

Risk Factors Comparison 2024-02-28 to 2023-02-23 Form: 10-K

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Risks Related to Our business **Business** is subject to numerous risks and **Industry** uncertainties that could affect our ability to successfully implement our business strategy and affect our financial results. You should carefully consider all of the information in this report and, in particular, the following principal risks and all of the other specific factors described in Item 1A. of this report, "Risk Factors," before deciding whether to invest in our company. We are an early stage company with a history of losses, expect to incur significant expenses and continuing losses for the foreseeable future, and there is substantial doubt that we will have sufficient funds to satisfy our obligations through the next 12 months from the date of this report. ~~10-K Item 1A. Risk Factors Risks Related to Our Business and Industry~~ We incurred net losses of \$ **966.3 million,** \$ 784.2 million and \$ 690.4 million for the years ended December 31, **2023,** 2022 and 2021, respectively, and have an accumulated deficit of approximately \$ ~~2.3~~ **0.1** billion from the inception of Nikola Corporation, a Delaware corporation, **prior to the merger with VectoIQ,** or Legacy Nikola, ~~prior to the merger with VectoIQ,~~ through December 31, ~~2022~~ **2023**. We believe that we will continue to incur operating and net losses each quarter until at least the time we begin to generate significant margin from our trucks, which may not happen. We have determined under our ASC 205-40 analysis, there is substantial doubt that we will have sufficient funds to satisfy our obligations through the next twelve months from the date of issuance of this Annual Report on Form 10-K. Our ability to continue as a going concern is dependent on our ability to obtain the necessary financing to meet our obligations and repay our liabilities arising from the ordinary course of business operations when they become due. The outcome of these matters cannot be predicted with any certainty at this time. If we are unable to raise sufficient capital when needed, our business, financial condition and results of operations will be materially and adversely affected, and we will need to significantly modify or terminate our operations and our planned business activities. We ~~have secured and~~ intend to employ various strategies to obtain the required funding for future operations such as continuing to access capital through ~~the an~~ equity distribution agreement with ~~Citi~~ **Citigroup** Global Markets Inc. ("**Citi**") as sales agent, **which was amended and restated in August 2023 (as amended and restated, the second "Equity Distribution Agreement"),** pursuant to which approximately \$ **311.7 million** was available as of January 30, 2024. **However, the ability to access the Equity Distribution Agreement is dependent on the market price of our** common stock purchase agreement with Tumim Stone Capital LLC, and the securities purchase agreement with investors for the sale of an **and availability** additional principal amount of **sufficient authorized** unsecured senior convertible notes. ~~However, the ability to access the equity distribution agreement and second common stock purchase agreement are dependent on our common stock trading volumes and the market price of our common stock, which cannot be assured, and the registration of shares to be sold under the Equity Distribution Agreement, and as a result cannot be included as a source~~ **source** of liquidity for our ASC 205-40 analysis. Our potential future profitability is dependent upon the successful development and successful commercial introduction and acceptance of our trucks and our hydrogen station platform, which may not occur. We expect the rate at which we will incur losses to be high in future periods as we: ~~continue to design, develop and manufacture our trucks;~~ **continue to validate** and manufacture our trucks; ~~continue to equip build out and equip tool~~ our manufacturing plant in Arizona; ~~continue to modify and equip the Iveco manufacturing plant in Germany to produce our trucks in Europe;~~ **build up inventories of materials and components for our trucks;** **service trucks subject to the recall campaign;** ~~manufacture an available inventory of our FCEV trucks;~~ **develop and deploy our hydrogen fueling stations;** ~~expand our design, development, maintenance and repair capabilities;~~ **increase our sales and marketing activities;** ~~develop our distribution infrastructure; and~~ **increase our general and administrative functions to support our growing operations.** Because we incur the costs and expenses from these efforts and other efforts before we receive any incremental revenue with respect thereto, **if any,** our losses in future periods will be significant. In addition, these efforts have and may continue to be more expensive than we currently anticipate and these efforts may not result in sufficient revenue if customers do not purchase or lease our trucks in sufficient volume, which would further **increase our losses.** We may be unable to adequately control the costs associated with our operations. ~~We require significant capital to develop and grow our business. We expect to continue to incur significant expenses which will impact our profitability, including research and development expenses, raw material procurement costs, leases, licenses, and sales and distribution expenses as we build our brand and market our trucks, and general and administrative expenses as we scale our operations. In addition, we expect to continue to incur significant costs in connection with our services, including building our hydrogen fueling stations and honoring our maintenance commitments. We have and expect to continue to incur significant costs related to the recall of our battery electric trucks. Our ability to become profitable in the future will not only depend on our ability to successfully market our vehicles and other products and services, but also to control our costs. If we are unable to cost efficiently design, manufacture, market, sell, distribute and service our trucks and cost efficiently develop our hydrogen fueling stations, our margins, profitability and prospects would be materially and adversely affected. We need to raise additional capital, which may not be available to us when we need it. If we cannot raise additional capital when needed, our operations and prospects will be negatively affected. Our business is capital-intensive. We need to raise additional capital in the short- and long-term to operate our business, scale our manufacturing and roll out our hydrogen fueling stations, among other activities. We have and may continue to raise additional funds through the issuance of equity, equity-linked or debt securities, strategic partnerships, licensing arrangements, or through obtaining credit from government or financial institutions. This capital will be necessary to fund our ongoing operations, continue research, development and design efforts, improve infrastructure, introduce new vehicles, build hydrogen fueling stations and undertake other business~~

activities. We cannot be certain that additional funds will be available to us on a timely basis, in the amounts needed, on reasonable terms, or terms favorable to us, or at all. If we raise funds by issuing equity or equity-linked securities, dilution to our stockholders could result. Any equity or equity-linked securities issued also may provide for rights, preferences or privileges senior to those of holders of our common stock. The terms of debt securities issued or borrowings, if available, could impose significant restrictions on our operations and may require us to pledge certain assets. If we raise funds through collaborations and licensing arrangements, we might be required to relinquish significant rights to our technologies or products, or grant licenses on terms that are not favorable to us. If we cannot raise additional funds when we need them, we may have to significantly reduce our spending, delay or cancel our planned business activities or substantially change our corporate structure, and we may not have sufficient resources to conduct our business as planned. As a result, we may be forced to curtail or discontinue our operations, which could materially and adversely affect our financial condition, results of operations, business and prospects. In addition, sales of a substantial number of shares of our common stock in the public market or the perception that these sales might occur, including pursuant to the Equity Distribution Agreement, could depress the market price of our common stock and could impair our ability to raise capital through the sale of additional equity securities. We also need to increase our authorized common stock, which is subject to stockholder approval, and we may not be able to obtain such approval on a timely basis or at all. See “We may be unable to issue sufficient additional shares to operate our business, including pursuant to existing potential sources of capital, or strategic transactions, unless we obtain stockholder approval to amend our certificate of incorporation to increase the number of authorized shares of our common stock available for issuance.” Our business model has yet to be tested and any failure to commercialize our strategic plans would have an adverse effect on our operating results and business, harm our reputation and could result in substantial liabilities that exceed our resources. Our limited operating history makes evaluating..... would be materially and adversely affected. Investors should be aware of the difficulties normally encountered by a new enterprise, many of which are beyond our control, including substantial risks and expenses in the course of establishing or entering new markets, organizing operations and undertaking successful marketing activities. The likelihood of our success must be considered in light of these risks, expenses, complications, delays and the competitive environment in which we operate. Our business plan may not be successful, and we may not be able to generate significant revenue, raise additional sufficient capital or operate profitably. We will continue to encounter risks and difficulties frequently experienced by early commercial stage companies, including scaling up our infrastructure and headcount, and may encounter unforeseen expenses, difficulties or delays in connection with our growth. In addition, as a result of the capital-intensive nature of our business, we expect to continue to sustain substantial operating expenses without generating sufficient revenue to cover expenditures. Any investment in our company is therefore highly speculative and could result in the loss of your entire investment. Our limited operating history makes evaluating our business and future prospects difficult and may increase the risk of your investment. You must consider the risks and difficulties we face as an early stage company with a limited operating history and a novel business plan. If we do not successfully address these risks, our business, prospects, operating results and financial condition will be materially and adversely harmed. We have a very limited operating history on which investors can base an evaluation of our business, operating results and prospects. We intend to derive substantially all of our revenue from the sale and lease of our vehicle platforms, which are still in the early stages of commercialization and development. Our revenue will also depend on the sale of hydrogen fuel at our planned hydrogen fueling stations which we do not expect to be operational until late 2023 or later. There are no assurances that we will be able to secure future business with the major trucking companies or with independent truck drivers. It is difficult to predict our future revenue and appropriately budget for our expenses, and we have limited insight into trends that may emerge and affect our business. In the event that actual results differ from our estimates or we adjust our estimates in future periods, our operating results and financial position could be materially affected. We operate in a The design, manufacture, lease, sale and servicing of vehicles and related hydrogen fueling stations is capital-intensive industry. We will need to raise additional capital to scale our manufacturing and roll out our hydrogen fueling stations, among other activities. We may raise additional funds through the not have sufficient unissued shares of common stock for future issuances of equity, equity related or debt securities, strategic partnerships, licensing arrangements, or through obtaining credit from government or financial institutions. This capital will be necessary to fund our ongoing operations, continue research, development and design efforts, improve infrastructure, introduce new vehicles and build hydrogen fueling stations. We cannot be certain that additional funds will be available to us on favorable terms when required, or at all. If we raise funds to execute by issuing equity or our business plan equity-linked securities, depending upon dilution to our stockholders could result. Any equity or our stock price when funds are raised. Having additional authorized shares equity-linked securities issued also may provide for rights, preferences or privileges senior to those of holders of our common stock. The terms of debt securities issued or borrowings, if available is critical to our ability to run our business and our continued efforts to pursue our strategic goals and we will be limited by the number of shares available for future capital raising transactions, including pursuant to the Equity Distribution Agreement, agreements we may enter into in the future, or for business development transactions or acquisitions, unless we obtain stockholder approval of an amendment to our restated certificate of incorporation to increase the number of authorized shares of our common stock. We plan to solicit the approval of our stockholders to amend our restated certificate of incorporation to increase the number of authorized shares of our common stock at our annual meeting of stockholders in 2024, but have in the past encountered difficulties obtaining stockholder approval for similar proposals, and there can be no assurance that our stockholders will approve the amendment. A delay in securing, or a failure to secure, stockholder approval to amend our restated certificate of incorporation to increase our authorized common stock will adversely affect our ability to raise capital to operate our business, and could would impose significant restrictions have a material adverse effect on our business, prospects, operations and may require us to pledge certain assets. If we raise funds through

collaborations and licensing arrangements, we might be required to relinquish significant rights to our technologies or products, or grant licenses on terms that are not favorable to us. If we cannot raise additional funds when we need them, our financial condition, results of operations, business and prospects could be materially adversely affected. In addition, sales of a substantial number of shares of our common stock in the public market or the perception that these sales might occur, including pursuant to our existing equity lines of credit or our equity distribution agreement, could depress the market price of our common stock and could impair our ability to raise capital through the sale of additional equity securities. Our future success is dependent upon the trucking industry market's willingness to adopt FCEV and BEV and FCEV trucks. Our success is highly dependent upon the adoption by the trucking industry market of alternative hydrogen fuel cell and electric trucks. If the market for our FCEV and BEV and FCEV trucks does not develop at the rate or to the extent that we expect, our business, prospects, financial condition and operating results will be harmed. The market for alternative hydrogen fuel cell and electric trucks is new and untested and is characterized by rapidly changing technologies, price competition, numerous competitors or potential competitors, evolving government regulation and industry standards and uncertain customer demands and behaviors. Factors that may influence the adoption of alternative hydrogen fuel cell and electric vehicles include: • perceptions about FCEV or BEV or FCEV truck quality, safety, design, performance and cost, especially if adverse events or accidents occur that are linked to the quality or safety of alternative hydrogen fuel cell or electric vehicles; • perceptions about vehicle safety in general, including the use of advanced technology, such as vehicle electronics, hydrogen fueling and storage and regenerative braking systems; • the decline of vehicle efficiency resulting from deterioration over time in the ability of the battery to hold a charge; • the availability of charging infrastructure and associated costs; • concerns about the availability of hydrogen stations, including those we plan to develop and deploy, which could impede our present efforts to promote FCEV trucks as a desirable alternative to diesel trucks; • improvements in the fuel economy of internal combustion engines; • the availability of service for alternative hydrogen fuel cell or electric trucks; • volatility in the cost of energy, oil, gasoline and hydrogen; • government regulations and economic incentives promoting fuel efficiency and alternate forms of energy; • the availability of tax and other governmental incentives to purchase and operate alternative hydrogen fuel cell and electric trucks or future regulation requiring increased use of nonpolluting trucks; • our ability to sell or lease trucks directly to business businesses or customers dependent on state by state unique regulations and dealership laws; • the availability of tax and other governmental incentives to sell hydrogen; • perceptions about and the actual cost of alternative hydrogen fuel cell; and • macroeconomic factors. Additionally, we may become subject to regulations that may require us to alter the design of our trucks, which could negatively impact customer interest in our products. Further, we sell our trucks to dealers in our network and rely on the dealers to sell them to end users. We have experienced delays in receiving additional purchase orders from dealers due in part to availability of charging infrastructure. The end users of our trucks the Tre BEV will need to continually assess their charging capacity and may need to build additional infrastructure prior to ordering or receiving trucks from dealers. In addition, Dealers dealers have and may continue to experience delays in receiving proceeds from the California Hybrid Zero Emission Truck and Voucher Incentive Program ("HVIP"), and may experience delays receiving proceeds from the New York Truck Voucher Incentive Program ("NYTVIP"), the NJZIP or other government incentive programs for our BEV trucks, which many of our dealers are leveraging for the first time. To qualify for the HVIP or NYTVIP or NJZIP, dealers are required to complete extensive training, initiate and complete applications for each sales order, and complete the voucher redemption process upon delivery to the end-user. There can be no assurances that our FCEV or BEV truck trucks will continue to qualify for these or other incentive programs, or that HVIP our FCEV trucks, once in production, NYTVIP and NJZIP incentives will qualify remain in effect. Any reduction, termination or failure to qualify for incentives, or any repeal of, or modification to, HVIP, NYTVIP or NJZIP incentives, would result in increased prices for our trucks, which would harm our business. If we fail to manage our future growth effectively, we may not be able to market and sell our vehicles successfully. Any failure to manage our growth effectively could materially and adversely affect our business, prospects, operating results and financial condition. We intend to expand our operations significantly. Our future expansion will is expected to include: • hiring and training personnel; • forecasting production and revenue; • controlling expenses and investments in anticipation of expanded operations; • establishing or expanding design validation, manufacturing, sales and service facilities; • establishing our hydrogen fueling capabilities; and • implementing and enhancing administrative infrastructure, systems and processes; and • hiring and training personnel, as production scales. We may intend to continue to hire additional personnel as production scales, including design and manufacturing personnel and service technicians for our trucks. Because our trucks are based on a different technology platform than traditional internal combustion engines, individuals with sufficient training in alternative fuel and electric vehicles may not be available to hire, and as a result, we will need to expend significant time and expense training the employees we do hire. Our future bundled lease model We may face legal challenges in one or more states attempting to sell directly to fleets or end users, which is intended to provide customers with the FCEV truck, hydrogen fuel and maintenance for a fixed price per mile will be reliant on our ability to achieve a minimum hydrogen fuel efficiency in our FCEV trucks. If we are unable to achieve or maintain this fuel efficiency, we may be forced to provide our bundled lease customers with fuel at prices below cost or risk damaging our relationships with our customers. Any such scenario would could put our bundled lease model in jeopardy and may have a material materially and adversely effect affect on our costs business, prospects, operating results and financial condition. Our business plan includes the direct sale of vehicles through to our authorized dealer dealers network, and potentially, directly to individual customers fleets or end users. Most, if not all, states require a license to sell vehicles within the state. Many states prohibit manufacturers from directly selling vehicles to customers end users. In other states, manufacturers must operate a physical dealership within the state to deliver vehicles to customers end users. As a result, we may not be able to sell directly to customers end users in each state in the United States. In many states, it is unclear if, as a manufacturer, we will be able to obtain permission to sell and deliver vehicles directly to customers end users. For customers end users located in states in which we are not allowed to sell or deliver vehicles, we may will have to arrange

alternate methods of delivery of vehicles. This could include **selling to our dealers, who may subsequently sell to the end user, or** delivering vehicles to adjacent or nearby states in which we are allowed to directly sell and ship vehicles, and arranging for the **customer-end user** to transport the vehicles to their home states. These workarounds could add significant complexity, and as a result, costs, to our business. We **depend on our network of independent dealers for the sale of vehicles, face competition for dealers, and have little control over their activities. Our primary sales conduit is expected to be through our dealer network. For the year ended December 31, 2023, we sold FCEV and BEV trucks to ten dealers, with four dealers individually representing sales in excess of 10 % of total revenue. Although we continue to seek to broaden our user base in both quantity and type of truck end users, we may continue to be dependent on a small number of dealers for a significant portion of our sales. The loss of a significant dealer, or a significant reduction in sales to any such dealer, could have a material adverse effect on our financial condition and results of operations. As we grow, particularly in new jurisdictions, we may need to expand our dealer network. We are subject to competition for the recruitment and retention of dealers from our competitors and we may not be able to recruit new or replacement dealers in the future. Most of our dealers are not restricted in their ability to work with our competitors and are not obligated to continue working with us. The departure of a significant number of our dealers for any reason, the failure to replace departing dealers in the event of such departures, or a substantial deterioration in the quality of our network of dealers could reduce our potential sales opportunities and could have a material adverse effect on our business, financial condition and results of operations. Misconduct, noncompliance with applicable laws and regulations, fraud or other improper activities by our dealers' employees, affiliates or other representatives could have a significant negative impact on our business, investments and results of operations. Such misconduct could include failures to comply with federal employment laws and regulations, including consumer protection laws. Although we require applicable dealers to comply with laws and regulations which are standard in our industry, we do not control the dealers, nor can we guarantee their compliance with all such laws and regulations. Failure to comply with applicable laws or regulations or acts of fraud or misconduct by dealers could subject us to fines and penalties. We face risks and uncertainties related to litigation, regulatory actions and government investigations and inquiries. We are subject to, and are,** and may in the future become a party to, a variety of litigation, other claims, suits, regulatory actions and government investigations and inquiries. For example, in 2020, Nikola and our officers, directors and employees received subpoenas from the SEC related to aspects of our business as well as certain matters described in an article **issued on published in** September 10, 2020 by a short-seller (, or the " short- seller article "). In addition, Nikola and Trevor R. Milton, our founder and former executive chairman, also received grand jury subpoenas from the U. S. Attorney's Office for the Southern District of New York, or the SDNY, and the N. Y. County District Attorney's Office. On July 29, 2021, the U. S. Attorney for the SDNY announced the unsealing of a criminal indictment charging Mr. Milton with two counts of securities fraud and one count of wire fraud. That same day, the SEC announced charges against Mr. Milton for alleged violations of federal securities laws. On October 14, 2022, a Federal District Court jury for the Southern District of New York found Mr. Milton guilty on one count of securities fraud and two counts of wire fraud. We have cooperated, and **may in** will continue to cooperate, with these **the future** and other regulatory or governmental requests. We have incurred **incur** significant expenses as a result of the regulatory and legal matters relating to the short- seller article **and our founder and former executive chairman** . The total cost associated with these matters will depend on many factors, including the duration of these matters and any related finding. **By order dated December 21, 2021, we and the SEC reached a settlement arising out of the SEC's investigation of Nikola. Under the terms of the settlement, without admitting or denying the SEC's findings, we agreed to cease and desist from future violations of the Exchange Act, and Rules 10b-5 and 13a-15 (a) thereunder and Section 17 (a) of the Securities Act of 1933, or the Securities Act; to certain voluntary undertakings; and to pay a \$ 125 million civil penalty.** Additionally, six putative class action lawsuits were filed against us and certain of our current and former officers and directors, asserting violations of federal securities laws under Section 10 (b) and Section 20 (a) of the Exchange Act, and, in one case, violations of the Unfair Competition Law under California law, alleging that Nikola and certain of our officers and directors made false and / or misleading statements in press releases and public filings regarding our business plan and prospects. These lawsuits have been consolidated. Separately, **three several** purported Nikola stockholder derivative actions were filed in the United States District Court, against certain of our current and former directors, alleging breaches of fiduciary duties, violations of Section 14 (a) of the Exchange Act, and gross mismanagement, among other claims. We are unable to estimate the potential loss or range of loss, if any, associated with these lawsuits. **We are also subject to certain class action lawsuits and other litigation related to our recent acquisition of Romeo, and we also may be subject to unforeseen or additional expenditures, costs or liabilities, including costs and potential liabilities associated with litigation, investigations and regulatory actions related to Romeo or to which Romeo is a party. In addition, from time to time, we may also be involved in legal proceedings and investigations arising in the ordinary course of business, including those relating to employment matters, relationships with collaboration partners, intellectual property disputes, and other business matters. Any such claims or investigations may be time-consuming, costly, divert management resources, or otherwise have a material adverse effect on our business or result of operations.** The results of litigation and other legal proceedings, including the other claims described under Legal Proceedings in Note 14, Commitments and Contingencies, to the consolidated financial statements included elsewhere in this Annual Report on Form 10- K and incorporated by reference herein, are inherently uncertain and adverse judgments or settlements in some or all of these legal disputes may result in materially adverse monetary damages or injunctive relief against us. Any claims or litigation, even if fully indemnified or insured, could damage our reputation and make it more difficult to compete effectively or obtain adequate insurance in the future. The litigation and other legal proceedings described under Note 14 are subject to future developments and management's view of these matters may change in the future. **Product recalls could materially adversely affect** sell our existing inventory or resume production of our BEV trucks on a timely basis, our business, **prospects, operating** results of operations and financial condition may be adversely impacted. **In**

2022, we announced a recall have resulted in significant expenses and involved lawsuits and other regulatory actions, installation of the seat belt shoulder anchorage assembly. This recall, and any recalls in management attention and other resources, future may result in adverse publicity, damage any of which have adversely affected our brand and materially adversely affect our business, business prospects, operating results and financial condition. In the future, we may voluntarily or involuntarily initiate a recall if any of our vehicles or electric powertrain components (including the fuel cell or batteries) prove to be defective or noncompliant with applicable federal motor vehicle safety standards. Such recalls involve significant expense, may involve lawsuits and other regulatory actions and diversion of management attention and other resources, which could adversely affect our brand image and reputation in our target markets, as well as our business, prospects, financial condition and results of operations. Our success will depend on our ability to economically manufacture our trucks at scale and establish build our hydrogen fueling stations ecosystem to meet our customers' business needs, and our ability to develop and manufacture trucks of sufficient quality and appeal to customers' end user fleets on schedule and at scale is unproven. Our future business depends in large part on our ability to execute our plans to develop, manufacture, market and sell our FCEV and BEV and FCEV trucks and to deploy the associated hydrogen fueling stations for our FCEV trucks at sufficient capacity to meet the transportation demands of end users of our customers' trucks. Our continued development of our truck platforms is and will be subject to risks, including with respect to: • our ability to secure necessary funding; • our ability to accurately manufacture the vehicles within specified design tolerances; • long- and short-term durability of our hydrogen fuel cell and electric drivetrain technology related components in the day-to-day wear and tear of the commercial trucking environment; • compliance with environmental, workplace safety and other applicable regulations; • securing necessary components on acceptable terms and in a timely manner; • delays in delivery of final component designs to our suppliers; • our ability to attract, recruit, hire and train skilled employees; • quality controls; • the effects of our recall of our BEV trucks, including costs associated with repairs, loss of revenue reputational harm and legal proceedings; • delays or disruptions in our supply chain, including ongoing supply constraints and shortages; and • other delays and cost overruns. We have limited manufacturing experience and no experience to date in high volume manufacturing of our trucks. We do not know whether we will be able to develop efficient, automated, low-cost manufacturing capabilities and processes, and reliable sources of component supply, that will enable us to meet the quality, price, engineering, design and production standards, as well as the production volumes, required to successfully mass market our trucks. Even if we are successful in developing our high volume manufacturing capability and processes and reliably source our component supply, we do not know whether we will be able to do so in a manner that avoids significant delays and cost overruns, including as a result of factors beyond our control such as problems with suppliers and vendors, or in time to meet our vehicle commercialization schedules or to satisfy the requirements of customers' end users. Any failure to develop and maintain such manufacturing processes and capabilities within our projected costs and timelines could have a material adverse effect on our business, prospects, operating results and financial condition. We may experience significant delays in the design, validation, and manufacture, launch and financing of our trucks, including in the build-out of our manufacturing plant, which could harm our business and prospects. Any delay in the financing, design, validation, and manufacture and launch of our trucks, including in the expansion of our manufacturing plant in Arizona, could materially damage our brand, business, prospects, financial condition and operating results. Vehicle manufacturers often experience delays in the design, validation, manufacture and commercial release of new products. To the extent we there are delay delays in the launch manufacturing of our FCEV trucks, our growth prospects could be adversely affected as we may fail to grow our market share. Furthermore, we rely on third party suppliers for the provision and development of many of the key components and materials used in our vehicles, such as battery products. To the extent our suppliers experience any delays in providing us with or developing necessary components, we could experience delays in delivering on our timelines. Increases in costs, disruption of supply or shortage of components and raw materials, could harm our business. We have and may continue to experience increases in the cost or a sustained interruption in the supply or shortage of raw materials and components, including lithium-ion but not limited to battery cells, chipsets, and displays, could harm our business. We have and may continue to experience increases in the cost or a sustained interruption in the supply or shortage of raw materials and components, including battery cells and packs, semiconductors, and integrated circuits, hydrogen tanks, which primarily impact our infotainment system and controllers modular fuelers. Any such increase or supply interruption have and may in the future materially negatively impact our business, prospects, financial condition and operating results. The war in Ukraine and recent COVID-19 outbreak and lockdowns in China are creating additional bottlenecks and cost pressure. This has resulted in delays and may continue to cause delays in the availability of saleable Tre BEV trucks. We use various raw materials including aluminum, steel, carbon fiber, non-ferrous metals (such as copper), and cobalt. The prices Prices for these raw materials fluctuate depending on market conditions and global demand and could adversely affect our business and operating results. For instance, we are exposed to multiple risks relating to price fluctuations for lithium-ion cells. These risks include: • disruption in the supply of cells due to quality issues or recalls by the battery cell manufacturers; and • an increase in the cost of raw materials, such as cobalt, used in lithium-ion cells; and • the inability or unwillingness of current battery manufacturers to build or operate battery cell manufacturing plants to supply the numbers of lithium-ion cells required to support the growth of the electric vehicle industry as demand for such cells increases. Any disruption in the supply of battery cells, semiconductors, or integrated circuits, has disrupted the production of our BEV trucks and may in the future, temporarily disrupt production of our BEV or FCEV truck-trucks until. For example, we have historically relied on a different limited number of suppliers of battery products. The manufacturing process of battery products is complex, highly technical and can be affected by supply chain disruptions and component shortages. Separately, in 2023, one of our battery suppliers reorganized under Chapter 11 of the United States Bankruptcy Code, and is in the process of being sold to a buyer. We expect to continue sourcing battery products from this supplier is fully qualified while they undergo reorganization. However, we are looking to source from alternative suppliers as well.

Battery products are critical to our ability to manufacture and service our BEV and FCEV trucks in the quantities and on the timeframes we expect. If we cannot manufacture sufficient quantities of battery packs or source sufficient quantities from alternative manufacturers, we may experience delays in the manufacturing or servicing of our BEV and FCEV trucks. Our commercial production of FCEV trucks in 2023 was also affected by supply chain from an existing supplier resumes. Furthermore, fluctuations or shortages in petroleum, inflation including shortages of hydrogen tanks, and these or other shortages economic conditions have had and may continue to cause us to experience significant increases in freight charges and raw material and component costs. Substantial increases in the prices for our occur raw materials or components has and may in the future increase our operating costs and reduce our margins if the increased costs cannot be recouped through increased electric vehicle prices. There can be no assurance that we will be able to recoup increasing costs of raw materials or components by increasing vehicle prices. We rely on complex machinery for our operations and production involves a significant degree of risk and uncertainty in terms of operational performance and costs. We rely on complex machinery for our operations and our production involves a significant degree of uncertainty and risk in terms of operational performance and costs. Our truck manufacturing plant consists of large-scale machinery combining many components. The manufacturing plant components are likely to suffer unexpected malfunctions from time to time and will depend on repairs and spare parts to resume operations, which may not be available when needed. Unexpected malfunctions of the manufacturing plant components may significantly affect the intended operational efficiency. Operational performance and costs can be difficult to predict and are often influenced by factors outside of our control, such as, but not limited to, scarcity of natural resources, environmental hazards and remediation, costs associated with decommissioning of machines, labor disputes and strikes, difficulty or delays in obtaining governmental permits, damages or defects in electronic systems, industrial accidents, fire fires, seismic activity and natural disasters. Should operational risks materialize occur, they may result in the personal injury to or death of workers, the loss of production equipment, damage to manufacturing facilities, monetary losses, delays and unanticipated fluctuations in production, environmental damage, administrative fines, increased insurance costs and potential legal liabilities, all of which could have a material adverse effect on our business, results of operations, cash flows, financial condition or prospects. If our manufacturing plant in Arizona becomes inoperable, we will be unable to produce our trucks and our business will be harmed. We expect to produce all of our trucks for North America at our manufacturing plant in Arizona. Our manufacturing plant and the equipment we use to manufacture our trucks would be costly to replace and could require substantial lead time to replace and qualify for use. Our manufacturing plant may be harmed or rendered inoperable by natural or man-made disasters, including earthquakes, flooding, fire fires, extreme temperatures and power outages, or by health epidemics, such as the COVID-19 pandemic, which may render it difficult or impossible for us to manufacture our trucks for some period of time. The inability to produce our trucks or the backlog that could develop if our manufacturing plant is inoperable for even a short period of time may result in the loss of customers, loss of revenue or harm to our reputation. Although we maintain insurance for damage to our property and the disruption of our business, this insurance may not be sufficient to cover all of our potential losses and may not continue to be available to us on acceptable terms, if at all. Our plan business may be subject to build risks associated with construction, cost overruns and delays, and other contingencies that may arise while constructing or servicing a network of hydrogen fueling stations, and such risks may increase in the United States future as we expand the scope of such services. We and our strategic partners expect to construct and service, or invest in the construction and servicing of, hydrogen fueling stations. We expect to undertake such construction or service with partners or contractors, which will require significant cash investments and management resources may require us and our partners to acquire or lease suitable and land may not meet, obtain licenses or permits expectations with respect to sales of our FCEV trucks. This planned construction of hydrogen stations is essential to persuading customers to pay a higher premium for our trucks. While we have constructed a demonstration station, that may require it is operating at very limited capacity. In addition, we do not have experience in the actual provision of our refueling solutions to users, and providing these services is subject to challenges, which include the logistics of rolling out our network of refueling stations and teams in appropriate areas, inadequate capacity or over capacity in certain areas, security risks, risk of damage to vehicles during charging or refueling and the potential for lack of customer acceptance of our services. We will need to ensure compliance with any regulatory additional rules, working conditions, wage requirements applicable in jurisdictions where our fueling stations will be located, including obtaining any required permits and land and use rights, which could take considerable time and expense and is subject to the other union requirements, adding risk that government support in certain areas may be discontinued or subject to conditions that we may be unable to meet in a cost costs -efficient manner and complexity to a construction project. Additionally, given we and our lack of partners have limited experience building in the engineering, procurement, construction and operating operation fueling stations, there could be unanticipated challenges which may hinder our ability to provide our proposed bundled lease to customers or make the provision of our bundled leases costlier than anticipated. If we are unable to build and successfully operate, or experience delays in building or problems in operating, our network of hydrogen fueling stations, If we may be and our partners are unable to provide timely convince customers to buy or lease our FCEV trucks or meet our fueling commitments under our bundled lease arrangements with customers, cost effective which may negatively impact our business, prospects, financial condition and quality construction-related operating results. As a key component of our business model, we intend to establish a series services of related to our hydrogen fueling stations, and we intend to include the cost of hydrogen in the purchase price of our trucks. Where there could electricity can be procured material adverse effects on our business, prospects, financial condition and operating results. In addition, we expect such construction and servicing to be subject to oversight and regulation in accordance with state and local laws and ordinances relating to building codes, accessibility requirements, safety, environmental protection and related matters, and to require various local and other governmental approvals and permits that may vary by jurisdiction. All of the above has and may continue to cause delays or cost overruns or

may prevent construction or servicing of hydrogen fueling stations. Meaningful delays or cost overruns, or the inability to construct or service hydrogen fueling stations, could have a material adverse effective effect on our business, prospects, financial condition and operating results. While we or our partners construct hydrogen fueling stations, we are currently operating modular fueling stations at strategic locations to provide fueling needs to initial FCEV purchasers and demonstrations. However, these modular fueling stations are also subject to local laws and regulations, may not function as intended, may not produce sufficient quantity or be available at desired locations, in order to support the fueling needs of our customers. We, our partners and other suppliers rely on complex technology to dispense hydrogen at hydrogen fueling stations, which involves a significant degree of risk and uncertainty in terms of operational performance and costs. We, our strategic partners and other suppliers rely on complex technology to dispense hydrogen at hydrogen fueling stations. Hydrogen dispensing technology is in the early stages and involves a significant degree of uncertainty and risk in terms of operational performance and costs. The dispensing technology will suffer non-performance or unexpected malfunctions given its maturity level and unproven uptime and will depend on repairs to resume operations, which will involve significant additional costs and may not be available or may not be available in a timely manner. Non-performance or malfunctions of the dispensing technology would significantly affect the intended operational efficiency of our or other suppliers' hydrogen fueling stations. The inability of customers to procure hydrogen from fueling stations due to non-performance or malfunctions of the dispensing technology would severely limit the use of their FCEV trucks and could have a material adverse effect on our business, prospects, financial condition or operating results. We may not be able to produce or source the hydrogen needed to establish our planned hydrogen fueling stations in sufficient volumes or at favorable prices, or at all. As a key component of our business model, we intend to establish a series of hydrogen fueling stations. We expect that hydrogen fuel will be produced or sourced by third-party providers or site, through electrolysis. In other cases, we expect that hydrogen fuel will be produced off-site and delivered to fueling stations under a . We have established hydrogen supply strategic partnerships intended to provide us "hub and spoke" structure. On June 22, 2021, we entered into a Hydrogen Sale and Purchase Agreement, or the Hydrogen Purchase Agreement, with low carbon Wabash Valley Resources LLC, or WVR, to purchase hydrogen produced at the hydrogen production facility, or the Plant, being developed by WVR in West Terre Haute, Indiana. WVR has yet to break ground on the Plant. There is no guarantee WVR will be able to meet its development timeline with regard to the facility or successfully produce hydrogen at scale. To the extent we are unable source to produce or obtain the hydrogen, unable to source hydrogen in sufficient volumes, or unable to obtain hydrogen at favorable prices, we may be unable to establish these fueling stations and severely limit the usefulness of our trucks, or, if we are still able to establish these stations, we may be forced to sell hydrogen at a loss in order to meet our commitments. We believe that this the provision of hydrogen incentive fueling stations will be a significant driver for purchases or leases of our trucks, and therefore, the failure to establish and roll out these hydrogen fueling stations in accordance with our expectations would materially and adversely affect our business.

Reservations Our inability to cost-effectively source the energy requirements to conduct electrolysis at our fueling stations may impact the profitability of our proposed bundled leases by making our hydrogen uneconomical compared to other vehicle fuel sources. Our ability to economically produce hydrogen for our FCEV trucks requires us to secure a reliable source of electricity for each of our on-site gaseous stations and large are cancellable scale production hubs at a price per kilowatt hour that is similar to wholesale rates in the geographic areas we target, and at vast quantities, assuming a full deployment of our planned hydrogen stations. During our initial hydrogen station roll-out, we intend to source power based on the most economical power mix available at each hydrogen production site, including power from the grid that is sourced from non-renewable sources. An increase in the price of energy used to generate hydrogen through electrolysis would likely result in a higher cost of fuel for our FCEV trucks as well as increase the cost of distribution, freight and delivery. We may not be able to offset these cost increases or pass such cost increases onto customers in the form of price increases, because of our contemplated bundled lease model for FCEV trucks, which could have an adverse impact on our results of operations and financial condition. In addition to the cost of electricity production, we expect to incur additional costs relating to the transmission, distribution and storage of energy. Reservations for our FCEV trucks are subject to cancellation by the customer fleet until the customer fleet enters into a lease agreement or, in the case of Anheuser-Busch LLC ("AB"), to the extent our trucks do not meet the vehicle specifications and delivery timelines specified in the contract with AB, as discussed further below. Because all of our reservations are cancellable, it is possible that a significant number of customers end users who submitted reservations for our trucks may cancel those reservations. Given the anticipated lead times between customer reservation and delivery of our trucks, there is a heightened risk that customers fleets that have made reservations may not ultimately take delivery of vehicles due to potential changes in customer their preferences, timing of deliveries, cost, competitive developments and other factors. As a result, no assurance can be made that reservations will not be cancelled, or that reservations will ultimately result in the purchase or lease of a vehicle. Any cancellations could harm our financial condition, business, prospects and operating results. While we currently have a contract with AB to lease up to 800 long-haul sleeper cab FCEV trucks, if we are unable to deliver our trucks according to the vehicle specifications and delivery timelines set forth in the contract, AB has the right to cancel its order for trucks. Moreover, the AB contract specifies lease terms and rental rates that may be hard difficult for us to meet or arrange to be met by a financing institution, depending on our ability to develop our trucks and hydrogen fueling network according to current design parameters and cost estimates. Any of these adverse events related to the AB order could harm our financial condition, business, prospects and operating results. We may offer While we do not currently have any leasing options arrangements finalized, in the future we intend to offer a bundled lease or other alternative structures to customers which would expose us to credit risk. While we may currently intend to offer bundled leasing options of our FCEV trucks or other alternative structures to potential customers through a third-party financing partner, we can provide no assurance that a third-party financing partner would be able or willing to provide the leasing services on terms that we have stated in our published

materials, or to provide financing at all. Furthermore, offering a leasing alternative **directly to customers fleets** will expose us to risks commonly associated with the extension of credit. Credit risk is the potential loss that may arise from any failure in the ability or willingness of the **customer counterparty** to fulfill **its their** contractual obligations when they **fall become** due. Competitive pressure and challenging markets may increase credit risk through leases to financially weak customers, extended payment terms and leases into new and immature markets. This could have a material adverse effect on our business, prospects, financial results and results of operations. We face significant barriers to produce our trucks, and if we cannot successfully overcome those barriers, our business will be negatively impacted. The trucking industry has traditionally been characterized by significant barriers to entry, including large capital requirements, investment costs of designing and manufacturing vehicles, long lead times to bring vehicles to market from the concept and design stage, the need for specialized design and development expertise, regulatory requirements, establishing a brand name and image and the need to establish sales, leasing, fueling and service locations. **In addition, our trucks are based on a different technology platform and powered with alternative fuel and electric sources.** If we are not able to overcome these barriers, our business, prospects, operating results and financial condition will be negatively impacted and our ability to grow our business will be harmed. If our trucks fail to perform as expected, our ability to develop, market and sell or lease our alternative fuel and electric trucks could be harmed. Our trucks **have and may in the future** contain defects in design and manufacture that may cause them not to perform as expected or may require repair. We currently have a limited frame of reference by which to evaluate the performance of our trucks upon which our business prospects depend. For example, our trucks use a substantial amount of software to operate which require modification and updates over the life of the vehicle. Software products are inherently complex and often contain defects and errors when first introduced. **Our trucks also include components made by third parties. Such components have and may in the future contain defects, and require that we replace affected parts.** There can be no assurance that we will be able to detect and fix any defects in the trucks' hardware or software prior to commencing ~~customer~~ sales. We **have announced a recall of our BEV trucks in August 2023** and may in the future experience recalls, which ~~could had and may continue to~~ adversely affect our brand in our target markets and could adversely affect our business, prospects and results of operations. Our trucks may not perform consistent with ~~customers~~ **end users'** expectations or consistent with other vehicles which may become available. Any **additional** product defects or any other failure of our trucks to perform as expected could harm our reputation and result in adverse publicity, lost revenue, delivery delays, product recalls, product liability claims and significant warranty and other expenses, and could have a material adverse impact on our business, financial condition, operating results and prospects. **Product recalls could materially adversely affect our..... financial condition and results of operations.** Insufficient warranty reserves to cover warranty claims could materially **and** adversely affect our business, prospects, financial condition and operating results. We maintain warranty reserves to cover warranty-related claims. If our warranty reserves are inadequate to cover warranty claims on our vehicles, our business, prospects, financial condition and operating results could be materially and adversely affected. We may become subject to significant and unexpected warranty expenses. There can be no assurances that warranty reserves will be sufficient to cover all claims. ~~Although we~~ **Additionally, future warranty reserves for our FCEV trucks may be significant due to parts that utilize new technology and** ~~have begun sales~~ **limited operating history and suppliers that may not warranty these parts. We face intense competition as a provider of FCEV and BEV Class 8 trucks and hope to be among the first to bring FCEV Class 8 trucks to market, competitors have and may continue to enter the market,** which **competition** could have an adverse effect on our business. We face intense competition in **FCEV and BEV and FCEV-Class 8 trucks**, including from companies in our target markets with greater financial resources, more extensive development, manufacturing, marketing and service capabilities, greater brand recognition and a larger number of managerial and technical personnel. If ~~competitor~~ **competitors'** trucks are brought to market before **our trucks or are viewed as superior to or more reliable than** our trucks, we may experience a reduction in potential market share. Many of our current and potential competitors, particularly international competitors, have significantly greater financial, technical, manufacturing, marketing and other resources than we do and may be able to devote greater resources to the design, development, manufacturing, distribution, promotion, sale and support of their products. We compete in a rapidly evolving and highly competitive industry, and a number of private and public companies have announced plans to offer **or are offering FCEV and / or BEV and / or FCEV** trucks, including, **but not limited to,** companies such as Daimler, Volvo, Tesla, BYD, Peterbilt, XOS, Lion, Hylion, Hyundai, Toyota, Navistar, Hino, and Hyzon **others**. Based on publicly available information, a number of these competitors have displayed prototype trucks and have announced target availability and production timelines, while others have launched pilot programs in some markets. In addition, we are aware that one potential competitor, BYD, is currently manufacturing and selling a Class 8 BEV truck. While some competitors may choose to offer BEV trucks, others such as Hyundai and Toyota have announced they plan to offer FCEV trucks and invest in hydrogen stations for refueling. In addition, our principal competition for our trucks **are will also come from** manufacturers of trucks with internal combustion engines powered by diesel fuel. We expect competition in our industry to intensify in the future in light of increased demand and regulatory push for alternative fuel and electric vehicles. We cannot provide assurances that our trucks will be among the first to market, or that competitors will not build hydrogen fueling stations **that provide fueling at competitive locations and prices**. Even if our trucks are among the first to market, we cannot **ensure** assure you that **customers fleets** will choose our vehicles over those of our competitors, or over diesel powered trucks. Developments in alternative technology improvements in the internal combustion engine may adversely affect the demand for our trucks. Significant developments in alternative technologies, such as advanced diesel, ethanol, or compressed natural gas or improvements in the fuel economy of the internal combustion engine, may materially and adversely affect our business and prospects in ways we do not currently anticipate. Other fuels or sources of energy may emerge as ~~customers~~ **fleets'** preferred alternative to our truck platform. Any failure by us to develop new or enhanced technologies or processes, or to react to changes in existing technologies, could materially delay our development and introduction of new and enhanced alternative fuel and electric trucks, which could result in the loss of

competitiveness of our trucks, decreased revenue and a loss of market share to competitors. Our research and development efforts may not be sufficient to adapt to changes in alternative fuel and electric vehicle technology. As technologies change, we plan to upgrade or adapt our trucks and introduce new models in order to continue to provide trucks with the latest technology, in particular battery cell technology. We have limited experience servicing or repairing our vehicles. If we are unable to address the service requirements of **our customers-end users**, our business will be materially and adversely affected. Because we recently started commercial production, we have limited experience servicing or repairing our vehicles. Servicing alternative fuel and electric vehicles is different than servicing vehicles with internal combustion engines and requires specialized skills, including high voltage training and servicing techniques. We utilize our dealer network and may decide to partner with a third party to perform some or all of the maintenance on our trucks, and there can be no assurance that we will be able to enter into an acceptable arrangement with any such third- party provider. If we are unable to successfully address the service requirements of **our customers-end users**, our business and prospects will be materially and adversely affected. In addition, the motor vehicle industry laws in many states require that service facilities be available to service vehicles physically sold from locations in the state. While we anticipate developing a service program that would satisfy regulators in these circumstances, the specifics of our service program are still in development, and at some point may need to be restructured to comply with state law, which may impact our business, financial condition, operating results and prospects. **Collaboration** ~~We have partnered with~~ **strategic partners is** Iveco to manufacture the BEV truck at the Iveco manufacturing plant in Ulm, Germany through a joint venture with Iveco, which commenced operations in the fourth quarter of 2020. We currently expect that approximately 40 million Euros will be invested in total by Iveco and Nikola into the manufacturing plant to prepare it for assembly, of which 27.4 million Euros was funded through December 31, 2022 by us. During the third quarter of 2021, the joint venture executed a term loan facility agreement for 15 million Euros with a 5-year term and a revolving credit facility agreement for 6 million Euros with a 4-year term. Each agreement was guaranteed 50% by Nikola and Iveco. In addition to entering into the Hydrogen Purchase Agreement with WVR, on June 22, 2021, we also acquired a 20% equity interest in WVR and entered into that certain Second Amended and Restated Limited Liability Company Agreement of WVR, pursuant to which, among other things, we, in our sole discretion, obtained the right, or the Offtake Right, to own up to 20% of the entity to which WVR will transfer ownership of the hydrogen gas turbine to be part of the Plant, without further consideration paid therefore, subject to **risks** certain conditions. Exercising this Offtake Right will likely require us to make significant capital expenditures to build liquefaction, storage, and transportation services. In addition, our expectations regarding the cost to us of hydrogen pursuant to the Offtake Right may be inaccurate, which could have a negative effect on our FCEV business, including our future bundled lease option. We have entered into ~~other~~ collaborations and have announced planned collaborations with various parties, including with respect to hydrogen production and sourcing, providing service and maintenance and deployment of hydrogen fueling stations. Discussions with our strategic partners are ongoing, **a number of collaborations** are subject to the parties' entry into definitive documentation, and terms of the agreements are subject to change. Consequently, there can be no assurance that we will enter into agreements on the terms initially contemplated, if at all, **or that our agreements with our strategic partners will remain in place. For example, we sold assets related to the development of a hydrogen production hub to FFI Phoenix Hub Holdings, LLC, a wholly- owned subsidiary of Fortescue Future Industries (" FFI") in July 2023 and in February 2024, and are currently negotiating an agreement with FFI for potential offtake of hydrogen produced at the hub**. Collaboration with third parties is subject to risks with respect to operations that are outside our control. We could experience delays if our partners do not meet agreed upon timelines or experience capacity constraints. There are risks of potential disputes, disagreements or fallouts with partners and failure to perform under contracts or enforce contracts against the other party, and / or the potential terminations, **or non- renewals**, of such contracts, and the ~~production of our trucks or~~ supply of hydrogen could be disrupted as a result. We may not be able to realize business or financial benefits of our strategic collaborations. We could be affected by adverse publicity related to our partners, whether or not such publicity is related to their collaboration with us, or adverse publicity related to our relationships with our partners. Our ability to successfully build a premium brand could also be adversely affected by perceptions about the quality of our partners' products **or by termination of our agreements with our partners**. In addition, ~~although we are involved in~~ **situations where** each step of the supply chain and manufacturing process, because we ~~also~~ rely on our partners and third parties to meet our quality standards, there can be no assurance that we will successfully maintain quality standards. In addition, our share of the earnings or losses of a collaborator ~~can may~~ adversely affect our financial results, depending on the nature of the collaboration, **including the discontinuation thereof**. We may be unable to enter into new agreements or extend existing agreements with strategic partners on terms and conditions acceptable to us and therefore may need to contract with other third parties or significantly add to our own production capacity. There can be no assurance that in such event we would be able to engage other third parties or establish or expand our own production capacity to meet our needs on acceptable terms or at all. The expense and time required to complete any transition, and to assure that vehicles manufactured at facilities of new manufacturers comply with our quality standards and regulatory requirements, may be greater than anticipated. Any of the foregoing could adversely affect our business, results of operations, financial condition and prospects. We **are or may be subject to risks associated with strategic alliances or acquisitions. We** have entered into, and may in the future enter into additional, strategic alliances, including joint ventures or ~~minority~~ equity investments with various third parties to further our business purpose. These alliances ~~could~~ subject us to a number of risks, including risks associated with sharing proprietary information, non- performance by the third party and increased expenses in establishing new, **or maintaining current**, strategic alliances, any of which may materially and adversely affect our business. We may have limited ability to monitor or control the actions of these third parties and, to the extent any of these strategic third parties ~~suffers- suffer~~ negative publicity or harm to their reputation from events relating to their business, we may also suffer negative publicity or harm to our reputation by virtue of our association with any such third party. When ~~appropriate~~ opportunities arise, we may **seek to** acquire additional assets, products, technologies or businesses that are complementary to our existing business. **If we make**

any acquisitions, we may not be able to integrate these acquisitions successfully into our existing business, and we could assume unknown or contingent liabilities. Any future acquisitions by us also could result in significant write-offs or the incurrence of debt and contingent liabilities, any of which could harm our operating results. Integration of an acquired company also may require management resources that otherwise would be available for ongoing development of our existing business. We may not identify or complete these transactions in a timely manner, on a cost-effective basis, or at all, and we may not realize the anticipated benefits of any acquisition. To finance any acquisitions, we have in the past and may in the future choose to issue shares of our common stock as consideration, which would dilute the ownership of our stockholders. In addition to possible stockholder approval, we ~~it may be necessary~~ need approvals and licenses from relevant government authorities for the ~~us to raise additional funds for~~ acquisitions ~~through public~~ and to comply with any applicable laws and regulations, which could result in increased delay and costs, and may disrupt our ~~or private financings~~ business strategy if we fail to do so. ~~Additional funds may not be available~~ Furthermore, acquisitions and the subsequent integration of new assets and businesses into our own require significant attention from our management and could result in a diversion of resources from our existing business, which in turn could have an adverse effect on ~~terms that are favorable to us,~~ our ~~or~~ operations at all. We ~~Acquired~~ ~~acquired~~ assets or businesses may not ~~Romeo Power, Inc. ("Romeo") in October 2022. On June 30, 2023, pursuant to a~~ generate ~~general assignment (~~ the financial results we expect. Acquisitions could result in the use of substantial amounts of cash, potentially dilutive issuances of equity securities, the occurrence of significant goodwill impairment charges, amortization expenses for other ~~the "Assignment")~~, we transferred ownership of all of ~~Romeo's~~ right, title and interest in and to all of its tangible and ~~intangible assets and exposure~~, subject to potential ~~unknown~~ certain agreed upon exclusions (collectively, the "Assets") to SG Service Co., LLC, in its sole and limited capacity as Assignee for the Benefit of Creditors of Romeo ("Assignee"), and also designated Assignee to act as the assignee for the benefit of creditors of Romeo, such that, as of June 30, 2023, Assignee succeeded to all of Romeo's right, title and interest in and to the Assets. We have incurred losses as a result of the Assignment. For example, we recognized a loss of \$ 24.9 million which is recorded in loss from deconsolidation of discontinued operations in the consolidated statements of operations for the year ended December 31, 2023. The carrying values of the assets and liabilities of Romeo were removed from the consolidated balance sheets as of June 30, 2023. See Note 11, Deconsolidation of Subsidiary, to the consolidated financial statements included elsewhere in this Annual Report on Form 10-K for additional information. We are currently subject to ongoing litigation related to, among ~~the other acquired things,~~ our acquisition of Romeo, and may in the future be subject to additional litigation related to Romeo. While we understand that the Assignee is in the process of winding down Romeo, the commencement of the Assignment does not have the effect of staying such litigation. Litigation and the time, cost and expenses associated with it could negatively impact our financial condition and results of operations. We may not be able to consume minimum commitments under our "take or pay" agreements, which may have a material adverse impact on our earnings. We have entered into agreements with certain suppliers of hydrogen that include "take or pay" terms. Take or pay terms obligate us to purchase a minimum quantity of hydrogen within certain time periods or make specified payments in lieu of such purchase. If we fail to secure adequate demand for hydrogen, we may not be able to consume minimum commitments under these take or pay contracts, requiring payments to suppliers, which may have a material adverse impact on our ~~business~~ ~~Moreover,~~ financial condition ~~the costs of identifying and~~ results of operations consummating acquisitions may be significant. We are dependent on our suppliers, a significant number of which are single or limited source suppliers, and the inability of these suppliers to deliver necessary components of our vehicles at prices and volumes acceptable to us would have a material adverse effect on our business, prospects and operating results. While we seek to obtain components from multiple sources whenever possible, many of the components used in our vehicles are or will be purchased by us from a single source, especially with respect to hydrogen fuel cells and batteries. We refer to these component suppliers as our single source suppliers. For example, we entered into an agreement with Robert Bosch LLC ("Bosch"), whereby we committed to purchase certain component requirements for fuel cell power modules from Bosch beginning on June 1, 2023 until December 31, 2030. ~~In addition, until our acquisition of Romeo in October 2022, we relied on Romeo as our sole supplier of battery packs, and have experienced delays obtaining packs in the numbers we require.~~ While we believe that we may be able to establish alternate supply relationships and can obtain or engineer replacement components for our single source components, we may be unable to do so in the short term (or at all) at prices or quality levels that are favorable to us ~~or that meet our requirements~~. A significant benefit of our collaborations with manufacturing partners is the ability to leverage their respective existing assortment of parts, thereby decreasing our purchasing expenses. While these relationships give us access to use an existing supplier base with the hopes of accelerating procurement of components at favorable prices, there is no guarantee that this will be the case. In addition, we ~~could have and may in the future~~ experience delays if our suppliers do not meet agreed upon timelines or experience capacity constraints. Our vehicles' ~~anticipated~~ ~~estimated~~ range may not be achievable based on various external conditions, which may negatively influence potential ~~customers~~ ~~end users'~~ decisions whether to purchase our trucks. We ~~anticipate~~ ~~estimate~~ the range of our ~~Tre FCEV and Tre BEV and Tre FCEV~~ vehicles to be up to ~~500 and 330 and 500~~ miles, respectively, before needing to recharge or refuel, depending on the type of vehicle. Actual range ~~varies with~~ ~~will vary depending on~~ conditions such as external environment, average speed, number of stops, grade of routes, gross combined weight, trailer type, and driver behavior, among others. Range specifications are subject to change. ~~The perceived lack of sufficient range may negatively affect potential end users' decisions to buy or lease our trucks~~. The battery efficiency of electric trucks and fuel cell efficiency of FCEV trucks will decline over time, which may negatively influence potential ~~customers~~ ~~end users'~~ decisions whether to purchase our trucks. Our vehicles' range will decline over time as the battery or fuel cell, as applicable, deteriorates. Other factors such as usage, time and stress patterns may also impact the ability to hold a charge, which would decrease our trucks' range. Such deterioration and the related decrease in range may negatively influence potential ~~customer~~ ~~end user~~

decisions to purchase our trucks. Our trucks make use of lithium- ion battery cells, which have been observed to catch fire or vent smoke and flame. The battery packs within our trucks make use of lithium- ion cells. ~~On rare occasions, lithium-~~ **Lithium-** ion cells can rapidly release the energy they contain by venting smoke and flames in a manner that can ignite nearby materials as well as other lithium- ion cells. While the battery pack is designed to contain any single cell' s release of energy without spreading to neighboring cells, a field or testing failure of our vehicles or other battery packs that we produce could occur, which could subject us to lawsuits, product recalls, or redesign efforts, all of which would be time consuming and expensive. **For example, we announced a recall of our BEV trucks in August 2023 as a result of preliminary results of our battery pack thermal event investigations. The investigation was in response to a thermal event caused by a battery pack defect. Subsequent thermal events have also occurred.** Also, negative public perceptions regarding the suitability of lithium- ion cells for automotive applications or any future incident involving lithium- ion cells, such as a vehicle or other fire, even if such incident does not involve our trucks, could seriously harm our business and prospects. In addition, we store a significant number of lithium- ion cells at our facility. Any mishandling of battery cells may cause disruption to the operation of our facility. While we have implemented safety procedures related to the handling of the cells, a safety issue or fire related to the cells could disrupt our operations. ~~Such~~ **Any related** damage or injury could lead to adverse publicity and potentially a safety recall. Moreover, any failure of a competitor' s electric vehicle or energy storage product may cause indirect adverse publicity for us and our products. Such adverse publicity could negatively affect our brand and harm our business, prospects, financial condition **and operating results. We may face challenges related to perceptions of safety for commercial electric vehicles, especially if adverse events or accidents occur that are linked to the quality or safety of commercial electric vehicles. An accident or safety incident involving one of our trucks may expose us to significant liability and a public perception that our trucks are unsafe or unreliable. For example, in June 2023, a fire started in one of our BEV trucks at our headquarters, which spread to other trucks parked nearby. As a result of the fire, all of the trucks affected became inoperable, and subsequent fires have occurred. Any accident or safety incident involving one of our trucks, even if fully insured, could harm our reputation and result in a loss of future demand if it creates a public perception that our trucks are unsafe or unreliable as compared to those offered by other manufacturers or other means of transportation. As a result, any accident or safety incident involving our trucks, or commercial electric vehicles of our competitors could directly or indirectly materially and adversely affect our business, prospects, financial condition,** and operating results. Any unauthorized control or manipulation of our vehicles' systems could result in loss of confidence in us and our vehicles and harm our business. Our trucks contain complex information technology systems and built- in data connectivity to accept and install periodic remote updates to improve or update functionality. We have designed, implemented and tested security measures intended to prevent unauthorized access to our information technology networks, our trucks and related systems. However, bad actors may attempt to gain unauthorized access to modify, alter and use such networks, trucks and systems to gain control of or to change our trucks' functionality, user interface and performance characteristics, or to gain access to data stored in or generated by the truck. Future vulnerabilities could be identified and our efforts to remediate such vulnerabilities may not be successful. Any unauthorized access to or control of our trucks or their systems, or any **unauthorized access to or** loss of ~~customer- end user~~ data, could result in **risks to end users or failure of our systems, any of which could result in interruptions in our business,** legal claims or proceedings. In addition, regardless of their veracity, reports of unauthorized access to our trucks, systems or data, as well as other factors that may result in the perception that our trucks, systems or data are capable of being hacked —could negatively affect our brand and harm our business, prospects, financial condition and operating results. Interruption or failure of our information technology and communications systems could impact our ability to effectively provide our services. We outfit our trucks with in- vehicle services and functionality that utilize data connectivity to monitor performance and timely capture opportunities for cost- saving preventative maintenance. The availability and effectiveness of our services depend on the continued operation of information technology and communications systems. Our systems may be vulnerable to damage or interruption from, among others, fire, terrorist attacks, **attacks by computer hackers or other cybersecurity risks,** natural disasters, power loss, telecommunications failures, computer viruses, computer denial of service attacks or other attempts to harm our systems. Our data centers could also be subject to break- ins, sabotage and intentional acts of vandalism causing potential disruptions. Some of our systems are not fully redundant, and our disaster recovery planning cannot account for all eventualities. Any problems at our data centers could result in lengthy interruptions in our service. In addition, our trucks are highly technical and complex and may contain errors or vulnerabilities, which could result in interruptions in our business or the failure of our systems. We are subject to substantial regulation and unfavorable changes to, or failure by us to comply with, these regulations could substantially harm our business and operating results. Our alternative fuel and electric trucks, and the sale and servicing of motor vehicles in general, are subject to substantial regulation under international, federal, state, and local laws. We have and expect to continue to incur significant costs in complying with these regulations. Regulations related to the electric vehicle industry and alternative energy are currently evolving and we face risks associated with changes to these regulations, including but not limited to: • increased subsidies for corn and ethanol production, which could reduce the operating cost of vehicles that use ethanol or a combination of ethanol and gasoline; and • increased sensitivity by regulators to the needs of established automobile manufacturers with large employment bases, high fixed costs and business models based on the internal combustion engine, which could lead them to pass regulations that could reduce the compliance costs of such established manufacturers or mitigate the effects of government efforts to promote alternative fuel vehicles. To the extent ~~the~~ laws change, our trucks may not comply with applicable international, federal, state or local laws, which would have an adverse effect on our business. Compliance with changing regulations could be burdensome, time consuming, and expensive. To the extent compliance with new regulations is cost prohibitive, our business, prospects, financial condition and operating results would be adversely affected. We are subject to various environmental laws and regulations that could impose substantial costs upon us and cause delays in ~~building~~ **operating** our manufacturing facilities. Our

operations are ~~and will be~~ subject to ~~international,~~ federal, state, and / or local environmental laws and regulations, including laws relating to the use, handling, storage, disposal and human exposure to hazardous materials. Environmental and health and safety laws and regulations can be complex, and we expect that we will be affected by future amendments to such laws or other new environmental and health and safety laws and regulations which may require us to change our operations, potentially resulting in a material adverse effect on our business, prospects, financial condition, and operating results. These laws can give rise to liability for administrative oversight costs, cleanup costs, property damage, bodily injury and fines and penalties. Capital and operating expenses needed to comply with environmental laws and regulations can be significant, and violations may result in substantial fines and penalties, third party damages, suspension of production or a cessation of our operations. Contamination at properties we will own and operate, we formerly owned or operated or to which hazardous substances were sent by us, may result in liability for us under environmental laws and regulations, including, but not limited to the Comprehensive Environmental Response, Compensation and Liability Act, which can impose liability for the full amount of remediation-related costs without regard to fault, for the investigation and cleanup of contaminated soil and ground water, for building contamination and impacts to human health and for damages to natural resources. The costs of complying with environmental laws and regulations and any claims concerning noncompliance, or liability with respect to contamination in the future, could have a material adverse effect on our financial condition or operating results. We may face unexpected delays in obtaining the required permits and approvals in connection with our manufacturing facilities that could require significant time and financial resources and delay our ability to operate these facilities, which would adversely impact our business prospects and operating results. We are subject to evolving laws, regulations, standards, policies, and contractual obligations related to data privacy and security, and any actual or perceived failure to comply with such obligations could harm our reputation and brand, subject us to significant fines and liabilities, or otherwise affect our business. In the course of our operations, we collect, use, store, disclose, transfer and otherwise process personal information from our ~~consumers-~~**customers, truck end users**, employees and third parties with whom we conduct business, including names, accounts, user IDs and passwords, and payment or transaction related information. Additionally, we ~~intend to~~ use our trucks' electronic systems to log information about each vehicle' s use in order to aid us in vehicle diagnostics, repair and maintenance. ~~Our customers-~~**End users** may object to the use of this data, which may increase our vehicle maintenance costs and harm our business prospects. Possession and use of ~~our customers-~~**end users'** information in conducting our business may subject us to legislative and regulatory burdens ~~in the United States and the European Union~~ that could require notification of data breaches, restrict our use of such information and hinder our ability to acquire new customers or market to existing customers. Non- compliance or a major breach of our network security and systems could have serious negative consequences for our business and future prospects, including possible fines, penalties and damages, reduced customer demand for our vehicles, and harm to our reputation and brand. ~~We~~ Accordingly, we are subject to or affected by a number of federal, state, ~~and~~ local ~~and international-~~ laws and regulations, as well as contractual obligations and industry standards, that impose certain obligations and restrictions with respect to data privacy and security and govern our collection, storage, retention, protection, use, processing, transmission, sharing and disclosure of personal information including that of our employees, customers and other third parties with whom we conduct business. These laws, regulations and standards may be interpreted and applied differently over time and from jurisdiction to jurisdiction, and it is possible that they will be interpreted and applied in ways that may have a material and adverse impact on our business, financial condition and results of operations. The global data protection landscape is rapidly evolving, and implementation standards and enforcement practices are likely to remain uncertain for the foreseeable future. We may not be able to monitor and react to all developments in a timely manner. The European Union adopted the General Data Protection Regulation (" GDPR"), which became effective in May 2018, and California adopted the California Consumer Privacy Act of 2018 (" CCPA"), which became effective in January 2020. Both the GDPR and the CCPA impose additional obligations on companies regarding the handling of personal data and ~~provides-~~**provide** certain individual privacy rights to persons whose data is collected. Compliance with existing, proposed and recently enacted laws and regulations (including implementation of the privacy and process enhancements called for under the GDPR and CCPA) can be costly, and any failure to comply with these regulatory standards could subject us to legal and reputational risks. Specifically, the CCPA establishes a privacy framework for covered businesses, including an expansive definition of personal information and data privacy rights for California consumers. The CCPA includes a framework with potentially severe statutory damages for violations and a private right of action for certain data breaches. The CCPA requires covered businesses to provide California consumers with new privacy- related disclosures and new ways to opt- out of certain uses and disclosures of personal information. As we expand our operations, **particularly in California,** the CCPA may increase our compliance costs and potential liability. Some observers have noted that the CCPA could mark the beginning of a trend toward more stringent privacy legislation in the United States. Additionally, effective starting on January 1, 2023, the California Privacy Rights Act ~~, or ("~~CPRA ~~, will")~~ significantly ~~modify-~~**modifies** the CCPA, including by expanding California consumers' rights with respect to certain sensitive personal information. The CPRA also ~~creates-~~**created** a new state agency that will be vested with authority to implement and enforce the CCPA and the CPRA. Other states have begun to propose similar laws. Compliance with applicable privacy and data security laws and regulations is a rigorous and time- intensive process, and we may be required to put in place additional mechanisms to comply with such laws and regulations, which could cause us to incur substantial costs or require us to change our business practices, including our data **management** practices, in a manner adverse to our business. In particular, certain emerging privacy laws are still subject to a high degree of uncertainty as to their interpretation and application. Failure to comply with applicable laws or regulations or to secure personal information could result in investigations, enforcement actions and other proceedings against us, which could result in substantial fines, damages and other liability as well as damage to our reputation and credibility, which could have a negative impact on revenues and profits. We post ~~public-~~**publicly** privacy policies and other documentation regarding our collection, processing, use and disclosure of personal information. Although we endeavor to comply with our ~~published-~~ policies and other documentation, we

may at times fail to do so or may be perceived to have failed to do so. Moreover, despite our efforts, we may not be successful in achieving compliance if our employees, contractors, service providers, vendors or other third parties fail to comply with our ~~published~~ policies and documentation. Such failures could carry similar consequences or subject us to potential local, state and federal action if they are found to be deceptive, unfair or misrepresentative of our actual practices. Claims that we have violated individuals' privacy rights or failed to comply with data protection laws or applicable privacy notices could, even if we are not found liable, be expensive and time-consuming to defend and could result in adverse publicity that could harm our business. Most jurisdictions have enacted laws requiring companies to notify individuals, regulatory authorities and other third parties of security breaches involving certain types of data. Such laws may be inconsistent or may change or additional laws may be adopted. In addition, our agreements with certain customers ~~or truck end users~~ may require us to notify them in the event of a security breach. Such mandatory disclosures are costly, could lead to negative publicity, penalties or fines, litigation and our customers ~~and truck end users~~ losing confidence in the effectiveness of our security measures and require us to expend significant capital and other resources to respond to or alleviate problems caused by the actual or perceived security breach. Any of the foregoing could materially ~~and~~ adversely affect our business, prospects, operating results and financial condition. We face risks associated with our international operations, including unfavorable regulatory, political, tax and labor conditions, which could harm our business. We face risks associated with our international operations, including possible unfavorable regulatory, political, tax and labor conditions, which could harm our business. ~~We~~ **Although our operations are currently focused in the U. S., we also** have international operations and subsidiaries in Germany, ~~Italy~~, and Canada that are subject to the legal, political, regulatory and social requirements and economic conditions in these jurisdictions. Additionally, as part of our growth strategy, we intend to expand our ~~truck~~ sales, **hydrogen supply, truck** maintenance and repair services ~~internationally in North America~~. However, we have **limited experience selling and servicing our vehicles in North America, and** no experience to date selling and servicing our vehicles ~~internationally outside of the United States and Canada~~, and such expansion ~~would~~ **may** require us to make significant expenditures, including the hiring of local employees and establishing facilities, in advance of generating any revenue. We are subject to a number of risks associated with international business activities that may increase our costs, impact our ability to sell our alternative fuel and electric trucks and require significant management attention. These risks include: • conforming our trucks to various international **law and** regulatory requirements where our trucks are sold, or homologation; • development and construction of our hydrogen fueling network; • difficulty in staffing and managing foreign operations; • difficulties attracting customers ~~and fleets~~ in new jurisdictions; • foreign government taxes, regulations and permit requirements, including foreign taxes that we may not be able to offset against taxes imposed upon us in the United States, and foreign tax and other laws limiting our ability to repatriate funds to the United States; • fluctuations in foreign currency exchange rates and interest rates, including risks related to any interest rate swap or other hedging activities we undertake; • United States and foreign government trade restrictions, tariffs and price or exchange controls; • foreign labor laws, regulations and restrictions; • changes in diplomatic and trade relationships; • political instability, natural disasters, war or events of terrorism, including the current conflict involving Ukraine and Russia **and in the Middle East**; and • the strength of international economies. If we fail to successfully address these risks, our business, prospects, operating results and financial condition could be materially harmed. Our ability to use net operating losses to reduce future tax payments may be limited by provisions of the Internal Revenue Code and may be subject to further limitation as a result of future transactions. Sections 382 and 383 of the Internal Revenue Code of 1986, as amended (the "Code"), contain rules that limit the ability of a company that undergoes an ownership change, which is generally any cumulative change in ownership of more than 50 % of its stock over a three- year period, to utilize its net operating loss and tax credit carryforwards and certain built- in losses recognized in the years after the ownership change. These rules generally operate by focusing on ownership changes involving stockholders who directly or indirectly own 5 % or more of the stock of a company and any change in ownership arising from a new issuance of stock by the company. Generally, if an ownership change occurs, the yearly taxable income limitation on the use of net operating loss and tax credit carryforwards is equal to the product of the applicable long- term tax exempt rate and the value of our stock immediately before the ownership change. As a result, we may be unable to offset our taxable income with net operating losses, or our tax liability with credits, before these losses and credits expire. In addition, it is possible that future transactions (including issuances of new shares of our common stock and sales of shares of our common stock ~~and equity-linked securities~~) will cause us to undergo one or more additional ownership changes. In that event, we may not be able to use our net operating losses from periods prior to this ownership change to offset future taxable income in excess of the annual limitations imposed by Sections 382 and 383. We face risks related to health epidemics, ~~including the COVID-19 pandemic~~, which could have a material adverse effect on our business and results of operations. We face various risks related to public health issues, including epidemics, pandemics, and other outbreaks. ~~For example, including the pandemic impact of the respiratory illness caused by a novel coronavirus known as COVID- 19 pandemic included. The impact of COVID- 19, including changes in consumer and business behavior, pandemic fears and market downturns, global supply chain constraints and restrictions on business and individual activities, created significant volatility in the global economy and led to reduced economic activity. The spread of COVID- 19 also created a disruption in the manufacturing, delivery and overall supply chain of vehicle manufacturers and suppliers, including us, and has led to a global decrease in vehicle sales in markets around the world. The pandemic has resulted in government authorities implementing numerous measures to try to contain the virus, such as travel bans and restrictions, quarantines, stay- at- home or shelter- in- place orders, and business shutdowns. These measures may adversely impact impacted our employees and operations and the operations of our customers, suppliers, vendors and business partners, and may negatively impact impacted our sales and marketing activities, the construction schedule of our hydrogen fueling stations and our manufacturing plant in Arizona, and the production schedule of our trucks. For example, the headquarters of our former joint venture partner, Iveco, located in Italy, was shut down for two months in 2020 due to COVID- 19, and as a result, pilot builds for the BEV truck were delayed. In addition, various aspects of our business,~~

manufacturing plant and hydrogen fueling station building process, cannot be conducted remotely. These measures by government authorities may remain in place for a significant period of time and they may adversely affect our manufacturing and building plans, sales and marketing activities, business and results of operations. The spread of COVID-19 has caused us to modify our business practices (including employee travel, recommending that all non-essential personnel work from home and cancellation or reduction of physical participation in sales activities, meetings, events and conferences), and we may take further actions as may be required by government authorities or that we determine are in the best interests of our employees, customers, suppliers, vendors and business partners. There is no certainty that such actions will be sufficient to mitigate the risks posed by the virus or otherwise be satisfactory to government authorities. If significant portions of our workforce are unable to work effectively, including due to illness, quarantines, social distancing, government actions or other restrictions in connection with the COVID-19 pandemic, our operations will be impacted. The extent to which the COVID-19 pandemic impacts our business, prospects and results of operations will depend on future developments, which are highly uncertain and cannot be predicted, including, but not limited to, the duration and spread of the pandemic, additional waves of the virus, its severity, the actions to contain the virus or treat its impact, including vaccination efforts, the efficacy of vaccine programs on new variants of the virus, and how quickly and to what extent normal economic and operating activities can resume. The COVID-19 pandemic could limit the ability of our customers, suppliers, vendors and business partners to perform, including third party suppliers' ability to provide components and materials used in our trucks. We may also experience an increase in the cost of raw materials used in our commercial production of trucks. Even after the COVID-19 pandemic has subsided, we may continue to experience an adverse impact to our business as a result of its global economic impact, including any recession that has occurred or may occur in the future. Specifically, difficult **Difficult** macroeconomic conditions, such as decreases in per capita income and level of disposable income, increased and prolonged unemployment or a decline in consumer confidence due to the acceleration of inflation in the U. S. and the COVID-19 pandemic, as well as reduced spending by businesses, **has and may continue to have an adverse adversely affected effect on** the demand for our trucks. Under difficult economic conditions, potential **customers purchasers** may seek to reduce spending by forgoing our trucks for other traditional options, and cancel reservations for our trucks. In addition, in **this** the current inflationary environment, end **customers are users were** less likely to invest **time and resources** in the necessary **considering alternative** charging infrastructure, which **will affect affected** demand for our trucks. Decreased demand for our trucks, particularly in the United States and Europe, would negatively affect **affects** our business. There are no comparable recent events which may provide guidance as to the effect of the spread of COVID-19 and a pandemic, and, as a result, the ultimate impact of the COVID-19 pandemic or a similar health epidemic is highly uncertain and subject to change. We do not yet know the full extent of COVID-19's impact on our business, our operations, or the global economy as a whole. However, the effects could have a material impact on our results of operations, and we will continue to monitor the situation closely. The unavailability, reduction or elimination of government and economic incentives could have a material adverse effect on our business, prospects, financial condition and operating results. We currently, and expect to continue to, benefit from certain government subsidies and economic incentives that support the development and adoption of our vehicles, particularly our BEV and FCEV trucks. Any reduction, elimination or discriminatory application of government subsidies and economic incentives because of policy changes, delays in promulgating regulations implementing new legislation, the reduced need for such subsidies and incentives due to the perceived success of the electric vehicle or other reasons may result in the diminished competitiveness of the alternative fuel and electric vehicle industry generally or our **FCEV and BEV and FCEV** trucks in particular. This could materially and adversely affect the growth of the alternative fuel automobile markets and our business, prospects, financial condition and operating results. These incentives include tax credits, rebates and other incentives for alternative energy production, alternative fuel and electric vehicles, including **greenhouse gas ("GHG" emissions credits under the U. S. Environmental Protection Agency's GHG Rule, the California Air Resources Board, and California Transportation Commission ("CTC"), New York State Energy Research and Development Authority, and New Jersey Economic Development Authority, HVIP, NYTVIP, and NJZIP. While There is no guarantee these programs will be available in the future. If these tax incentives and other benefits have been are not available or are reduced or otherwise limited in the future, our financial position could be harmed. Additionally, while the IRA includes certain federal tax credits and the other past incentives for alternative energy production and alternative fuel, there is no guarantee these programs will be available renewed or extended in the future or that we, our customers, our dealers, or their retail customers will qualify for the tax credits or incentives. If these-- the IRA's tax credits and incentives and other benefits for our trucks are not available to us or truck purchasers are reduced or otherwise limited in the future, our business, financial position viability and prospects could be harmed adversely affected. Additionally The IRA, when combined the Inflation Reduction Act of 2022 was signed into law with other state-based incentives tax provisions primarily focused on implementing a 15% minimum tax on global adjusted financial statement income, effective such as HVIP for or NYTVIP incentives tax years beginning after December 31, 2022, could reduce the overall cost of our truck and a 1% excise tax on share the fueling thereof, but the repeal or modification of such incentives could discourage potential repurchase-- purchasers from acquiring our trucks occurring after December 31, 2022. These and other changes to tax laws and regulations, or interpretation thereof, in the United States or other tax jurisdictions in which we do business, could adversely impact our business, financial condition, and results of operations. We may not be able to obtain or agree on acceptable terms and conditions for all or a significant portion of the government grants, loans and other incentives for which we may apply. As a result, our business and prospects may be adversely affected. We anticipate have received and expect to continue applying for federal and state grants, loans and tax incentives under government programs designed to stimulate the economy and support the production of alternative fuel and electric vehicles and related technologies, as well as the sale of hydrogen. We are For example, we intend to initially build focusing our efforts hydrogen fueling stations in California, in part because of the incentives that are available. For example, in 2023, the CTC awarded us a \$ 41. 9 million grant under the Trade Corridor**

Enhancement Program (" TCEP") to build up to six heavy- duty hydrogen refueling stations across Southern California, subject to compliance with follow on requirements, including timing and completion of certain milestones. We anticipate that in the future there will be new opportunities for us to apply for grants, loans and other incentives from the United States, state and foreign governments. Our ability to obtain funds or incentives from government sources is subject to the availability of funds under applicable government programs ~~and~~, approval of our applications to participate in such programs **, and in certain instances, compliance with ongoing requirements**. The application process for these funds and other incentives will likely be highly competitive. We cannot assure you that we will be successful in obtaining any ~~of these~~ additional grants, loans and other incentives **or achieving the follow on requirements to receive funding of grants awarded**. If we are not successful in obtaining any of these ~~additional~~ incentives and we are unable to find alternative sources of funding to meet our planned capital needs, our business and prospects could be materially **and** adversely affected. Further, accepting funding from governmental entities or in- licensing patent rights from third parties that are co- owned with governmental entities may result in the U. S. government having certain rights, including so- called march- in rights, to such patent rights and any products or technology developed from such patent rights. When new technologies are developed with U. S. government funding, the U. S. government generally obtains certain rights in any resulting patents, including a nonexclusive license authorizing the U. S. government to use the invention for noncommercial purposes. These rights may permit the U. S. government to disclose our confidential information to third parties and to exercise march- in rights to use or to allow third parties to use our licensed technology. The U. S. government can exercise its march- in rights if it determines that action is necessary because we fail to achieve the practical application of government- funded technology, because action is necessary to alleviate health or safety needs, to meet requirements of federal regulations, or to give preference to U. S. industry. In addition, our rights in such inventions may be subject to certain requirements to manufacture products embodying such inventions in the United States. Any exercise by the U. S. government of such rights could harm our competitive position, business, financial condition, results of operations and prospects. The evolution of the regulatory framework for autonomous vehicles is outside of our control and we cannot guarantee that our trucks will achieve the requisite level of autonomy to enable driverless systems ~~within our projected timeframe, if ever~~. There are currently no federal U. S. regulations pertaining to the safety of self- driving vehicles. However, the National Highway Traffic and Safety Administration has established recommended guidelines. Certain states have legal restrictions on self- driving vehicles, and many other states are considering them. This patchwork increases the difficulty in legal compliance for our vehicles **should we deploy autonomous**. ~~In Europe, certain vehicle safety regulations apply to self- driving features braking and steering systems, and certain treaties also restrict the legality of certain higher levels of self- driving vehicles~~. Self- driving laws and regulations are expected to continue to evolve ~~in numerous jurisdictions in the U. S. and foreign countries~~ and may restrict autonomous driving features that we may deploy. We may be subject to risks associated with autonomous driving technology. Our trucks can be designed with connectivity for future installation of an autonomous hardware suite and we plan to partner with a third- party software provider in the future to potentially implement Level 2 (**" L2 "**) autonomous capabilities. However, we cannot guarantee that we will be able to identify a third party to provide the necessary hardware and software to enable driverless Level 4 or Level 5 autonomy in an acceptable timeframe, on terms satisfactory to us, or at all. Autonomous driving technologies are subject to risks and there have been accidents and fatalities associated with such technologies. The safety of such technologies depends in part on user interaction and users, as well as other drivers on the roadways, may not be accustomed to using or adapting to such technologies. To the extent accidents associated with our L2 autonomous driving systems occur, we could be subject to liability, negative publicity, government scrutiny and further regulation. Any of the foregoing could materially and adversely affect our results of operations, financial condition and growth prospects. Unfavorable publicity, or a failure to respond effectively to adverse publicity, could harm our reputation and adversely affect our business. As an early stage company, maintaining and enhancing our brand and reputation is critical to our ability to attract and retain employees, partners, customers and investors, and to mitigate legislative or regulatory scrutiny, litigation and government investigations. Significant negative publicity has adversely affected our brand and reputation and our stock price. Negative publicity has and may in the future give rise to litigation and / or governmental investigations. Unfavorable publicity relating to us or those affiliated with us, including our former executive chairman **and our vehicle recall in August 2023**, has and may in the future adversely affect public perception of the ~~entire~~ company. Adverse publicity and its effect on overall public perceptions of our brand, or our failure to respond effectively to adverse publicity, could have a material adverse effect on our business. The negative publicity has made it more difficult for us to attract and retain employees, partners ~~and~~, customers **, and end users**, reduced confidence in our products and services, ~~harm~~ **harmed** investor confidence and the market price of our common stock, invited legislative and regulatory scrutiny and resulted in litigation and governmental investigations and penalties. As a result, customers, potential customers **, end users, potential end users**, partners and potential partners have failed to award us additional business ~~or~~, cancelled or sought to cancel existing contracts or otherwise, ~~or~~ direct future business to our competitors, and may in the future take similar actions, and investors may invest in our competitors instead of us. See Legal Proceedings in Note 14, Commitments and Contingencies, to our audited consolidated financial statements included elsewhere in this Annual Report on Form 10- K and incorporated herein by reference. The successful rehabilitation of our brand will depend largely on regaining a good reputation, meeting business milestones, satisfying the requirements of customers **and end users**, meeting our fueling commitments ~~under our future bundled lease arrangements or other customer arrangements~~, maintaining a high quality of service ~~under our future bundled lease arrangements~~, improving our compliance programs and continuing our marketing and public relations efforts. Expenses related to our brand promotion, reputation building, and media strategies have been significant and our efforts may not be successful. We anticipate that other competitors and potential competitors will expand their offerings, which will make maintaining and enhancing our reputation and brand increasingly more difficult and expensive. If we fail to successfully rehabilitate our brand in the current or future competitive environment or if events similar to the negative publicity occur in the future, our brand and reputation would be further damaged and our business may suffer. Although we maintain

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

~~Concentration of ownership among our executive officers and directors and their affiliates, and voting restrictions, may prevent new investors from influencing significant corporate decisions. As of December 31, 2022, Mark A. Russell, our former President and Chief Executive Officer, and current director, beneficially owned, directly or indirectly, approximately 8.7%, of our outstanding common stock, and our directors and executive officers as a group beneficially own approximately 12.0% of our outstanding common stock. As a result, these stockholders will be able to exercise a significant level of control over all matters requiring stockholder approval, including the election of directors, any amendment of our second amended and restated certificate of incorporation ("Certificate of Incorporation"), and approval of significant corporate transactions. This control could have the effect of delaying or preventing a change of control or changes in management and will make the approval of certain transactions difficult or impossible without the support of these stockholders. As of December 31, 2022, Trevor R. Milton, our founder and former executive chairman, beneficially owned, directly or indirectly, approximately 10.2% of our outstanding common stock. In connection with his departure in September 2020, for a period of three years from September 20, 2020, Mr. Milton has agreed to certain standstill provisions, including, among other things, agreeing not to (i) acquire ownership (beneficial or otherwise) of more than 19 million shares of our outstanding common stock in the aggregate, together with shares held by his affiliates and associates, (ii) propose or effect any extraordinary transaction with respect to us, (iii) solicit any proxy or consent with respect to the election or removal of directors or any other proposal, (iv) seek representation on our board of directors or the removal of any member of our board of directors, or (v) submit any stockholder proposal. In addition, for a period of three years from September 20, 2020, Mr. Milton has agreed to vote his shares of our common stock (x) in favor of the slate of directors recommended by our board of directors at any meeting of our stockholders and (y) against the election of any nominee for director not recommended and nominated by our board of directors for election at such meeting. These standstill and voting restrictions could have the effect of delaying or preventing a change of control or changes in management and will make the approval of certain transactions difficult or impossible without the support of our executive officers and directors and their affiliates. It is not possible to predict the actual number of shares we will sell under the Tumim Purchase Agreements, or the actual gross proceeds resulting from those sales. On June 11, 2021 and September 23, 2021, we entered into the First Tumim Purchase Agreement and Second Tumim Purchase Agreement, respectively, with Tumim Stone Capital LLC, or Tumim, pursuant to which Tumim committed to purchase in each case up to \$300 million in shares of our common stock, subject to certain limitations and conditions set forth in the applicable Tumim Purchase Agreement. We generally have the right to control the timing and amount of any sales of our shares of common stock to Tumim under the Tumim Purchase Agreements. Because the purchase price per share to be paid by Tumim for the shares of common stock that we may elect to sell to Tumim under the Tumim Purchase Agreements will fluctuate based on the market prices of our common stock during the applicable purchase valuation period for each purchase made pursuant to the Tumim Purchase Agreements, it is not possible for us to predict the total number of shares of common stock that we will sell to Tumim under the Tumim Purchase Agreements, the purchase price per share that Tumim will pay for shares purchased from us in the future under the Tumim Purchase Agreements, or the aggregate gross proceeds that we will receive from those purchases by Tumim under the Tumim Purchase Agreements. Sales of shares of our common stock pursuant to the Tumim Purchase Agreements will be dilutive to stockholders. Moreover, although the Second Tumim Purchase Agreement provides that we may sell up to an aggregate of \$300.0 million of our common stock to Tumim, only 29,042,827 shares of our common stock under the Second Tumim Purchase Agreement have been registered for resale by Tumim. If it becomes necessary for us to issue and sell to Tumim under the Second Tumim Purchase Agreement more than the shares that were registered for resale under the respective registration statements in order to receive aggregate gross proceeds equal to the total commitment of aggregate of \$300.0 million under the Second Tumim Purchase Agreement, we must file with the SEC one or more additional registration statements to register under the Securities Act the resale by Tumim of any such additional shares of our common stock we wish to sell from time to time under the Tumim Purchase Agreements, which the SEC must declare effective and we may need to obtain stockholder approval to issue shares of common stock in excess of the exchange cap under the Second Tumim Purchase Agreement in accordance with applicable Nasdaq rules. Risks Related to Our Intellectual Property We may~~

need to defend ourselves against patent or trademark infringement, or other intellectual property claims, which may be time-consuming and cause us to incur substantial costs. Companies, organizations or individuals, including our competitors, may own or obtain patents, trademarks or other proprietary rights that would prevent or limit our ability to make, use, develop or sell our vehicles or components, which could make it more difficult for us to operate our business. We may receive inquiries from patent or trademark owners inquiring whether we infringe their proprietary rights. Companies owning patents or other intellectual property rights relating to battery packs, electric motors, fuel cells or electronic power management systems may allege infringement of such rights. In response to a determination that we have infringed upon a third party's intellectual property rights, we may be required to do one or more of the following: • cease development, sales, or use of vehicles that incorporate the asserted intellectual property; • pay substantial damages; • obtain a license from the owner of the asserted intellectual property right, which license may not be available on reasonable terms or at all; or • redesign one or more aspects or systems of our trucks. A successful claim of infringement against us could materially **and** adversely affect our business, prospects, operating results and financial condition. Any litigation or claims, whether valid or invalid, could result in substantial costs and diversion of resources. We also **have plan to license licensed** patents and other intellectual property from third parties, including suppliers and service providers, and we may face claims that our use of this in- licensed technology infringes the intellectual property rights of others. In such cases, we will seek indemnification from our licensors. However, our rights to indemnification may be unavailable or insufficient to cover our costs and losses. We may also face claims challenging our use of open source software and our compliance with open source license terms. While we monitor our use of open source software and try to ensure that none is used in a manner that would require us to disclose or license our proprietary source code or that would otherwise breach the terms of an open source agreement, such use could inadvertently occur, or could be claimed to have occurred. Any breach of such open source license or requirement to disclose or license our proprietary source code could harm our business, financial condition, results of operations and prospects. Our business may be adversely affected if we are unable to protect our intellectual property rights from unauthorized use by third parties. Failure to adequately protect our intellectual property rights could result in our competitors offering similar products, potentially resulting in the loss of some of our competitive advantage, and a decrease in our revenue which would adversely affect our business, prospects, financial condition and operating results. Our success depends, at least in part, on our ability to protect our core technology and intellectual property. To accomplish this, we ~~will~~ rely on a combination of patents, trade secrets (including know-how), employee and third-party nondisclosure agreements, copyright, trademarks, intellectual property licenses and other contractual rights to establish and protect our rights in our technology. We cannot guarantee that we have entered into such agreements with each party that may have or have had access to our trade secrets or proprietary information, including our technology and processes. In connection with our collaboration, partnership and license agreements, our rights to use licensed or jointly owned technology and intellectual property under such agreements may be subject to the continuation of and compliance with the terms of those agreements. In some cases, we may not control the prosecution, maintenance or filing of licensed or jointly owned patent rights, or the enforcement of such patents against third parties. The protection of our intellectual property rights **is will be** important to our **business and** future **business** opportunities. However, the measures we take to protect our intellectual property from unauthorized use by others may not be effective for various reasons, including the following: • any patent applications we submit may not result in the issuance of patents; • the scope of our issued patents may not be broad enough to protect our proprietary rights; • our issued patents may be challenged and / or invalidated by our competitors; • the costs associated with enforcing patents, confidentiality and invention agreements or other intellectual property rights may make aggressive enforcement impracticable; • current and future competitors may circumvent our patents; and • our in- licensed patents may be invalidated, or the owners of these patents may breach our license arrangements. Patent, trademark, and trade secret laws vary significantly throughout the world. Some foreign countries do not protect intellectual property rights to the same extent as do the laws of the United States. Further, policing the unauthorized use of our intellectual property in foreign jurisdictions may be difficult. Therefore, our intellectual property rights may not be as strong or as easily enforced outside of the United States. Our patent applications may not issue as patents, which may have a material adverse effect on our ability to prevent others from commercially exploiting products similar to ours. We cannot be certain that we are the first inventor of the subject matter to which we have filed a particular patent application, or if we are the first party to file such a patent application. If another party has filed a patent application to the same subject matter as we have, we may not be entitled to the protection sought by the patent application. Further, the scope of protection of issued patent claims is often difficult to determine. As a result, we cannot be certain that the patent applications that we file will issue, or that our issued patents will afford protection against competitors with similar technology. In addition, our competitors may design around our issued patents, which may adversely affect our business, prospects, financial condition or operating results. Risks Related to Our Convertible Indebtedness Servicing our debt may require a significant amount of cash, and we may not have sufficient cash flow from our business to pay our substantial debt. **In June-As of December 31, 2022-2023, we issued \$ 200-123. 0-5 million, \$ 11. 5 million, and \$ 21. 6 million in aggregate principal amount of our June 2022 Toggle Convertible Notes, June 2023 Toggle Convertible Notes and 8. 00-25 % / 11. 00-0 % convertible Convertible senior PIK toggle notes Notes due 2026, respectively or the 2026 notes, were outstanding in a private placement.** The terms of the **our June 2026-2022 Toggle Convertible notes Notes and June 2023 Toggle Convertible Notes** allow us to issue additional **June 2022 Toggle Convertible notes Notes and June 2023 Toggle Convertible Notes, respectively,** in lieu of paying cash interest **thereon** and, as of December 31, 2022, \$ 210. 9 million aggregate principal amount of the 2026 notes was outstanding. In December 2022, we entered into a securities purchase agreement under which we may well up to \$ 125. 0 million in initial principal amount of **senior convertible notes, or the short-term convertible notes, and completed the sale of \$ 50. 0 million principal amount of the short-term convertible notes.** Our ability to make scheduled payments of the principal of, to pay interest on or to refinance **the our June 2026-2022 Toggle notes, the short-term convertible Convertible notes Notes, June 2023 Toggle Convertible Notes, 8. 25 % Convertible Notes** or any future indebtedness we may incur depends on our future performance, which is

subject to economic, financial, competitive and other factors beyond our control. While, in lieu of paying cash interest on ~~the our June 2026-2022 Toggle Convertible notes-Notes and June 2023 Toggle Convertible Notes~~, we may elect to pay interest in kind, that election will increase the aggregate principal amount of ~~the those 2026 notes and~~. In addition, while in ~~the~~ lieu of paying cash ~~case of our June 2022 Toggle~~ interest on the short-term convertible ~~Convertible notes-Notes~~, ~~could~~ we may elect to pay interest through issuance of in kind notes, that election will result in a further dilutive issuance of shares of our common stock ~~if such notes are converted~~. Our business ~~may has~~ not and may not in the future generate cash flow from operations in ~~the future~~ sufficient to service our debt and make necessary capital expenditures, ~~or repay our outstanding indebtedness~~. If we are unable to generate cash flow, we may be required to adopt one or more alternatives, such as selling assets, restructuring debt or obtaining additional equity capital on terms that may be onerous or highly dilutive. Our ability to refinance our indebtedness will depend on the capital markets and our financial condition at such time. We may not be able to engage in any of these activities or engage in these activities on desirable terms, which could result in a default on our debt obligations. We may incur a substantial amount of debt or take other actions which would intensify the risks discussed above, and significant indebtedness may prevent us from taking actions that we would otherwise consider to be in our best interests. We and our subsidiaries may be able to incur substantial additional debt in the future, subject to the restrictions contained in our debt instruments, some of which may be secured debt. The ~~indenture-indentures~~ governing ~~the our June 2026-2022 Toggle Convertible notes-Notes~~, ~~June 2023 Toggle Convertible Notes and 8.25 % Convertible Notes do not restrict us from incurring any unsecured debt; however, the indentures governing our June 2022 Toggle Convertible Notes and June 2023 Toggle Convertible Notes allows-- allow~~ us to incur secured debt of up to \$ 500.0 million. In addition, our indebtedness, combined with our other financial obligations and contractual commitments, could have other important consequences. For example, it could: • make us more vulnerable to adverse changes in general U. S. and worldwide economic, industry and competitive conditions and adverse changes in government regulation; • limit our flexibility in planning for, or reacting to, changes in our business and our industry; • place us at a disadvantage compared to our competitors who have less debt; and • limit our ability to borrow additional amounts for working capital and other general corporate purposes, including to fund possible acquisitions of, or investments in, complementary businesses, products, services and technologies. Any of these factors could materially and adversely affect our business, financial condition and results of operations. We may not have the ability to raise the funds necessary to settle conversions of our convertible notes in cash or to repurchase the notes upon a fundamental change or change in control transaction, and our future debt may contain limitations on our ability to pay cash upon conversion or repurchase of the notes. Holders of ~~the our June 2026-2022 Toggle Convertible notes-Notes and June 2023 Toggle Convertible Notes~~ have the right to require us to repurchase all or any portion of their notes upon the occurrence of a fundamental change or a change ~~if of~~ control transaction as defined in those notes at a repurchase price equal to 100 % of the capitalized principal amount of the notes to be repurchased, in the case of a fundamental change, or 130 % of the capitalized principal amount of the notes to be repurchased, in the case of a change in control transaction, plus accrued and unpaid interest, if any. Holders of ~~the short-term 8.25 % convertible~~ ~~Convertible notes-Notes~~ have the right to require us to ~~redeem~~ ~~repurchase~~ all or any portion of their notes ~~in cash~~ upon the occurrence of a ~~fundamental change or a change~~ of control ~~transaction~~ as defined in those notes at a ~~repurchase~~ price equal to ~~115-100 % of the greatest of the principal amount to be redeemed, the conversion value of those-- the notes as determined pursuant to be repurchased in those-- the notes, and the case of a fundamental change of control consideration payable on the underlying shares plus accrued and unpaid interest, if any~~. In addition, upon conversion of ~~the our June 2026-2022 Toggle Convertible notes-Notes and June 2023 Toggle Convertible Notes~~, unless we elect to deliver solely shares of our common stock to settle such conversion (other than paying cash in lieu of delivering any fractional share), we will be required to make cash payments in respect of the notes being converted. ~~In addition, upon conversion of our 8.25 % Convertible Notes, we will be required to deliver to the converting holder in cash a coupon make- whole premium in an amount equal to the present value of all regularly scheduled payments of interest due on each interest payment date of such notes until the maturity date thereof discounted based on United States treasuries plus 50 basis points.~~ However, we may not have enough available cash or be able to obtain financing at the time we are required to make repurchases of notes surrendered therefor or notes being converted. In addition, our ability to repurchase ~~the our June 2026-2022 Toggle notes, redeem the short-term convertible~~ ~~Convertible notes-Notes~~, ~~June 2023 Toggle Convertible Notes and 8.25 % Convertible Notes~~, or to pay cash upon conversions of ~~such the 2026 notes may be limited by law, by regulatory authority or by agreements governing our future indebtedness. Our failure to repurchase the our June 2026-2022 Toggle Convertible notes-Notes, June 2023 Toggle Convertible Notes and 8.25 % Convertible Notes at a time when the repurchase is required by the indenture that governs such notes or to pay any cash payable on future conversions of the such notes as required by the indenture that governs such would constitute a default under the indenture. Similarly, our failure to redeem the short-term convertible notes when required by the terms of those notes would constitute a default under those notes such indenture~~. A default under ~~the any such indenture or the short-term convertible notes or the occurrence of the fundamental change itself could also lead to a default under agreements governing our existing or future indebtedness. If the repayment of the related indebtedness were to be accelerated after any applicable notice or grace periods, we may not have sufficient funds to repay the indebtedness and redeem the short-term convertible notes, repurchase such the 2026 notes or make cash payments upon conversions of such the 2026 notes. The conditional conversion feature of the our June 2026-2022 Toggle Convertible notes-Notes and June 2023 Toggle Convertible Notes, if triggered, may adversely affect our financial condition and operating results. In the event the conditional conversion feature of the each of our June 2026-2022 Toggle Convertible notes-Notes and June 2023 Toggle Convertible Notes~~ is triggered, holders of ~~2026 such~~ notes will be entitled to convert ~~such the 2026 notes at any time during specified periods at their option. If one or more holders elect to convert such their 2026 notes, unless we elect to satisfy our conversion obligation by delivering solely shares of our common stock (other than paying cash in lieu of delivering any fractional share), we would be required to settle a portion or all of our conversion~~

obligation through the payment of cash, which could adversely affect our liquidity. In addition, even if holders do not elect to convert ~~such their 2026~~ notes, we could be required under applicable accounting rules to reclassify all or a portion of the outstanding principal of ~~such the 2026~~ notes as a current rather than long-term liability, which would result in a material reduction of our net working capital. Risks Related to Operating as a Public Company We incur significant increased expenses and administrative burdens as a public company, which could have an adverse effect on our business, financial condition and results of operations. We incur ~~increased~~ **significant** legal, accounting, administrative and other costs and expenses as a public ~~company that we did not incur as a private~~ company. The Sarbanes- Oxley Act of 2002 ~~(, or the "~~ Sarbanes- Oxley Act ~~")~~, including the requirements of Section 404, as well as rules and regulations subsequently implemented by the SEC, the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 and the rules and regulations promulgated and to be promulgated thereunder, the Public Company Accounting Oversight Board and the securities exchanges, impose additional reporting and other obligations on public companies. Our management and other personnel need to devote a substantial amount of time to these compliance and disclosure obligations. If these requirements divert the attention of our management and personnel from other aspects of our business, they could have a material adverse effect on our business, financial condition and results of operations. Moreover, these rules and regulations applicable to public companies substantially increase our legal, accounting and financial compliance costs, require that we hire additional personnel and make some activities more time-consuming and costly. It may also be more expensive for us to obtain director and officer liability insurance. **We identified a material weakness in our internal control over financial reporting, and have identified other material weaknesses in the past. If we are unable to remediate these material weaknesses, or if we experience additional material weaknesses or other deficiencies in the future or otherwise fail to maintain an effective system of internal control over financial reporting, we may not be able to accurately or timely report our financial results.** Our management is responsible for establishing and maintaining adequate internal control over financial reporting and for evaluating and reporting on the effectiveness of our system of internal control. As a public company, we are required by Section 404 of the Sarbanes- Oxley Act to evaluate the effectiveness of our internal control over financial reporting. We must also include a report issued by our independent registered public accounting firm based on their audit of our internal controls over financial reporting. In connection with our year-end assessment of internal control over financial reporting, we determined that, as of December 31, ~~2022~~ **2023**, we did not maintain effective internal control over financial reporting because of a material weakness associated with ineffective information technology general controls ~~, or ("~~ ITGCs ~~")~~, in the areas of user access and change management for the IT ~~system~~ **systems** that ~~supports~~ **support** our financial reporting processes. We believe that these control deficiencies were a result of insufficient training of personnel on the operation and importance of ITGCs and inadequate risk-assessment processes resulting in failure to identify and assess risks in IT environments that could impact internal control over financial reporting. Management also deemed ineffective certain automated and manual business process controls that are dependent on the affected ITGCs, because they could have been adversely impacted to the extent that they rely upon information and configurations from the affected IT system. ~~The~~ **We have taken and continue to take steps to remediate the control deficiencies contributing to the material weakness for ITGCs was first identified in 2022. With the oversight of senior management and our audit committee, such we have identified controls and implemented our remediation plan to address the material weakness related to our ITGCs mentioned above. During the year ended December 31, 2023, we have completed the following remedial actions related to this material weakness:** • Performed a risk assessment over the IT system ~~that supports our financial reporting processes;~~ • Hired consultants and key personnel with internal control experience with our IT system to drive remediation efforts; • Designed, developed, and deployed an enhanced ITGC framework, including the implementation of systems and tools to enable the effectiveness and consistent execution of these controls are designed, implemented; • Developed a training program to address ITGCs and policies, operating effectively. These remediation actions include **including** ~~:(i) developing and deploying a training program regarding the operation and importance of ITGCs and policies, including educating control owners concerning the principles and requirements of each control, with a focus on those controls involving~~ **related to user access to and change management over IT systems impacting and change management of IT systems that support financial reporting processes;** (ii) developing and maintaining documentation of **underlying** ITGCs to **facilitate promote** knowledge transfer **upon** in the event of personnel and function changes; and (iii) **enhancing implementing an IT** management ~~'s~~ review and testing plan to monitor ITGCs with a specific focus on ~~IT~~ systems supporting our financial reporting processes; **and** • **Implemented enhanced system capabilities and business processes to manage and monitor key elements of the control framework. This includes segregation of duties, elevated user access review, change management, user provisioning and deprovisioning, and user access reviews. We believe the measures described above will remediate the material weakness and strengthen our internal control over financial reporting. However, this material weakness will not be considered remediated until the applicable controls operate for a sufficient period of time and management has concluded through testing that the controls are operating effectively. Our implementation of the measures described above occurred through the end of 2023, and as a result, there was not a sufficient period of time for the controls to be operating or tested to conclude a full assessment of their effectiveness.** Although we have improved our controls intended to remediate this material weakness, we cannot be certain as to when or if remediation will be complete. Further, remediation efforts place a significant burden on management and add increased pressure to our financial and IT resources and processes. As a result, we may not be successful in making the improvements necessary to remediate the material weakness identified by management, be able to do so in a timely manner, or be able to identify and remediate additional control deficiencies, including material weaknesses, in the future. For further discussion of the material weaknesses identified and our remedial efforts, see Item 9A. Controls and Procedures of this Annual Report on Form 10-K. **We have also identified other material weaknesses in the past including, most recently in connection with the review of our unaudited consolidated financial statements for the three months ended September 30, 2023. That material**

weakness was a result of certain control deficiencies related to the precision of our review for the valuation and remeasurement of the embedded derivative liability of our Toggle Convertible Notes as of June 30, 2023 and September 30, 2023, and was remediated in 2023. Any failure to maintain internal control over financial reporting could severely inhibit our ability to accurately report our financial condition or results of operations. The effectiveness of our controls and procedures may be limited by a variety of factors, including: • faulty human judgment and simple errors, omissions, or mistakes; • fraudulent action of an individual or collusion of two or more people; • inappropriate management override of procedures; and • the possibility that any enhancements to controls and procedures may still not be adequate to assure timely and accurate financial control. Our ability to comply with the annual internal control report requirements will depend on the effectiveness of our financial reporting and data systems and controls across our company. We expect these systems and controls to involve significant expenditures and to become increasingly complex as our business grows. To effectively manage this complexity, we will need to continue to improve our operational, financial, and management controls, and our reporting systems and procedures. Our inability to successfully remediate our existing or any future material weaknesses or other deficiencies in our internal control over financial reporting or any failure to implement required new or improved controls, or difficulties encountered in the implementation or operation of these controls, could harm our operating results and cause us to fail to meet our financial reporting obligations or result in material misstatements in our financial statements, which could ~~limit~~ **adversely affect** our liquidity and access to capital markets, ~~adversely affect~~ our business and investor confidence in us, and ~~reduce~~ our stock price.

Interest Risks Related to Our Acquisition of Romeo Even though Romeo was a supplier of battery modules which it in turn assembled into battery packs designed by us, both companies previously operated independently and manufacture different products. The success of the merger will depend, in part, on our ability to successfully integrate Romeo's businesses into Nikola, our ability to successfully manufacture Romeo's battery products, and realize the anticipated benefits, including synergies, cost savings, innovation opportunities and operational efficiencies, from the merger, in a manner that does not materially disrupt existing customer, supplier and employee relations. If we are unable to achieve these objectives within the anticipated time frame, or at all, the anticipated benefits may not be realized fully or at all, or may take longer to realize than expected, and the value of our common stock may decline. The integration of Romeo into our business has and may in the future result in material challenges, including, without limitation: • the diversion of management's attention from ongoing business concerns; • managing a more complex combined business; • expanding operations to manufacture Romeo's battery products and overcoming our lack **significant base of retail** manufacturing experience related to such products; • maintaining employee morale, retaining key Romeo employees and the possibility that the integration process and organizational changes may adversely impact the ability to maintain employee relationships; • transitioning Romeo's existing customers to new suppliers, and maintaining business and operational relationships, including suppliers, collaboration partners, employees and other **individual investors** counterparties; • risks related to Romeo's existing customer contracts and disputes with customers; • the integration process not proceeding as expected, including due to a possibility of faulty assumptions or expectations regarding the integration process or Romeo's operations; • risks related to litigation, disputes, investigations or other events that could increase our expenses, result in liability or require that we take other action; • consolidating corporate, administrative and compliance infrastructures and eliminating duplicative operations; • coordinating geographically separate locations; • unanticipated issues in integrating information technology, communications and other systems; and • unforeseen expenses, costs, liabilities or delays associated with the merger or the integration. Many of these factors are outside of our control, and any one of them could result in delays, increased **volatility** costs, decreases in the amount **market price** of expected cost savings or **our common stock** synergies and diversion of management's time and energy, which could ~~have a~~ **materially** ~~material~~ **adverse impact on the market price of our common stock and our investment.** Retail and other individual investors, which make up a significant segment of our overall stockholder base, have played a significant role in recent market dynamics that have resulted in substantial increases and volatility in the market prices of "meme" stocks. For example, the market prices and trading volumes of the common stock of GameStop Corp., AMC Entertainment Holdings, Inc. and certain other "meme" stocks, have recently experienced, and may continue to experience, extreme volatility. The rapid and substantial increases or decreases in the market prices of these "meme" stocks may be unrelated to operating performance, macroeconomic trends or industry fundamentals, and substantial increases in the value of such stocks may obscure the significant risks and uncertainties that the issuer faces. This volatility has been attributed, in part, to strong and atypical retail investor interest, including as may be expressed on **financial trading** position, results of operations and cash flows other social media sites and online forums. Our ~~We have in the past and may in the future~~ **experience significant interest in our common stock from such investors, and as a results-** ~~result the market price of our common stock has been and may continue to be volatile. There is no guarantee that we will continue to benefit from such retail and individual investor interest, even if our business or financial performance is strong. If investor sentiment changes, this could have a material adverse impact on the market price of our common stock and your investment. Retail and individual investor sentiment (including as may be expressed on financial trading and other social media sites and online forums) may also influence the amount and status of short interest in our common stock. This has and may in the future increase the likelihood of our common stock being the target of a "short squeeze", particularly because a large proportion of our common stock has been in the past and may in the future be traded by short sellers. A short squeeze and / or focused investor trading in anticipation of a short squeeze has and may in the future lead to volatile price movements in shares of our common stock that may be unrelated or disproportionate to our operating performance or prospects. Or, if investors no longer believe a short squeeze is viable, the market price of our common stock may rapidly decline. Accordingly, investors that purchase shares of our common stock during a short squeeze may lose a significant portion of their investment. Furthermore, short squeeze and / or other focused trading activity stemming from negative sentiment across our retail investor base could result in declines in the market price of~~

our common stock such that our eligibility to remain listed on Nasdaq may be adversely impacted if we do not effectively manage our battery pack production following the completion of the merger. As a result of the acquisition, we are manufacturing a component that we have not manufactured before, and the component is critical to our ability to manufacture and deliver our trucks in the quantities and on the timeframes we expect. We may require a higher level of overhead than currently anticipated. Our ability to successfully manage this new aspect of our business will depend, in part, upon management's ability to design and implement strategic initiatives that address not only the integration of Romeo into Nikola, but also the increased scope of the combined business with its associated increased costs and complexity. There can be no assurances that we will be successful in manufacturing battery packs or that we will realize the expected operating efficiencies, cost savings and other benefits anticipated from the merger. We may be unable to successfully manufacture Romeo's battery products, which could **impair** materially adversely affect our business, financial condition and results of operations. The manufacturing process of battery products is complex, highly technical and can be subject to supply chain disruptions and component shortages. The machinery involved in the manufacturing of battery products consists of many components that are likely to suffer unexpected malfunctions from time to time and will depend on repairs and spare parts to resume operations. We will have to learn how to operate software and hardware that is highly technical and complex. Such hardware and software may require modification and updates over the life of a battery pack and may contain errors, bugs or **our** vulnerabilities, which we may not know how to properly respond to. Due to the high energy density inherent in lithium-based batteries, the manufacturing process can pose certain safety risks, including the risk of fire and accidents causing death, personal injury or property damage can occur, such safety risks are heightened to due to our lack of experience in manufacturing such products. Since the battery packs are manufactured in a single manufacturing facility, if such facility becomes inoperable due to any of these risks, we will not be able to produce any battery products. If we fail to successfully manufacture Romeo's battery products, incur delays in production or manufactures battery products containing defects or any other failure of the battery products, our reputation may be harmed, and we may experience delivery delays, product recalls, negative publicity, product liability-- **ability to access claims, all of which may materially adversely affect our business, financial condition and operating results. The occurrence of any one of these-- the events could ultimately disrupt or delay capital markets and otherwise raise capital in the future** production of our trucks. See "General Risk Factors -- **If we fail to satisfy all applicable Nasdaq continued listing requirements, including the \$ 1.00 minimum closing bid price requirement, our common stock may be delisted from Nasdaq, which could have an adverse impact on the liquidity and market price of our common stock.**" We have never paid dividends on our capital stock, and we do not anticipate paying dividends in the foreseeable future. We have never paid dividends on any of our capital stock and currently intend to retain any future earnings to fund the growth of our business. Any determination to pay dividends in the future will be at the discretion of our board of directors, and will depend on our financial condition, operating results, capital requirements, general business conditions and other factors that our board of directors may deem relevant. As a result, capital appreciation, if any, of our common stock will be the sole source of gain for the foreseeable future. Our stock price is volatile, and you may not be able to sell shares of our common stock at or above the price you paid. The trading price of our common stock is volatile and has been and may in the future be subject to wide fluctuations in response to various factors, some of which are beyond our control. For example, the trading price of our common stock declined following the release of the short-seller article, which contains certain allegations against us. Other factors that have or may cause our stock price to fluctuate include, but are not limited to: • our progress on achievement of business milestones and objectives; • actual or anticipated fluctuations in operating results; • **our ability to increase our authorized common stock; • our need for additional capital; •** failure to meet or exceed financial estimates and projections of the investment community or that we provide to the public; • issuance of new or updated research or reports by securities analysts or changed recommendations for our stock or the transportation industry in general; • announcements by us or our competitors of significant acquisitions, **capital commitments or the entrance into or discontinuation of** strategic partnerships, joint ventures, ~~or~~ collaborations ~~or capital commitments~~; • operating and share price performance of other companies that investors deem comparable to us; • **recalls, including our BEV truck recall**; • our focus on long- term goals over short- term results; • the timing and magnitude of our investments in the growth of our business; • actual or anticipated changes in laws and regulations affecting our business; • additions or departures of key management or other personnel; • disputes or other developments related to our intellectual property or other proprietary rights, including litigation; • our ability to market new and enhanced products and technologies on a timely basis; • sales of substantial amounts of our common stock, including sales by our directors, executive officers or significant stockholders or the perception that such sales could occur; • changes in our capital structure, including future issuances of securities or the incurrence of debt; and • general economic, political and market conditions. In addition, the stock market in general, and The Nasdaq Stock Market LLC in particular, has experienced extreme price and volume fluctuations that have often been unrelated or disproportionate to the operating performance of those companies. ~~The closing price of our common stock on Nasdaq ranged from \$ 2.11 to \$ 79.73 following the closing of the Business Combination on June 3, 2020, through February 20, 2023.~~ In September 2020, an entity published an article containing certain allegations against us that we believe has negatively impacted the trading price of our common stock. The price of our common stock also decreased substantially following public announcements made by us. In addition, broad market and industry factors, including the COVID- 19 pandemic and the war in Ukraine, may seriously affect the market price of our common stock, regardless of our actual operating performance. Any investment in our common stock is subject to extreme volatility and could result in the loss of your entire investment. In addition, in the past, following periods of volatility in the overall market and the market price of a particular company's securities, securities class action litigation has often been instituted against these companies. This litigation, which has and may in the future be instituted against us, could result in substantial costs and a diversion of our management's attention and resources. See Legal Proceedings in Note 14, Commitments and Contingencies, to the consolidated financial statements included elsewhere in this Annual Report on Form 10- K and incorporated herein by reference. **Our common stock is currently listed**

on Nasdaq, which has qualitative and quantitative continued listing requirements, including corporate governance requirements, public float requirements, and a \$ 1.00 minimum closing bid price requirement. On January 19, 2024, we received a notice from Nasdaq that we were not in compliance with the minimum bid price requirement set forth in Rule 5450 (a) (1) of the Nasdaq listing rules for continued listing on Nasdaq. To regain compliance, the closing bid price of our common stock must be at least \$ 1.00 per share for a minimum of 10 consecutive business days within 180 days of the notice date, or by July 17, 2024, which may be extended if certain conditions are met. If we do not regain compliance with the minimum bid price requirement, or if we are unable to satisfy any of the other continued listing requirements, Nasdaq may take steps to delist our common stock. Delisting would have an adverse effect on the liquidity of our common stock, decrease the market price of our common stock, result in the potential loss of confidence by investors, suppliers, customers, end users, and employees, and fewer business development opportunities, and adversely affect our ability to obtain financing for our continuing operations. In addition, delisting would constitute a fundamental change under the indentures that govern our June 2022 Toggle Convertible Notes, June 2023 Toggle Convertible Notes and 8.25% Convertible Notes which could result in our being required to repurchase such notes. See "Risks Related to Our Convertible Indebtedness- We may not have the ability to raise the funds necessary to settle conversions of convertible notes in cash or to repurchase the notes upon a fundamental change or change in control transaction, and our future debt may contain limitations on our ability to pay cash upon conversion or repurchase of the notes".

If we are unable to attract and retain key employees and hire qualified management, technical and engineering personnel, our ability to compete could be harmed. Our success depends, in part, on our ability to retain our key personnel. The unexpected loss of or failure to retain one or more of our key employees could adversely affect our business. For example, we have experienced a number of changes in management in the past few years. Our success also depends, in part, on our continuing ability to identify, hire, attract, train and develop other highly qualified personnel, including management, technical and engineering personnel. Qualified individuals are in high demand, particularly in the vehicle technology industry. Competition for individuals with experience designing, manufacturing and servicing electric vehicles is intense, and we may not be able to attract, integrate, train, motivate or retain additional highly qualified personnel in the future. Furthermore, our ability to hire, attract and retain them may depend on our ability to provide competitive compensation. We use equity awards to attract talented employees, but if the value of our common stock declines significantly, as it has in the recent past, and remains depressed, it may prevent us from recruiting and retaining qualified employees. We may not be able to attract, integrate, train or retain qualified personnel in the future. Additionally, we may not be able to hire new employees quickly enough to meet our needs. Our failure to do so could adversely affect our business and prospects, including the execution of our global business strategy. Our Certificate of Incorporation provides, subject to limited exceptions, that the Court of Chancery of the State of Delaware will be the sole and exclusive forum for certain stockholder litigation matters, which could limit our stockholders' ability to obtain a favorable judicial forum for disputes with us or our directors, officers, employees or stockholders. Our Certificate of Incorporation requires, to the fullest extent permitted by law, that derivative actions brought in our name, actions against directors, officers and employees for breach of fiduciary duty and other similar actions may be brought in the Court of Chancery in the State of Delaware or, if that court lacks subject matter jurisdiction, another federal or state court situated in the State of Delaware. Any person or entity purchasing or otherwise acquiring any interest in shares of our capital stock shall be deemed to have notice of and consented to the forum provisions in our Certificate of Incorporation. In addition, our Certificate of Incorporation and our amended and restated bylaws ("Bylaws") will provide that the federal district courts of the United States shall be the exclusive forum for the resolution of any complaint asserting a cause of action under the Securities Act and the Exchange Act. In March 2020, the Delaware Supreme Court issued a decision in *Salzburg et al. v. Sciabacucchi*, which found that an exclusive forum provision providing for claims under the Securities Act to be brought in federal court is facially valid under Delaware law. It is unclear whether this decision will be appealed, or what the final outcome of this case will be. We intend to enforce this provision, but we do not know whether courts in other jurisdictions will agree with this decision or enforce it. This choice of forum provision may limit a stockholder's ability to bring a claim in a judicial forum that it finds favorable for disputes with us or any of our directors, officers, other employees or stockholders, which may discourage lawsuits with respect to such claims. Alternatively, if a court were to find the choice of forum provision contained in our Certificate 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, operating results and financial condition. If securities or industry analysts issue an adverse recommendation regarding our stock or do not publish research or reports about our company, our stock price and trading volume could decline. The trading market for our common stock depends in part on the research and reports that equity research analysts publish about us and our business. We do not control these analysts or the content and opinions included in their reports. Securities analysts may elect not to provide research coverage of our company and such lack of research coverage may adversely affect the market price of our common stock. The price of our common stock could also decline if one or more equity research analysts downgrade our common stock, change their price targets, issue other unfavorable commentary or cease publishing reports about us or our business. For example, in September 2020, an entity published an article containing certain allegations against us that we believe has negatively impacted the trading price of our common stock. If one or more equity research analysts cease coverage of our company, we could lose visibility in the market, which in turn could cause our stock price to decline. Certain of our warrants are accounted for as liabilities and the changes in value of our warrants could have a material effect on our financial results. We are required to measure the fair value of certain of our warrants at the end of each reporting period and recognize changes in the fair value from the prior period in our operating results for the current period. As a result of the recurring fair value measurement, our financial statements and results of operations may fluctuate quarterly based on factors which are outside our control. We expect that we will recognize non-cash gains or losses due to the quarterly fair valuation of certain of our warrants and that such gains or losses could be material.

