, including the continued successful development and customer acceptance of our energy storage products and solutions, services, and digital applications, our ability to obtain components from suppliers on cost-effective terms on a timely basis, our ability to maintain and grow our market share, as well as our ability to effectively manage both our operating expenditures and our capital expenditures.** We have encountered and will continue to encounter risks and difficulties frequently experienced by growing companies in new and rapidly changing industries, including increasing expenses as we continue to grow and expand our business. We expect our operating expenses to continue to increase significantly over the next several years as we continue to hire additional personnel, expand our operations and infrastructure, and continue to expand to reach more customers. In addition to the expected costs to grow our business, we also expect to incur additional legal, accounting, compliance, and other expenses as a newly newer public company. These investments may be more costly than we expect, and if we do not achieve the benefits anticipated from these investments, or if the realization of these benefits is delayed, they may not result in increased revenue or growth in our business. **Further, we may encounter unforeseen operating expenses, difficulties, complications, delays, and other factors as we expand our business, execute our business plans and navigate macroeconomic uncertainty, which may result in losses or a failure to generate profitable growth in future periods.** If our growth rate were to decline significantly or become negative, it could adversely affect our financial condition and results of operations. If we are not able to achieve or maintain positive cash flow in the long term, we may require additional financing, which may not be available on favorable terms or at all and / or which would be dilutive to our stockholders. **Our ability to obtain any such additional financing is subject to a number of factors, including general market conditions, investor and customer acceptance of our business model and our products and market and stakeholder confidence in our ability to perform against our business plans.** If we are unable to successfully address these risks and challenges as we encounter them, our business, results of operations and financial condition would may be adversely affected. Our failure to achieve and / or maintain prolonged profitability could negatively impact the value of our Class A common stock and the value of our business. We may experience difficulties in establishing mass manufacturing capacity and estimating potential cost savings and efficiencies from anticipated improvements to our manufacturing capabilities. While our manufacturing output achieved to date is already at commercial scale, it is a fraction of what we expect will be necessary to fully meet the demand we see in the market for our energy storage products. ~~The~~ ~~Although, we are currently on track to meet our internal corporate initiatives related to mass manufacturing in fiscal year 2024, the~~ manufacturing process for our expected full commercial scale is still being refined and improved. There are risks associated with scaling up manufacturing to larger commercial volumes including, among others, technical or other problems with process scale-up, process reproducibility, stability issues, quality consistency, timely availability of raw materials, supply chain delays and bottlenecks, cost overruns, and adequate definitions or qualifications for safety, reliability, and quality. In addition, in connection with our limited operating history and our significant growth, we have in the past experienced and may in the future experience incurrence of project costs without proper documentation or adhering to our policies and procedures. There is no assurance that our manufacturers will be successful in establishing a ~~and then maintaining~~ larger-scale commercial manufacturing processes -- **process** that achieves our objectives for manufacturing capacity and cost per battery, in a timely manner or at all or that. **If we are unable to produce sufficient quantities of products on a timely basis and in a cost-effective manner, they -- the will** Company's commercialization efforts would be able to maintain such processes over time **impaired which could materially adversely affect our business, financial condition, results of operations, and growth prospects.** ~~We are in the process.~~ We have experienced and may continue to experience delays, disruptions, and / or quality control problems in our manufacturing operations in part due to our third-party manufacturer concentration, which may in turn adversely affect our business, results of operations, financial condition, and / or future prospects. Our product development, manufacturing, and testing protocols are complex and require significant technological and production process expertise. We currently depend on a limited number of third-party manufacturers, including for key components of our energy storage products. As of today, we have ~~one two~~ major contract ~~manufacturer manufacturers~~ for the Fluence Cube ~~along with another,~~ **including one manufacturer who provides fabrication, integration, assembly and / or full turnkey services to Fluence depending on location of customer site. We also maintain a final assembly facility for the Fluence Cube with the second manufacturer in Utah, serving only customers in the Americas region. We are also in the process of qualifying new manufacturers in both India and the Americas and are planning to continue to expand our set of partners in the near term.** **Qualifying new manufacturers can be a lengthy, time-consuming process and we may not be able to qualify manufacturers on the timeline we anticipate, if at all, which would lead us to rely more heavily on our existing manufacturers and their current operating abilities. If our current manufacturers are unable to keep up with our demand, this may impact our ability to meet deadlines for our customers and may lead to adverse effects to our brand.** As we introduce new products, we plan to continue to evaluate the economic benefits to Fluence and will expand our regional manufacturing capabilities to further support customers in all regions. Moreover, we ~~continue have launched~~ our Americas regional manufacturing capabilities today and will further develop the EMEA ~~and India market~~ **markets** once the demand targets are achieved. ~~Any~~ While the risk of relying on a single vendor will diminish with regional and footprint optimization, ~~expansion may be delayed by the process of vetting and qualifying new manufacturing partners. Further, any~~ vendor delay or disruption could cause a delay or disruption in our ability to meet customer requirements which may result in a loss of customers. Such processes involve a number of precise steps from design to production. Any change in our processes could cause one or more production errors, requiring a temporary suspension or delay in our production line until the errors can be

researched, identified, and properly addressed and rectified. This may occur particularly as we introduce new products, modify our engineering and production techniques, and / or expand our capacity. In addition, our failure to maintain appropriate quality assurance processes could result in increased product failures, loss of customers, increased warranty reserve, or increased production and logistics costs, delays and liquidated damages to our customers. Any of these developments could have a material adverse effect on our business, **results of operations**, financial condition, and **our future prospects. We are dependent on our existing suppliers and face supply chain competition and, in some instances, have entered into long-term supply agreements that could result in insufficient inventory and negatively affect our** results of operations. We have ~~experienced~~ **executed long- term supply agreements with certain battery and may continue inverter suppliers. Our suppliers' caution and uncertainty in their own downstream supply chains has resulted in a variety of pricing mechanisms designed to mitigate unforeseen fluctuations in materials availability and pricing. For instance, some of these supply agreements provide for substantial prepayment obligations and committed volumes to ensure source of supply and favorable pricing and payment terms, which impacts our working capital resources. If our suppliers provide insufficient inventory at the level of quality or provenance required to meet customer or regulatory requirements, or if our suppliers are unable or unwilling to provide us with the contracted quantities at the contracted prices, or if there are unexpected changes in business conditions, including inflation of raw material costs, labor issues, wars, natural disasters, pandemics, trade and shipping disruptions, and other factors beyond our or our suppliers' control which affect our supplier' s ability to deliver adequate inventory of components to us, our results of operations could be exposed materially and negatively impacted. If our customers do not provide sufficient demand to purchase the levels of inventory we have committed to purchasing in future periods under such supply agreements, our ability to generate revenue or cash flows may be limited. New supply agreements with established suppliers in the battery and inverter industries present a potential period of growing pains as we launch new energy storage product offerings. Supply arrangements with new entrants to the energy storage industry also pose risks due to their associated with construction, utility interconnection, commissioning and installation of our products production planning , inflationary cost overruns from increased shipping and logistics prices ramp up operations as well as the unknown quality of our ability to generate revenue or cash flows may be limited. Further, we face significant specific counterparty risk under long- term supply agreements when dealing with certain suppliers without a long, stable production and financial history. Given the their offerings. New market entrants who uniqueness of our product, many of our suppliers do not have a long operating history and may not have substantial financial challenges raising working capital resources and possess operating risks . In the event any such supplier experiences financial difficulties, it may be difficult or may require substantial time and expense to replace such supplier . The opportunity costs of engaging with new industry participants may therefore outweigh the perceived benefits. Insufficient inventory to meet customer expectations may impact negatively on our brand and industry sentiment . We do not know whether we will be able to maintain long- term supply relationships with our critical suppliers , or secure new long- term supply agreements. Additionally, many a large proportion of the our battery storage products and inverter suppliers components of our energy storage products are procured from foreign suppliers situated outside of the United States , which exposes us to risks including unforeseen increases in costs or interruptions in supply arising from changes in applicable international trade regulations, such as taxes, tariffs, or quotas. Any of the foregoing could materially adversely affect our business, financial condition, and results of operations. Certain of We may also be unsuccessful in our continuous efforts to negotiate with existing suppliers also supply products to obtain cost reductions and avoid unfavorable changes to terms. Global demand has increased prices on raw materials necessary for the production of lithium- ion batteries battery cells , and which may cause challenges for our suppliers, including delays, inventory shortages, or price volatility. Any such delays or reduced availability of components may impact our sales and operating results. We face risks resulting from supplier and contract manufacturer concentration and limited supplier and contract manufacturer capacity. We rely on a small number of suppliers and contract manufacturers. Switching suppliers or contract manufacturers can be costly and disruptive to business operations and would require a longer- term strategic approach. If any of our suppliers or contract manufacturers is unable or unwilling to provide us with contracted quantities in a timely manner at prices, quality levels (including those related environmental, social, and / or geographic provenance), and volumes acceptable to obtaining government authorizations us and which are contracted for, we would have limited alternatives for supply and manufacturing, and we may not be able to contract for and receive suitable alternative supply or manufacturing abilities in a timely manner for our customers, if at all. Such and- an permits event may impair our ability to meet scheduled deliveries of our products to customers, which may cause our customers to cancel orders and subject us to liability and potential litigation and may materially adversely affect our customer relationships, reputation, business, prospects, financial condition, and results of operations. Further, these particular risks may increase as market demand for our offerings grows. Certain of our suppliers also supply products and components to other businesses contingencies that may arise in the course of completing installations. Although we generally are not regulated as a utility- including businesses engaged in the production of federal, state, and local government statutes and regulations concerning electricity--- electric vehicles, renewable energy heavily influence the market for our products production and services. These statutes and regulations often relate to electricity pricing, consumer electronics net metering, incentives, taxation, and the rules surrounding the interconnection of customer- owned electricity generation for specific technologies. In the U. S., governments frequently modify these statutes and regulations. Governments, often acting through state utility or public service commissions, change and adopt different requirements for utilities and rates for commercial customers on a regular basis. Changes, or in some cases a lack of change, in any of the laws, regulations, ordinances, or other industries unrelated rules that apply to customer installations and new technology could make it more costly for our customers to install and operate our energy storage products . As a relatively low- volume purchaser of certain of these products and components, we may be unable to procure a**

sufficient supply of these products and components on particular sites favorable terms, and if at all. In the event that our suppliers fail to produce sufficient quantities in turn a timely manner to satisfy the demands of all of their customers, including Fluence, it could materially negatively affect our ability to deliver cost..... our energy storage products and could therefore adversely affect the amount of the our business, financial recognition---- condition of revenue related to the sale of our energy storage products, and which could adversely affect our operating results. The production and installation of our energy storage products also involves the incurrence of various project costs and can entail project modifications. We have policies and procedures regarding the approval of project costs and modifications. In connection with our limited operating operations history and our significant growth, we have in the past experienced and may in the future experience incurrence of project costs in excess of those budgeted. In addition, disagreements with our customers..... from period to period. The interruption Interruptions of in the flow and / or availability of components and materials from international vendors could disrupt our supply chain and, including as a result of the imposition of additional duties, or tariffs by government authorities, and other charges on imports and exports, which in turn could affect our business and results of operations. We purchase some of our Our products and services include many components and materials sourced from for our products outside of the United States through arrangements with various vendors, resulting in and are therefore exposed exposure to international supply chain risks from and logistics disruptions. We In the past, we have experienced delays in obtaining certain necessary components and materials from overseas, including as a result of the COVID- 19 pandemic, and other trade Trade and shipping disruptions and factors beyond our suppliers' control have in the past and we expect in the future could have a compounding effect on our business and results of operations. International political, social, or economic instability or, including as a the result of another international future health pandemic pandemics could cause similar to COVID- 19, may lead to future trade disruptions, impacting our supply chain and ability to complete projects in a timely and efficient manner. The In addition, certain uncertain actions, policies and legislation legislative actions of put forth in various government authorities countries where we source materials and components out of have created uncertainty with respect to potential tariff impacts on the international and domestic trade, including new or increased tariffs or quotas, border taxes, embargoes, safeguards, and customs restrictions impact our ability to manage our costs of production some of our components and materials as we go forward. The degree of our exposure is dependent on (among other things) the type of materials and components that may be impacted, the proposed rates or rates imposed, and timing of the imposition of such tariffs. Labor strikes, work stoppages and boycotts, similarly may have a negative impact on our total cost and ownership and result in reduced or delayed supply of materials and components, with potential adverse effects on our business and results of operations. Disruptions in the availability of key components or materials may adversely impact and their associated price volatility therefore create challenges for stability of our business and operations, and volatility in prices and availability of such items may negatively impact our customer relationships, and our ability to accurately plan for future growth. Additionally, there are increasing expectations in various jurisdictions that companies monitor the environmental and social performance of their suppliers, including compliance with a variety of labor practices, as well as consider a wider range of potential environmental and social matters, including the end of life considerations for products. For example, forced labor concerns have rapidly become a global area of interest, and is a topic that will likely be subject to new regulations in the markets we operate within. Numerous laws imposes the prohibitive ban of the importation of goods made with forced labor or compulsory prison labor, including for example the Tariff Act of 1930, as well as the Uyghur Forced Labor Prevention Act ("UFLPA"), and other global laws against forced labor. Certain of our suppliers operate and source materials in China, and their presence in our supply chain could present unique risks for us due to risks associated with the UFLPA, as well as the strain in U. S.- China relations, and China's unique regulatory landscape. The UFLPA imposes a presumptive ban on the importation of articles, merchandise, apparel, and goods mined, produced, or manufactured wholly or in part in the Xinjiang Uyghur Autonomous Region (Xinjiang) of the People's Republic of China, or by entities identified by the U. S. government on the UFLPA Entity List. Forced labor concerns have rapidly become a global area of interest, and is a topic that will likely be subject to further regulations or prohibitions in the markets we operate within. Such a process could result in a delay or complete inability to import such materials (including potentially non- lithium materials), which could result in inventory shortages or greater supply chain compliance costs, particularly to the extent we need to identify new suppliers or to otherwise modify supply chains to address evolving regulatory requirements and / or interpretations. We could also be subject to penalties or fines if our imports are found to have been in violation of the UFLPA or other customs- related laws and regulations. Even if we are not subject to any fines or penalties, any perceived link between our products and Xinjiang, designated entities, or labor practices not in keeping with industry expectations may result in increased costs, affect our business and damage our reputation. Overcoming the UFLPA's presumption can be a time- and information- intensive process, and we may not be able to obtain sufficient information to satisfy policymakers that products are not connected to forced labor. Moreover, Xinjiang is the source of significant amounts of raw and refined materials and components in the global lithium- ion battery supply chain, and there is ongoing scrutiny of this value chain and companies associated therewith, including for human rights and national security concerns. As such, there is a risk that our operations may be impacted by related supply chain disruptions or costs. Moreover, compliance with the UFLPA or other similar current or proposed requirements, including the European Union Forced Labor Ban Proposal, may have other effects on the global supply chain, the price and scarcity of traceable minerals or other materials of focus, and could lead to increases in our cost of goods sold, which could have an adverse effect on our business, financial condition, and operating results. Other events that could disrupt our supply chain include: • the imposition of additional trade legislation or regulations both internationally and domestically; • the imposition of additional duties, tariffs and other charges on imports and exports, including as a result of the ongoing trade war between the United States and China; • disruption of Chinese battery manufacturing and supply lines due

to China's extremely stringent **government mandated sanctions on production continuity and the movement of goods** Covid-Zero policy, causing force majeure to be declared by our battery manufacturers; • breach of supply contracts by suppliers and vendors; • quotas imposed by bilateral trade agreements; • foreign currency fluctuations; • logistics and shipping constraints; • natural disasters; • public health issues and epidemic diseases, their effects (including any disruptions they may cause) and / or the perception of their effects; • theft; • restrictions on the transfer of funds; • the financial instability or bankruptcy of vendors; and • significant labor disputes, such as dock strikes. We cannot predict whether the countries in which our components and materials are sourced, or may be sourced in the future, will be subject to new or additional trade restrictions imposed by the United States or other foreign governments, including the likelihood, type, or effect, **or magnitude** of any such restrictions. ~~Trade restrictions, including new or increased tariffs or quotas, border taxes, embargoes, safeguards, and customs restrictions against certain components and materials, as well as labor strikes and work stoppages or boycotts, could increase the~~ **their overall impact on** ~~cost or reduce or delay the supply of components and materials available to us and adversely affect our business and~~ **financial condition or our operating** ~~results of operations~~. Significant changes in the cost and / or availability of raw materials and components **that are** incorporated into our **energy storage** products could adversely affect our business, results of operations, and future prospects. We are subject to risk from availability and fluctuating market prices of certain commodity raw materials, including, but not limited to, steel, aluminum, copper, nickel, iron phosphate, graphite, manganese, lithium carbonate, lithium hydroxide, and cobalt. **These raw materials** ~~that are used in the components from~~ **form suppliers** **an essential and integral part of our energy storage products. Prices and availability of these raw materials is oftentimes affected by** ~~such amongst other things, global supply and demand imbalance, inventory levels, changes in interest rates, speculative market activities, and geopolitical uncertainty. During fiscal year 2022, there~~ **as was** ~~sizable increases in the~~ **cost of certain metals, including lithium carbonate and lithium hydroxide, which led to an increase in the price of** ~~lithium-ion batteries, however~~ **that are used in our energy storage products. Prices and availability of these raw materials may be affected by global supply and demand balance, inventory levels, speculative activities by market participants, geopolitical uncertainty of any kind and other market factors from time to time. There has been** ~~sizable increases in the recent months in the~~ **cost of certain metals, including lithium carbonate and lithium hydroxide, which has led to an increase in the price** ~~prices~~ **decreased again** ~~of lithium-ion in batteries, fiscal year 2023.~~ Our revenue growth is directly tied to the continued adoption of energy storage products by our customers, which may be affected by commodity raw material price fluctuations **and component price fluctuations** ~~including lithium-ion batteries~~. As we ~~are~~ **have** ~~not~~ **historically been** ~~the direct buyer of these~~ **raw materials** **for our components and energy storage products**, we ~~have~~ **currently do not** ~~historically~~ **enter entered** into hedging arrangements to mitigate commodity risk. Significant price changes or reduced availability for ~~these our~~ **raw materials** ~~could~~ **and components has a deleterious effect on supply chain certainty with potential knock on effects for** ~~reduce~~ **reduced** ~~our operating margins~~ **margin** ~~if suppliers increase component prices and we are unable to pass on such increased costs to our customers, and in turn,~~ **could harm our business, financial condition, and results of operations. Failure by our vendors** **and** ~~or our component or raw material suppliers to use ethical business practices and comply with applicable laws and regulations~~ **including labor and environmental laws**, may adversely affect our business. We do not control our vendors or suppliers ~~or nor~~ their business practices. Accordingly, we cannot guarantee that they follow ethical **business employment** practices, such as ~~fair wage practices and compliance with environmental respect to child labor~~ **wages and benefits, forced labor, discrimination, safety** ~~safe~~ **and healthy working conditions, and with all legal and regulatory requirements relating to the conduct of** ~~other~~ **their businesses** ~~local laws~~. A lack of demonstrated compliance could lead us to seek alternative manufacturers or suppliers, which could increase our costs and result in delayed delivery of our products, product shortages, or other disruptions of our operations. Violation of labor **(including forced labor and child labor)** or other laws by our manufacturers or suppliers or the divergence of a supplier's labor or other **work** practices from those generally accepted as ethical in the U. S. or other markets in which we do business could ~~also result in fines for the Company, as well as~~ **attract** ~~negative publicity for us and~~ **otherwise adversely** ~~harm our business. We face~~ **Violation of laws by our manufacturers or suppliers could also subject us to regulatory consequences as well. For more information, see our risk factor titled "Interruptions in the flow and / or availability of components and materials from international vendors could disrupt our supply chain** ~~competition~~ **and the imposition of additional duties or tariffs by government authorities, and other charges on imports and exports** ~~in some instances, have entered into long-term supply agreements that could result in insufficient inventory and negatively affect our~~ **business and** ~~results of operations.~~ **"** ~~We have entered into long-term.....~~ **financial condition and results of operations.** A loss of one or more of our significant customers, including but not limited to AES and Siemens, **and their** ~~the~~ **inability of customers** to perform under their **respective** contracts, ~~or their default in payment~~ could harm our business and negatively impact revenue, results of operations, and cash flow. We are dependent on a relatively small number of customers for our sales, and a small number of customers have historically accounted for a material portion of our revenue. **For the fiscal year ended September 30, 2023, our two largest customers, in the aggregate, accounted for approximately 49 % of our annual revenue.** The loss of any one of the Company's significant customers, their inability to perform under their contracts, **including** their default in payment, a significant dispute with one of these customers, a significant downturn or deterioration in the business or financial condition of any of these customers, or any other event significantly negatively impacting the contractual relationship with one of these customers could have a materially adverse effect on the revenues and cash flows of the Company. For the near future, we may continue to derive a significant portion of our net sales from a small number of customers. ~~For the fiscal year ended September 30, 2022, our top five customers, in the aggregate, accounted for approximately 77 % of our annual revenue.~~ Accordingly, loss of a significant customer or a significant reduction in pricing or order volume from a significant customer could materially reduce net sales and operating results in any reporting period. We face **increasing** competition for our **energy storage** product **and**, service, **and digital application** offerings from **both more a** ~~number of~~ established and new competitors, and if we are unable to attract new customers and retain existing customers, our

revenue growth **and operating results** may be adversely affected. We operate in an increasingly competitive business environment **and face competition for our customers with other energy storage providers product, service, and digital application offerings**. To increase our revenue **and market share**, our business strategy depends on our ability to attract new customers and retain **our** existing customers. **Certain** We face competition from other energy storage and digital application providers in the recruitment of potential customers and some of our competitors have financial, **production technical, manufacturing**, marketing, and other resources that are significantly greater than ours, **which may allow them to devote greater resources to the design, development, manufacturing, distribution, promotion, sale and support of their product, service, and digital application offerings than we may be able to and therefore more effectively compete for new projects and customers**. We expect competition in the energy storage industry to increase due to increased demand from **customers and recent regulatory changes and incentives geared towards adoption of energy storage solutions, services, and digital applications, including as a result of the IRA and its anticipated impacts in the United States**. Consolidation by **other** industry participants could further increase their resources and result in competitors with expanded market share, larger customer bases, greater diversified product and service offerings and greater technological and marketing expertise, which may allow them to compete more effectively against us **in the future**. Moreover, our competitors **may have or** may develop products, **services, or digital applications** that are superior to our products, **services, or digital applications** (on a price- to-value basis or otherwise) or may adapt more quickly to new **or emerging** technologies or regulatory regimes implemented across the globe. **There are also several competing alternatives for energy storage solutions, as well as non- intermittent energy generation that does not require storage, including but not limited to: lithium- ion batteries, other batteries, pumped hydro, hydrogen, biofuels, and generation paired with carbon sequestration**. If we are unable to convince potential customers of the benefits of our **products, services, and digital applications**, effectively differentiate our product and **service, and digital application** offerings from our competitors, or if potential or existing customers prefer the **product and service offerings of one of our competitors**, we may not be able to effectively implement this aspect of our growth strategy, **which may adversely impact our business**. Additionally, a significant portion of our annual sales **in fiscal year 2023 and 2022** were direct sales to AES or a result of our Siemens sales relationship. If we fail to maintain those relationships **with AES and Siemens or if those relationships weaken**, or if AES or Siemens decide to reduce their energy storage activities **in the future**, it could **materially** impact our **business prospects, financial condition, cash flows or sales and our**. Our future growth would **then** be even more reliant on our ability to recruit **and retain** new customers **outside of AES and Siemens and our existing relationships with them**. Our inability to recruit new customers and retain existing customers would harm our ability to execute our growth strategy and may have a material adverse effect on our business operations and financial position. If we fail to **effectively** manage our recent and future growth ~~effectively~~ and expansion of our business and operations, we may be unable to execute our business plan, maintain high levels of customer service, **and /** or adequately address competitive challenges. We have experienced significant **and rapid** growth in recent periods. We intend to continue to expand our business significantly within existing and new market segments. This growth has placed, and any future growth may place, a significant strain on our management, operational, and financial infrastructure. **Our In the continued growth and expansion of the Company, our** management will also be required to maintain and expand our relationships with customers, suppliers, channel partners, and other third parties and attract new customers and suppliers, as well as manage multiple geographic locations. **To manage our growth, we must continue to improve and expand our IT and financial infrastructure and systems, our operating and administrative systems and controls, our ability to manage headcount, capital, and processes in an efficient manner**. Our current and planned ~~operations future infrastructure, plans personnel, IT, and processes other systems and procedures~~ might be inadequate to support our future growth and may require us to make additional unanticipated investment and improvements **in, which may adversely impact our infrastructure financial condition and may disrupt our operations and business**. Our success and ability to further scale our business will depend, in part, on our ability to manage ~~these changes expansion and growth~~ in a cost- effective and efficient manner. If we cannot manage our growth, we may be unable to take advantage of market opportunities, execute our business strategies, or respond appropriately and quickly to competitive pressures ~~-, this~~ **This** could also result in declines in product quality and customer satisfaction, **reputational damage**, increased costs, difficulties in introducing new offerings, **reduce demand for our offerings**, or other operational difficulties. ~~Any~~ **Our future operating results depend on a large extent on our ability to manage our continued expansion and growth successfully and any** failure to effectively manage **expansion and growth** could adversely impact our business and reputation. ~~In~~ **If we are not able to maintain and** ~~an increasingly competitive market~~ **enhance our reputation and brand recognition**, our business and results of operations may be harmed. We believe that maintaining and enhancing our reputation and brand recognition is critical ~~to for maintaining our relationships with customers position as an industry leader~~. The promotion of **If we are not able to maintain and strengthen our reputation and brand recognition may require us to make substantial investments, our business and we results of operations may be harmed**. We anticipate that, as ~~our the~~ **market markets for energy storage and SaaS products for renewables and storage becomes become** increasingly competitive, ~~these~~ marketing initiatives may become increasingly difficult and expensive. Our marketing activities may not be successful or yield increased revenue ~~-, and may fail to the extent that these activities yield increased revenue~~, the increased revenue may not offset the expenses we incur as part of any marketing initiatives, and our results of operations could be harmed. **Our ability to maintain and strengthen Fluence brand will depend heavily on our ability to provide quality offerings to our customers**. In addition ~~order to protect our brand, any~~ we may also expend substantial resources to register our intellectual property **rights and to prevent others from using similar intellectual property, including similar patents and trademarks**. Any factor that diminishes our reputation or that of our management, including failing to meet the expectations of or provide quality products and services to our customers **on a timely basis**, or any adverse publicity or litigation, could make it substantially more difficult for us to attract new customers **and to maintain our existing customers. Our ability to successfully position**

our brand could also be adversely affected by perceptions of our competitors' products, services, and digital applications. If we do not successfully maintain and ~~enhance~~ **strengthen** our reputation and brand recognition, our business may not grow, and we could lose our relationships with **existing** customers, which ~~is~~ **This** would harm our business, results of operations, and financial condition. Our growth depends in part on the success of our relationships with third parties. We rely on third-party general contractors to install energy storage products at our customers' sites. We currently work with a limited number of general contractors, which has impacted and may continue to impact our ability to facilitate customer installations as planned **in a timely and efficient manner**. Our work with contractors or their subcontractors may ~~result in~~ **have the effect of** us being required to comply with additional rules (including rules unique to our customers), working conditions, site remediation, and other union requirements, which can add costs and complexity to ~~a an installation~~ project. The timeliness, thoroughness, and quality of the installation-related services performed by our general contractors and their subcontractors in the past have not always met our **or our customers'** expectations or standards and in the future may not meet our **or our customers'** expectations and standards, and it may be difficult to find and train third-party general contractors that meet our standards at a competitive cost. If we are unable to attract and retain **highly** qualified personnel, including members of the senior management team, in order to execute our business strategy and growth plan, our business and ability to compete may be adversely affected. Competition for highly qualified personnel is intense **in our industry across geographic areas. We depend on the continued services of our senior management and highly-skilled employees across all levels and departments of our organization to run and grow our business**. We have experienced, and we expect to continue to experience, difficulty in hiring and retaining employees with appropriate qualifications. ~~We may face high turnover, requiring us to expend time and resources to source, train and integrate new employees.~~ The challenging markets in which we compete for talent may also require us to invest significant amounts of cash and equity to attract and retain employees. In addition, a significant portion of our compensation to our key employees is in the form of stock related grants. A prolonged depression in our stock price could make it difficult for us to retain our key **members of management** and other employees and recruit additional qualified personnel and we may have to pay additional compensation to employees to incentivize them to join or stay with us. Further, many of the companies with which we compete for experienced personnel have greater financial resources than we have. If we hire employees from competitors or other companies, their former employers may attempt to assert that these employees or the Company has breached certain legal obligations, resulting in a diversion of our time and resources. **We have adopted a hybrid work policy for our employees in the United States, where employees are expected to split time between home and the office. Many companies, including companies that we compete with for talent, have announced plans to adopt full time remote work arrangements or hybrid work arrangements more flexible than ours, which may impact our ability to attract and retain qualified personnel if potential or current employees prefer these policies. In addition, as a result of our recent move to a hybrid work environment, we expect to face challenges in retention of personnel who prefer to only work from home. We have and may continue to face turnover resulting from the hybrid work policy, requiring us to expend time and resources to source, train and integrate new employees. In addition, current trends in the labor market (including elevated employee attrition, labor availability and wage inflation) have exacerbated and may continue to exacerbate the challenges of attracting and retaining talented and diverse employees. Differences in demands, expectations and priorities of the workforce (such as remote work expectations) may require us to modify our recruiting and retention strategies to attract and retain employees.** If we fail to attract new personnel or fail to retain and motivate our current personnel, our business and future growth prospects and ability to compete could be adversely impacted. Moreover, our success depends largely upon the continued services **and leadership** of our senior management team. ~~We rely on~~ **Our senior management has acquired specialized knowledge and skills with respect to** our leadership team ~~in business, and the loss of any of these individuals could harm our business~~ **areas of sales and operations, information technology and security, marketing, and general and administrative functions**. From time to time, there may be changes in our **executive senior** management team, **including as a** ~~resulting~~ **result** from the hiring or departure of executives, which could disrupt our business. Our ~~executive~~ officers are not subject to any restrictions that would require them to continue to work for us for any specified period and, therefore, they could terminate their employment with us at any time. The loss of one or more of the members of our senior management team, could harm our business. **We have experienced and may continue to be exposed to risks associated with construction, utility interconnection, commissioning and installation of our products, cost overruns from increased shipping and logistics prices as well as increased prices on raw materials necessary for the production of lithium-ion batteries, and delays, including those related to obtaining government authorizations and permits and other contingencies that may arise in the course of completing installations. Although we generally are not regulated as a utility, federal, state, and local government laws and regulations concerning electricity heavily influence the market for our products and services. These laws and regulations often relate to electricity pricing, net metering, incentives, taxation, and the rules surrounding the interconnection of customer-owned electricity generation for specific technologies. In the U. S., governments frequently modify these statutes and regulations. Governments, often acting through state utility or public service commissions, change and adopt different requirements for utilities and rates for commercial customers on a regular basis. Changes in, our- or executive management team may in some cases a lack of change, in any of the laws, regulations, ordinances, or other rules that apply to customer installations and new technology could make it more costly for our customers to install and operate our energy storage products on particular projects sites, and in turn, could negatively affect our ability to deliver cost savings to customers for the purchase of electricity, thereby making our energy storage products less appealing to current customers and potential customers. The installation and operation of our energy storage products at a particular site are also budgeted.** In addition, disagreements with our customers and suppliers have arisen and may in the future arise with respect to project schedules, work, and modifications, which can result in the need to find different suppliers, loss of future business, additional costs

to us and not fully realizing the anticipated profit from the project. In addition, the successful installation of our energy storage products and solutions is dependent upon the availability of and timely connection to the local electric grid. Our customers may be unable to timely obtain the required consent and authorization of local utilities to ensure successful interconnection to energy grids to enable the successful discharge of renewable energy, if at all. Any delays in our customers' ability to connect with utilities, delays in the performance of installation-related services, or poor performance of installation-related services will have an adverse effect on our business and results of operations and could **cause operating results to vary materially from period to period. The interruption** cause disruptions in, and harm to, our business **results to vary materially from period to period**. Our products, including components thereof, and technology could have undetected defects, errors, **vulnerabilities, and / or bugs in hardware or software which could reduce market adoption, cause reputational** damage our reputation with current or prospective customers and / or expose us to **product liability and other** legal claims that could materially and adversely affect our business. The energy storage products and solutions we develop are complex energy solutions. Our energy storage products and software have **in the past and may in the future contained -- contain bugs, vulnerabilities,** design and manufacturing-related defects and errors and may in the future contain undetected defects or errors. We do have not **historically manufacture manufactured** the batteries or other components of the our energy storage products and **rely solutions and relied** on our component OEM suppliers and contract manufacturers to control the quality of such components, **however we anticipate that we will begin production of the Fluence- made battery packs in mid- 2024, which will include battery modules and a battery management system although we will continue to source battery modules and battery management systems from other suppliers as well**. We provide installation, construction and commissioning services for our customers that purchase our products. In the past, we have from time to time discovered latent defects in energy storage products and **solutions and** the components thereof and have experienced defects in workmanship and in the future we may face **similar** such defects in our products or in workmanship. We **Although we** have implemented various quality **and control** initiatives **and processes** to help prevent defects and issues, **which we continue to work on and improve continuously, however,** there is no **absolute guarantee that there will not be a latent perfect- defect in a** component. So although **from a supplier or manufacturer or from a component** we **ourselves have manufactured.** are working towards minimizing the defects. **Defects, defects may still occur in the future that which** may result in significant expenses or disruptions of our operations. We are continuing to evolve the features and functionality of our products and technology platform through updates and enhancements, and as we do, we may introduce **inadvertent** additional defects or errors that may not be detected until after deployment to customers through our hardware. **. Any attempt to remedy issues we observe in our hardware and software effectively and efficiently may not be timely and may not be to the satisfaction of our customers. If we are unable to prevent or effectively remedy errors, bugs, vulnerabilities or defects in our software and hardware, or fail to deploy updates to our software properly, we could potentially suffer reputational damage, increased costs, and potential impact to our customer relationships, any of which could adversely affect our business, prospects, financial condition, results of operations, and cash flows**. Since we do not manufacture certain components of our energy storage products, our ability to seek recourse for liabilities and recover costs from our component OEM suppliers and contract manufacturers depends on our contractual rights as well as the financial condition and integrity of such component OEM suppliers and contract manufacturers. Furthermore, our component OEM suppliers and contract manufacturers may be unable or not required to correct manufacturing defects or other failures of such components of our energy storage products in a manner satisfactory to our customers, which could adversely affect customer satisfaction, market acceptance, and our business reputation. On rare occasions, lithium- ion batteries can rapidly release the energy they contain by venting smoke and flames in a manner that can ignite nearby materials as well as other lithium- ion batteries. This faulty result could subject us to lawsuits, product recalls, or redesign efforts, all of which would be time consuming and expensive. For example, in April 2019, the McMicken energy storage facility in Arizona experienced a thermal event and subsequent explosion, injuring several first responders and making the facility inoperable. The facility was built prior to the creation of Fluence and was under a maintenance contract with Fluence. The response and investigation required significant expense and the devotion of significant management time. Also, **general** negative public perception regarding the suitability of lithium- ion batteries for energy applications or any future incident involving lithium- ion batteries, such as a plant, vehicle or other fire, even if such incident does not involve **Fluence hardware provided by us,** could adversely affect our business and reputation. We may be subject, **in the ordinary course of business, to losses resulting from products liability, accidents, acts of God and other** legal claims **against us** that our hardware and software-enabled services have malfunctioned and **persons were injured or purported to be injured**. Any insurance that we carry may not be sufficient or it may not apply to all situations. In addition, our customers could be subjected to claims as a result of such incidents and may bring legal claims against us to attempt to hold us liable. Any of these events could adversely affect our brand **and reputation**, relationships with customers, operating results, or financial condition. For example, on September 4, 2021, a 300 MW energy storage facility owned by one of our customers experienced an overheating event. **Fluence served as the energy storage technology provider and designed and installed portions of the facility, which was completed earlier in fiscal year 2021. No injuries were reported from the incident. Our customer released initial findings in the second fiscal quarter of 2022 on what it contends is the root cause of the incident. The facility was taken offline as teams from Fluence, our customer, and the battery designer/ manufacturer investigated the incident. At this time, Fluence cannot comment on or accept the customer' s stated findings. The customer' s stated findings, if ultimately confirmed and proven, could relate to certain scopes of work for which Fluence or its subcontractors could be responsible. The customer' s stated findings, however, could also relate to certain scopes of work for which other parties were responsible and / or relate to other causes, including the design and installation of portions of the facility over which Fluence did not have responsibility or control. The customer has alleged that Fluence is liable for the incident but has not yet demanded a specific amount of compensation nor alleged a particular level of responsibility. Fluence has denied liability and cannot comment on the customer' s findings at this time.** No formal legal proceedings have been

commenced, but it is reasonably possible that litigation may result from this matter if a resolution cannot be achieved. ~~Any such dispute would also likely include claims by Fluence and counterclaims by the customer relating to disputed costs arising from the original design and construction of the facility. The customer announced in July of 2022 that a large portion of the facility was back online. We are currently not able to estimate the impact, if any, that this incident may have on our financial results.~~ To date, we do not believe that this incident has impacted the market's adoption of our products. In addition, Fluence Mosaic generates artificial intelligence-enabled bid recommendations for utility-scale storage and renewable generation assets, enabling customers to optimize asset trading in wholesale electricity markets. While we are generally not regulated as a utility or a broker-dealer, customers of Fluence Mosaic are regulated market participants. We could experience scrutiny from regulators on the provision of Fluence Mosaic bid recommendations to our customers and use of such application and the related technologies by our customers. Fluence Nispera, which optimizes renewable asset performance with real-time monitoring, automated reporting, and AI-powered analytics, integrates asset data with intelligent machine learning models and visualization tools. Both of these digital applications could experience a software anomaly, that could result in an unexpected, material adverse event for ~~our customer~~ **customers, and may** therefore ~~damaging~~ **damage** our reputation and, ~~business~~ **and future prospects**. Any defects or errors in ~~our~~ **our** product or, ~~services~~ **service, or digital applications** offerings, or the perception of such defects or errors, or other performance problems could result in any of the following, each of which could adversely affect our business, financial condition, and results of operations: • expenditure of significant financial and product development resources, including recalls, in efforts to analyze, correct, eliminate, or work around errors or defects; • significant re-engineering costs; • loss of existing or potential customers or partners; • interruptions or delays in sales; • delayed or lost revenue; • delay or failure to attain market acceptance; • delay in the development or release of new functionality or improvements; • negative publicity and reputational harm; • sales credits or refunds; • security vulnerabilities, data breaches, and exposure of confidential or proprietary information; • diversion of development and customer service resources; • breach of warranty claims; • legal claims and regulatory actions under applicable laws, rules, and regulations; and • the expense and risk of litigation. Although we have contractual protections, including warranty disclaimers and limitation of liability provisions, in many of our agreements with customers, resellers, and other business partners, such protections may not be uniformly implemented in all contracts and, where implemented, may not fully or effectively protect from claims by customers, resellers, business partners or other third parties. Any insurance coverage or indemnification obligations of suppliers may not adequately cover all such claims or cover only a portion of such claims. A successful product liability, warranty, or other similar claim could have an adverse effect on our business, financial condition, and operating results. In addition, even claims that ultimately are unsuccessful could result in expenditure of funds in litigation, divert management's time and other resources, and cause reputational harm **as well as lead to potential loss of existing or future customers.** Compromises, interruptions, or shutdowns of our systems, including those managed by third parties, whether intentional or inadvertent, could lead to delays in our business operations and, if significant or extreme, affect our results of operations. From time to time, our systems require modifications and updates, including by adding new hardware, software, and applications; maintaining, updating, or replacing legacy programs; and integrating new service providers and adding enhanced or new functionality. Although we are actively selecting systems and vendors and implementing procedures to enable us to maintain the integrity of our systems when we modify them, there are inherent risks associated with modifying or replacing systems, and with new or changed relationships, including accurately capturing and maintaining data, realizing the expected benefit of the change, and managing the potential disruption of the operation of the systems as the changes are implemented. Potential issues associated with implementation of these technology initiatives could reduce the efficiency of our operations in the short term. The efficient operation and successful growth of our business depends upon our information technology systems. The failure of our information technology systems and the third-party systems we rely on to perform as designed, or our failure to implement and operate them effectively, could disrupt our business or subject us to liability and thereby **may** have a material adverse effect on our business, financial condition, results of operations, and prospects. **Our energy storage products, which are complex, could contain defects, and / or may not operate at expected performance levels, which may cause us to incur warranty expenses beyond current estimates and could adversely affect our business and results of operations. We offer standard limited assurance type product warranties, as well as extended service type warranties. Our limited warranties cover defects in materials and workmanship of our products for normal use and service conditions typically between one and five years following commercial operation date or substantial completion depending on the contract. As a result, we bear the risk of warranty claims long after we have sold the product and recognized revenue. Our estimated costs of warranty for previously sold products may change to the extent future products may not be compatible with earlier generation products under warranty. Furthermore, as we are in a evolving industry, there is a degree of uncertainty regarding estimated warranty costs due to limited data. We have limited operating history and therefore must project how our product will perform over the estimated warranty period and the estimated reserve may have material changes. In addition, under real world operating conditions, which may vary by location and design, as well as environmental conditions, our product may perform in a different way than under standard test conditions or other failure data sets. We depend significantly on our reputation for reliability and high-quality products and services, exceptional customer service and our brand name to attract new customers and grow our business. If our products and services do not perform as anticipated or we experience unexpected reliability problems or widespread product failures, our brand and market reputation could be significantly impaired and we may lose, or be unable to gain or retain, customers which could impact our business and results of operations. Because of the limited operating history of our products, we have been required to make assumptions and apply judgments, including the durability and reliability of our products, performance over the estimated warranty period and our anticipated rate of warranty claims. Our assumptions could prove to be materially different from the actual performance of our products, causing us to incur substantial expense to**

repair or replace defective products in the future. An increase in our estimates of future warranty obligations due to product failure rates, field service obligations and rework costs incurred in correcting product failures could cause us to increase the amount of warranty obligations and may adversely impact on our results of operations. If our warranty reserves are inadequate to cover future warranty claims on our energy storage products, our financial condition and results of operations will be adversely affected. Warranty reserves include our management's best estimates of the projected costs to repair or to replace items under warranty, which is based on estimated failure rates. Such estimates are inherently uncertain and changes to our historical or projected experience, especially with respect to energy storage products which are still in development and which we expect to produce at significantly greater volumes than our past products, may cause material changes to our warranty reserves in the future.

We are exposed to fluctuations in currency exchange rates, which could negatively affect our operating results. The Company in the ordinary course of business enters into projects globally, which are denominated in foreign currencies such as the Euro, the Pound, and the Australian Dollar, and the Canadian Dollar, and is therefore subject to fluctuations due to changes in foreign currency exchange rates. In particular, current geopolitical instability and fiscal and monetary policies have caused, and may continue to cause, significant volatility in the currency exchange rates, and such volatility may continue for the foreseeable future. If our exposure to currency fluctuations increases and we are not able to successfully hedge against all the risks associated with currency fluctuations, our operating results could be adversely affected. Furthermore, such currency fluctuations may also adversely impact our ability to accurately predict our future financial results. Therefore, from time to time, we seek to manage our exposure to foreign currency risk relating to these cash flow projects through entering into different types of hedging arrangements designed to reduce such risk exposure. However, there can be no assurance that our hedging activities will successfully reduce our risk exposure. In addition, there may be unforeseen events affecting our business that could lead us to be long in positions that we did not anticipate when such hedging transactions were put into place which in turn could lead to adverse effects on our financial position. Our current and planned foreign operations expose us to additional business, financial, regulatory, geopolitical, and other related risks which may have a material adverse effect on our business. We sell our products and solutions and have operations in a number of different countries, including, but not limited to, the United States, the United Kingdom, multiple European Union countries, Chile, Australia, Taiwan, India, Canada, and the Philippines. We have in the past, and may in the future, evaluate and take advantage of opportunities to expand into new geographic markets and introduce new product offerings and services that are a natural extension of our existing business internationally. We also may from time to time engage in acquisitions of businesses or product lines with the potential to strengthen our market position, enable us to enter attractive markets, expand our technological capabilities, or provide synergy opportunities in those geographic markets we currently are in or in other geographic markets that we have not yet penetrated.

Our Operating globally requires significant resources and management attention and subjects us to business, financial, regulatory, geopolitical, and other related risks. In particular, our international operations and the markets in which we operate or that we may operate in in the future expose us to risks, including:

- compliance with multiple, potentially conflicting and changing governmental laws, regulations and permitting processes, including trade, labor, environmental, health, safety, banking, employment, privacy and data protection and privacy laws and regulations, such as the EU Data Privacy Directive, as well as tariffs, export quotas, customs duties and other trade restrictions;
- compliance with U. S. and foreign anti-bribery laws, including the Foreign Corrupt Practices Act of 1977, as amended;
- compliance with potentially conflicting and changing laws of taxing jurisdictions where we conduct business and applicable U. S. tax laws as they relate to international operations, the complexity and adverse consequences of such tax laws and potentially adverse tax consequences due to changes in such tax laws;
- limited or unfavorable intellectual property protection and practical difficulties associated with enforcing our legal rights abroad;
- geopolitical or economic conditions or uncertainty, which may include war, political instability or unrest, or terrorism, and natural disasters and pandemics;
- increased management, travel, infrastructure, and legal compliance costs associated with having operations in many countries;
- increased financial accounting and reporting burdens and complexities;
- changes in diplomatic and trade relationships, including political risk and customer perceptions based on such changes as the current armed conflict between Ukraine and Russia) risks;
- heightened risks of unfair or corrupt business practices in certain geographies that may impact our financial results and result in restatements of our consolidated financial statements;
- restrictions on the repatriation of earnings;
- different customer and sales practices including longer sales cycles, warranty expectations, and product return policies;
- differing technical standards, existing or future regulatory and certification requirements, and required features and functionality as well as different cost, performance, and compatibility requirements; and
- fluctuations in the value of foreign currencies and global inflation.

These conditions risks listed above are generally beyond our ability to adequately control, influence or predict and if we fail to successfully control, influence, or predict these risks, they could have a material adverse effect on our business, financial position, results of operations and liquidity. Our hardware and software-enabled services involve a lengthy sales and installation cycle, and if we fail to close sales on a regular and timely basis it could adversely affect our business, financial condition, and results of operations. Our current sales and installation cycle is typically twelve averages up to twenty months for our hardware and software-enabled services but varies can vary considerably on a project by project basis, typically between three months to twelve months. In order to make a sale, we must often provide a significant level of education to prospective customers regarding the use and benefits of our hardware and software-enabled services. The period between initial discussions with a potential customer and the sale of an energy storage product typically depends on a number of factors, including the potential customer's budget and decision as to the type of financing it chooses to use, as well as the arrangement of such financing. Prospective customers often undertake a significant internal evaluation process, which may further extend the sales cycle. **Because of the long sales cycle, we may expend significant resources without having certainty of generating a sale.** This lengthy sales cycle is subject to a number of significant risks over which we have little or no control. **Because of both the long sales cycle, we may expend significant resources without having certainty**

of generating a sale. These lengthy sales and installation cycles increase the risk that our customers may fail to satisfy their payment obligations, **increased labor costs for trouble shooting and commissioning, increased financing costs, that our customers may** cancel orders before the completion of the transaction, or delay the planned date for installation. Cancellation rates may be impacted by factors outside of our control including an inability to **timely** install an energy storage product at the customer's chosen location, **if at all**, because of permitting or other regulatory issues, unanticipated changes in the cost or availability of alternative sources of electricity available to the customer, or other reasons unique to each customer. ~~Our operating expenses are based on anticipated sales levels, and many of our expenses are fixed.~~ If we are unsuccessful in closing sales after expending significant resources or if we experience delays or cancellations in the ~~installations~~ **installation** process, ~~our business, financial condition, and results of operations could be adversely affected.~~ Additionally, we have long-term, multi-year service contracts with some of our customers. ~~If those contracts are terminated or if we are unable to continue to fulfill the obligations under such contracts,~~ our business, financial condition, and results of operations could be adversely affected. Amounts included in our pipeline and contracted backlog may not result in actual revenue or translate into profits. Information about our pipeline and contracted backlog included in this Annual Report is based on numerous assumptions and limitations, calculated using our internal data ~~which that has not been independently verified by third parties and~~ may not provide an accurate indication of our future or expected results ~~as we~~. Pipeline is monitored by management to understand the growth of our Company and our estimated future revenue related to customer contracts for our battery-based energy storage products and services. Pipeline and backlog are not prepared or audited in accordance with U. S. GAAP. We cannot guarantee that our pipeline or contracted backlog will result in actual revenue in the originally anticipated period, if at all, **or will result in meaningful revenue or profitability**. Our customers operate in a relatively new industry and have based their commitments to us on assumptions about future energy prices, demand levels, regulatory regimes and incentives, among other factors. Further, certain customers may need to obtain financing to fulfill their commitments to us. If the market does not grow as expected, the regulatory environment changes, or customers fail to obtain necessary financial backing, customers may fail to satisfy their minimum purchase commitments to us and we would fail to realize our contracted backlog. Furthermore, our pipeline or contracted backlog may not generate margins equal to historical operating results **or to the expected level guided to by management**. We have only ~~recently begun to track~~ **tracked** our pipeline and contracted backlog on a consistent basis **for a relatively short period of time**, and as a result, we do not have significant experience in determining the level of realization that we will achieve **on these contracts**. Our customers may experience **delays that could result in** project delays or ~~cancel~~ **cancelled** orders as a result of external market factors and economic or other factors beyond our control. If our pipeline or **contracted** backlog fails to result in revenue ~~at all as anticipated~~ or in a timely manner, we could experience a reduction in revenue, profitability, and liquidity. See "Management's Discussion and Analysis of Financial Condition and Results of Operations — Key Operating Metrics" for additional information regarding our pipeline and contracted backlog. ~~We may experience difficulties in establishing mass..... of operations, and growth prospects.~~ If our estimates of useful life for our energy storage products and related hardware and software-enabled services are inaccurate or if our component OEM suppliers do not meet service and performance warranties and guarantees, our business and financial results could be adversely affected. We sell hardware products and software-enabled services to our customers. Our software-enabled services are essential to the operation of ~~these our~~ hardware products. Our pricing of services contracts is based upon the value we expect to deliver to our customers, including considerations such as the useful life of the energy storage product and prevailing electricity prices. We also provide warranties and guarantees covering the efficiency and performance of certain of our products and digital applications. We do not have a long history with a large number of field deployments, and our estimates may prove to be incorrect. Failure to meet these performance warranties and guarantee levels may require us to refund our service contract payments to the customer or require us to make cash payments to the customer based on actual performance, as compared to expected performance, **or may result in litigation by customers, which would impact our brand, business, and results of operations**. As part of growing our business, we have **in the past** made **acquisitions** and expect to continue to **make evaluate** acquisitions **into the future**. If we fail to successfully select, execute, or integrate our acquisitions, then our business and operating results could be adversely affected and our stock price could decline. We continuously evaluate potential acquisitions to add new product lines and technologies, gain new sales channels, ~~or~~ **enter into new sales territories, or expand our market share**. For example, in 2022, we acquired **our asset performance management software**, Fluence Energy AG (formerly known as Nispera AG), a Zurich based provider of artificial intelligence (AI) and in 2020, we acquired **a AMS² software and digital intelligence platform**, which has become Fluence Mosaic. Acquisitions involve numerous risks and challenges, including but not limited to the following: • integrating the companies, assets, systems, products, sales channels, and personnel that we acquire; • higher than anticipated acquisition and integration costs and expenses; • reliance on third parties to provide transition services for a period of time after closing to ensure an orderly transition of the business; • growing or maintaining revenues to justify the purchase price and the increased expenses associated with acquisitions; • entering into territories or markets with which we have limited or no prior experience; • establishing or maintaining business relationships with customers, vendors, and suppliers who may be new to us; • overcoming the employee, customer, vendor, and supplier turnover that may occur as a result of the acquisition; • disruption of, and demands on, our ongoing business as a result of integration activities including diversion of management's time and attention from running the day to day operations of our business; • unfavorable tax or accounting treatment; • inability to implement uniform standards, disclosure controls and procedures, internal controls over financial reporting, and other procedures and policies in a timely manner, **if at all**; • inability to realize the anticipated benefits of or successfully integrate with our existing business the businesses, products, technologies or personnel that we acquire; • **failure to appropriately and holistically identify all the problems, liabilities, risks, or other challenges of any acquisition, technology or solution at the time of closing; • known and unknown liabilities including contract, tax, regulatory or other legal, and other obligations incurred by the acquired business or fines or penalties, for which indemnity obligations, escrow arrangements or**

insurance may not be available or may not be sufficient to provide coverage; and • potential post-closing disputes. As part of undertaking an acquisition, we may also significantly revise our capital structure or operational budget, including through issuing common stock that would dilute the ownership percentage of our stockholders, assuming liabilities or debt, utilizing a substantial portion of our cash resources to pay for the acquisition, or significantly increasing operating expenses. In addition, our effective tax rate in any particular quarter may also be impacted by acquisitions. Following the closing of an acquisition, we may also have disputes with the seller regarding contractual requirements and covenants, purchase price adjustments, contingent payments, or ~~for~~ indemnifiable losses. Any such disputes may be time consuming and distract management from other aspects of our business. In addition, if we increase the pace or size of acquisitions, we will have to expend significant management time and effort into the transactions and integrations, and we may not have the proper human resources bandwidth to ensure successful integrations and accordingly, our business could be harmed or the benefits of our acquisitions may not be realized. Our customer relationships, business, financial results and reputation may be adversely impacted due to events and incidents relating to storage, delivery, installation, operation, maintenance, and shutdowns of our energy storage products. Our customer relationships, business, financial results, and reputation may be adversely impacted due to events and incidents relating to storage, delivery, installation, operation and shutdowns of our energy storage products, including events and incidents outside of our control. We are subject to various risks as a result of the size, weight, and sophisticated nature of our energy storage products, including exposure to production, delivery, supply chain, inventory, installation and maintenance issues. Such issues may, and from time to time have, result in financial losses, including losses resulting from our failure to deliver or install our energy storage products on a contractually agreed timeframe, or losses resulting from agreed warranty or indemnity terms. Furthermore, issues and incidents involving our customers or their facilities at which our energy storage products are located, whether or not attributable to our energy storage products, may have an adverse effect on our reputation and customer relationships. Any of these developments could have a material adverse effect on our business, financial condition, and results of operations. Actual or threatened health epidemics, pandemics or similar public health threats, such as the COVID-19 pandemic, have had and could in the future have a material adverse effect on our business, outlook, financial condition, results of operations and liquidity. The global markets in which we operate ~~were have been impacted by and continue to be impacted by the COVID-19 pandemic~~ ~~Our business has been impacted by the COVID-19 pandemic and~~ **could** in the future ~~could continue to be adversely affected by COVID-19 or other health pandemics, epidemics or similar public health threats.~~ **For example** ~~There continues to be uncertainty around the COVID-19 pandemic, its ultimate duration, in fiscal years 2021 and 2022, as its impact on U.S. and global economic activity and consumer behavior.~~ As a result of the COVID-19 pandemic, our ground operations at project sites, our manufacturing facilities and our suppliers and vendors ~~were have been in the past and could be~~ disrupted by worker absenteeism, quarantines, shortage of COVID-19 test kits and personal protection equipment for employees, office and factory closures, disruptions to ports and other shipping infrastructure, ~~or and~~ other travel ~~or and~~ health-related restrictions. ~~For example, our suppliers and vendors in Asia have been particularly impacted by business closures and disruptions to ports and other shipping infrastructure arising out of the COVID-19 pandemic and the rise of certain variants over the course of the last two years. If our ground operations at project sites, our manufacturing facilities and our suppliers or vendors are so affected in the future, our supply chain, manufacturing and product shipments will be delayed, which could adversely affect our business, operations, and customer relationships. Overall, our revenue for fiscal year 2022 has been negatively affected by impacts related to the COVID-19 pandemic, such as continued delays in shipping energy storage products and components thereof and temporary closures of customer construction sites.~~ Additionally, we saw COVID-19 driven lockdowns in key areas for our battery suppliers, such as China, that resulted in our battery suppliers issuing delay notices to us. Due to the delays from our battery suppliers, some of our intended projects were delayed, resulting in lower revenue recognition. Additionally, some of our projects that were delayed because of COVID-19 supply chain disruptions also incurred liquidated damages payable to our customers resulting in decreased profitability. ~~If this continues into fiscal year 2023 our~~ **ground operations at project sites, we our manufacturing facilities and our suppliers or vendors are so affected in the future, our supply chain, manufacturing and product shipments may be delayed, which** ~~could face adverse adversely effects~~ ~~affect to our business, and results of operations, and customer relationships.~~ We have encountered and could encounter in the future project delays and resulting liquidated damages claims from customers due to impacts **arising from or related to actual or threatened health epidemics, pandemics or similar public health threats** on suppliers, customers, or others. The duration and intensity of these **potential** impacts and resulting disruption to our operations is uncertain and continues to evolve. The extent to which these events may impact our business will depend on future developments, which are highly uncertain and cannot be predicted at this time. Accordingly, **to the extent any such actual or threatened health epidemics, pandemics or similar public health threat arises,** management will ~~continue to~~ monitor the impact of the global situation on its financial condition, liquidity, operations, suppliers, industry, and workforce. The scope and duration of ~~the a~~ **pandemic, epidemic or other similar public health threat**, including any ~~current or~~ future resurgences, the pace at which government restrictions, **if any,** are **implemented to contain a virus and then** ~~lifted or whether additional actions may be taken to contain the virus,~~ the impact on our customers and suppliers, the speed and extent to which markets recover from the disruptions caused by ~~the a~~ **pandemic, epidemic, or other similar public health threat**, and the impact of these factors on our business, will depend on future developments that are highly uncertain and cannot be predicted with confidence. The impact of ~~a the~~ **COVID-19 pandemic, epidemic, or other similar public health threat** may also exacerbate other risks discussed herein, any of which could have a material adverse effect on our business, results of operations, or financial condition. Risks Related to Our Industry If renewable energy technologies are not suitable for widespread adoption or sufficient demand for our hardware and software-enabled services does not develop or takes longer to develop than we anticipate, our sales may decline, and we may be unable to achieve or sustain profitability. The market for renewable, distributed energy generation is emerging and rapidly evolving, and its future success **and trajectory** is uncertain **and subject to a number of risks.** If renewable energy

generation proves unsuitable for widespread commercial deployment or if demand for our **renewable energy hardware storage products and solutions** and software-enabled services fails to develop as **currently** anticipated, **our we would be unable to achieve expected level of sales and revenue and, market share, and our ability to achieve and / or sustain profitability may be adversely affected**. Many factors may influence the widespread adoption of renewable energy generation and demand for our hardware and software-enabled services, including, but not limited to, the cost-effectiveness of renewable energy technologies as compared with conventional and competitive technologies, the performance and reliability of renewable energy products as compared with conventional and non-renewable products, fluctuations in economic and market conditions that impact the viability of conventional and competitive alternative energy sources, increases or decreases in the prices of oil, coal and natural gas, continued deregulation of the electric power industry and broader energy industry, governmental regulations regarding renewable energy generation, and the availability or effectiveness of government subsidies and incentives. **The growth of renewable energy generation is relevant to the demand for energy storage because increases in intermittent solar and wind power in many jurisdictions have spurred the demand for energy storage to help maintain reliability and support the integration of solar and wind power into the electrical grid**. The growth and profitability of our business is largely dependent upon the continued decline in the overall cost of battery storage. Over the last decade the cost of battery storage products, particularly lithium-ion based battery storage products, have declined significantly. This lower cost has been driven by advances in battery technology, maturation of the battery supply chain, the scale of battery production by the leading manufacturers and other factors. The growth of our hardware sales and related software-enabled services is dependent upon the continued decrease in the price and efficiency of battery storage products of our component OEM suppliers. However, in fiscal year 2022, we saw battery prices increase for the first time and as a result, we had to **evolve and** adopt a different contracting strategy to ensure preservation of margin **in such instance**. If for any reason going forward our component OEM suppliers are unable to continue to reduce the price of their **components battery storage products, as they have historically done prior to fiscal year 2022**, our business and financial condition may be negatively impacted. **Additionally, the growth and profitability of our business is dependent on domestic supply chains that have not yet begun commercial operations. Delays in the construction of these domestic supply chains could cause delays to our projects and could result in lower sales, profitability, and potentially canceled contracts. This could harm our relationships with our customers if projects are delayed**. If the estimates and assumptions we use to determine the size of our total addressable market are inaccurate, our future growth rate may be affected, and the potential growth of our business may be limited. Market estimates and growth forecasts are subject to significant uncertainty and are based on assumptions and estimates that may prove to be inaccurate. Even if the **market markets** in which we compete ~~meets~~ **meet** our size estimates and forecasted growth, our business could fail to grow at similar rates, if at all. The assumptions relating to our market ~~opportunity~~ **opportunities** include, but are not limited to, the following: (i) according to BloombergNEF, global energy storage capacity grew 63 % per annum between 2015 and 2020 **based on the Energy Storage Market Outlook dated October 2022** and is expected to grow at a further **21-27%** compound annual growth rate through 2030 based on the Energy Storage Market Outlook dated October **2022-2023**; (ii) declines in **overall** lithium-ion battery costs and in the cost of renewable generation; (iii) growing demand for renewable energy; and (iv) increased complexity of the electrical grid. Our market ~~opportunity~~ **opportunities is are** also based on the assumption that our existing and future offerings will be more attractive to our customers and potential customers than competing products and services. If these assumptions prove inaccurate, our business, financial condition, and results of operations could be adversely affected. For more information regarding our estimates of market opportunity and the forecasts of market growth included herein, see the section entitled "Business." Existing electric utility industry policies and regulations, and any subsequent changes, may present technical, regulatory, and economic barriers to the purchase and use of energy storage products that may significantly reduce demand for our products or harm our ability to compete. Federal, state, local, and foreign government regulations and policies concerning the broader electric utility industry, as well as internal policies and regulations promulgated by electric utilities and organized electric markets with respect to fees, practices, and rate design, can influence the market for energy storage products and services. These regulations and policies often affect electricity pricing and the interconnection of generation facilities, and can be subject to frequent modifications by governments, regulatory bodies, utilities, and market operators. For example, changes in fee structures, electricity pricing structures, and system permitting, interconnection, and operating requirements can deter purchases of renewable energy products by reducing anticipated revenues or increasing costs or regulatory burdens for would-be system purchasers. The resulting reductions in demand for energy storage products could harm our business, prospects, financial condition, and results of operations. A significant recent development in renewable-energy pricing policies in the U. S. occurred on July 16, 2020, when the Federal Energy Regulatory Commission ("FERC") issued a final rule amending regulations that implement the Public Utility Regulatory Policies Act ("PURPA"). Among other requirements, PURPA mandates that electric utilities buy the output of certain renewable generators below established capacity thresholds. PURPA also requires that such sales occur at a **an** utility's "avoided cost" rate. FERC's PURPA reforms include modifications (1) to how regulators and electric utilities may establish avoided cost rates for new contracts; (2) that reduce from 20 MW to 5 MW, the capacity threshold above which **there is a rebuttable presumption that** a renewable-energy qualifying facility **has is rebuttably presumed to have** non-discriminatory market access, thereby removing the requirement for utilities to purchase its output; (3) that require regulators to establish criteria for determining when an electric utility incurs a legally enforceable obligation to purchase from a PURPA facility; and (4) that reduce barriers for third parties to challenge PURPA eligibility. In general, FERC's PURPA reforms have the potential to reduce prices for the output from certain new renewable generation projects while also narrowing the scope of PURPA eligibility for new projects. These effects could reduce demand for PURPA-eligible battery energy storage products and could harm our business, prospects, financial condition, and results of operations. Changes in other current laws or regulations applicable to us or the imposition of new laws, regulations, or policies in the U. S., Europe, or other jurisdictions in which we do business could have a material adverse effect on our business,

financial condition, and results of operations. Any changes to government, utility, or electric market regulations or policies that favor electric utilities or other market participants could reduce the competitiveness of battery energy storage products and cause a significant reduction in demand for our products and services and adversely impact our growth. The economic benefit of our **offerings to our customers depends on the cost of electricity available from alternative sources, including local electric utility companies, which cost structure is subject to change. The economic benefit of our energy storage products and solutions** to our customers includes, among other things, the benefit of reducing such ~~customer~~ **customers'** s-payments to the local electric utility company. The rates at which electricity is available from a customer' s local electric utility company is subject to change and any changes in such rates may affect the relative benefits of our energy storage products. **Factors that could influence these rates include the effect of energy conservation initiatives that reduce electricity consumption, construction of additional power generation plants (including nuclear, coal or natural gas), and technological developments by others in the electric power industry.** Further, the local electric utility may impose “ departing load, ” “ standby ” or other charges on our customers in connection with their acquisition of our energy storage products, the amounts of which are outside of our control and which may have a material impact on the **overall** economic benefit of our energy storage products to **and cost analysis for** our customers **of our energy storage products** . Changes in the rates offered by local electric utilities and / or in the applicability or amounts of charges and other fees imposed by such utilities on customers acquiring our energy storage products could adversely affect the demand for our energy storage products. An increase in interest rates or a reduction in the availability of tax equity or project debt capital in the global financial markets could make it difficult for end customers to finance the cost of a renewable energy storage system and could reduce the demand for our products. Many end users depend on financing to fund the initial capital expenditure required to purchase our products and services as a result of the significant up- front costs. Their ability to attract third- party financing depends on many factors that are outside of our control, including the ability of third parties to utilize tax credits and other government incentives, interest rate and / or currency exchange fluctuations, their perceived creditworthiness and the condition of credit markets generally. As a result, an increase in interest rates or a reduction in the supply of project debt or tax equity financing could reduce the number of customer projects that receive financing or otherwise make it difficult for our customers or their customers to secure the financing necessary to construct a renewable energy system on favorable terms, or at all, and thus lower demand for our products, which could limit our growth or reduce our net sales. In addition, we believe that a significant percentage of end- users construct renewable energy storage systems as an investment, funding a significant portion of the initial capital expenditure with financing from third parties. An increase in interest rates could lower an investor' s return on investment, increase equity requirements, or make alternative investments more attractive relative to our products and services and, in each case, could cause these end users to seek alternative investments. Changes in tax laws or regulations could materially adversely affect our business, financial condition, results of operations, and prospects. Changes in corporate tax rates, tax incentives for renewable energy projects, the realization of net deferred tax assets relating to our U. S. operations, the taxation of foreign earnings, and the deductibility of expenses under future tax reform legislation could have a material impact on the value of our deferred tax assets, could result in significant one- time charges in the current or future taxable years, and could increase our future U. S. tax expense, any and all of which could have a material adverse effect on our business, financial condition, results of operations, and prospects. Governmental agencies in the jurisdictions in which we and our affiliates do business, as well as the Organization for Economic Cooperation and Development (the “ OECD ”), have recently focused on issues related to the taxation of multinational business, including issues relating to “ base erosion and profit shifting, ” where profits are reported as earned for tax purposes in relatively low- tax jurisdictions or payments are made between affiliates in jurisdictions with different tax rates. The OECD has released several components of its comprehensive plan to create an agreed set of international rules for addressing base erosion and profit shifting, and governmental authorities from various jurisdictions (including the United States) continue to discuss potential legislation and other reforms, including proposals for global minimum tax rates. As we operate in numerous jurisdictions, the application of tax laws can be subject to diverging and sometimes conflicting interpretations by tax authorities of these jurisdictions. It is not uncommon for taxing authorities in different countries to have conflicting views, for instance with respect to whether a permanent establishment exists in a particular jurisdiction, the manner in which an arm' s length standard is applied for transfer pricing purposes, or with respect to the valuations of intellectual property. For example, if a taxing authority in one country where we operate were to reallocate income from another country where we operate, and if the taxing authority in the second country did not agree with the reallocation asserted by the first country, then we could be subject to tax on the same income in both countries, resulting in double taxation. If taxing authorities were to allocate income to a higher tax jurisdiction, subject our income to double taxation or assess interest and penalties, our tax liabilities could increase, which could adversely affect our business, financial condition, and results of operations. Due to the potential for changes to tax laws and regulations or changes to the interpretation thereof (including regulations and interpretations pertaining to recent tax reforms in the United States), the ambiguity of tax laws and regulations, the subjectivity of factual interpretations, the complexity of our intercompany arrangements, uncertainties regarding the geographic mix of earnings in any particular period, and other factors, our estimates of effective tax rate and income tax assets and liabilities may be incorrect and our financial statements could be adversely affected, and the resulting impacts may vary substantially from period to period. In particular, in the United States, there have been multiple significant changes recently proposed **or enacted to the taxation of business entities** (including the passing of the **IRA Inflation Reduction Act of 2022 signed into law by President Biden on August 16, 2022**) to the taxation of business entities, including, among other things, **implementing a 15 % an increase in the U. S. federal corporate minimum tax on book income of certain large corporations effective in 2024, a 1 % excise tax rate on net stock repurchases after December 31, 2022 a transition to graduated rates, an and several increase in the tax incentives rate applicable to global intangible low promote clean energy. We are still evaluating the impact these IRA - related taxed income and elimination of certain exemptions, and various other changes to the U. S. international tax regime. While incentives may have on our financial**

results as we go forward. Additionally ~~are analyzing the impact of the Inflation Reduction Act~~, we are currently unable to predict whether other proposed changes **to tax laws will occur-be enacted** and, if so, when they would be effective or the ultimate impact on us or our business. To the extent that such changes have a negative impact on us or our business, these changes may materially and adversely impact our business, financial condition, and results of operations. In addition, the amounts of taxes we pay are subject to current or future audits by taxing authorities in the United States and all other jurisdictions in which we operate. If audits result in additional payments or assessments ~~different from our reserves~~, our future results may include unfavorable adjustments to our tax liabilities, and our financial statements could be adversely affected. We may incur obligations, liabilities, or costs under environmental, health, and safety laws, which could have an adverse impact on our business, financial condition, and results of operations. We are required to comply with ~~national~~ **federal**, state, local, and foreign laws and regulations regarding the protection of the environment, health, and safety. We may incur expenses, or be subject to liability, related to the transportation, storage, or disposal of lithium-ion batteries, or other materials used in our products. Adoption of more stringent laws and regulations in the future could require us to incur substantial costs to come into compliance with these laws and regulations. In addition, violations of, or liabilities under, these laws and regulations may result in restrictions being imposed on our operating activities or in our being subject to adverse publicity, substantial fines, penalties, criminal proceedings, third-party property damage or personal injury claims, cleanup costs, or other costs. Liability under these laws and regulations can be imposed on a joint and several basis and without regard to fault or the legality of the activities giving rise to the claim. In addition, future developments such as more aggressive enforcement policies or the discovery of presently unknown environmental conditions may require expenditures that could have an adverse effect on our business, financial condition, and results of operations. The reduction, elimination, or expiration of government incentives for, or regulations mandating the use of, renewable energy could reduce demand for energy storage products and harm our business. Federal, state, local, and foreign government bodies provide incentives to owners, end users, distributors, system integrators and manufacturers of renewable energy products to promote renewable electricity in the form of rebates, tax credits and other financial incentives. The range and duration of these incentives varies widely by jurisdiction. Our customers typically use our products for grid-connected applications wherein power is sold under a power purchase agreement or into an organized electric market. The reduction, elimination, or expiration of government incentives for grid-connected electricity may negatively affect the competitiveness of our offerings relative to conventional renewable sources of electricity and could harm or halt the growth of our industry and our business. These subsidies and incentives may expire on a particular date, end when the allocated funding is exhausted or be reduced or terminated as renewable energy adoption rates increase or as a result of legal challenges, the adoption of new statutes or regulations, or the passage of time. These reductions or terminations may occur without warning.

There is no guarantee that such policies and incentives will continue to exist in current form, if at all. The reduction, elimination or expiration of such incentives therefore could **reduce demand for our offerings and therefore could** harm our business, **operating results**, and cash flows. In August 2022, the United States passed the **Inflation Reduction Act of 2022 (the "IRA")**, which includes a number of government incentives that support the adoption of energy storage products and services and are anticipated to benefit the Company and its operations. ~~Forthcoming~~ **The impact of the IRA and its accompanying guidance on our operations cannot be known with certainty and we may not recognize the benefits we anticipate. We are continuing to implement-evaluate the potential overall impact and applicability of the IRA on our business and operations. To the extent that any impacts from the IRA are less beneficial** U. S. Department of Treasury and other federal administrative agencies could be drafted in such manner that ~~than~~ would not be as anticipated and may be adverse to the Company **or have a negative impact on us or our business or on our customers' s-interests-businesses, these changes may materially and adversely impact our business, financial condition, and results of operations**. Revenue from any projects we support may be adversely affected if there is a decline in public acceptance or support of renewable energy, or regulatory agencies, local communities, or other third parties delay, prevent, or increase the cost of constructing and operating customer projects. Certain persons, associations and groups could oppose renewable energy projects in general or our customers' projects specifically, citing, for example, misuse of water resources, landscape degradation, land use, food scarcity or price increase, and harm to the environment. Moreover, regulation may restrict the development of renewable energy plants in certain areas. In order to develop a renewable energy project, our customers are typically required to obtain, among other things, environmental impact permits or other authorizations and building permits, which in turn require environmental impact studies to be undertaken and public hearings and comment periods to be held during which any person, association, or group may oppose a project. Any such opposition may be taken into account by government officials responsible for granting the relevant permits, which could result in the permits being delayed or not being granted or being granted solely on the condition that our customers carry out certain corrective measures to the proposed project, **and opposition to a project could lead to legal challenges by opponents to an agency' s approval of the project permits**. Severe weather events, including the effects of climate change, are inherently unpredictable and may have a material adverse effect on our financial results and financial condition. Our business, including our customers and suppliers, may be exposed to severe weather events and natural disasters, such as tornadoes, tsunamis, tropical storms (including hurricanes), earthquakes, windstorms, hailstorms, severe thunderstorms, wildfires, and other fires, which could cause operating results to vary significantly from one period to the next. We may incur losses in our business in excess of: (1) those experienced in prior years, (2) the average expected level used in pricing, or (3) current insurance coverage limits. The incidence and severity of severe weather conditions and other natural disasters are inherently unpredictable. Climate change ~~may affect~~ **is anticipated to increase** the occurrence of certain natural events, such as an increase in the frequency or severity of wind and thunderstorm events, and tornado or hailstorm events ~~due to increased convection in the atmosphere~~; more frequent wildfires and subsequent landslides in certain geographies; higher incidence of deluge flooding; and the potential for an increase in severity of the hurricane events due to higher sea surface temperatures. ~~Additionally~~ **Climate change may also result in chronic physical changes, such as changes to temperature or**

precipitation patterns or rising sea levels that may also adversely impact the suitability of certain project sites or otherwise adversely impact our business. Evolving market conditions, shift in global policy on climate change, and the increase in frequency and impact of extreme weather events on critical infrastructure globally as a result of climate change have the potential to disrupt our business, the business of our suppliers and the business of our customers, and may cause us to experience higher attrition, losses and additional costs to maintain or resume operations. Additionally, climate change may adversely impact the demand, price, and availability of insurance that may be available to us and to our customers at project sites. While we may take various actions to mitigate our business risks associated with future changing climate conditions, we are unable to predict the impact climate change, this may require us to incur substantial costs and may not be successful, due to, among other things, the uncertainty associated with the longer-term projections associated with managing climate risks. Increasing attention to, and evolving expectations regarding, ESG matters may impact our business and reputation. Companies across industries are facing increasing scrutiny from a variety of stakeholders related to their ESG and sustainability practices. Expectations regarding voluntary ESG initiatives and disclosures may result in increased costs (including but not limited to increased costs related to compliance, stakeholder engagement, contracting and insurance), changes in demand for certain products, enhanced compliance or disclosure obligations, or other impacts to our business, financial condition, or results of operations. While we have in past, and expect in future to continue, engaged in voluntary initiatives (such as voluntary disclosures, certifications, or goals, among others) to improve the ESG profile of our Company and / or products or to respond to stakeholder expectations, such initiatives may be costly and may not have the desired effect. Expectations around company's management of ESG matters continues to evolve rapidly, in many instances due to factors that are out of our control. For example, we may ultimately be unable to complete certain initiatives or targets, either on the timelines initially announced or at all, due to technological, legal, cost, or other constraints, which may be within or outside of our control. Moreover, actions or statements that we may take based on expectations, assumptions, or third-party information that we currently believe to be reasonable may subsequently be determined to be erroneous or be subject to misinterpretation. If we fail to, or are perceived to fail to, comply with or advance certain ESG initiatives (including the timeline and manner in which we complete such initiatives), we may be subject to various adverse impacts, including reputational damage and potential stakeholder engagement and / or litigation, even if such initiatives are currently voluntary. For example, there have been increasing allegations of greenwashing against companies making significant ESG claims due to a variety of perceived deficiencies in performance, including as stakeholder perceptions of sustainability continue to evolve. Companies, such as us, involved in the energy transition may be especially impacted by such criticisms, due to our efforts to position our business plan focusing on helping customers achieve sustainability-related goals and objectives. We expect there will likely be increasing levels of regulation, disclosure-related and otherwise, with respect to ESG matters. For example, various policymakers, such as the SEC and the State of California, have adopted, or are considering adopting rules to require companies to provide significantly expanded climate-related disclosures in their periodic reporting, which may require us to incur significant additional costs to comply, including the implementation of significant additional internal controls processes and procedures regarding matters that have not been subject to such controls in the past, and impose increased oversight obligations on our management and board of directors. Simultaneously, there are efforts by some stakeholders to reduce companies' efforts on certain ESG-related matters. Both advocates and opponents to certain ESG matters are increasingly resorting to a range of activism forms, including media campaigns and litigation, to advance their perspectives. To the extent we are subject to such activism, it may require us to incur costs or otherwise adversely impact our business. This and other stakeholder expectations will likely lead to increased costs as well as scrutiny that could heighten all of the risks identified in this risk factor. Additionally, many of our customers and suppliers may be subject to similar expectations, which may augment or create additional risks, including risks that may not be known to us.

Risks Related to Our Financial Condition and Liquidity Our revolving ABL credit facility Agreement imposes certain restrictions that may affect our ability to operate our business and make payments on our indebtedness. We entered into a Revolving are party to an asset-based syndicated credit agreement (the "ABL Credit Agreement for a") with revolving commitments in an aggregate principal amount of \$ 190 400 . 0 million secured revolving credit facility (the "Revolver ABL Facility") on November 1, 2021. On June 30, 2022, we increased the revolving commitment available under the Revolver by \$ 10. 0 million to an aggregate of \$ 200. 0 million. The Revolver ABL Credit Agreement contains covenants that, among other things, restrict our ability to incur additional indebtedness; incur liens; sell, transfer, or dispose of property and assets; invest; pay dividends, make dividends or distributions or other restricted payments and engage in affiliate transactions. In addition, we are required to maintain (i) minimum liquidity and gross revenue requirements, in each case, until consolidated EBITDA reaches a certain specified threshold and we make an election, and (ii) thereafter, a maximum total leverage ratio and a minimum interest coverage ratio. See "Management's Discussion and Analysis of Financial Condition and Results of Operations — Liquidity and Capital Resources — ABL Revolving Credit Facility" for further discussion of the Revolver ABL Facility. The Revolver terms of the ABL Credit Agreement limits our ability to make certain payments, including dividends or distributions on Fluence Energy, LLC's equity and its subsidiaries ability to pay cash dividends to, lend to, or make other investments restricted payments, provided; however, that payments in respect of certain tax distributions under the Fluence Energy LLC Agreement and, Inc., subject to certain exceptions, including certain payments under the Tax Receivable Agreement are permitted. See "Management's Discussion and Analysis of Financial Condition and Results of Operations — Liquidity and Capital Resources — Tax Receivable Agreement" for further discussion of the Tax Receivable Agreement. These restrictions may restrict our current and future operations, particularly our ability to respond to certain changes in our business or industry or take future actions. Our ability to meet these restrictive covenants can be impacted by events beyond our control and we may be unable to do so. Our

~~Revolver ABL Credit Agreement~~ and related security agreements provides that our breach or failure to satisfy certain covenants constitutes an event of default. Upon the occurrence of an event of default, our lenders could elect to declare all amounts outstanding under its debt agreements to be immediately due and payable. In addition, our lenders, to whom we granted a security interest in substantially all of our assets, would have the right to proceed against such assets we provided as collateral pursuant to the ~~Revolver ABL Credit Agreement~~ and related security agreement. If the debt under our ~~Revolver ABL Facility~~ was to be accelerated, we may not have sufficient cash on hand or be able to sell sufficient collateral to repay it, which would have an immediate adverse effect on our business and operating results. This could potentially cause us to cease operations and result in a complete loss of your investment in our Class A common stock. **In addition, availability under the ABL Facility is subject to a borrowing base calculated based on a percentage of Net Orderly Liquidation Value (as defined in the ABL Credit Agreement), which, in turn, may be impacted by factors outside of our control, including demand for the Company's products, competition with producers of similar products and supply chain factors. As such, we may not have full access to our current ABL Facility availability based on the actual borrowing base calculation at any future period. Should our borrowing base under the ABL Facility decline, our ability to borrow against the ABL Facility to fund future operations and business transactions could be limited.** Moreover, the ~~Revolver ABL Credit Agreement~~ requires us to dedicate a portion of our cash flow from operations to interest payments, thereby reducing the availability of cash flow to fund working capital, capital expenditures and other general corporate purposes; increasing our vulnerability to adverse general economic, industry, or competitive developments or conditions; and limiting our flexibility in planning for, or reacting to, changes in our business and the industry in which we operate or in pursuing our strategic objectives. Our future capital needs are uncertain and we may need to raise additional funds in the future, and such funds may not be available on acceptable terms or at all. We believe that our current cash and cash equivalents together with our expected cash from operations, will be sufficient to meet our projected operating requirements for the foreseeable future. However, continued expansion of our business will be expensive, and we may seek additional funds from public and private stock offerings, borrowings under our existing or new credit facilities or other sources which we may not be able to maintain or obtain on acceptable or commercially reasonable terms, if at all. Our capital requirements will depend on many factors, including: • market acceptance of our offerings; • the revenue generated by sales of our offerings; • the costs associated with expanding our sales and marketing efforts; • the expenses we incur in manufacturing and selling our products; • the costs of developing and commercializing new products or technologies; • the cost of filing and prosecuting patent applications and defending and enforcing our patents and other intellectual property rights; • the cost of defending, in litigation or otherwise, any claims that we infringe third- party patents or other intellectual property rights; • the cost of enforcing or defending against non- competition claims; • the number and timing of acquisitions and other strategic transactions; • the costs associated with our planned international expansion; and • unanticipated general and administrative expenses. As a result of these factors, we may seek to raise additional capital to, among others: • maintain appropriate product inventory levels; • continue our research and development and protect our intellectual property rights; • defend claims, in litigation or otherwise; • expand our geographic reach; • commercialize our new products; and • acquire companies and license products or intellectual property. Such capital may not be available on favorable terms **to us**, ~~or if~~ at all. Furthermore, if we issue equity or debt securities to raise additional capital, our existing stockholders may experience dilution, and the new equity or debt securities may have rights, preferences, and privileges senior to those of our existing stockholders. In addition, if we raise additional capital through collaboration, licensing, or other similar arrangements, it may be necessary to relinquish valuable rights to our products, potential products, or proprietary technologies, or grant licenses on terms that are not favorable to us. ~~Historically, we have relied on parent corporate guarantees from our affiliates to support project sales.~~ If we are unable to rely on our standalone credit quality or utilize such **credit support tools like parent corporate company guarantees, letters of credit, or surety bonds** going forward, it may impact our ability to sell products or establish **customer and** supplier relationships going forward. If we cannot raise capital on acceptable terms, we may not be able to develop or enhance our ~~products~~ **product, service, and digital application offerings**, execute our business plan, take advantage of future opportunities, or respond to competitive pressures, changes in our supplier relationships, or unanticipated customer requirements. Any of these events could adversely affect our ability to achieve our development and commercialization goals, which could have a material adverse effect on our business, results of operations, and financial condition. Risks Related to Our Intellectual Property, **Data Privacy** and Technology If we are unable to obtain, maintain and enforce **adequate protection for our** intellectual property ~~protection for our technology~~ or if the scope of our intellectual property protection is not sufficiently broad, others may be able to develop and commercialize technology **and intellectual property** substantially similar to ours, and our ability to successfully commercialize our technology **or intellectual property** may be adversely affected. Our business depends on internally developed technology **or other internally developed intellectual property**, including hardware, software, databases, **systems**, confidential information and know- how, the protection of which is crucial to the success of our business. We rely on a combination of patent, trademark, trade- secret, and copyright laws **and as well as internal** confidentiality procedures and contractual provisions to **establish, maintain, and** protect our intellectual property rights in our internally developed technology **and other intellectual property. However, our rights under these laws and agreements only afford us limited protection and the actions we take to establish, maintain and enforce our intellectual property rights may not be sufficient**. We may, over time, ~~increase our investment~~ **take additional steps** in protecting our intellectual property **through growing our IP team and** through additional trademark, patent, and other intellectual property filings **both in the United States and abroad** that could be expensive and time- consuming. Effective patent protection is expensive to develop and maintain and while it is generally less costly to obtain trademark and copyright protection, the aggregate costs of maintaining a portfolio of patents and registered copyrights and trademarks can be substantial, both in terms of initial and ongoing prosecution and maintenance requirements and the costs of enforcing and defending our rights. **Despite our efforts to protect our intellectual property,** ~~These these~~ measures, ~~however,~~ **taken to date** may not be

sufficient to offer us meaningful protection **from our competitors or other third parties from attempting to copy, reverse engineer, or otherwise obtain and use our intellectual property**. If we are unable to protect our intellectual property and other rights, our competitive position **could be harmed, business opportunities and demand for our products, services and digital application offerings could decrease**, and our business could be **harmed, adversely impacted** as third parties may be able to commercialize and use technologies and software products **and intellectual property** that are substantially the same as ours without incurring the development and licensing costs that we have incurred. Any of our owned or licensed intellectual property rights could be challenged, invalidated, circumvented, infringed, or misappropriated, and our trade secrets and other confidential information could be disclosed in an unauthorized manner to third parties. **Further, our intellectual property rights may..... and business opportunities. Also, some** **Some** of our services rely on technologies and software developed by or licensed from third parties, and we may not be able to maintain our relationships with such third parties or enter into similar relationships in the future on reasonable terms or at all. **Further, in some cases**, our intellectual property rights may not be sufficient to **circumvent third party intellectual property and thereby not** permit us to take advantage of **current** market trends or **nor** otherwise to provide **providing** us with competitive advantages, which could result in costly redesign efforts, discontinuance of certain offerings, or other competitive harm. **Additionally, Monitoring monitoring** unauthorized use of our intellectual property is **difficult-cumbersome** and costly **and there is no guarantee that any steps taken to prevent misappropriation will be successful**. **In the future** **From time to time**, we seek to analyze our competitors' services, and **in the future** seek to enforce our rights against potential infringement. **However however**, the steps we have taken to protect our intellectual property rights may not be adequate to prevent **actual** infringement or misappropriation of our intellectual property. We may not be able to detect unauthorized use of, or take appropriate steps to enforce, our intellectual property rights. **Any inability-From time to time, we may have to resort to litigation to enforce** our intellectual property rights, **which** could result in **harm to-substantial costs and diversion of our resources** ability to compete and reduce demand for our technology. **Moreover, our failure to develop and properly manage new intellectual property could adversely affect our market positions and business**. Uncertainty may result from changes in intellectual property laws as a result of new legislation and from new interpretations of intellectual property laws by applicable courts and agencies **throughout the world**. Accordingly, despite our efforts, we may be unable to obtain and maintain the intellectual property rights necessary to provide us with a competitive advantage. Our failure to obtain, maintain and enforce our intellectual property rights could therefore have a material adverse effect on our business, financial condition, and results of operations. **We may be-As a technology company selling commercial products, we run the risk of being** sued by third parties for infringement, misappropriation, dilution, or other violation of their intellectual property or proprietary rights. **Technology, Internet-internet**, advertising, and e-commerce **in general most** companies **involved with commercially selling products**, frequently are subject to litigation based on allegations of infringement, misappropriation, dilution, or other violations of intellectual property rights. **Some of these internet, advertising, and e-commerce** companies, including some of our competitors, as well as non-practicing entities, own large numbers of patents, copyrights, trademarks, and trade secrets, which they may use to assert claims against us. **Third parties may in the future assert, that we have infringed, misappropriated, diluted, or otherwise violated their intellectual property rights**. For instance, the use of our technology to provide our offerings could be challenged by claims that such use infringes, dilutes, misappropriates, or otherwise violates the intellectual property rights of a third party. In addition, we may in the future be exposed to claims that content published or made available through our **apps applications** or websites violates third-party intellectual property rights. As we face increasing competition and as a public company, the possibility of intellectual property rights claims against us grows. Such claims and litigation may involve patent holding companies or other adverse intellectual property rights holders who have no relevant product revenue, and therefore our own pending patents and other intellectual property rights may provide little or no deterrence to these rights holders in bringing intellectual property rights claims against us. Third parties may hold intellectual property rights that cover significant aspects of our technologies, content, branding, or business methods, and we cannot assure that we are not infringing or violating, and have not violated or infringed, any third-party intellectual property rights or that we will not be held to have done so or be accused of doing so in the future. **We may not be aware of existing patents or patent applications that could be pertinent to our business as many patent applications are filed confidentially in the United States and are not published until 18 months following the applicable filing date. We** expect that we may receive in the future notices that claim we or our **customers partners, or clients** using our **energy storage solutions and, services or digital applications**, have infringed or misappropriated, other parties' intellectual property rights, particularly as the number of competitors in our market grows and the functionality of applications amongst competitors overlaps. Any claim that we have violated intellectual property or other proprietary rights of third parties, with or without merit, and whether or not it results in litigation, is settled out of court or is determined in our favor, could be time-consuming and costly to address and resolve, and could divert the time and attention of management and technical personnel from our business **and the day-to-day operations**. Furthermore, an adverse outcome of a dispute may result in an injunction and could require us to pay substantial monetary damages, including treble damages and attorneys' fees, if we are found to have willfully infringed a party's intellectual property rights. Any settlement or adverse judgment resulting from such a claim could require us to enter into a licensing agreement to continue using the technology, content, or other intellectual property that is the subject of the claim; restrict or prohibit our use of such technology, content, or other intellectual property; require us to expend significant resources to redesign our technology or solutions; and require us to indemnify third parties. Royalty or licensing agreements, if required or desirable, may be unavailable on **commercially reasonable** terms **that are** acceptable to us, or at all, and may require significant royalty payments and other expenditures. We may also be required to develop alternative non-infringing technology, which could require significant time and expense **and diversion of resources**. There also can be no assurance that we would be able to develop or license suitable alternative technology, content, or other intellectual property to permit us to continue offering the affected technology, content, or services to our **customers partners or clients**. If we cannot develop or

license technology for any allegedly infringing aspect of our business, we would be forced to limit our **product or service** offerings and may be unable to compete **as effectively, if at all**. Any of these events could materially harm our business, financial condition, and results of operations. If our trademarks and trade names are not adequately protected or protectable, we may not be able to build name recognition in our markets of interest, and our competitive position may be harmed. The registered and unregistered trademarks and trade names that we own may be challenged, infringed, circumvented, declared generic, lapsed, or determined to be infringing on or dilutive of other marks. We may not be able to protect our rights in these trademarks and trade names, which we need in order to build name recognition with potential members, partners, and clients. In addition, third parties may file for registration of trademarks similar or identical to our trademarks, thereby impeding our ability to build brand identity and possibly leading to market confusion. If they succeed in registering or developing common-law rights in such trademarks, and if we are not successful in challenging such third-party rights, we may not be able to use these trademarks to develop brand recognition of our technologies, products, or services. In addition, there could be potential trademark infringement claims brought by owners of other registered or unregistered trademarks or trademarks that incorporate variations of our registered or unregistered trademarks or trade names. If we are unable to establish name recognition based on our trademarks and trade names, we may not be able to compete effectively, which could have a material adverse effect on our business, financial condition, results of operations and prospects. We may not be able to enforce our intellectual property rights throughout the world. As the geographic scope of our business expands, we will need to consider protecting our proprietary technology and ~~content~~ **other intellectual property** in an increasing number of jurisdictions, a process that is expensive and may not be successful, and accordingly we may choose not to do so in every location. Filing, prosecuting, maintaining, defending, and enforcing intellectual property rights on our products, services, **digital applications**, and technologies in all countries throughout the world could be prohibitively expensive, and our intellectual property rights in some countries outside the United States can be less extensive than those in the United States. We do not own and have not registered or applied for intellectual property registrations in all countries outside the United States. Competitors may use our technologies in jurisdictions where we have not obtained protection to develop their own products ~~and~~, services, **digital applications, and technologies** and, further, may export otherwise violating products and services to territories where we have protection but enforcement is not as strong as that in the United States. These products ~~and~~, services, **digital applications, and technologies** may compete with our ~~solutions and products,~~ services, **digital applications, and technologies**, and our intellectual property rights may not be effective or sufficient to prevent them from competing. In addition, the laws of some foreign countries do not protect certain proprietary **and intellectual property** rights to the same extent as the laws of the United States, and many **other** companies have encountered significant challenges in establishing and enforcing certain of their proprietary **and intellectual property** rights outside of the United States. These challenges can be caused by the absence or inconsistency of the application of rules and methods for the establishment and enforcement of intellectual property rights outside of the United States. For instance, there is no uniform worldwide policy regarding patentable subject matter or the scope of claims allowable for business methods. As such, we do not know the degree of future protection that we will have on our technologies, products, ~~and~~ services, **and digital applications**. In addition, the legal systems of some countries, particularly developing countries, do not favor the enforcement of intellectual property rights to the same degree as the United States. This could make it difficult for us to stop the misappropriation, **dilution, infringement**, or other violation of certain of our ~~other~~ intellectual property rights. Accordingly, we may choose not to seek protection in certain countries, and we will not have the benefit of **intellectual property** protection in such countries. Proceedings to enforce our intellectual property rights in foreign jurisdictions could result in substantial costs and divert our efforts and attention from other aspects of our business. ~~Accordingly~~ **In addition**, our efforts to protect our intellectual property rights in such countries may be inadequate. ~~In addition, changes~~ **Changes** in the law and **the interpretation thereof as well as** legal decisions by courts in the United States and foreign countries may affect our ability to obtain, **maintain, and enforce** adequate **intellectual property** protection for our products, services, **digital applications**, and other technologies ~~and the enforcement of intellectual property~~. Any of the foregoing could harm our competitive position, business, financial condition, results of operations, and prospects. We may be subject to claims that our employees, consultants, or advisors have wrongfully used or disclosed alleged trade secrets of their current or former employers or claims asserting ownership of what we regard as our own intellectual property. Many of our employees, consultants, and advisors are currently or were previously employed at other companies in our field, including our competitors or potential **future** competitors. Although we try to ensure that our employees, consultants, and advisors do not use the proprietary information or know-how of others in their work for us, we may be subject to claims that we or these individuals have used or disclosed intellectual property, including trade secrets or other proprietary information, of any such individual's current or former employer. Litigation may be necessary to defend against these claims. If we fail in defending any such claims, in addition to paying monetary damages, we may lose valuable intellectual property rights or personnel. Even if we are successful in defending against such claims, litigation could result in substantial costs and be a distraction to management. In addition, while it is our policy to require our employees and contractors who may be involved in the conception or development of intellectual property to execute agreements assigning such intellectual property to us, we may be unsuccessful in executing such an agreement with each party who, in fact, conceives or develops intellectual property that we regard as our own. The assignment of intellectual property rights may not be self-executing, or the assignment agreements may be breached, and we may be forced to bring claims against third parties, or defend claims that they may bring against us, to determine the ownership of what we regard as our intellectual property. Any of the foregoing could harm our competitive position, business, financial condition, results of operations, and prospects. **If our existing patents expire or are not maintained, our pending patent applications are not granted or our patent rights are contested, circumvented, invalidated or limited in scope, we may not be able to prevent others from selling, developing or exploiting competing technologies, products, services or digital applications, which could have a material adverse effect on our business, prospects, financial condition, results of operations, and cash flows. There can be no assurance that our**

pending patent applications will issue as patents. Even if our patent applications result in issued patents, these patents may be contested, circumvented, or invalidated in the future. In addition, the rights granted under any issued patents may not provide us with adequate protection or competitive advantages that we anticipate against competitors or other third parties. The claims under any patents that issue from our patent applications may not be broad enough to prevent others from developing competing technologies that are similar or that achieve results similar to ours. The intellectual property rights of others could also bar us from licensing and exploiting any patents that issue from our pending applications. There are a number of patents and pending patent applications owned by competitors exist in the fields in which we have developed and are developing our technology. Many of these existing patents and patent applications might have priority over our patent applications and could subject our patents to invalidation or our patent applications to rejection. Finally, in addition to patents with an earlier priority date and patent applications that were filed before our patent applications that may affect the likelihood of issuance of patents we are seeking, any of our existing or future patents may also be challenged by others on grounds that may render our patent applications or issued patents invalid or unenforceable. In addition, patents issued to us may be infringed upon or designed around by others which may adversely affect our business, prospects, and operating results. Our business depends on our ability to effectively invest in, implement improvements to and properly maintain **and protect** the **uninterrupted continuous** operation and data integrity of our information technology **infrastructure** and other business systems **and the inability to do so may have a material adverse effect on our reputation and harm our business prospects, financial conditions, and operating results**. Our business is highly dependent on maintaining effective information systems as well as the integrity **and** of the data we use to serve our customers and operate our business. Because of the large amount of data that we collect and manage, it is possible that hardware failures or errors in our systems could result in data loss or corruption or cause the information that we collect to be incomplete or contain inaccuracies that our **customers or other** partners **may** regard as significant. If our data were found to be inaccurate or unreliable due to fraud or other error, or if we, or any of the third- party service providers we engage, were to fail to maintain information systems and data integrity effectively, we could experience operational disruptions that may impact our operations and hinder our ability to provide services, establish appropriate pricing **for services**, establish reserves, report financial results timely and accurately and maintain regulatory compliance, among other things. If any such failure of our data integrity were to result in the theft, corruption or other harm to the data of our customers, our ability to retain and attract partners or customers may be harmed. We must continue to invest in long- term solutions that will enable us to anticipate customer needs and expectations, enhance the customer experience, act as a differentiator in the market, and protect against cybersecurity risks and threats. Despite our implementation of reasonable security measures **designed to prevent cybersecurity risks and threats**, **we** ~~like those of other companies,~~ are vulnerable to **potential harm and** damages from computer viruses, natural disasters, fire, power loss, telecommunications failures, personnel misconduct **or theft**, human error, unauthorized access, physical or electronic security breaches, cyber- attacks (including malicious and destructive code, phishing attacks, ransomware, and denial of service attacks), and other similar disruptions. Such **harm, damages,** attacks or security breaches may be perpetrated by bad actors internally or externally (including computer hackers, persons involved with organized crime, or foreign state or foreign state- supported actors) **and create risks for our (as well as our suppliers' and our customers') internal networks, IT infrastructure, and other business systems and the data and information they store and process**. Cybersecurity threat actors employ a wide variety of methods and techniques that are constantly evolving, increasingly sophisticated, and difficult to detect and successfully defend against. **Geopolitical tensions or conflicts, such as Russia' s invasion of Ukraine, may further heighten the risk of cyber- attacks.** We have experienced such **cybersecurity** incidents in the past, and any future incidents could expose us to claims, litigation, regulatory or other governmental investigations, administrative fines, and potential liability. **Moreover, while we have implemented remedial measures in response to such incidents, we cannot guarantee that such measures will prevent all incidents in the future.** Any system failure, accident, or security breach could result in disruptions to our operations. A material network breach in the security of our IT systems could include the theft of our trade secrets, customer information, human resources information, or other confidential data, including but not limited to personally identifiable information. Although past incidents have not had a material effect on our business operations or financial performance, to the extent that any disruption or security breach results in a loss or damage to our data, or an **inappropriate inadvertent** disclosure of confidential, proprietary **personal** or customer information, it could cause significant damage to our reputation, affect our relationships with our customers and strategic partners, lead to claims against us from governments and private plaintiffs, and adversely affect our business. We cannot guarantee that future cyberattacks, if successful, will not have a material effect on our business or financial results. **In 2023, the SEC issued final rules related to cybersecurity risk management, strategy governance and incident disclosure, which may further increase our regulatory burden and the cost of compliance in such events. Public companies must comply with the cybersecurity incident reporting obligations by December 18, 2023 and must comply with the other disclosure obligations beginning with annual reports for fiscal years ending on or after December 15, 2023. In addition, Many many** governments have enacted laws requiring companies to provide notice of cyber incidents involving certain types of data, including personal **data information**. These laws may be subject to alterations and revisions, and if we fail to comply with our obligations under such laws in the jurisdictions in which we operate, we could be subject to regulatory action and lawsuits. ~~if~~ **We may also have other obligations, for example, under contracts, to notify customers or other counterparties of a security incident, including a data security breach. Regardless of our contractual protections, if** an actual or perceived cybersecurity breach of security measures, unauthorized access to our system or the systems of the third- party vendors that we rely upon, or any other cybersecurity threat occurs, we may incur liability, costs, or damages, contract termination, our reputation may be compromised, our ability to attract new customers could be negatively affected, and our business, financial condition, and results of operations could be materially and adversely affected. Any compromise of our security could also result in a violation of applicable

domestic and foreign security, privacy or data protection, consumer protection, and other laws, regulatory or other governmental investigations, enforcement actions, and legal and financial exposure, including potential contractual liability. In addition, we may be required to incur significant costs to protect against and remediate damage caused by these disruptions or security breaches in the future . **While we carry cyber insurance, we cannot be certain that our coverage will be adequate for liabilities actually incurred, that insurance will continue to be available to us on commercially reasonable terms, or at all, or that any insurer will not deny coverage as to any future claim** . We utilize open- source software, which may pose particular risks to our proprietary software and solutions. We use open- source software in our solutions and will use open- source software in the future. Companies that incorporate open- source software into their solutions have, from time to time, faced claims challenging the use of open- source software and compliance with open- source license terms. Some licenses governing the use of open- source software contain requirements that we make available source code for modifications or derivative works we create based upon the open- source software, and that we license such modifications or derivative works under the terms of a particular open- source license or other license granting third parties certain rights of further use. By the terms of certain open- source licenses, we could be required to release the source code of our proprietary software, and to make our proprietary software available under open- source licenses to third parties at no cost, if we combine or distribute our proprietary software with open- source software in certain manners. Although we monitor our use of open- source software, we cannot assure you that all open- source software is reviewed prior to use in our solutions, that our developers have not incorporated open- source software into our solutions, or that they will not do so in the future. Additionally, the terms of many open- source licenses to which we are subject have not been interpreted by U. S. or foreign courts. There is a risk that open- source software licenses could be construed in a manner that imposes unanticipated conditions or restrictions on our ability to market or provide our solutions as currently marketed or provided. Companies that incorporate open- source software into their products have, in the past, faced claims seeking enforcement of open- source license provisions and claims asserting ownership of open- source software incorporated into their product. If an author or other third party that distributes such open- source software were to allege that we had not complied with the conditions of an open- source license, we could incur significant legal costs defending ourselves against such allegations. In the event such claims were successful, we could be subject to significant damages or be enjoined from the distribution of our software. In addition, the terms of open- source software licenses may require us to provide source code that we develop using such open- source software to others on unfavorable license terms. As a result of our current or future use of open- source software, we may face claims or litigation, be required to release our proprietary source code, pay damages for breach of contract, re- engineer our solutions, discontinue making our solutions available in the event re- engineering cannot be accomplished on a timely basis, or take other remedial action. Any such re- engineering or other remedial efforts could require significant additional research and development resources, and we may not be able to successfully complete any such re- engineering or other remedial efforts. Further, in addition to risks related to license requirements, use of certain open- source software can lead to greater risks than use of third- party commercial software, as open- source licensors generally do not provide warranties or controls on the origin of software. Any of these risks could be difficult to eliminate or manage, and, if not addressed, could have a negative effect on our business, financial condition, and results of operations. If we fail to comply with our obligations under license or technology agreements with third parties, we may be required to pay damages, and we could lose license rights that are critical to our business. If we fail to comply with our obligations under license and technology agreements with AES and Siemens, we could lose license rights, including to patents and patent applications, which may prove to be material to our business. We license certain intellectual property, including patents, technologies, and software from third parties **and related parties** , including AES and Siemens, that **is are** important to our business, and in the future, we may enter into additional agreements that provide us with licenses to valuable intellectual property or technology. If we fail to comply with any of the obligations under our license agreements, we may be required to pay damages and the licensor may have the right to terminate the license. Termination by the licensor would cause us to lose valuable rights, and could prevent us from selling our products and services, or adversely impact our ability to commercialize future solutions and services. Our business would suffer if any current or future licenses terminate, if the licensors fail to abide by the terms of the license, if the licensors fail to enforce licensed patents against infringing third parties, if the licensed intellectual property is found to be invalid or unenforceable, if the licensed intellectual property expires or if we are unable to enter into necessary licenses on acceptable terms. In addition, our rights to certain intellectual property, technologies, and software, are licensed to us on a non- exclusive basis. The owners of these non- exclusively licensed technologies are therefore free to license them 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 that has 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 or technology from third 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. If we cannot license rights to use technologies on reasonable terms, we may not be able to commercialize new solutions or services in the future. In the future, we may identify additional third- party intellectual property we may need to license in order to engage in our business, including to develop or commercialize new products or services. However, such licenses may not be available on acceptable terms or at all. The licensing or acquisition of third- party intellectual property rights is a competitive area, and several more established companies may pursue strategies to license or acquire third- party intellectual property rights that we may consider attractive or necessary. These established companies may have a competitive advantage over us due to their size, capital resources, and greater development or commercialization

capabilities. In addition, companies that perceive us to be a competitor may be unwilling to assign or license rights to us. Even if such licenses are available, we may be required to pay the licensor substantial royalties based on sales of our products and services. Such royalties are a component of the cost of our products or services and may affect the margins on our products and services. In addition, such licenses may be non-exclusive, which could give our competitors access to the same intellectual property licensed to us. If we are unable to enter into the necessary licenses on acceptable terms or at all, if any necessary licenses are subsequently terminated, if our licensors fail to abide by the terms of the licenses, if our licensors fail to prevent infringement by third parties, or if the licensed intellectual property rights are found to be invalid or unenforceable, or if the licensed intellectual property rights expire, our business, financial condition, results of operations, and prospects could be affected. If licenses to third-party intellectual property rights are or become required for us to engage in our business, the rights may be non-exclusive, which could give our competitors access to the same technology or intellectual property rights licensed to us. Moreover, we could encounter delays and other obstacles in our attempt to develop alternatives. Defense of any lawsuit or failure to obtain any of these licenses on favorable terms could prevent us from commercializing solutions and services, which could harm our competitive position, business, financial condition, results of operations, and prospects. Failure to comply with data privacy and data security laws, regulations and industry standards could have a material adverse effect on our reputation, results of operations or financial condition or have other adverse consequences. We are subject to various laws, related regulations, and industry standards involving data privacy and information security. Such laws and regulations relating to data privacy and information security are continuously evolving and subject to potentially differing interpretations. These requirements may be interpreted and applied in a manner that is inconsistent from one jurisdiction to another or may conflict with other rules or our practices. As a result, our practices may not have complied in the past or may not comply now or in the future with all such laws, regulations, requirements and obligations. In the United States, there are numerous federal and state data privacy and security laws, rules, and regulations governing the collection, use, storage, sharing, transmission, and other processing of personal information, including federal and state data privacy laws, data breach notification laws, and consumer protection laws. Many state legislatures have adopted legislation that regulates how businesses operate online, including measures relating to privacy, data security, and data breaches. Such legislation includes the California Consumer Privacy Act (“CCPA”), which created new consumer rights, and imposes corresponding obligations on covered businesses, relating to the access to, deletion of, and sharing of personal information collected by covered businesses, including California residents’ right to access and delete their personal information, opt out of certain sharing and sales of their personal information, receive detailed information about how their personal information is used and shared, and may restrict the use of cookies and similar technologies for advertising purposes. The CCPA also prohibits discrimination against individuals who exercise their privacy rights. **Additionally, the California Privacy Rights Act (“CPRA”), was passed in California in November 2020 and became effective in July 2023 and effectively replaces and expands the scope of the CCPA. In particular, the CPRA restricts the use of certain categories of sensitive personal information that we handle; establishes restrictions on the retention of personal information; expands the types of data breaches subject to the private right of action; and establishes the California Privacy Protection Agency to implement and enforce the CPRA, as well as impose administrative fines. The CPRA provides for civil penalties for violations, enforceable by the California Attorney General as well as a private right of action for certain data breaches that result in the loss of personal information. This private right of action has is expected to increase increased the likelihood of, and risks associated with, data breach litigation. The enactment of** Additionally, a new California ballot initiative, the **CCPA and California Privacy Rights Act, or the CPRA, was recently passed is prompting a wave of similar legislative developments** in California and expands the **other** scope of **states in the United States** CCPA. In particular, **which creates** the CPRA will restrict use of certain categories of sensitive personal information that we handle; establish restrictions on the retention of personal information; expand the types of data breaches subject to the private right of action; and establish the California Privacy Protection Agency to implement and enforce the new law, as well as impose administrative fines. The majority of the CPRA’s provisions are expected to take effect on January 1, 2023, and additional compliance investment and potential business process changes will likely be required **for a patchwork of overlapping but different state laws. For example, Virginia, Utah, Colorado, and Connecticut, Indiana, Iowa, Montana, Tennessee, Texas, and Oregon** have passed similar laws, which **have or will** come into force **starting** in 2023, reflecting a trend toward more stringent privacy legislation in the United States. Other states, such as **California New York** and Massachusetts, have passed specific laws mandating reasonable security measures for the handling of personal information. **Further, other U. S. states are considering such laws, and there remains increased interest at the federal level.** In Europe, we are subject to **data protection laws such as** the European Union General Data Protection Regulation 2016 / 679 and applicable national supplementing laws (“EU GDPR”) and to the United Kingdom General Data Protection Regulation and Data Protection Act 2018 (“UK GDPR”), (the EU GDPR and UK GDPR together referred to as the “GDPR”). The GDPR imposes comprehensive compliance obligations regarding our processing of personal **data information**, including a principle of **transparency**, accountability and the obligation to demonstrate compliance through policies, procedures, training and audit [H]. Further, the **GDPR and UK** GDPR regulates cross-border transfers of personal **data information** out of the European Economic Area and the United Kingdom. **Case law from** On July 16, 2020, the Court of Justice of the European Union (“CJEU”) **states** invalidated the EU-US Privacy Shield Framework (“Privacy Shield”) under which personal data could be transferred from these jurisdictions to relevant self-certified U. S. entities. The CJEU further noted that **sole** reliance on the European Commission standard contractual clauses (a potential alternative **standard form of contract approved by the European Commission as an adequate personal information** transfer mechanism to the Privacy Shield) alone may not necessarily be sufficient in all circumstances and that transfers must be assessed on a case-by-case basis. We currently rely on the **EU standard contractual clauses and the UK Addendum to the EU standard contractual clauses and the UK International Data Transfer Agreement and the EU- US Data Privacy Framework (“DPF”) as relevant to transfer**

personal information outside the EEA and the UK, including to the United States, with respect to both intragroup and third party transfers. As we expect the existing legal complexity enforcement landscape further develops, and uncertainty regarding supervisory authorities issue further guidance on international data personal information transfers to continue, the DPF to be challenged (continuation of the Schrems case) and international governments agree on additional transfer transfers mechanisms, we to the United States and to other jurisdictions more generally to continue being subject to enhanced regulatory scrutiny. We could suffer additional costs, complaints and / or regulatory investigations or fines; we may have to stop using certain tools and vendors and make other operational changes; we have had to and will have to implement revised standard contractual clauses and / or equivalent transfer mechanisms for existing intragroup, customer and vendor arrangements within required time frames; and / or it could otherwise affect the manner in which we provide our services, and could adversely affect our business, operations and financial condition. Failure to comply with the EU GDPR and the UK GDPR could be adversely affected result in penalties under each of these regimes independently in respect of the same breach. Penalties for certain breaches are up to the greater of EUR 20 million / GBP 17.5 million or 4 % of our global annual turnover. In addition to fines, a breach of the GDPR may result in regulatory investigations, reputational damage, orders to cease / change our data processing activities, enforcement notices, assessment notices (for a compulsory audit) and / or civil claims (including class actions). We are also subject to evolving EU-EEA and UK privacy laws on cookies, tracking technologies and e-marketing. If regulators continue their -- the trend of increasing enforcement by regulators of the strict approach to opt-in consent for all but essential use cases, as seen in recent guidance and decisions, continues, and given the complex and evolving nature of EU-EEA and UK privacy laws, this may lead to substantial costs, require significant systems changes, may lead customers to demand certain standards due to strict privacy laws, limit the effectiveness of our marketing activities, require that we divert the attention of our technology personnel, adversely affect our margins, and subject us to additional liabilities and there can be no assurances that we will be successful in our compliance efforts. This legislation-The foregoing laws, regulations, and industry standards may add additional complexity, variation in requirements, restrictions and potential legal risk, require additional investment in resources to compliance programs, could impact strategies and availability of previously useful data, and could result in increased compliance costs and / or changes in business practices and policies. Any failure, or perceived failure, by us to comply with our posted privacy policies or with any federal, state, or international privacy and security laws, regulations, industry standards, or other legal obligations relating to data privacy and information security could adversely affect our reputation, brand and business, and may result in claims (including class actions), liabilities, regulatory investigations, enforcement notices, assessment notices (for a compulsory audit) proceedings or actions against us by governmental entities or others, or may require us to change our operations (including by ceasing or changing our data processing activities and applying serious additional controls). In addition, GDPR and similar regulations may cause intensive workloads in privacy offices and related departments in order to meet the related data subject access rights and complaints, and if these demands cannot be met, complaints may be filed to the supervisory authorities and ultimately we may face sanctions and penalties. Any such claims, proceedings or actions could hurt our reputation, brand and business, force us to incur significant expenses in defense of such proceedings or actions, distract our management, increase our costs of doing business, and result in the imposition of monetary penalties. Risks related to Ownership of our Class A Common Stock Certain provisions of Delaware law and antitakeover provisions in our organizational documents could delay or prevent a change of control. Certain provisions of Delaware law, our amended and restated certificate of incorporation, amended and restated bylaws, and our Stockholders Agreement dated October 27, 2021 by and among Fluence Energy, LLC, Fluence Energy, Inc., and the Stockholders (as defined therein) (the "Stockholders Agreement") may have an antitakeover effect and may delay, defer, or prevent a merger, acquisition, tender offer, takeover attempt, or other change of control transaction that a stockholder might consider in its best interest, including those attempts that might result in a premium over the market price for the shares held by our stockholders. These provisions provide for, among other things: • the ability of our board of directors to issue one or more series of preferred stock; • advance notice for nominations of directors by stockholders and for stockholders to include matters to be considered at our annual meetings; • certain limitations on convening special stockholder meetings; • prohibit cumulative voting in the election of directors; • that certain provisions of amended and restated certificate of incorporation may be amended only by the affirmative vote of at least 66 2 / 3 % of the voting power represented by our then-outstanding common stock; • the right of each of the AES Related Parties, Siemens Related Parties, and the QIA Related Parties (each as defined in the Stockholders Agreement) to nominate certain of our directors; • the shares of our Class B- 1 common stock held by AES our Founders entitle them to five votes per share on all matters presented to our stockholders generally; and • the consent rights of the Continuing Equity Owners in the Stockholders Agreement. These antitakeover provisions could make it more difficult for a third party to acquire us, even if the third party's offer may be considered beneficial by many of our stockholders. As a result, our stockholders may be limited in their ability to obtain a premium for their shares. In addition, we have opted out of Section 203 of the General Corporation Law of the State of Delaware, which we refer to as the DGCL, but our amended and restated certificate of incorporation will provide that engaging in any of a broad range of business combinations with any "interested" stockholder (any stockholder with 15 % or more of our voting stock) for a period of three years following the date on which the stockholder became an "interested" stockholder is prohibited, subject to certain exceptions. The JOBS Act will allow us to postpone the date by which we must comply with certain laws and regulations intended to protect investors and to reduce the amount of information we provide in our reports filed with the SEC. We cannot be certain if this reduced disclosure will make our Class A common stock less attractive to investors. The JOBS Act is intended to reduce the regulatory burden on "emerging growth companies." As defined in the JOBS Act, a public company whose initial public offering of common equity securities occurs after December 8, 2011, and whose annual net revenues are less than \$ 1.235 billion will, in general, qualify as an emerging growth company until the earliest of: • the last day of its fiscal year following the fifth anniversary of the date of its initial public offering of common equity securities; • the last day of its fiscal year in which it has

annual gross revenue of \$ 1.235 billion or more; • the date on which it has, during the previous three-year period, issued more than \$ 1.0 billion in non-convertible debt; and • the date on which it is deemed to be a “large accelerated filer,” which will occur at such time as the company (1) has an aggregate worldwide market value of common equity securities held by non-affiliates of \$ 700 million or more as of the last business day of its most recently completed second fiscal quarter, (2) has been required to file annual and quarterly reports under the Securities Exchange Act of 1934, as amended, or the Exchange Act, for a period of at least 12 months, and (3) has filed at least one annual report pursuant to the Exchange Act. Under this definition, we are an emerging growth company and may remain an emerging growth company until as late as September 30, 2026. However, we anticipate no longer being an emerging growth company as soon as September 30, 2023. For so long as we are an emerging growth company, we are, among other things: • not be required to comply with the auditor attestation requirements of Section 404 (b) of the Sarbanes-Oxley Act; • not be required to hold a nonbinding advisory stockholder vote on executive compensation pursuant to Section 14A (a) of the Exchange Act; • not be required to seek stockholder approval of any golden parachute payments not previously approved pursuant to Section 14A (b) of the Exchange Act; • be exempt from the requirement of the Public Company Accounting Oversight Board, or PCAOB, regarding the communication of critical audit matters in the auditor’s report on the financial statements; and • be subject to reduced disclosure obligations regarding executive compensation in our periodic reports and proxy statements. Section 107 of the JOBS Act provides that an emerging growth company can use the extended transition period provided in Section 7 (a) (2) (B) of the Securities Act for complying with new or revised accounting standards. This permits an emerging growth company to delay the adoption of certain accounting standards until those standards would otherwise apply to private companies. However, for the year ended September 30, 2022, we have “opted out” of this election and elected to comply with the financial accounting standard effective dates applicable to non-emerging growth companies. We cannot predict if investors will find our Class A common stock less attractive as a result of our decision to take advantage of some or all of the reduced disclosure requirements above. If some investors find our Class A common stock less attractive as a result, there may be a less active trading market for our Class A common stock and our stock price may be more volatile. Because we have no current plans to pay regular cash dividends on our Class A common stock for the foreseeable future, you may not receive any return on investment unless you sell your Class A common stock for a price greater than that which you paid for it. We do not anticipate paying any regular cash dividends on our Class A common stock in the foreseeable future. Any decision to declare and pay dividends in the future will be made at the discretion of our board of directors and will depend on, among other things, general and economic conditions, our results of operations and financial condition, our available cash and current and anticipated cash needs, capital requirements, contractual, legal, tax and regulatory restrictions, and such other factors that our board of directors may deem relevant. In addition, our ability to pay dividends is, and may be, limited by covenants of any future outstanding indebtedness we or our subsidiaries incur. Therefore, any return on investment in our Class A common stock is solely dependent upon the appreciation of the price of our Class A common stock on the open market, which may not occur. The dual class structure of our common stock may adversely affect the trading market for our Class A common stock. We cannot predict the effect our multiple class structure may have on the market price of our Class A common stock. **We cannot predict whether our multi-class structure will result in a lower or more volatile market price of our Class A common stock, in adverse publicity or other adverse consequences. Certain stock stockholder advisory firms and large institutional investors may prefer companies that do not have multiple share classes or may have investment guidelines that preclude them from investing in companies that have multiple share classes. In addition, certain index providers have previously implemented, such as and may in the future determine to implement, restrictions on including companies with multiple class share in certain of their indices. For example, from July 2017 to April 2023, S & P Dow Jones exclude excluded companies with multiple share classes of shares of common stock from being added to certain stock indices, including the S & P Composite 1500 (composed of the S & P 500. In addition, several stockholder advisory firms S & P MidCap 400 and large institutional investors oppose the use of S & P SmallCap 600). Indices have discretion to reassess and implement such policies with respect to multiple--- multi-class differing voting right structures. As a result Under any such policies, the our dual class structure of our common stock may prevent the inclusion of our Class A common stock in such indices, may cause stockholder advisory firms to publish negative commentary about our corporate governance practices or otherwise seek to cause us to change our capital structure, and may result would make us ineligible for inclusion in any large institutional investors not purchasing shares of these indices our Class A common stock.** Any exclusion from stock indices could result in a less active trading market for our Class A common stock. Any actions or publications by stockholder advisory firms or institutional investors critical of our corporate governance practices or capital structure could also adversely affect the value of our Class A common stock. We are a “controlled company” within the meaning of the Nasdaq rules and, as a result, qualify for, and intend to rely on, exemptions from certain corporate governance requirements. You may not have the same protections afforded to stockholders of companies that are subject to such corporate governance requirements. Our Continuing Equity Owners have more than 50 % of the voting power for the election of directors, and, as a result, we are considered a “controlled company” for the purposes of the Nasdaq rules. As such, we qualify for, and intend to rely on, exemptions from certain corporate governance requirements, including the requirements to have a majority of independent directors on our board of directors, an entirely independent compensation committee or to have director nominations be made, or recommended to the full board of directors, by its independent directors or by a nominations committee that is composed entirely of independent directors. The corporate governance requirements and, specifically, the independence standards are intended to ensure directors who are considered independent are free of any conflicting interest that could influence their actions as directors. Accordingly, you may not have the same protections afforded to stockholders of companies that are subject to all of the corporate governance requirements of the Nasdaq rules. Our status as a controlled company could make our Class A common stock less attractive to some investors or otherwise harm our stock price. Our amended and restated certificate of incorporation provides that the Court of Chancery of the State of Delaware will be the sole and exclusive forum for certain stockholder litigation matters, and the

federal district courts of the United States shall be the exclusive forum for the resolution of any complaint asserting a cause of action arising under the Securities Act, which could limit our stockholders' ability to obtain a favorable judicial forum for disputes with us or our directors, officers, employees or stockholders. Our amended and restated certificate of incorporation provides (A) (i) any derivative action or proceeding brought on behalf of the Company, (ii) any action asserting a claim of breach of a fiduciary duty owed by any current or former director, officer, other employee or stockholder of the Company to the Company or the Company's stockholders, (iii) any action asserting a claim arising pursuant to any provision of the DGCL, our amended and restated certificate of incorporation or our amended and restated bylaws (as either may be amended or restated) or as to which the DGCL confers jurisdiction on the Court of Chancery of the State of Delaware or (iv) any action asserting a claim governed by the internal affairs doctrine of the law of the State of Delaware shall, to the fullest extent permitted by law, be exclusively brought in the Court of Chancery of the State of Delaware or, if such court does not have subject matter jurisdiction thereof, the federal district court of the State of Delaware; and (B) the federal district courts of the United States shall be the exclusive forum for the resolution of any complaint asserting a cause of action arising under the Securities Act. Notwithstanding the foregoing, the exclusive forum provision shall not apply to claims seeking to enforce any liability or duty created by the Exchange Act. The choice of forum provision may limit a stockholder's ability to bring a claim in a judicial forum that it finds favorable for disputes with us or our directors, officers, or other employees, which may discourage such lawsuits against us and our directors, officers, and other employees. Alternatively, if a court were to find the choice of forum provision contained in our amended and restated certificate of incorporation to be inapplicable or unenforceable in an action, we may incur additional costs associated with resolving such action in other jurisdictions, which could harm our business, results of operations, and financial condition. Any person or entity purchasing or otherwise acquiring any interest in shares of our capital stock shall be deemed to have notice of and consented to the forum provisions in our amended and restated certificate of incorporation. Our amended and restated certificate of incorporation provides that the doctrine of "corporate opportunity" does not apply with respect to any director or stockholder who is not employed by us or our subsidiaries. The doctrine of corporate opportunity generally provides that a corporate fiduciary may not develop an opportunity using corporate resources, acquire an interest adverse to that of the corporation or acquire property that is reasonably incident to the present or prospective business of the corporation or in which the corporation has a present or expectancy interest, unless that opportunity is first presented to the corporation and the corporation chooses not to pursue that opportunity. The doctrine of corporate opportunity is intended to preclude officers or directors or other fiduciaries from personally benefiting from opportunities that belong to the corporation. Our amended and restated certificate of incorporation provides that the doctrine of "corporate opportunity" will not apply with respect to any director or stockholder who is not employed by us or our subsidiaries. Any director or stockholder who is not employed by us or our subsidiaries, therefore, has no duty to communicate or present corporate opportunities to us, and has the right to either hold any corporate opportunity for their (and their affiliates') own account and benefit or to recommend, assign or otherwise transfer such corporate opportunity to persons other than us, including to any director or stockholder who is not employed by us or our subsidiaries. As a result, certain of our stockholders, directors, and their respective affiliates, including AES Grid Stability, LLC, Siemens AG and affiliates, the Blocker Shareholder Siemens Pension-Trust e. V., QHL, and any of our directors nominated by them that ~~is~~ **are** not employed by us or our subsidiaries, are not prohibited from operating or investing in competing businesses. We, therefore, may find ourselves in competition with certain of our stockholders, directors, or their respective affiliates, and we may not have knowledge of, or be able to pursue, transactions that could potentially be beneficial to us. Accordingly, we may lose a corporate opportunity or suffer competitive harm, which could negatively impact our business, operating results, and financial condition. You may be diluted by future issuances of additional Class A common stock or common units in connection with our incentive plans, acquisitions or otherwise; future sales of such shares in the public market, or the expectations that such sales may occur, could lower our stock price. The sale of shares of our Class A common stock in the public market, or the perception that such sales could occur, could harm the prevailing market price of shares of our Class A common stock. These sales, or the possibility that these sales may occur, also might make it more difficult for us to sell equity securities in the future at a time and at a price that we deem appropriate. As of September 30, ~~2022~~ **2023**, we had outstanding a total of ~~114,118, 873,903, 121,435~~ shares of Class A common stock. Of the outstanding shares, ~~37,41, 793,823, 151,465~~ shares held by public investors are freely tradable without restriction or further registration under the Securities Act, other than any shares held by our affiliates. Any shares of Class A common stock held by our affiliates will be eligible for resale pursuant to Rule 144 under the Securities Act, subject to the volume, manner of sale, holding period and other limitations of Rule 144. In addition, we, Fluence Energy, LLC and the ~~Founders Continuing Equity Owners~~ are party to the Fluence Energy, LLC Agreement under which ~~Founders the Continuing Equity Owners~~ (or certain permitted transferees thereof) ~~have~~ **were granted** the right (subject to the terms of the Fluence Energy, LLC Agreement) to have their common units redeemed from time to time at our election (determined solely by our independent directors (within the meaning of the rules of the Nasdaq) who are disinterested), newly- issued shares of our Class A common stock on a one- for- one basis or a cash payment from the sale of newly issued shares of Class A common stock equal to a volume weighted average market price of one share of Class A common stock for each common unit so redeemed, in each case, in accordance with the terms of the Fluence Energy, LLC Agreement; provided that, at our election (determined solely by our independent directors (within the meaning of the rules of the Nasdaq) who are disinterested), we may effect a direct exchange by us of such Class A common stock or such cash, as applicable, for such common units. The ~~Founders Continuing Equity Owners~~ may exercise such redemption right, subject to certain exceptions, for as long as their common units remain outstanding. For example, in July 2022, Siemens Industry exercised its redemption right with respect to its entire holding of 58, 586, 695 common units, which we elected to settle through the issuance of 58, 586, 695 shares of Class A common stock. The market price of shares of our Class A common stock could decline as a result of these redemptions or exchanges or the perception that a redemption or exchange could occur. These redemptions or exchanges, or the possibility that these redemptions or exchanges may occur, also might make it more difficult

for holders of our Class A common stock to sell such stock in the future at a time and at a price that they deem appropriate. In addition, we have ~~granted outstanding~~ options to acquire shares of Class A common stock pursuant to equity ~~incentives-~~ ~~incentive awards~~ issued pursuant to the 2020 Unit Option Plan of Fluence Energy, LLC (the “ Existing Equity Plan ”) ~~. Further~~ ~~, we have~~ of which approximately 8, 044, 880 are outstanding as of November 30, 2022. Further, we have granted phantom shares conveying the right to receive cash or equity based upon the value of Class A common stock ~~, of which 411, 783 are outstanding as of November 30, 2022~~. Finally, we have reserved 9, 500, 000 shares of Class A common stock for issuance under the Fluence Energy, Inc. 2021 Incentive Award Plan (the “ 2021 Equity Plan ”) ~~, of which 2, 706, 101 have been granted in the form of restricted stock units (“ RSUs ”) and are outstanding as of November 30, 2022~~. Any additional Class A common stock that we issue under the 2021 Equity Plan or other equity incentive plans that we may adopt in the future would be dilutive to Class A common stockholders. In the future, we may also issue securities in connection with investments, acquisitions or capital raising activities, which could constitute a material portion of our then- outstanding shares of Class A common stock. Further in connection with the completion of the IPO, we entered into a Registration Rights Agreement with certain of the Continuing Equity Owners. Any such issuance of additional securities or any exercise of registration rights or the prospect of any such sales, could materially impact the market price of our Class A common stock and could impair our ability to raise capital through future sales of equity securities.

Risks Related to Our Existing Shareholders Our certificate of incorporation limit our Continuing Equity Owners’ and their directors’ and officers’ liability to us or you for breach of fiduciary duty and could also prevent us from benefiting from corporate opportunities that might otherwise have been available to us. Our certificate of incorporation provides that, subject to any contractual provision to the contrary, our Continuing Equity Owners will have no obligation to refrain from:

- engaging in the same or similar business activities or lines of business as we do;
- doing business with any of our clients, customers, vendors or lessors;
- employing or otherwise engaging any of our officers or employees; or
- making investments in any property in which we may make investments.

Under our certificate of incorporation, neither Continuing Equity Owners nor any officer or director of Continuing Equity Owners, except as provided in our certificate of incorporation, will be liable to us or to our stockholders for breach of any fiduciary duty by reason of any of these activities. Any interests or expectancy in corporate opportunities which become known to (i) any of our directors or officers who are also directors, officers, employees or other affiliates of Continuing Equity Owners or their affiliates (except that we and our subsidiaries shall not be deemed affiliates of Continuing Equity Owners or its affiliates for the purposes of the provision), or dual persons, or (ii) our Continuing Equity Owners themselves, and which relate to the business of Fluence or may constitute a corporate opportunity for both our Continuing Equity Owners and us. Generally, neither our Continuing Equity Owners nor our directors or officers who are also dual persons will be liable to us or our stockholders for breach of any fiduciary duty by reason of the fact that any such person pursues or acquires any corporate opportunity for the account of our Continuing Equity Owners or their affiliates, directs, recommends, sells, assigns or otherwise transfers such corporate opportunity to Our Continuing Equity Owners or its affiliates, or does not communicate information regarding such corporate opportunity to us. The corporate opportunity provision may exacerbate conflicts of interest between our Continuing Equity Owners and us because the provision effectively permits one of our directors or officers who also serves as a director, officer, employee, or other affiliate of Our Continuing Equity Owners to choose to direct a corporate opportunity to our Continuing Equity Owners instead of us. Our Continuing Equity Owners are not restricted from competing with us in the energy storage business, including as a result of acquiring a company that operates an energy storage business. Due to the significant resources of our Continuing Equity Owners, including their intellectual property (all of which our Continuing Equity Owners retain and certain of which they license to us under the IP ~~applicable intellectual property~~ ~~License license~~ ~~Agreements agreements~~), financial resources, name recognition and know- how resulting from the previous management of our business, our Continuing Equity Owners could have a significant competitive advantage over us should ~~it any of them~~ decide to utilize these resources to engage in the type of business we conduct, which may ~~in turn~~ cause our operating results and financial condition to be materially adversely affected. We are controlled by the Continuing Equity Owners, whose interests may differ from those of our public stockholders. ~~The As~~ ~~of the date of this Annual Report, the~~ Continuing Equity Owners control approximately ~~90-89~~ ~~78~~ % of the combined voting power of our common stock through their ownership of both Class A common stock and Class B- 1 common stock. The Continuing Equity Owners ~~will, for the foreseeable future,~~ have the ability to substantially influence us through their ownership position over corporate management and affairs. The Continuing Equity Owners are able to, subject to applicable law, and the voting arrangements, elect a majority of the members of our board of directors and control actions to be taken by us and our board of directors, including amendments to our certificate of incorporation and bylaws and approval of significant corporate transactions, including mergers and sales of substantially all of our assets. The directors so elected will have the authority, subject to the terms of our indebtedness and applicable rules and regulations, to issue additional stock, implement stock repurchase programs, declare dividends and make other decisions. It is possible that the interests of the Continuing Equity Owners may in some circumstances conflict with our interests and the interests of our other stockholders, including you. For example, the Continuing Equity Owners may have different tax positions from us, especially in light of the Tax Receivable Agreement, that could influence our decisions regarding whether and when to dispose of assets, whether and when to incur new or refinance existing indebtedness, and whether and when we should terminate the Tax Receivable Agreement and accelerate its obligations thereunder. In addition, the determination of future tax reporting positions and the structuring of future transactions may take into consideration the Continuing Equity Owners’ tax or other considerations, which may differ from the considerations of us or our other stockholders. Certain of our officers and directors may have actual or potential conflicts of interest because of their positions with our Continuing Equity Owners. Ricardo Falu, Tish Mendoza, Barbara Humpton, Emma Falck, Axel Meier, Chris Shelton and Simon Smith serve on our board of directors and are employed by and have retained their positions with AES, Siemens, or QIA ~~or any of their respective affiliates~~, as applicable. These individuals’ holdings in and compensation from the relevant Continuing Equity Owners may be significant for some of these persons. Their positions at

AES, Siemens, or QIA **or their respective affiliates**, their compensation from AES, Siemens or QIA **or their respective affiliates**, and the ownership of any equity or equity awards in AES, Siemens, or QIA **or their respective affiliates**, as applicable, may create the appearance of conflicts of interest when these individuals are faced with decisions that could have different implications for our Continuing Equity Owners than the decisions have for us. We rely on our access to our Founders' brands and reputation **for establishing**, ~~some of our Founders' relationships, and the brands and reputations of unaffiliated third parties. We believe the association with our Founders has contributed to our~~ building relationships with **customers. We believe the association with our Founders has previously contributed and continues to contribute to our establishing and building relationships with** our customers due to ~~their~~ **the Founders'** recognized brands and products, as well as resources such as their intellectual property and access to **other** third parties' intellectual property. Any perceived loss of our Founders' scale, capital base and financial strength, or any actual loss or reduction in the Founders' ownership **of the Company** in the future, may prompt business partners to reprice, modify or terminate their relationships with us. In addition, our Founders' reduction of their ownership of our company may cause some of our existing agreements and licenses to be terminated. Third parties may seek to hold us responsible for liabilities of our Founders, which could result in a decrease in our income. Third parties may seek to hold us responsible for our Founders' liabilities. If those liabilities are significant and we are ultimately held liable for them, we cannot assure that we will be able to recover the full amount of our losses from our Founders. We may be required to pay additional taxes as a result of partnership tax audit rules. We may be required to pay additional taxes as a result of partnership audit rules under U. S. federal and other applicable income tax law. The Bipartisan Budget Act of 2015 changed the rules applicable to U. S. federal income tax audits of partnerships, including entities such as Fluence Energy, LLC. Under these rules (which generally are effective for taxable years beginning after December 31, 2017), subject to certain exceptions, audit adjustments to items of income, gain, loss, deduction, or credit of an entity (and any holder's share thereof) are determined, and taxes, interest, and penalties attributable thereto, are assessed and collected, at the partnership level. **It** ~~Although there is uncertainty about how these rules will continue to be implemented, it~~ is possible that they could result in Fluence Energy, LLC (or any of its subsidiaries that are or have been treated as partnerships for U. S. federal income tax purposes) being required to pay additional taxes, interest, and penalties as a result of an audit adjustment, and we, as an owner of Fluence Energy, LLC (or as an indirect owner of such other entities), could be required to indirectly bear the economic burden of those taxes, interest, and penalties even if they relate to periods prior to the IPO and even though we may not otherwise have been required to pay additional corporate-level taxes as a result of the related audit adjustment. ~~We may incur certain tax liabilities attributable to the Blocker Company as a result of the Transactions. In connection with the Transactions, and pursuant to the Blocker Mergers, the Blocker Company merged with and into us. As the successor to the Blocker Company, we will generally succeed to and be responsible for any outstanding or historical liabilities, including tax liabilities, of the Blocker Company, including any liabilities that might be incurred as a result of the Blocker Mergers. Any such liabilities for which we are responsible could have an adverse effect on our liquidity and financial condition.~~ Risks Related to Our Organizational Structure Our principal asset is our interest in Fluence Energy, LLC, and, as a result, we depend on distributions from Fluence Energy, LLC to pay our taxes and expenses, including payments under the Tax Receivable Agreement. Fluence Energy, LLC's ability to make such distributions may be subject to various limitations and restrictions. We are a holding company and have no material assets other than our ownership of LLC Interests. As such, we have no independent means of generating revenue or cash flow, and our ability to pay our taxes and operating expenses or declare and pay dividends in the future, if any, are dependent upon the financial results and cash flows of Fluence Energy, LLC and its subsidiaries and distributions we receive from Fluence Energy, LLC. There can be no assurance that Fluence Energy, LLC and its subsidiaries will generate sufficient cash flow to distribute funds to us or that applicable state law and contractual restrictions, including negative covenants in our debt instruments, will permit such distributions. The ~~Revolver~~ **ABL Credit Agreement** limits, and our future debt agreements may similarly limit, our ability to make certain payments, including dividends and distributions on Fluence Energy, LLC's equity, Fluence Energy, Inc.'s equity and other restricted payments. Fluence Energy, LLC continues to be treated as a partnership for U. S. federal income tax purposes and, as such, generally is not subject to any entity-level U. S. federal income tax. Instead, any taxable income of Fluence Energy, LLC will be allocated to holders of LLC Interests, including us. Accordingly, we incur income taxes on our allocable share of any net taxable income of Fluence Energy, LLC. We expect to use distributions from Fluence Energy, LLC to fund any payments that we are required to make under the Tax Receivable Agreement. Under the terms of the Fluence Energy LLC Agreement, Fluence Energy, LLC is obligated, subject to various limitations and restrictions, including with respect to our debt agreements, to make tax distributions to holders of LLC Interests, including us, although tax distributions may not be paid in whole or in part in certain circumstances, including if Fluence Energy, LLC does not have available cash to make such distributions. In addition to tax expenses, we will also incur expenses related to our operations, including payments under the Tax Receivable Agreement, which we expect could be significant. We intend, as its managing member, to cause Fluence Energy, LLC to make cash distributions to the holders of LLC Interests in an amount sufficient to (1) fund all or part of their tax obligations in respect of taxable income allocated to them and (2) cover our operating expenses, including payments under the Tax Receivable Agreement. However, Fluence Energy, LLC's ability to make such distributions may be subject to various limitations and restrictions, such as restrictions on distributions that would either violate any contract or agreement to which Fluence Energy, LLC is then a party, including debt agreements, or any applicable law, or that would have the effect of rendering Fluence Energy, LLC insolvent. If we do not have sufficient funds to pay tax or other liabilities, or to fund our operations (including, if applicable, as a result of an acceleration of our obligations under the Tax Receivable Agreement), we may have to borrow funds, which could materially and adversely affect our liquidity and financial condition, and subject us to various restrictions imposed by any lenders of such funds. To the extent we are unable to make timely payments under the Tax Receivable Agreement for any reason, such payments generally will be deferred and will accrue interest until paid; provided, however, that nonpayment for a specified period may constitute a material breach of a

material obligation under the Tax Receivable Agreement resulting in the acceleration of payments due under the Tax Receivable Agreement. In addition, if Fluence Energy, LLC does not have sufficient funds to make distributions, our ability to declare and pay cash dividends will also be restricted or impaired. See “ — Risks related to ownership of our Class A common stock ”. As a result of (1) potential differences in the amount of net taxable income allocable to us and to Fluence Energy, LLC’s other equity holders, (2) the lower tax rate applicable to corporations as opposed to individuals, and (3) certain tax benefits that we anticipate from (a) future redemptions or exchanges of LLC Interests from the Founders, (b) payments under the Tax Receivable Agreement and (c) certain other transactions, tax distributions to us may be in amounts that exceed our tax liabilities. Our board of directors will determine the appropriate uses for any excess cash so accumulated, which may include, among other uses, the payment of obligations under the Tax Receivable Agreement. We have no obligation to distribute such cash (or other available cash) to our stockholders. No adjustments to the redemption or exchange ratio or price for LLC Interests and corresponding shares of Class B- 1 or Class B- 2 common stock will be made as a result of any cash distribution by us or any retention of cash by us. To the extent we do not distribute such excess cash as dividends on our Class A common stock, we may take other actions with respect to such excess cash, for example, holding such excess cash, or lending it (or a portion thereof) to Fluence Energy, LLC or its subsidiaries, which may result in shares of our Class A common stock increasing in value relative to the value of LLC Interests. The holders of LLC Interests may benefit from any value attributable to such cash balances or loan receivables if they acquire shares of Class A common stock in exchange for their LLC Interests or otherwise exercise their rights to redeem or exchange their LLC Interests, notwithstanding that such holders may have participated previously as holders of LLC Interests in distributions by Fluence Energy, LLC that resulted in the excess cash balances. The Tax Receivable Agreement with the Founders requires us to make cash payments to them in respect of certain tax benefits to which we may become entitled, and we expect that such payments will be substantial. We are party to a Tax Receivable Agreement with Fluence Energy, LLC and the Founders. Under the Tax Receivable Agreement, we are required to make cash payments to such Founders equal to 85 % of the tax benefits, if any, that we actually realize, or in certain circumstances are deemed to realize, as a result of (1) the increases in our share of the tax basis of assets of Fluence Energy, LLC and its subsidiaries resulting from any redemptions or exchanges of LLC Interests from the Founders and certain distributions (or deemed distributions) by Fluence Energy, LLC; and (2) certain other tax benefits arising from payments under the Tax Receivable Agreement. For example, ~~as a result of the July 2022 redemption by~~ **Redemption** with respect to its entire holding of 58, 586, 695 common units of Fluence Energy, LLC, ~~we estimated~~ **resulted in increases in the tax basis of the assets of Fluence Energy, LLC and certain of its subsidiaries. As a result of the tax basis adjustment, the Siemens Redemption will result in future** tax savings of ~~approximately \$ 109.96.~~ **6.5** million. Siemens will be entitled to receive payments under the Tax Receivable Agreement equaling 85 % of such amount, or \$ ~~93.82.~~ **4.0** million; assuming, among other factors, (i) we will have sufficient taxable income to fully utilize the tax benefits; (ii) Fluence Energy, LLC is able to fully depreciate or amortize its assets; and (iii) no material changes in applicable tax law. We anticipate funding ordinary course payments under the Tax Receivable Agreement from cash flow from operations of our subsidiaries, available cash or available borrowings under any future debt agreements. We expect that the amount of the cash payments we will be required to make under the Tax Receivable Agreement will be substantial. Any payments made by us to the Founders under the Tax Receivable Agreement will not be available for reinvestment in our business and will generally reduce the amount of overall cash flow that might have otherwise been available to us and have a substantial negative impact on our liquidity. To the extent that we are unable to make timely payments under the Tax Receivable Agreement for any reason, the unpaid amounts generally will be deferred and will accrue interest until paid; provided, however, that nonpayment for a specified period may constitute a material breach of a material obligation under the Tax Receivable Agreement resulting in the acceleration of payments due under the Tax Receivable Agreement. The payments under the Tax Receivable Agreement are not conditioned upon continued ownership of us by the redeeming or exchanging Founders. Furthermore, our future obligation to make payments under the Tax Receivable Agreement could make us a less attractive target for an acquisition, particularly in the case of an acquirer that cannot use some or all of the tax benefits that are the subject of the Tax Receivable Agreement. The actual increase in tax basis, and the actual utilization of any resulting tax benefits, as well as the amount and timing of any payments under the Tax Receivable Agreement, will vary depending upon a number of factors: including the timing of redemptions or exchanges by the Founders; the price of shares of our Class A common stock at the time of the exchange; the extent to which such redemptions or exchanges are taxable; the amount of gain recognized by such Founders; the amount and timing of the taxable income allocated to us or otherwise generated by us in the future; the portion of our payments under the Tax Receivable Agreement constituting imputed interest; and the federal and state tax rates then applicable. Our organizational structure, including the Tax Receivable Agreement, confers certain benefits upon the Founders that will not benefit holders of our Class A common stock to the same extent that it will benefit the Founders. Our organizational structure, including the Tax Receivable Agreement, confers certain benefits upon the Founders that will not benefit the holders of our Class A common stock to the same extent that it will benefit such Founders. We are party to the Tax Receivable Agreement with Fluence Energy, LLC and certain Founders, which provides for the payment by us to such Founders of 85 % of the amount of tax benefits, if any, that we actually realize, or in some circumstances are deemed to realize, as a result of (1) the increases in our share of the tax basis of assets of Fluence Energy, LLC and its subsidiaries resulting from any future redemptions or exchanges of LLC Interests from the Founders and certain distributions (or deemed distributions) by Fluence Energy, LLC and (2) certain other tax benefits arising from payments under the Tax Receivable Agreement. Although we will retain 15 % of the amount of such tax benefits, this and other aspects of our organizational structure may adversely impact the future trading market for the Class A common stock. In certain cases, payments under the Tax Receivable Agreement may be accelerated or significantly exceed any actual benefits we realize in respect of the tax attributes subject to the Tax Receivable Agreement. The Tax Receivable Agreement provides that if (1) we materially breach any of our material obligations under the Tax Receivable Agreement and the **Founders Continuing Equity Owners** elect an early termination of the Tax Receivable

Agreement, (2) certain mergers, asset sales, other forms of business combinations or other changes of control were to occur after the consummation of the IPO and the **Founders Continuing Equity Owners** elect an early termination of the Tax Receivable Agreement, or (3) we elect, at any time, an early termination of the Tax Receivable Agreement, then our obligations, or our successor's obligations, under the Tax Receivable Agreement to make payments would be based on certain assumptions, including an assumption that we would have sufficient taxable income to fully utilize all potential future tax benefits that are subject to the Tax Receivable Agreement. As a result of the foregoing, we would be required to make an immediate cash payment equal to the present value of the anticipated future tax benefits that are the subject of the Tax Receivable Agreement, based on certain assumptions, which payment may be made significantly in advance of the actual realization, if any, of such future tax benefits. We could also be required to make cash payments to the Founders that are greater than the specified percentage of any actual benefits we ultimately realize in respect of the tax benefits that are subject to the Tax Receivable Agreement. In these situations, our obligations under the Tax Receivable Agreement could have a substantial negative impact on our liquidity and could have the effect of delaying, deferring, or preventing certain mergers, asset sales, other forms of business combinations or other changes of control. There can be no assurance that we will be able to fund or finance our obligations under the Tax Receivable Agreement. To the extent we are unable to make timely payments under the Tax Receivable Agreement for any reason, such payments generally will be deferred and will accrue interest until paid; provided, however, that nonpayment for a specified period may constitute a material breach of a material obligation under the Tax Receivable Agreement resulting in the acceleration of payments due under the Tax Receivable Agreement. We may need to incur debt to finance payments under the Tax Receivable Agreement to the extent our cash resources are insufficient to meet our obligations under the Tax Receivable Agreement as a result of timing discrepancies or otherwise. We will not be reimbursed for any payments made under the Tax Receivable Agreement in the event that any tax benefits are disallowed. Payments under the Tax Receivable Agreement will be based on the tax reporting positions that we determine, and the U. S. Internal Revenue Service, or the IRS, or another tax authority, may challenge all or part of the tax basis increases or other tax benefits we claim, as well as other related tax positions we take, and a court could sustain such challenge. If the outcome of any audit of us or our subsidiaries is reasonably expected to adversely affect the rights and obligations of the Founders under the Tax Receivable Agreement in a material respect, then we will notify the Founders of such audit, keep them reasonably informed with respect thereto, provide them with a reasonable opportunity to provide information and other input concerning the audit or the relevant portion thereof and consider such information and other input in good faith. The interests of such Founders in any such challenge may differ from or conflict with our interests and your interests, and the Founders may exercise their rights relating to any such challenge in a manner adverse to our interests and your interests. We will not be reimbursed for any cash payments previously made under the Tax Receivable Agreement in the event that any tax benefits initially claimed by us and for which payment has been made are subsequently challenged by a taxing authority and are ultimately disallowed. Instead, any excess cash payments made by us will be netted against any future cash payments we might otherwise be required to make to the applicable Founder under the terms of the Tax Receivable Agreement. However, we might not determine that we have effectively made an excess cash payment to a Founder for a number of years following the initial time of such payment and, if any of our tax reporting positions are challenged by a taxing authority, we will not be permitted to reduce any future cash payments under the Tax Receivable Agreement until any such challenge is finally settled or determined. Moreover, the excess cash payments we made previously under the Tax Receivable Agreement could be greater than the amount of future cash payments against which we would otherwise be permitted to net such excess. The applicable U. S. federal income tax rules for determining applicable tax benefits we may claim are complex and factual in nature, and there can be no assurance that the IRS or a court will not disagree with our tax reporting positions. As a result, payments could be made under the Tax Receivable Agreement significantly in excess of any actual cash tax savings that we realize in respect of the tax attributes that are the subject of the Tax Receivable Agreement. Unanticipated changes in effective tax rates or adverse outcomes resulting from examination of our income or other tax returns could adversely affect our results of operations and financial condition. We are subject to taxes by the U. S. federal, state, local, and foreign tax authorities. Our future effective tax rates could be subject to volatility or adversely affected by a number of factors, including: • allocation of expenses to and among different jurisdictions; • changes in the valuation of our deferred tax assets and liabilities; • expected timing and amount of the release of any tax valuation allowances; • tax effects of stock-based compensation; • costs related to intercompany restructurings; • changes in tax laws, tax treaties, regulations or interpretations thereof; or • lower than anticipated future earnings in jurisdictions where we have lower statutory tax rates and higher than anticipated future earnings in jurisdictions where we have higher statutory tax rates. In addition, we may be subject to audits of our income, sales and other taxes by U. S. federal, state, and local, and foreign taxing authorities. Outcomes from these audits could have an adverse effect on our operating results and financial condition. If we were deemed to be an investment company under the Investment Company Act of 1940, as amended, or the 1940 Act, including as a result of our ownership of Fluence Energy, LLC, applicable restrictions could make it impractical for us to continue our business as contemplated and could have a material adverse effect on our business. Under Sections 3 (a) (1) (A) and (C) of the 1940 Act, a company generally will be deemed to be an "investment company" for purposes of the 1940 Act if (1) it is, or holds itself out as being, engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting or trading in securities, or (2) it engages, or proposes to engage, in the business of investing, reinvesting, owning, holding or trading in securities and it owns or proposes to acquire investment securities having a value exceeding 40 % of the value of its total assets (exclusive of U. S. government securities and cash items) on an unconsolidated basis. We do not believe that we are an "investment company," as such term is defined in either of those sections of the 1940 Act. We and Fluence Energy, LLC intend to conduct our operations so that we will not be deemed an investment company. As the sole managing member of Fluence Energy, LLC, we will control and operate Fluence Energy, LLC. On that basis, we believe that our interest in Fluence Energy, LLC is not an "investment security" as that term is used in the 1940 Act. However, if we were to cease participation in the management of Fluence Energy, LLC, or if Fluence

Energy, LLC itself becomes an investment company, our interest in Fluence Energy, LLC could be deemed an “ investment security ” for purposes of the 1940 Act. We and Fluence Energy, LLC intend to conduct our operations so that we will not be deemed an investment company. If it were established that we were an unregistered investment company, there would be a risk that we would be subject to monetary penalties and injunctive relief in an action brought by the SEC, that we would be unable to enforce contracts with third parties and that third parties could seek to obtain rescission of transactions undertaken during the period it was established that we were an unregistered investment company. If we were required to register as an investment company, restrictions imposed by the 1940 Act, including limitations on our capital structure and our ability to transact with affiliates, could make it impractical for us to continue our business as contemplated and could have a material adverse effect on our business.

General Risk Factors As a public company, we are obligated to develop and maintain proper and effective internal control over financial reporting in order to comply with Section 404 of the Sarbanes- Oxley Act. We may not complete our analysis of our internal control over financial reporting in a timely manner, or these internal controls may not be determined to be effective, which may adversely affect investor confidence in us and, as a result, the value of our common stock. ~~In addition, because of our status as an emerging growth company, you will not be able to depend on any attestation from our independent registered public accountants as to our internal control over financial reporting for the foreseeable future.~~ We are a public reporting company subject to the rules and regulations established from time to time by the SEC and Nasdaq. These rules and regulations require, among other things, that we have and periodically evaluate procedures with respect to our internal control over financial reporting. The process of designing and implementing internal control over financial reporting required to comply with this requirement is time- consuming, costly, and complicated. Under Section 404 (a) of the Sarbanes- Oxley Act our management is required to assess and report annually on the effectiveness of our internal control over financial reporting and to identify any material weaknesses in our internal control over financial reporting. ~~Once we are no longer qualifying as an “ emerging growth company ” as defined in the Jumpstart Our Business Startups Act of 2012 and becoming a large accelerated filer, we are also required to comply with, among other requirements, the auditor attestation requirements of~~ Section 404 (b) of the Sarbanes- Oxley Act will require our independent registered public accounting firm to issue an annual report that addresses the effectiveness of our internal control over financial reporting. If during the evaluation and testing process we identify one or more other material weaknesses in our internal control over financial reporting or determine that existing material weaknesses have not been fully remediated, our management will be unable to assert that our internal control over financial reporting is effective. In addition, if we fail to achieve and maintain the adequacy of our internal controls, as such standards are modified, supplemented, or amended from time to time, we may not be able to ensure that we can conclude on an ongoing basis that we have effective internal controls over financial reporting in accordance with Section 404 of the Sarbanes- Oxley Act. As discussed in “ Item 9A – Controls and Procedures – Management’ s Report in Internal Control over Financial Reporting, ” as of September 30, 2022, ~~we previously reported~~ a material weakness in ~~the internal control over the revenue recognition process and the related inventory~~. ~~As of September 30, 2023, the material weakness in internal control over revenue recognition~~ has not ~~fully~~ been ~~fully~~ remediated. The Company’ s controls related to its estimate at completion (“ EAC ”), which is used in the Company’ s percentage of completion (“ POC ”) accounting for its battery energy storage solutions were not effective. We assessed the material weakness as not remediated as the EAC controls did not consistently operate for a sufficiently -- sufficient design period of time and implement due to control operating effectiveness issues identified in management’ s assessment of controls. ~~Certain aspects of the prior year material weakness have been successfully remediated as it related~~ relates to revenue recognition and related inventory and associated processes, including in- transit and delivered equipment and liquidated damages. We are actively engaged in implementing a remediation plan to address the material weakness. The material weakness will not be considered fully remediated until management designs and implements effective controls that operate for a sufficient period of time and management has concluded, through testing, that these controls are effective. ~~Our independent registered public accounting firm was not required to, and did not, attest formally or perform an evaluation of the effectiveness of our internal control over financial reporting as of September 30, 2022, in accordance with Section 404 (b) of the Sarbanes- Oxley Act. Accordingly, you will not be able to depend on any attestation concerning our internal control over financial reporting from our independent registered public accountants and we cannot assure you that we have identified all, or that we will not in the future have additional, material weaknesses.~~ We cannot be certain as to the timing of completion of our evaluation, testing, and any remediation actions or the impact of the same on our operations. If we are not able to implement the requirements of Section 404 of the Sarbanes- Oxley Act in a timely manner or with adequate compliance, our independent registered public accounting firm may issue an adverse opinion due to ineffective internal controls over financial reporting, and we may be subject to sanctions or investigation by regulatory authorities, such as the Nasdaq or SEC. As a result, there could be a negative reaction in the financial markets due to a loss of confidence in the reliability of our financial statements. In addition, we may be required to incur costs in improving our internal control system and the hiring of additional personnel. Any such action could negatively affect our results of operations and cash flows. From time to time, we may be subject to legal proceedings, regulatory disputes, and governmental inquiries that could cause us to incur significant expenses, divert our management’ s attention, and materially harm our business, financial condition, and operating results. We have been and continue to be subject to claims, lawsuits, government investigations, and other ~~regulatory or legal~~ proceedings that arise out of our operations and ~~businesses~~ -- ~~business~~ and that cover a wide range of matters, including, among others, intellectual property matters, ~~contract labor~~ and employment claims, personal injury claims, ~~contract disputes~~, and warranty claims. In addition, since our energy storage ~~product~~ products are is a new type- types of product products in a nascent market, we have in the past needed and may in the future need to seek the amendment of existing regulations or, in some cases, the creation of new regulations, in order to operate our business in some jurisdictions. Such regulatory processes may require public hearings concerning our business, which could expose us to subsequent litigation. Litigation and regulatory proceedings may be protracted and expensive, and

may divert management attention and resources and the ultimate results are may be difficult to predict. Certain of these matters include speculative claims for substantial or indeterminate amounts of damages. Any of these actions could expose us to adverse publicity that could harm our reputation and operations. Unfavorable outcomes or developments relating to proceedings to which we are a party or transactions involving our products and services, such as judgments for monetary damages, injunctions, or denial or revocation of permits, could have a material adverse effect on our business, financial condition, and results of operations. In addition, settlement of claims could adversely also affect our financial condition and results of operations. Changes in accounting principles or their application to us could result in unfavorable accounting charges or effects, which could adversely affect our operating results and prospects. We prepare our financial statements in accordance with accounting principles generally accepted in the United States. The accounting for our business is subject to change based on the evolution of our business model, interpretations of relevant accounting principles, enforcement of existing or new regulations, and changes in policies, rules, regulations, and interpretations, of accounting and financial reporting requirements of the SEC or other regulatory agencies. A change in any of these principles or guidance, or in their interpretations or application to us, may have a significant effect on our reported results, as well as our processes and related controls, and may retroactively affect previously reported results, which may negatively impact our financial statements, which may in turn adversely affect our prospects. It is difficult to predict the impact of future changes to accounting principles and accounting policies over financial reporting, any of which could adversely affect our results of operations and financial condition and could require significant investment in systems and personnel. If our estimates or judgments relating to our critical accounting policies are based on assumptions that change or prove to be incorrect, our operating results could fall below our publicly announced guidance or the expectations of securities analysts and investors, resulting in a decline in the market price of our common stock. The preparation of our financial statements in conformity with accounting principles generally accepted in the United States requires us to make estimates and assumptions that affect the reported amount of assets and liabilities and the disclosure of contingent liabilities as of the date of the financial statements and the reported amount of revenues and expenses during the reporting period. We base estimates and assumptions on historical experience and on various other factors that we believe to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets, liabilities, equity, revenue and expenses that are not readily apparent from other sources. We may make estimates regarding activities for which the accounting treatment is still uncertain. Actual results could differ from those estimates. If our assumptions change or if actual circumstances differ from our assumptions, our operating results may be adversely affected and could fall below our publicly announced guidance or the expectations of securities analysts and investors, resulting in a decline in the market price of our Class A common stock.