Risk Factors Comparison 2023-09-21 to 2022-09-21 Form: 10-K

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

You should carefully consider the risks and uncertainties described below, together with all of the other information contained in this Annual Report on Form 10- K, including our consolidated financial statements and related notes, before making a decision to invest in our securities. The risks and uncertainties described below are not the only ones we face; additional risks and uncertainties that we are unaware of, or that we currently believe are not material, may also become important factors that affect our business. If any of the following risks occur, our business, financial condition, operating results **, cash flows** and prospects could be materially harmed. In that event, the price of our securities could decline, and you could lose part or all of your investment. In addition, the **global macroeconomic environment remains uncertain, which may adversely** impact **our business** ~~of the COVID- 19 pandemic and any worsening of the economic environment may exacerbate the risks described below~~ , **operating results** ~~any of which could have a material impact on us. The situation is changing rapidly~~ , **cash flows,** and **prospects** ~~additional impacts may arise that we are not currently aware of~~ . Summary Risk Factors Our business and an investment in our securities are subject to a number of risks, including risks that may prevent us from achieving our business objectives or may adversely affect our business, financial condition, results of operations, cash flows, and prospects. These risks are discussed more fully below and include, but are not limited to, risks related to: Risks Related to Our Business and Industry • ~~the impact of the COVID- 19 pandemic (including any variants) on our business, operations, financial performance, and stock price; •~~ our ability to achieve our business plans, vision, and objectives, including our growth and go- to- market strategies, successfully and in a timely manner; • macroeconomic or geopolitical conditions, industry trends, and technological developments, including disruptions and delays in global supply chains; • the competitive market, including our competitive position and advantages and ability to compete effectively; • our ability to predict future financial performance from our historical financial performance; • **our ability to remediate the previously- identified material weakness in our internal controls and maintain an effective system of internal controls; • our ability to address customer needs and expand or maintain our customer base; • our platform, solutions, products, services and technology, including their interoperability and availability with and on third- party platforms and technologies, and current and future product roadmaps, including expanding our AI- related capabilities; • our reliance on key personnel and ability to attract, train, incentivize, retain, and / or ramp to full productivity, qualified employees and key personnel; • our ability to form new or maintain and strengthen existing, strategic alliances and partnerships, as well as our ability to manage** any ~~current~~ **changes thereto; • our reliance on key manufacturers, suppliers or other vendors; • our ability to obtain, maintain, protect,** and ~~future~~ **enforce our intellectual property rights; • any** business model transitions (including our ~~ongoing~~ transition to a subscription- based business model); • **the impact of a pandemic** ~~our~~ - **or major public health concern** ~~ability to address customer needs and expand or maintain our customer base; • our platform, solutions, products, services and technology, including their interoperability and availability with and~~ on ~~third- party platforms and technologies, and current and future product roadmaps; • our reliance on key personnel and ability to attract, train, incentivize, retain, and / or~~ **our business** ~~ramp to full productivity~~ , **operations** ~~qualified employees and key personnel; • our ability to form new or maintain and strengthen existing~~ , **financial performance** ~~strategic alliances and partnerships~~ , ~~as well as the impact of any changes thereto; • our reliance on key manufacturers, suppliers or other vendors; • our ability to obtain, maintain, protect,~~ and **stock price** ~~enforce our intellectual property rights~~ ; • any changes to, or failure to comply with, laws and regulations, as well as the impact of and any regulatory investigations and enforcement actions and other legal proceedings, including any pending or future class action lawsuits; • complex and evolving U. S. and foreign privacy, data use and data protection, content, competition, consumer protection, and other laws and regulations; ~~and~~ • the occurrence of security breaches, improper access to or disclosure of our data or user data, and other cyber incidents or undesirable activity on our platform **; and • investors' and other stakeholders' expectations of our performance relating to environmental, social and governance factors** . Risks Related to Our Convertible Notes • our ability to service our outstanding convertible notes, including the sufficiency of our cash, or our ability to raise necessary funds, to settle conversions of the notes, repay the notes at maturity, or repurchase the notes upon a fundamental change; and • the impact of certain provisions of our outstanding convertible notes on our financial condition and operating results, as well as the value of the notes and the price of our securities. Risks Related to Ownership of Our Securities • any volatility and decline in the market price and / or trading volume of our securities, including as a result of financial or industry analyst reports or a lack thereof; • any dilutive impact of actual or perceived sales of substantial amounts of our securities in the public markets and / or the conversion of our outstanding convertible notes; • any limitations on the ability of holders of our securities to influence corporate matters due to certain provisions of our organizational documents or under Delaware law; **• restrictions on our stockholders' ability to choose the judicial forum for disputes with us or our directors, officers, or employees;** and • our plans regarding payment of any future dividends. The effects of a pandemic or major...... be negatively affected, potentially materially. We have a history of losses **,** and we may not be able to ~~achieve or~~ maintain profitability **on a non- GAAP basis or achieve profitability on a GAAP basis** in the future. We have incurred **GAAP** net losses in all periods since our inception, and we expect that we will continue to incur **GAAP** net losses for the foreseeable future. We experienced **GAAP** net losses of $ ~~872~~ **1. 0 billion, $ 798** . 9 million ~~,~~ **and** $ ~~1~~ **254** . **6** ~~0 billion and $ 797. 5~~ million for fiscal ~~2020,~~ 2021 ~~and~~ **,** 2022 **and 2023** , respectively. As of July 31, ~~2022~~ **2023** , we had an accumulated deficit of $ 4. ~~4~~ **6** billion. In addition to the investments we expect to continue to make to grow our business, we also incur and expect to continue incurring significant additional legal, accounting and other expenses as a public company. ~~If~~ **While we achieved profitability on a non- GAAP basis in fiscal 2023,**

if we fail to increase our revenue and manage our expenses, we may not **be able to maintain profitability on a non- GAAP basis or** achieve ~~or sustain~~ profitability **on a GAAP basis** in the future. Adverse or uncertain macroeconomic or geopolitical conditions or reduced IT spending may adversely impact our business, revenues and profitability. Our business, operations and performance are dependent in part on worldwide market, economic and financial conditions and events that may be outside of our control, such as global, regional, and local economic developments, fiscal, monetary and tax policies, **high** inflation **, rising interest rates** , recession, political and social unrest, terrorist attacks, hostilities or the perception that hostilities may be imminent, military conflict, war, including ~~an escalation of~~ the **ongoing** war in Ukraine and related sanctions as well as measures taken in response to such sanctions, malicious human acts, climate change, natural disasters (including extreme weather), pandemics or other major public health concerns and other similar events, and the impact these conditions and events have on the overall demand for enterprise computing infrastructure solutions and on the economic health and general willingness of our current and prospective end customers to purchase our solutions and to continue spending on IT in general. The global macroeconomic environment has been, and may continue to be, inconsistent, challenging and unpredictable due to ~~the ongoing COVID- 19 pandemic~~ **pandemics** , international trade disputes or tensions, tariffs, including those imposed by the U. S. government on Chinese imports to the United States, restrictions on sales and technology transfers, rising interest and inflation rates, uncertainties related to changes in public policies such as domestic and international regulations and fiscal and monetary stimulus measures, taxes, or international trade agreements, actual or potential government shutdowns, elections and any related political instability, geopolitical turmoil and civil unrests, instability in the global credit markets, uncertainties regarding the effects of the United Kingdom' s separation from the European Union, commonly known as" Brexit," and other disruptions to global and regional economies and markets. These macroeconomic challenges and uncertainties ~~, including the COVID- 19 pandemic,~~ have, and may continue to, put pressure on global economic conditions and overall IT spending and may cause our end customers to modify spending priorities or delay or abandon purchasing decisions, thereby lengthening sales cycles and potentially lowering prices for our solutions, and may make it difficult for us to forecast our sales and operating results and to make decisions about future investments, any of which could materially harm our business, operating results and financial condition. The markets in which we compete are rapidly evolving, which make it difficult to forecast end customer adoption rates and demand for our solutions. The markets in which we compete are rapidly evolving. Accordingly, our future financial performance will depend in large part on the allocation of spending in traditional IT markets and on our ability to adapt to new market demands. Currently, sales of our solutions are dependent in large part upon replacement of spending in traditional markets, including x86 servers, storage systems and virtualization software. In addition, as we continue to develop new solutions designed to address new market demands, sales of our solutions will in part depend on capturing new spending in these markets, including public cloud and hybrid cloud services. **Moreover, in recent years, an increasing number of customers have been allocating their IT spending toward artificial intelligence, machine learning, and generative AI capabilities. The IT infrastructure market for artificial intelligence, machine learning, and generative AI workloads is expected to be an intensely competitive and rapidly evolving market, and our future financial performance may depend on our ability to adapt to, and capture new spending, in this market.** If ~~these~~ -- **the** markets **in which we compete** experience a shift in customer demand, or if customers in these markets focus their new spending on, or shift their existing spending to, public cloud solutions or other solutions that do not interoperate with our solutions more quickly or more extensively than expected, our solutions may not compete as effectively, if at all. It is also difficult to predict end customer demand or adoption rates for our solutions or the future growth of our market. In addition, we have estimated the size of our total addressable market based on internally generated data and assumptions, as well as data published by third parties, which we have not independently verified. While we believe these estimates are reasonable, such information is inherently imprecise and subject to a high degree of uncertainty. If our third- party or internally generated data prove to be inaccurate or we make errors in our assumptions based on that data, our actual market may be more limited than our estimates. In addition, these inaccuracies or errors may cause us to misallocate capital and other critical business resources, which could harm our business. Even if our total addressable market meets our size estimates and experiences growth, we may not continue to grow our share of the market. If end customers do not adopt our solutions, our ability to grow our business and operating results may be adversely affected. Traditional IT infrastructure architecture is entrenched in the data centers of many of our end customers because of their historical financial investment in existing IT infrastructure architecture and the existing knowledge base and skill sets of their IT administrators. As a result, our sales and marketing efforts often involve extensive efforts to educate our end customers as to the benefits and capabilities of our solutions, particularly as we introduce new products and continue to pursue large organizations as end customers. If we fail to achieve market acceptance of our solutions, our ability to grow our business and our operating results will be adversely affected. We have experienced ~~rapid~~ **significant** growth in prior periods and we may not be able to sustain or manage any future growth effectively. We have expanded our overall business and operations significantly in prior periods. Our employee headcount **has** increased significantly since our inception. We anticipate that our operating expenses will increase in the long term as we scale our business, including in developing and improving our new and existing solutions, expanding our sales and marketing capabilities and global coverage, and in providing general and administrative resources to support our growth ~~. However, as discussed in the section titled" Management' s Discussion and Analysis of Financial Condition and Results of Operations- Investment in Growth," we have proactively taken steps to reduce our expenses and increase our go- to- market productivity, as a result, our operating expenses may fluctuate from quarter to quarter in the near term~~ . In addition, as we continue to grow our business in the long term, we must effectively train, integrate, develop, motivate and retain a large number of new employees, as well as existing employees who are promoted or moved into new roles, while maintaining the effectiveness of our business execution. The failure to manage these changes could significantly delay the achievement of our strategic objectives. In particular, our success depends heavily on our ability to ramp new sales teams in a fast and effective manner and retain those sales teams. ~~We~~ **In recent years, we** have also ~~recently~~ seen higher **-** than **-** normal attrition among our sales representatives and while we are actively recruiting additional sales representatives, it will take time to replace, train, and ramp them to full productivity, and if we are unable to do so, we may not be able to achieve our growth targets. We must also continue to improve and expand our IT and financial infrastructure, management systems and product management and sales processes. We expect that our future growth will continue to place a significant strain on our management, operational and financial resources, and we may not be able to sustain or manage any future growth effectively. We may make investments or otherwise incur costs associated with future growth that may not translate into billings or revenues or otherwise result in the realization of their anticipated benefits within the expected timeframe or at all, and the return on these investments may be lower, if any, or may develop more slowly than we expect. If we are unable to sustain or manage our growth effectively, we may not be able to take advantage of market opportunities. We also may fail to satisfy end customers' requirements, maintain product quality, execute on our business plan or respond to competitive pressures, any of which could adversely affect our business, operating results, financial condition and prospects. Our continued focus on growth may negatively impact our ability to achieve or maintain profitability in the near term. We intend to continue ~~investing in our growth, while~~ balancing ~~such~~ **our** growth against our operating expenses. ~~By~~ **However,** maintaining this balance ~~, we believe we can drive towards profitable growth. However, maintaining this balance~~ may negatively impact our ability to achieve **,** or **subsequently** maintain **,** profitability **on a GAAP basis** in the near term. Further, expenditures related to expanding our research and development efforts, sales and marketing efforts, our transition to a subscription- based business model, infrastructure and other such investments may not ultimately grow our business, billings or revenue or result in future profitability. If we are ultimately unable to achieve or maintain profitability at the level anticipated by analysts and our stockholders, the price of our securities may decline, potentially significantly. The enterprise IT market is rapidly changing and expanding, and we expect competition to continue to intensify in the future from both established competitors and new market entrants. We operate in the intensely competitive enterprise **IT** infrastructure market and compete primarily with companies that sell software and hardware to build and operate enterprise clouds, integrated systems and standalone storage and servers, as well as providers of public cloud infrastructure solutions. These markets are characterized by constant change and rapid innovation. Our main competitors fall into the following categories: • software providers, such as VMware (which has agreed to be acquired by Broadcom Inc.), that offer a broad range of virtualization, infrastructure and management products to build and operate enterprise and hybrid clouds; • **providers of public cloud infrastructure and SaaS- based offerings, such as AWS, Google Cloud, Oracle Cloud, and Microsoft Azure; and •** traditional IT systems vendors, such as ~~Cisco,~~ Dell, HPE, Hitachi, IBM ~~and~~ **,** Lenovo **, Pure Storage, NetApp, and Huawei** , that offer integrated systems that include bundles of servers, storage and networking solutions, as well as a broad range of standalone server and storage products **. As the market in** ~~; • traditional storage array vendors, such as Dell, Hitachi, Pure Storage, and NetApp,~~ which ~~typically sell centralized storage products; and • providers of public cloud infrastructure and SaaS- based offerings, such as AWS, Google Cloud, and Microsoft Azure. In addition,~~ we compete **continues to develop** ~~against vendors of hyperconverged infrastructure and software- defined storage products, such as Cisco, Dell, HPE, VMware and many smaller companies. As our market grows~~ , we expect it will continue to attract new companies as well as existing larger vendors. Some of our competitors may also expand their product offerings, acquire competing businesses, sell at lower prices, bundle with other products **and capabilities (including artificial intelligence, machine learning, and generative AI capabilities)** , provide closed technology platforms, partner with other companies to develop joint solutions, or otherwise attempt to gain a competitive advantage. Furthermore, as we expand our product offerings, we may expand into new markets and we may encounter additional competitors in such markets. Additionally, as companies increasingly offer competing solutions, they may be less willing to cooperate with us as an ~~original equipment manufacturer ("~~ OEM ~~" and, collectively," OEMs")~~ or otherwise. Many of our existing competitors have, and some of our potential competitors may have, competitive advantages over us, such as longer operating histories, significantly greater financial, technical, marketing or other resources, stronger brand awareness and name recognition, larger intellectual property portfolios and broader global presence and distribution networks. Moreover, our current or potential competitors may be acquired by third parties with greater available resources and the ability to initiate or withstand substantial price competition **, such as VMware' s pending acquisition by Broadcom Inc** . Furthermore, some of our competitors have access to larger customer bases and supply a wide variety of products to, and have well- established relationships with, our current and prospective end customers. Some of these competitors have in the past and may in the future take advantage of their existing relationships with end customers, distributors or resellers to provide incentives to such current or prospective end customers that make their products more economically attractive or to interfere with our ability to offer our solutions to our end customers. Our competitors may also be able to offer products or functionality similar to ours at a more attractive price, such as by integrating or bundling their solutions with their other product offerings or those of technology partners or establishing cooperative relationships with other competitors, technology partners or other third parties. Potential end customers may prefer to purchase from their existing suppliers rather than a new supplier, especially given the significant investments that they have historically made in their legacy infrastructures. Some of our competitors may also have stronger or broader relationships with technology partners than we do, which could make their products more attractive than ours. We ~~are~~ **have** also ~~venturing~~ **ventured** into a number of markets that are adjacent to our core HCI market, both through the expansion of HCI in hybrid multicloud environments as well as through our emerging products, and some of our competitors in these adjacent markets have more experience with those markets and more resources targeted at penetration of those markets than we do. As a result, we cannot assure you that our solutions will compete favorably, and any failure to do so could adversely affect our business, operating results and prospects. **In addition, in recent years, an increasing number of customers have been allocating their IT spending toward artificial intelligence, machine learning, and generative AI capabilities. The IT infrastructure market for artificial intelligence, machine learning, and generative AI workloads is also expected to be an intensely competitive and rapidly evolving market.** Developments or improvements in enterprise IT infrastructure technologies may materially and adversely affect the demand for our solutions. Significant developments in enterprise IT infrastructure technologies, such as advances in storage, virtualization, containers, networking, disaster recovery, edge computing, management software and public cloud and hybrid cloud infrastructure solutions, may materially and adversely affect our business, operating results and prospects in ways we do not currently anticipate. Any failure by us to develop new or enhanced technologies or processes, to react to changes or advances in existing technologies or to correctly anticipate these changes or advances as we create and invest in our product roadmap, could materially delay our development and introduction of new solutions, which could result in the loss of competitiveness of our solutions, decreased revenue and a loss of market share to competitors. In addition, public cloud infrastructure offers alternatives to the on- premises infrastructure deployments that our platform currently primarily supports. Various factors could cause the rate of adoption of public cloud infrastructure to increase, including ~~the ongoing COVID- 19 pandemic, continued or accelerated~~ decreases in the price of public cloud offerings, increased interoperability with on- premises infrastructure solutions that compete with our solutions, and improvements in the ability of public cloud providers to deliver reliable performance, enhanced security, better application compatibility and more precise infrastructure control. **In addition, the rate of adoption of public cloud infrastructure could increase due to increased customer interest in artificial intelligence, machine learning, and generative AI capabilities that may be offered by public cloud providers.** Any of these factors could make our platform less competitive as compared to the public cloud, and could materially and adversely affect the demand for our solutions. Our historical financial performance, including revenue growth, may not be indicative of our future performance. Our historical financial performance, including revenue growth, may not be indicative of our future performance. For example, while we have historically experienced significant revenue growth, our total revenue growth slowed in recent periods, due in large part to our transitions from hardware to software- only sales, and from life- of- device to a subscription license model, and these transitions make it difficult to compare historical results. In addition, ~~as a result of~~ our transition toward a subscription- based model ~~,~~ **has resulted in impacts to** our revenue ~~may continue to be impacted~~ in the short term **compared to our historical results** . The revenue associated with certain subscription purchases **is** ~~will be~~ recognized ratably over the term of the subscription, resulting in less upfront revenue as compared to our historical life- of- device and term- based software- only transactions. Also, the revenue we recognize from subscription sales, even if recognized upfront, may in some instances have a lower total dollar value than those associated with licenses for the life of the device because they may be of a shorter term than the life of the device. Furthermore, such downward impact on average term lengths may ~~be~~ **have been** further exacerbated by our transition to an ACV- based sales compensation structure during fiscal 2021. This may also make it difficult to rapidly increase our revenue in any period through additional sales. Following our transition to software- only sales and due to our ~~ongoing~~ transition toward a subscription- based model, our success will also depend heavily on the ability of our sales team to adjust their strategy to focus on software- only and subscription- based sales effectively and in a timely manner. Furthermore, our customers may not understand these changes to our product sales, and investors, industry and financial analysts may have difficulty understanding the changes to our business model, resulting in changes in financial estimates or failure to meet investor expectations. As our business changes, the transitions may make it more difficult to accurately project our operating results or plan for future growth. Accordingly, you should not rely on our revenue growth for any prior periods as an indication of our future revenue or revenue growth. **We have identified a material weakness in our internal control over financial reporting. If we are unable to remediate the identified material weakness, or if we experience additional material weaknesses or deficiencies in the future or if we otherwise fail to maintain an effective system of internal controls, our ability to produce timely and accurate financial statements or comply with applicable regulations could be impaired. As a public company, we are subject to the reporting requirements of the Exchange Act, the Sarbanes- Oxley Act of 2002 (" Sarbanes- Oxley Act") and the rules and regulations of the Nasdaq Stock Market. We expect that the requirements of these rules and regulations will continue to increase our legal, accounting and financial compliance costs, make some activities more difficult, time- consuming and costly, and place significant strain on our personnel, systems and resources. The Sarbanes- Oxley Act requires, among other things, that we maintain effective disclosure controls and procedures and internal control over financial reporting. We are continuing to develop and refine our disclosure controls, internal control over financial reporting and other procedures that are designed to ensure that information required to be disclosed by us in the reports that we will file with the SEC, is recorded, processed, summarized and reported within the time periods specified in SEC rules and forms, and that information required to be disclosed in reports under the Exchange Act is accumulated and communicated to our principal executive and financial officers. As initially disclosed in our Quarterly Report on Form 10- Q filed with the SEC on May 24, 2023, we had identified control deficiencies that, individually or in the aggregate, constitute a material weakness in our internal control over financial reporting. A material weakness is a deficiency, or a combination of deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of a company' s annual or interim financial statements will not be prevented or detected on a timely basis. In particular, we determined that our controls did not effectively provide the information necessary for our risk assessment process to identify non- compliant use of third- party software as a risk of material misstatement in our financial reporting and we did not effectively reinforce the importance of raising concerns about perceived unethical conduct in a timely manner. While our management, with the oversight of the Audit Committee of our Board of Directors, has made significant progress toward remediating this material weakness, our management determined that this material weakness has not yet been fully remediated. For more information about our remediation efforts, refer to Part II, Item 9A of this Annual Report on Form 10- K.** Our ~~ongoing transition to a subscription~~ **management has implemented many of the remedial measures outlined in the remediation plan initially disclosed in our Quarterly Report on Form 10** - ~~based business model~~ **Q filed with the SEC on May 24, 2023 and remains in the process of implementing the remaining remedial measures. This identified material weakness will not be considered remediated until the applicable remediated controls operate for a sufficient period of time and management** has **concluded** ~~resulted in~~

, ~~and may~~ **through testing, that these controls are operating effectively. As management** ~~continue~~ **continues** to **evaluate and work** ~~result in, a compression~~ to **enhance our internal control over financial reporting, management may take additional measures to address control deficiencies** ~~our~~ - **or** ~~topline results, and if~~ we ~~fail to~~ **may modify some of the remediation measures. Despite these efforts, we may nevertheless be** ~~successfully~~ -- **unsuccessful** ~~manage the transition~~ **in remediating this identified material weakness. Further** , **additional weaknesses in our internal controls may be discovered in the future. Any failure to develop** ~~our~~ - **or** ~~business~~ **maintain effective controls** , **or any difficulties encountered in their implementation or improvement, could harm our** operating results **or cause us to fail to meet our reporting obligations** and ~~free cash flow~~ may ~~be~~ **result in a restatement of our financial statements for prior periods. Any failure to implement and maintain effective internal controls also could** adversely ~~affected~~ -- **affect** ~~. Our ongoing transition~~ **the results of periodic management evaluations and annual independent registered public accounting firm attestation reports regarding the effectiveness of our internal control over financial reporting that we are required** to ~~a subscription~~ **include in our periodic reports we will file with the SEC under Section 404 of the Sarbanes** - ~~based the results of periodic management evaluations and annual independent registered public accounting firm attestation reports regarding the effectiveness of our internal control over financial reporting that we are required to include in our periodic reports we will file with the SEC under Section 404 of the Sarbanes-~~ Oxley Act.Ineffective disclosure controls and procedures and internal control over financial reporting could also cause investors to lose confidence in our reported financial and other information,which would likely have a negative effect on the market price of our securities.In order to **restore,** maintain and improve the effectiveness of our disclosure controls and procedures and internal control over financial reporting to comply with the SEC rules that implement Sections 302 and 404 of the Sarbanes- Oxley Act,we have expended and anticipate that we ~~will~~ **may** continue to expend significant resources and undertake various actions,including **implementing our remediation plan,** incurring accounting- related costs ~~and~~ **,** implementing new internal controls and procedures,and providing **significant management oversight.Any failure to maintain the adequacy of our internal controls,or consequent inability to produce accurate financial statements on a timely basis could increase our operating costs and could materially impair our ability to operate our** business ~~model entails significant known~~ and ~~unknown risks~~ **could have a material** and ~~uncertainties,~~ **adverse effect on our operating results** and **could cause a decline in the price of our securities. In addition, if** we ~~cannot assure you that~~ **are unable to continue to meet these requirements,** we ~~will~~ **may not** be able to **maintain our listing on the Nasdaq Global Select Market. Matters arising out of or relating to our Audit Committee' s previously** ~~complete~~ **completed investigation** the transition to a subscription- based....... First, subscription- based sales , including **risks** ~~sales of term- based licenses where revenue is currently recognized upfront, may in some instances have a lower total dollar value than sales of licenses for the life of the device because they may be of a shorter term than the actual or assumed life of the device. If we are unable to increase the volume of our subscription- based sales in any given period to make up for the lower total dollar value of certain subscription- based sales, our total billings and revenue for such period will be negatively impacted. Second, and of lesser significance, the revenue~~ associated with **litigation and any regulatory investigations and proceedings, may adversely affect our business and results of operations. As initially disclosed in our Quarterly Report on Form 10- Q filed with the SEC, the Audit Committee of our Board of Directors, with the assistance of outside counsel, completed its investigation into our management' s discovery that** certain ~~SaaS subscription purchases will~~ **third- party evaluation software that was used for interoperability testing, validation, customer proofs of concept, training and customer support over a multi- year period. The matters which led to our Audit Committee' s review and our internal accounting review have exposed us to greater risks associated with litigation, regulatory proceedings and government enforcement actions. We have incurred significant expenses related to legal, accounting, and other professional services associated with the completed Audit Committee investigation and related matters and may continue to incur significant additional expenses with regard to related remediation efforts. To the extent that our remedial efforts are not successful, we could** be ~~recognized ratably over~~ **forced to incur additional time and expense. Furthermore, if the SEC were to commence an investigation, we could incur significant additional time and expense, including expenses related to accounting, legal and** ~~the~~ **other** ~~term~~ **professional services, in connection with the investigation, the outcome** of **which would be difficult to predict. If the SEC were to commence legal action, we could be required to pay significant penalties and become subject to injunctions, a cease and desist order and** ~~the~~ **other** ~~subscription~~ **equitable remedies. Following our announcement of the investigation** , ~~resulting in less upfront revenue~~ **a putative federal securities class action** ~~as~~ **was** ~~compared to~~ **filed in the Northern District of California against us and certain of** our ~~term~~ **current and former executive officers alleging violations of Sections 10 (b) and 20 (a) of the Exchange Act, and Rule 10b** - ~~based licenses~~ **5 promulgated thereunder, alleging misstatements** and ~~historical life-~~ **/ or omissions in certain** of ~~- device licenses~~ **our financial statements, press releases, and SEC filings made during the putative class period of September 21, 2021 through March 6, 2023 and a putative stockholder derivative action was filed in the Northern District of California against us and our directors alleging violations of Section 14 (a) of the Exchange Act, breach of fiduciary duties, and aiding and abetting breach of fiduciary duties** . **We could** ~~These factors may~~ also **become subject** ~~make it difficult~~ to ~~increase our revenue in a given period through~~ additional **future lawsuits** ~~sales in the same period. In addition, due to the generally shorter terms of subscription- based licenses as compared to our~~ - **or future regulatory investigations** ~~historical life- of- device licenses, maintaining our~~ - **or proceedings relating** ~~historically high customer renewal rates and minimizing customer churn will become increasingly important. Our subscription customers have no obligation~~ to ~~renew their~~ -- **the subject matter** ~~subscriptions for our solutions after the expiration~~ of ~~the subscription term, and may decide not to renew their~~ -- **the investigation** ~~subscriptions, or to renew only for a portion of our solutions or on pricing terms that are less favorable to us. Our customers' renewal rates may decline or fluctuate as a result of a number of factors, including their level of satisfaction with our solutions, their ability to continue their operations and spending levels, the pricing of our solutions and the availability of competing solutions at the time of renewal or~~

~~hardware refresh~~ . We **intend** ~~anticipate that our subscription- based model will require us~~ to **vigorously defend against** ~~dedicate additional resources toward educating our existing and potential customers as to the~~ **these lawsuits** ~~benefits of the subscription model and our solutions generally~~ , **but** and to continue to retrain our seasoned...... rates to fluctuate or decline, and there ~~is~~ **can be** no assurance that we will be ~~able to successfully~~ -- **successful** ~~implement the adjustments~~ in ~~a~~ **any defense. Any existing or future lawsuits and / or any future regulatory investigations or proceedings could be** ~~timely~~ -- **time** ~~or cost~~ - **consuming** ~~effective manner~~ , **result in significant expense and divert the attention and resources of** ~~or~~ **our** ~~that we~~ **management and other key employees, as** ~~will~~ **well as harm our reputation, business, financial condition or results of operations. Any unfavorable outcome could have a material adverse effect on our business, financial condition, results of operations and cash flows. Further, we could** be ~~able~~ **required** to **pay damages** ~~realize all or any of the expected benefits from such adjustments. If our~~ - **or additional penalties** ~~customers do not renew their subscriptions for~~ - **or have** ~~our solutions, demand pricing or~~ other ~~concessions prior to renewal~~ **remedies imposed against us** , ~~or if our~~ - **or** ~~renewal rates fluctuate or~~ **our** ~~decline, our total billings and revenue will fluctuate or decline, and our business and financial results will be negatively affected. Furthermore, our future financial profitability will depend significantly on renewals driving topline growth at a much lower cost than new customer contracts, and renewal rates failing to meet our expectations could also harm our operating results and delay our profitability. Additional risks associated with our transition to a subscription- based business model include, but are not limited to: • if~~ current or **former directors** ~~prospective end customers prefer our~~ - **or officers** historical life- of- device licenses...... purchases to our lower priced subscription offerings , which could **harm** ~~negatively affect~~ our ~~overall~~ **reputation, business,** financial **condition,** results ~~; • when purchasing multi- year term- based subscription licenses, or as a result~~ of ~~our recently announced sales compensation model change to one that is based primarily on ACV, we may see an increase in the number of customers who choose to pay for only the first year of the applicable term upfront, instead of the full term as we have seen historically, which would negatively impact our operating~~ **operations or** ~~and free~~ cash flows ~~, potentially significantly, and as a result we may need to raise additional capital which we may not be able to do on terms favorable or acceptable to us, or at all; • our relationships with existing channel and OEM partners that are accustomed to selling life- of- device licenses may be damaged, and we may be required to dedicate additional time and resources to educate our channel partners about our transition; • we may see increased discounting behavior from our sales employees and, if we are unable to monitor, prevent and manage such discounting behavior successfully and in a timely manner, our business and financial results will be negatively affected; • if we are unsuccessful in adjusting our go- to- market cost structure, or in doing so in a timely or cost- effective manner, we may incur higher than expected sales compensation costs, particularly if the pace of our subscription transition is faster than anticipated; • we may face additional and / or different financial reporting obligations, which could increase the costs associated with our financial reporting and investor relations activities; • similarly to our decision to start reporting ACV billings, run- rate ACV and annual recurring revenue, we may choose to supplement our financial reporting with new or different metrics, which could increase the costs associated with our financial reporting and may be difficult for investors to understand; and • investors, industry and financial analysts may have difficulty understanding the shift in our business model, resulting in changes in analysts' financial estimates or failure to meet investor expectations. Finally, our transition to a subscription- based business model as an IT infrastructure and platform company has few, if any, precedents, and there are many risks or uncertainties that may remain unknown to us as part of the transition. If we fail to anticipate these unknowns, whether due to a lack of information, precedent, or otherwise, or if we fail to properly manage expected risks and / or execute on our transition to a subscription- based business model, our business and operating results, and our ability to accurately forecast our future operating results, may be adversely affected. In addition, we may undergo additional business model changes in the future to adapt to changing market demands, which may entail known and unknown risks and uncertainties~~ . If other IT vendors do not cooperate with us to ensure that our solutions interoperate with their products, including by providing us with early access to their new products or information about their new products, our product development efforts may be delayed or impaired, which could adversely affect our business, operating results and prospects. Our solutions provide a platform on which software applications and hypervisors from different software providers run. As a result, our solutions must interoperate with our end customers' existing hardware and software infrastructure, specifically their networks, servers, software and operating systems, as well as the applications that they run on this infrastructure, which may be manufactured and provided by a wide variety of vendors and OEMs. In addition to ensuring that our solutions interoperate with these hardware and software products initially, we must occasionally update our software to ensure that our solutions continue to interoperate with new or updated versions of these hardware and software products. Current or future providers of hardware, software applications, hypervisors or data management tools could make changes that would diminish the ability of our solutions to interoperate with them, and significant additional time and effort may be necessary to ensure the continued compatibility of our solutions, which might not be possible at all. Even if our solutions are compatible with those of other providers, if they do not certify or support our solutions for their systems or cooperate with us to coordinate troubleshooting and hand off of support cases, end customers may be reluctant to buy our solutions, which could decrease demand for our solutions and harm our ability to achieve a return on the investments and resources that we have dedicated to ensuring compatibility. Developing solutions that interoperate properly requires substantial partnering, capital investment and employee resources, as well as the cooperation of the vendors or developers of the software applications and hypervisors both with respect to product development and product support. Vendors may not provide us with early or any access to their technology and products, assist us in these development efforts, certify our solutions, share with or sell to us any **application programming interfaces ("** APIs **")** , formats, or protocols we may need, or cooperate with us to support end customers. If they do not provide us with the necessary access, assistance or proprietary technology on a timely basis or at all, we may experience product development delays or be unable to ensure the compatibility of our solutions with such new technology or products. To the extent that vendors develop products that compete with ours, they have in the past, and may again in the future, withhold their cooperation, decline to share access, certify our solutions or sell or make available to us their proprietary APIs, protocols or formats or engage in practices to actively limit the functionality, or compatibility, and certification of our products. If any of the foregoing occurs, our product development efforts may be delayed or impaired, our solutions could become less attractive to end customers resulting in a decline in sales, and our business, operating results and prospects may be adversely affected. If we fail to successfully execute on our plan to sell more cloud services, which would be sold on a ratable subscription- basis, our results of operations could be adversely affected. We have sold and anticipate selling more of our products and services as cloud- based offerings- which include offerings hosted on public cloud infrastructure as well as part of our own Nutanix Cloud Platform- on a ratable subscription basis. While cloud- based offerings currently make up a small portion of our business, this shift has required and will continue to require a considerable investment of resources and will continue to divert resources and increase costs, especially in cost of license and other revenues, in any given period. We have also made, and intend to continue to make, investments in the supporting infrastructure for such cloud- based offerings that we host, and may not recoup the costs of such investments. Such investments of resources may also not improve our long- term growth and results of operations. Further, the increase in some costs associated with our cloud- based services may be difficult to predict over time, especially in light of our lack of historical experience with the costs of delivering cloud- based versions of our solutions. We believe our plan has certain advantages; however, it also presents a number of risks to us including, but not limited to, the following: • arrangements entered into on a ratable subscription basis may delay when we can recognize revenue, even when compared to similar term- based subscription sales, which we currently recognize upfront, and can require up- front costs, which may be significant; • since revenue is recognized ratably over the term of the customer agreement, any decrease in customer purchases of our ratable subscription- based products and services will not be fully reflected in our operating results until future periods. This will also make it difficult for us to increase our revenue through additional ratable subscription sales in any given period; • cloud- based ratable subscription arrangements are generally under short- term agreements. Accordingly, our customers generally have no long- term obligation to us and may cancel their subscription at any time, even if our customers are satisfied with our cloud- based subscription products; and • there is no assurance that the cloud- based solutions we offer on a ratable subscription basis, including new products that we may introduce, will receive broad marketplace acceptance. If we fail to properly execute on our plan to sell more of our products and services as cloud- based offerings on a ratable subscription basis, our business and operating results would be adversely affected, and the price of our securities could decline. If we fail to develop or introduce new or enhanced solutions on a timely or cost- effective basis, our ability to attract and retain end customers could be impaired and our brand, reputation and competitive position could be harmed. We operate in a dynamic environment characterized by rapidly changing technologies and industry standards and technological obsolescence. We will need to continue to create valuable software solutions and integrate these solutions across hardware platforms. To compete successfully, we must design, develop, market and sell new or enhanced solutions that provide increasingly higher levels of performance, capacity, scalability, security, interoperability, application mobility and reliability and meet the cost expectations of our end customers. The introduction of new products by our competitors, the market acceptance of products based on new or alternative technologies, **including AI capabilities,** or the emergence of new industry standards could render our existing or future solutions obsolete or less attractive to end customers. Any failure to anticipate or develop new or enhanced solutions or technologies **, including AI capabilities,** in a timely or cost- effective manner in response to technological shifts, could result in decreased revenue and harm to our business and prospects. Any new feature or application that we develop or acquire may not be introduced in a timely or cost- effective manner and may not achieve broad market acceptance and investments in research and development or efforts to optimize our engineering cost structure may not be successful. In particular, if we fail to timely release new products, technology or services that we previously announced, our brand and reputation could be harmed. ~~In addition, we recently launched a simplified product portfolio shifting from offerings based on individual products to offerings based on solutions.~~ If we fail to introduce new or enhanced solutions that meet the needs of our end customers or penetrate new markets in a timely fashion, we will lose market share and our business, operating results and prospects will be adversely affected **. Investing in our AI capabilities introduces risks, which, if realized, could adversely impact our business. We are making investments in our artificial intelligence capabilities in our business, products, and services, including making our Nutanix Cloud Platform the platform of choice for customers deploying machine learning and artificial intelligence workloads. As part of these efforts, we recently introduced GPT- in- a- Box, which addresses the challenges that enterprises face when adopting generative AI and AI / ML applications by providing our full- stack software- defined AI- ready platform with services designed to facilitate customers' deployment of their generative AI workloads. AI technologies are complex and rapidly evolving, and we face significant competition from other companies as well as an evolving regulatory landscape. The introduction of AI technologies into new or existing products may result in new or enhanced governmental or regulatory scrutiny, litigation, privacy, confidentiality or security risks, ethical concerns, legal liability, or other complications that could adversely affect our business, reputation, or financial results. The intellectual property ownership and license rights, including copyright, surrounding AI technologies has not been fully addressed by. laws or regulations, and the use or adoption of third- party AI technologies into our business operations, products and services may result in exposure to claims of copyright infringement or other intellectual property misappropriation, as well as potential liability to customers. AI technologies may use algorithms, datasets, or training methodologies that may be flawed or contain deficiencies that may be difficult to detect during testing. AI technologies, including generative AI, may create content that appears correct but is factually inaccurate, flawed or biased. Use of such content may be to the detriment of the user, or it may lead to discriminatory or other adverse outcomes, which may expose us to brand or reputational harm, competitive harm, and / or legal liability. The use of AI technologies presents emerging ethical and social issues that may result in brand or reputational harm, competitive harm, and / or legal liability** . If we are not successful in executing our strategy to increase sales of our solutions to new and existing large organizations, service providers and government entities, our operating results may suffer. Our growth strategy is dependent in large part upon increasing sales of our solutions to new and existing large enterprises, service providers and government entities, particularly when such sales result in large orders for our solutions. Sales to these end customers involve risks that may not be present, or that are present to a lesser extent, with sales to smaller end customers, which can act as a disincentive to our sales team to pursue these larger end customers. These risks include: • competition from companies that traditionally target larger enterprises, service providers and government entities and that may have pre- existing relationships or purchase commitments from such end customers; • increased purchasing power and leverage held by large end customers in negotiating contractual arrangements with us; • more stringent requirements in our support service contracts, including demand for quicker support response times and penalties for any failure to meet support requirements; and • longer sales cycles and the associated risk that substantial time and resources may be spent on a potential end customer that elects not to purchase our solutions. Large organizations often undertake a significant evaluation process that results in a lengthy sales cycle. Although we have a channel sales model, our sales representatives typically engage in direct interaction with our prospective end customers as well as our distributors and resellers. We typically provide evaluation products to these end customers and may spend substantial time, effort and money in our sales efforts to these prospective end customers. In addition, product purchases by large organizations are frequently subject to budget constraints, multiple approvals and unanticipated administrative, processing and other delays. Finally, large organizations typically have longer implementation cycles, require greater product functionality and scalability, require a broader range of services, demand that vendors take on a larger share of risks, require acceptance provisions that can lead to a delay in revenue recognition, expect greater payment flexibility and may also have a greater ability to resist any attempts to pass on increases in our operating and procurement costs. Given these variables, it can be difficult for us to estimate when an expected sale from a large organization, service provider or government entity may occur, and our ability to accurately forecast our future operating results may be adversely affected. If we fail to realize an expected sale from a large end customer in a particular quarter or at all, our business and operating results could be adversely affected. All of these factors can add further risk to business conducted with these end customers. Our growth depends on our existing end customers **renewing or upgrading their subscriptions and support and entitlement agreements and** making additional purchases of software licenses and software upgrades ~~and renewing and upgrading their subscriptions and support and entitlement agreements~~ , and the failure of our end customers to do so could harm our business and operating results. Our future success depends ~~in part~~ on ~~purchases by~~ our existing end customers ~~of~~ **renewing or upgrading their subscription and support and entitlement agreements and making** additional **purchases of** software licenses and **software** ~~appliances as well as renewals and~~ upgrades ~~to their subscription and support and entitlement agreements~~ . If our end customers do not **renew or upgrade their subscription and support and entitlement agreements and / or** purchase additional software licenses or ~~appliances or~~ software upgrades ~~, or renew or upgrade their subscription and support and entitlement agreements~~ , our revenue may decline and our operating results may be harmed. In order for us to maintain or improve our operating results, we depend on our existing end customers renewing their subscription agreements as well as their support and entitlement agreements, or purchasing additional solutions. End customers may choose not to renew their subscription agreements or support and entitlement agreements, or purchase additional solutions, because of several factors, including dissatisfaction with our prices or features relative to competitive offerings, reductions in our end customers' spending levels or other causes outside of our control. If our existing end customers do not purchase new solutions, or renew or upgrade their subscription agreements or support and entitlement agreements, our revenue may grow more slowly than expected or may decline, and our business and operating results may be adversely affected. Our business and growth depend on our ability to attract and retain qualified personnel, including our management team and other key personnel, and the inability to attract, hire, integrate, train, retain, or motivate qualified personnel could harm our business and growth. Our success and growth depend to a significant degree on the skills and continued services of our management team and other key personnel. If we lose the services of any member of management or any key personnel, we may not be able to locate a suitable or qualified replacement, and we may incur additional expenses to recruit and train a replacement. ~~We~~ **In recent years, we** have experienced ~~recent~~ changes in our management team resulting from the hiring or departure of executives and other key personnel. While we seek to manage these transitions carefully, these changes may result in a loss of institutional knowledge and may cause disruptions to our business and growth. If we fail to successfully integrate new key personnel into our organization or if key employees are unable to successfully transition into new roles, our business could be adversely affected. In addition, we do not have life insurance policies that cover any of our executive officers or other key employees. The loss of the services of any of our executive officers or key employees, and any failure to have in place and execute an effective succession plan for key executives, could disrupt our business and have a significant negative impact on our operating results, prospects and future growth. In addition, our success and growth also depend substantially on our ability to continue to attract, hire, integrate, train, retain, and adequately incentivize qualified and highly skilled personnel, in particular, in sales and engineering. We **have invested, and** may need to **continue to** invest **,** significant amounts of cash and equity to attract and retain employees, and we may never realize returns on these investments. Moreover, ineffective management of any leadership transitions, especially within our sales organization, or the inability of our recently hired sales personnel to effectively ramp to target productivity levels could negatively impact our growth and operating margins. ~~We~~ **In recent years, we** have ~~recently~~ seen higher- than- normal attrition among our sales representatives and our overall sales headcount being below our targets, which may negatively impact our billings and revenue growth. While we continue to recruit additional sales representatives, it takes time to replace, train, and ramp them to full productivity. Competition for highly skilled personnel, particularly in sales and engineering, is frequently intense, especially in the San Francisco Bay Area, where we are headquartered and have a substantial need for such personnel. **This competition for highly skilled personnel results in increased costs in the form of cash and stock- based compensation.** Furthermore, the industry in which we operate generally experiences high employee attrition. Although we have entered into employment offer letters with **some of** our key personnel, these agreements have no specific duration and constitute at- will employment. Volatility or lack of performance in the price of our securities may also affect our ability to attract and retain our key employees. ~~We cannot~~ **There is no** ~~assure~~ **assurance** ~~you~~ that we will be able to successfully attract or retain qualified personnel. Additionally, potential changes in U. S. immigration and work authorization laws and regulations may make it difficult to renew or obtain visas for any highly skilled personnel that we have hired or are actively recruiting. Our inability to attract and retain the necessary personnel could adversely affect our business, operating results and financial condition **. Moreover, we believe that a key contributor to our success and our ability to retain highly skilled personnel has been our corporate culture, which we believe fosters innovation, teamwork, and a passion for our products and customers. As we grow and evolve, we may find it difficult to maintain the beneficial aspects of our corporate culture globally. These difficulties may be further amplified by our decision to shift to a hybrid- first workplace, which could have a negative impact on our workplace culture and on the execution of our business plans and operations. Any inability to maintain our corporate culture could adversely affect our ability to attract and retain employees, continue to perform at current levels, or execute on our business strategy** . If we do not effectively expand, train, motivate and retain our sales force, we may be unable to add new end customers or increase sales to our existing end customers and our business will be adversely affected. Although we have a channel sales model, our sales representatives typically engage in direct interaction with our prospective end customers. Therefore, we continue to be substantially dependent on our sales force to obtain new end customers and sell additional solutions to our existing end customers. There is significant competition for sales personnel with the skills and technical knowledge that we require. Our ability to achieve revenue growth will depend, in large part, on our success in recruiting, training and retaining sufficient numbers of sales personnel to support our growth. New hires require significant training and may take significant time before they achieve full productivity; we estimate based on past experience that our average sales team members typically do not fully ramp and are not fully productive until around the time of the start of their fourth quarter of employment with us. Our recent hires and planned hires may not become productive as quickly as we expect, and we may be unable to hire or retain sufficient numbers of qualified individuals, particularly individuals who are focused on sales of our solutions to new and existing large enterprises, service providers and government entities, in the markets where we do business or plan to do business. Hiring sales personnel in new countries also requires additional set up, upfront and ongoing costs that we may not recover if the sales personnel fail to achieve full productivity. In addition, as a result of our rapid growth, a large percentage of our sales force is new to our company and our solutions and therefore less effective than our more seasoned employees. Moreover, as **part of** ~~we have substantially completed~~ our transition to focus on software- only transactions and ~~continue~~ our transition to a subscription- based business model, we have also had to retrain our seasoned sales employees who have historically focused on appliance sales and selling software licenses for the life of the device in order to maintain or increase their productivity. We have adjusted and also anticipate needing to further adjust our go- to- market cost structure, particularly as it relates to how we compensate our sales teams for life- of- device and renewal transactions. If our new sales employees, particularly those focused on sales of our solutions to new and existing large enterprises, service providers and government entities, do not become fully productive on the timelines that we have projected, or if we are unable to successfully retrain our more seasoned sales employees who have historically focused on appliance sales and selling software licenses for the life of the device or appropriately adjust our go- to- market cost structure, our revenue will not increase at anticipated levels and our ability to achieve long- term projections may be negatively impacted. If we are unable to hire, train and maintain sufficient numbers of effective sales personnel, or our new or existing sales personnel are not successful in obtaining new end customers, convincing existing customers to renew their subscription- based purchases, or increasing sales to our existing customer base generally, our business, operating results and prospects will be adversely affected. If we do not effectively ~~compose~~ **develop** , structure and compensate our sales force to focus on the end customers and activities that will primarily drive our growth strategy, our business will be adversely affected. As indicated above, our growth is dependent in large part on the success of our sales force and in particular our ability to structure our sales force and sales compensation structure in a way that aligns with our growth strategy. As part of our efforts to appropriately structure and compensate our sales force such that their incentives are properly aligned with our growth strategy, we have made changes to our sales processes, sales segmentation, and leadership structures for our global sales teams and may need to make additional changes in the future. Such changes may take longer than anticipated to successfully implement, and we may not be able to realize the full benefits thereof, which may have a material adverse impact on our sales productivity as well as our business and operational results generally. In particular, as indicated above, our growth continues to be substantially dependent on our ability to increase our sales to large enterprises, particularly when those sales result in large orders for our solutions. Competition for sales employees who have the knowledge and experience necessary to effectively penetrate major enterprise accounts is fierce, and we may not be successful in hiring such employees, or hiring them on the timelines we anticipate, which will negatively impact our ability to target and penetrate major enterprise accounts. In addition, we anticipate that the sales cycles associated with major accounts will be longer than our traditional sales cycles, which will increase the time it will take our new global account managers to become fully productive. In addition, as our organization continues to focus on major accounts and large deals, the productivity of our traditional sales teams may be impacted. Additionally, as **part of** ~~we continue with~~ our transition to a subscription- based business model, we have adjusted and may need to further adjust the compensation structure of our sales force ~~, particularly as it relates to how we compensate our sales teams for life- of- device and renewal transactions~~ . In particular, to align with the new subscription- based business model, starting in fiscal 2021 we ~~have~~ adjusted our sales compensation structure, which was previously based on total contract value, to one that is based primarily on ACV, which has caused our average contract term lengths to decline and could negatively impact our revenue and operating and free cash flows, potentially significantly. These business model transitions and compensation structure changes ~~may lead~~ **, have contributed** to **, and may continue to contribute to,** fluctuations in sales productivity that will make it more difficult to accurately project our operating results or plan for future growth. If we are unable to effectively manage these changes or implement new sales structures in a timely manner, or if our decision to segment our sales force is not successful in obtaining large sales of our solutions, our growth and ability to achieve long- term projections may be negatively impacted, and our business and operating results will be adversely affected. We rely primarily on indirect sales channels for the distribution of our solutions, and disruption within these channels could adversely affect our business, operating results and cash flows. We primarily sell our solutions through indirect sales channels, including channel partners, such as distributors, our OEMs, value added resellers, and system integrators. Our OEMs may in turn distribute our solutions through their own networks of channel partners with whom we have no direct relationships. We rely, to a significant degree, on our channel partners to select, screen and maintain relationships with their distribution networks and to distribute our solutions in a manner that is consistent with applicable law, regulatory requirements and our quality standards. If our channel partners or a partner in their distribution network violates applicable law or regulatory requirements or misrepresents the functionality of our solutions, our reputation and brand could be damaged and we could be subject to potential liability. Additionally, if we are unable to establish relationships with strong channel partners in key growth regions, our ability to sell our solutions in these regions may be adversely affected. Our agreements with our channel partners are non- exclusive, meaning our channel partners may offer end customers the products of several different companies, including products that compete with ours. If our channel partners do not effectively market and sell our solutions, choose to use greater efforts to market and sell their own products or those of our competitors, or fail to meet the needs of our end customers, our business, operating results and prospects may be adversely affected. Our channel partners may cease marketing our solutions with limited or no notice and with little or no penalty. The loss of a substantial number of our channel partners, together with our inability to replace them, or the failure to recruit additional channel partners or establish an alternative distribution network could materially and adversely affect our business and operating results. For example, sales through Arrow Electronics, Inc. and Tech Data Corporation to our end customers represented ~~33~~ **32** % and ~~15~~ **16** %, respectively, of our total revenue for fiscal ~~2022~~ **2023** . In addition, if a channel partner offers its own products or services that are competitive to our solutions, is acquired by a competitor or reorganizes or divests its reseller business units, our revenue derived from that partner may be adversely impacted or eliminated altogether. Recruiting and retaining qualified channel partners and training them in the use of our technologies requires significant time and resources. If we fail to devote sufficient resources to support and expand our network of channel partners, our business may be adversely affected. Maintaining strong indirect sales channels for our products and effectively leveraging our channel partners and OEMs is important to our growth strategy, and the failure to effectively manage these relationships may lead to higher costs and reduced revenue. Also, in certain international markets, we are in the process of transitioning our distribution model from contracting directly with hundreds of individual resellers to contracting with a smaller number of larger global distributors. Although we believe that this transition will make our sales channels more efficient and broader reaching in the long term in these markets, there is no guarantee that this new distribution model will increase our sales in the short term or allow us to sustain our gross margins. Any potential delays or confusion during the transition process to our new partners may negatively affect our relationship with our existing end customers and channel partners and may cause us to lose prospective end customers or additional business from existing end customers or cause a decline in renewal rates with existing end customers. Upon completion of the transition to the new sales model, we will be more reliant on fewer channel partners, which may reduce our contact with our end customers making it more difficult for us to establish brand awareness, ensure proper delivery and installation of our software, support ongoing end customer requirements, estimate end customer demand, respond to evolving end customer needs and obtain subscription renewals from end customers. ~~All~~ **Substantially all** of our sales to government entities have been made indirectly through our channel partners. Government entities may have statutory, contractual or other legal rights to terminate contracts with our channel partners for convenience or due to a default, and, in the future, if the portion of government contracts that are subject to renegotiation or termination at the election of the government are material, any such termination or renegotiation may adversely impact our future operating results. Additionally, we sometimes rely on our channel partners to satisfy certain regulatory obligations that we would otherwise have to satisfy if we sold directly to the government entities, and our channel partners may be unable or unwilling to satisfy these obligations in the future. In the event of such termination or change, it may be difficult for us to arrange for another channel partner to sell our solutions to these government entities in a timely manner, and we could lose sales opportunities during the transition. Governments routinely investigate and audit government contractors' (including subcontractors') administrative processes, and any unfavorable audit could result in the government refusing to continue buying our solutions, our channel partners changing their business models or refusing to continue to sell our solutions under current models, a reduction of revenue or fines, or civil or criminal liability if the audit uncovers improper or illegal activities. If our indirect distribution channel is disrupted, particularly if we are reliant on a fewer number of channel partners, or if we are required to directly satisfy certain regulatory obligations imposed by government entities as a result of our efforts to expand our sales to government entities, we may be required to devote more time and resources to distribute our solutions directly and support our end customers, which may not be as effective and could lead to higher costs, reduced revenue and growth that is slower than expected. Our operating results may fluctuate significantly, which could make our future results difficult to predict and could cause our operating results to fall below expectations. Our operating results may fluctuate due to a variety of factors, many of which are outside of our control. As a result, comparing our operating results on a period- to- period basis may not be meaningful. If our revenue or operating results in any particular period fall below investor expectations, the price of our securities would likely decline. Factors that are difficult to predict and that could cause our operating results to fluctuate include, but are not limited to: • the timing and magnitude of orders (including the start dates thereof), shipments and acceptance of our solutions in any quarter; • our ability to attract new **end customers** and retain **, and increase sales to,** existing end customers; • disruptions in our sales channels or shifts in our relationships with important channel partners and OEMs; • the timing of revenue recognition for our sales, the impact of which is heightened by our focus on software- only sales and ~~ongoing~~ **our** transition to a subscription- based **business** model; • reductions in end customers' budgets for information technology purchases; • delays in end customers' purchasing cycles or deferments of end customers' purchases in anticipation of new products or updates from us or our competitors; • fluctuations in demand and competitive pricing pressures for our solutions; • the lengths of our contract terms; • the mix of solutions sold, including the mix between ~~appliance and~~ software- only **and appliance** sales and the mix between subscription- based and non- subscription- based transactions, and the mix of revenue between products and support, entitlements and other services, which will depend in part on whether we are successful in executing our strategy to transition our business to a subscription- based model; • our ability to develop, introduce and ship in a timely manner new solutions and product enhancements that meet customer requirements, and market acceptance of such new solutions and product enhancements; • the timing of product releases or upgrades or announcements by us or our competitors; • any change in the competitive dynamics of our markets, including consolidation or partnerships among our competitors or partners, new entrants or discounting of prices; • the amount and timing of expenses to grow our business and the extent to which we are able to take advantage of economies of scale or to leverage our relationships with OEM or channel partners; • the costs associated with acquiring new businesses and technologies and the follow- on costs of integrating and consolidating the results of acquired businesses; • the amount and timing of stock- based compensation expenses **incurred as a result of granting equity awards to attract, retain, and motivate employees and key personnel** ; • our ability to control the costs of our solutions and their key components, or to pass along any cost increases to our end customers; • general economic, industry and market conditions and other events that may be outside of our control, such as political and social unrest, terrorist attacks, hostilities, war, malicious human acts, climate change, natural disasters (including extreme weather), supply chain disruption or shortages, pandemics or other major public health concerns, and other similar events; and • future accounting pronouncements and changes in accounting policies. The occurrence of any one of these risks could negatively affect our operating results in any particular quarter, which could cause the price of our securities to decline. **We may fail to meet our publicly announced guidance or other expectations about our business and future operating results, which would cause the price of our securities to decline. From time to time, we release earnings guidance in our earnings conference calls, earnings releases, or otherwise, regarding our future performance that represents our management' s estimates as of the date of release. This guidance includes forward- looking statements based on projections prepared by our management. Projections are based upon a number of assumptions and estimates that, while presented with numerical specificity, are inherently subject to significant business, economic and competitive uncertainties and contingencies on our business, many of which are beyond our control and are based upon specific assumptions with respect to future business decisions, some of which will change. Some of those key assumptions relate to the macroeconomic environment, including inflation and interest rates, which are inherently difficult to predict. We generally state possible outcomes as high and low ranges, which are intended to provide a sensitivity analysis as variables are changed but are not intended to imply that actual results could not fall outside of the suggested ranges. Furthermore, analysts and investors may develop and publish their own projections of our business, which may form a consensus about our future performance. Our actual business results may vary significantly from such guidance or that consensus due to a number of factors, many of which are outside of our control, including those described in this" Risk Factors" section, any of which or combination thereof could materially and adversely affect our business and future operating results. Furthermore, if we make downward revisions of our previously announced guidance, if we withdraw our previously announced guidance, or if our publicly announced guidance of future operating results fails to meet expectations of securities analysts, investors or other interested parties, the price of our securities would decline. Guidance is necessarily speculative in nature, and it can be expected that some or all of the assumptions underlying the guidance furnished by us will not materialize or will vary significantly from actual results. Accordingly, our guidance is only an estimate of what management believes is realizable as of the date of release. Actual results may vary from our guidance and the variations may be material. In light of the foregoing, investors are urged not to rely upon our guidance in making an investment decision regarding our securities. Any failure to successfully implement our operating strategy or the occurrence of any of the events or circumstances set forth in this " Risk Factors " section could result in the actual operating results being different from our guidance, and the differences may be adverse and material. Because a significant portion of our revenue is recognized ratably over the term of the contractual service period, downturns or upturns in sales are not immediately reflected in full in our results of operations. Subscription revenue accounts for the substantial majority of our revenue, comprising 89 %, 91 %, and 93 % of our total revenue for fiscal 2021, 2022, and 2023, respectively. A significant portion of our subscription revenue is revenue from software entitlement and support subscriptions and SaaS offerings, which is recognized ratably over the contractual service period. As a result, a significant portion of our revenue that we report for each fiscal quarter represents the recognition of deferred revenue from subscription agreements entered into during previous fiscal quarters. Consequently, any decline in new or renewed subscriptions in any one fiscal quarter will not be fully or immediately reflected in our revenue for that fiscal quarter. However, any such decline will negatively affect our revenue for future quarters. Accordingly, the effect of significant downturns in sales, our failure to achieve our internal sales targets, a decline in the market acceptance of our services, or a decrease in retention rates may not be fully reflected in our operating results until future periods. Our subscription model also makes it difficult for us to rapidly increase our revenue through additional sales in any period, as a significant portion of our revenue from additional sales must be recognized over the applicable subscription term.** Our gross margins are impacted by a variety of factors and may be subject to variation from period to period. Our gross margins may be affected by a variety of factors, including fluctuations in the pricing of our products ~~,~~ **(** including as a result of competitive pricing pressures or increases in component pricing **)** , ~~and~~ the degree to which we are successful in selling the value of incremental feature improvements and upgrades, changes in the cost of components of our hardware appliances **, customer renewal rates and the degree to which renewals drive our top- line growth** , changes in the mix between direct versus indirect sales, changes in the mix of products sold **,** and the timing and amount of recognized and deferred revenue, particularly as a result of our ~~continued~~ transition to a subscription- based business model. If we are unable to manage these factors effectively, our gross margins may decline, and fluctuations in gross margin may make it difficult to manage our business and to achieve or maintain profitability, which could adversely affect our business and operating results. Our sales cycles can be long and unpredictable and our sales efforts require considerable time and expense. As a result, it can be difficult for us to predict when, if ever, a particular customer will choose to purchase our solutions, which may cause our operating results to fluctuate significantly. Our sales efforts involve educating our end customers about the uses and benefits of our solutions, including their technical capabilities and cost saving potential. End customers often undertake an evaluation and testing process that can result in a lengthy sales cycle. Increasing competition and the emergence of new hyperconverged infrastructure product offerings and consumption models often result in customers evaluating multiple vendors at the same time, which can further lengthen the sales cycle. We spend substantial time and resources on our sales efforts without any assurance that our efforts will produce any sales. Platform purchases are frequently subject to budget constraints, multiple approvals and unanticipated administrative, processing and other delays. The broad nature of the technology shift that our solutions represent and the legacy relationships our end customers have with existing IT vendors sometimes lead to unpredictable sales cycles, which make it difficult for us to predict when end customers may purchase solutions from us. The unpredictable nature of our sales cycles may be increased in future periods as we continue to focus our sales efforts more heavily on major accounts and large deals ~~, and as we educate our customers about our ongoing transition to a subscription- based business model~~ . Our business and operating results will be significantly affected by the degree to which and speed with which organizations adopt our solutions **. In addition, in recent quarters, we have seen a modest elongation in sales cycles, as we have seen some customers increasing their inspection of deals in an uncertain global macroeconomic environment** . Because our business depends on manufacturers of hardware, including our OEM partners, to timely and cost-effectively produce and ship the hardware on which our software runs, we are susceptible to supply chain disruptions, delays, quality events, and pricing fluctuations, which have adversely affected, and could further adversely affect, our business. Our business depends on manufacturers (including Supermicro and our OEM partners) to produce the hardware appliances on which our software runs (including both our Nutanix- branded NX series appliances and the various third- party appliances that are included on our hardware compatibility list) as well as various products that are beyond our control or the control of such manufacturers, which exposes us to direct and indirect risks beyond our control, including reduced control over quality assurance, product costs, product availability, supply chain disruptions and delays, and potential reputational harm and brand damage. We may not be able to discover, manage, and / or remediate such risks in a timely manner or at all. **Key** ~~For example, key~~ components of the servers on which our software runs have **in the past** been **, and may in the future be,** affected by ~~the ongoing~~ chip ~~shortage~~ **shortages** ~~. Beginning late in the fiscal quarter ended April 30, 2022, we saw an unexpected impact from increased supply chain challenges with increased hardware supply chain delays resulting in an increasing percentage of orders having start dates in future quarters and certain customers delaying their purchase of our software pending availability of the hardware on which our software runs~~ . Furthermore, fulfilling orders for NX series appliances or other hardware appliances on which our software runs may not be a priority for such manufacturers in guiding their business decisions and operational commitments. If we fail to manage our relationships with such manufacturers effectively, or if such manufacturers experience delays, disruptions or increased manufacturing lead times, component lead- time disruptions, capacity constraints or quality control problems in their operations or are unable to address our or our end customers' requirements for or concerns about timely delivery, our ability to sell our solutions to our end customers could be severely impaired due to the lack of availability of certified hardware appliances, and our customers' ability, or willingness, to consume our software may be materially impacted or delayed, which will adversely affect our business and operating results, competitive position, brand and reputation, as well as our relationships with affected customers. In particular, we rely substantially on Supermicro to manufacture, as well as assemble and test, the Nutanix- branded NX series appliances, including those that are delivered by us. Our agreement with Supermicro ~~was renewed in May 2021 for one year and will~~ automatically ~~renew~~ **renews** for successive one- year periods ~~following the expiration of such renewal term~~ , with the option to terminate upon each annual renewal, and does not contain any minimum long- term commitment to manufacture NX- branded appliances. If we are required to change the manufacturer or contract manufacturers for the assembly and testing of our NX- branded appliances, we may lose revenue, incur increased costs and damage our channel partner and end customer relationships. We may also decide to switch or bring on additional contract manufacturers for the assembly and testing of our NX- branded appliances in order to better meet our needs. Switching to or bringing on a new OEM partner or contract manufacturer and commencing production is expensive and time- consuming and may cause delays in order fulfillment at our existing OEM partners and contract manufacturers or cause other disruptions. Our agreement with Supermicro does not contain any price assurances, and increases in component costs, without a corresponding increase in the price of our NX series solutions, could reduce the amount that an end customer pays for our software, thereby adversely affecting our billings and revenue. Furthermore, we may need to increase our component purchases, manufacturing capacity and internal test and quality functions if we experience increased demand. The inability of Supermicro or other manufacturers to produce adequate supplies of hardware appliances could cause a delay in customers' ability to consume our software and our order fulfillment, and our business, operating results and prospects would be adversely affected. As of July 31, ~~2022~~ **2023** , we had approximately $ ~~82~~ **45** . 3 million in the form of guarantees to our contract manufacturers related to certain components. There are a limited number of suppliers, and in some cases single- source suppliers, for several key components in our NX- branded appliances as well as other hardware appliances that our software is certified to operate on (including hardware appliances from our OEM partners), and any delay or disruption in the availability or quality of these components could delay shipments of the NX- branded appliances and damage our channel partner or end customer relationships, or cause our customers to delay purchasing our software. We rely on a limited number of suppliers, and in some cases single- source suppliers, for several key hardware components of the Nutanix- branded NX series appliances. These components are generally purchased on a purchase order basis through Supermicro, and we do not have long- term supply contracts with these suppliers. This reliance on key suppliers exposes us to risks, including reduced control over product quality, production and component costs, timely delivery and capacity. It also exposes us to the potential inability to obtain an adequate supply of required components because we do not have long- term supply commitments, and replacing some of these components would require a lengthy product qualification process. Furthermore, we extensively test and qualify the components that are used in NX- branded appliances and other appliances on our hardware compatibility list, including hardware appliances from our OEM partners, to ensure that they meet certain quality and performance specifications. If the supply of certain components is disrupted or delayed, or if there is a need to replace existing suppliers on the qualified hardware configuration, there can be no assurance that additional supplies or components can serve as adequate replacements for the existing components, will be available when required or that supplies will be available on terms that are favorable, and it may require modifying our solutions to interoperate with the replacement components. Any of these developments could extend the lead times, increase the costs of the components or costs of product development, cause us to miss market windows for product launch and adversely affect our business, operating results and financial condition. We generally maintain minimal inventory for repairs and a number of evaluation and demonstration units, and generally acquire components only as needed. We do not enter into long- term supply contracts for these components. As a result, our ability to respond to channel partner or end customer orders efficiently may be constrained by the then- current availability, terms and pricing of these components. The technology industry has experienced component shortages and delivery delays in the past, **including** ~~and is currently experiencing~~ a global chip shortage, and there may be shortages or delays of critical components in the future as a result of strong demand in the industry, component availability constraints, or other factors. If we or our suppliers inaccurately forecast demand for our solutions or we ineffectively manage our enterprise resource planning processes, our suppliers may have inadequate inventory, which could increase the prices we must pay for substitute components or result in our inability to meet demand for our solutions, as well as damage our channel partner or end customer relationships. If the suppliers of the components of compatible hardware appliances increase prices of components, experience delays, disruptions, capacity constraints, quality control problems in their manufacturing operations or adverse changes to their financial condition, our ability to ship appliances to our channel partners or end customers in a timely manner and at competitive prices could be impaired, and our customers' ability to acquire hardware on which to run our software could be impaired, and our competitive position, brand, reputation, and operating results could be adversely affected. Qualifying a new component is expensive and time- consuming. If we are required to change key suppliers, we may lose revenue and damage our channel partner or end customer relationships which could adversely impact our revenue and operating results. We rely upon third parties for the warehousing and delivery of appliances and replacement parts for support, and we therefore have less control over these functions than we otherwise would. We outsource the warehousing and delivery of appliances and spare parts to a third- party logistics provider for spares and service parts fulfillment. In addition, some of our support offerings commit us to replace defective parts in our appliances as quickly as four hours after the initial customer support call is received, which we satisfy by storing replacement parts inventory in various third- party supply depots in strategic worldwide locations. As a result of relying on third parties, we have reduced control over shipping and logistics transactions and costs, quality control, security and the supply of replacement parts for support. Consequently, we may be subject to shipping disruptions and unanticipated costs as well as failures to provide adequate support for reasons that are outside of our direct control. If we are unable to have appliances or replacement products shipped in a timely manner, end customers may seek to cancel their contracts with us, we may suffer reputational harm, and our business, operating results and prospects may be adversely affected. Our ability to sell our solutions is dependent in part on ease of use and the quality of our technical support, and any failure to offer high- quality technical support would harm our business, operating results and financial condition. Once our solutions are deployed, our end customers depend on our support organization to resolve any technical issues relating to our solutions. Furthermore, because of the emerging nature of our solutions, our support organization often provides support for and troubleshoots issues for products of other vendors running on our solutions, even if the issue is unrelated to our solutions. There is no assurance that we can solve issues unrelated to our solutions, or that vendors whose products run on our solutions will not challenge our provision of technical assistance to their products. Our ability to provide effective support is largely dependent on our ability to attract, train and retain personnel who are not only qualified to support our solutions, but also well versed in some of the primary applications and hypervisors that our end customers run on our solutions. Furthermore, as we ~~expand our~~ **have international** operations ~~internationally~~, our support organization ~~will face~~ **faces** additional challenges, including those associated with delivering support, training and documentation in languages other than English. In addition, as we continue to evolve our product portfolio, which may include additional solutions, our ability to provide high- quality support will become more difficult and will involve more complexity. Any failure to maintain high- quality installation and technical support, or a market perception that we do not maintain high- quality support, could harm our reputation and brand, adversely affect our ability to sell our solutions to existing and prospective end customers, and could harm our business, operating results and financial condition. Our solutions are highly technical and may contain undetected defects, which could cause data unavailability, unauthorized access to, loss, or corruption that might, in turn, result in liability to our end customers and harm to our reputation, brand and business. Our solutions are highly technical and complex and are often used to store information critical to our end customers' business operations. Our solutions may contain undetected errors, defects or security vulnerabilities that could result in data unavailability, unauthorized access to, loss, corruption or other harm to our end customers' data, including personal or identifying information regarding their employees, customers, and suppliers, as well as their finance and payroll data, and other sensitive business information. In addition, as we expand our platform and introduce new cloud- based products that may hold more of our customer' s data, any undetected or unresolved errors, defects or security vulnerabilities may result in data unavailability, unauthorized access to, loss, corruption or other harm to our end- customers' data. Some errors or defects in our solutions may only be discovered after they have been installed and used by end customers ~~. We previously conducted an in- field replacement of equipment manufactured by our previous outsourced manufacturer, and may be required to do so again in the future~~ . In addition, we may make certain commitments to our OEMs regarding the time frames within which we will correct any security vulnerabilities in our software. If any hardware or software errors, defects or security vulnerabilities are discovered in our solutions after commercial release, a number of negative effects in our business could result, including but not limited to: • lost revenue or lost OEM or other channel partners or end customers; • increased costs, including warranty expense and costs associated with end customer support as well as development costs to remedy the errors or defects; • delays, cancellations, reductions or rescheduling of orders or shipments; • product returns or discounts; and • damage to our reputation and brand. In addition, we could face legal claims for breach of contract, product liability, tort or breach of warranty. While many of our contracts with end customers contain provisions relating to warranty disclaimers and liability limitations, these provisions might not be upheld or might not provide adequate protection if we face such legal claims. Defending a lawsuit, regardless of its merit, could be costly and may divert management' s attention and adversely affect the market' s perception of us and our solutions. In addition, our business liability insurance coverage could prove inadequate with respect to a claim and future coverage may be unavailable on terms favorable or acceptable to us or at all. These product- related issues could result in claims against us and our business could be adversely impacted. Our business depends, in part, on sales to government organizations, and significant changes in the contracting or fiscal policies of such government organizations could have an adverse effect on our business and operating results. We derive a portion of our revenue from contracts with federal, state, local and foreign governments, and we believe that the success and growth of our business will continue to depend on our successful procurement of government contracts. However, demand is often unpredictable from government organizations, and there can be no assurance that we will be able to maintain or grow our revenue from the public sector. Government agencies are subject to budgetary processes and expenditure constraints that could lead to delays or decreased capital expenditures in IT spending, particularly in light of continued uncertainties about government spending levels, such as recent changes to, or failure to appoint new, government leaders. The budget and approval process for government agencies also experiences a longer sales cycle relative to our other end customers, and it may be difficult for us to accurately forecast the impact of these contracts on our future operating results. If government organizations reduce or shift their capital spending patterns, our business, operating results and prospects may be harmed. Factors that could impede our ability to maintain or increase the amount of revenue derived from government contracts, include, but are not limited to: • public sector budgetary cycles and funding authorizations; • changes in fiscal or contracting policies; • decreases in available government funding; • changes in government programs or applicable requirements; • the adoption of new laws or regulations or changes to existing laws or regulations; • potential delays or changes in the government appropriations or other funding authorization processes; and • higher expenses associated with, or delays caused by, diligence and qualifying or maintaining qualification as a government vendor. The occurrence of any of the foregoing could cause governments and governmental agencies to delay or refrain from purchasing our solutions in the future or otherwise have an adverse effect on our business, operating results and prospects. Third- party claims that we are infringing intellectual property, whether successful or not, could subject us to costly and time- consuming litigation or expensive licenses, and our business could be harmed. A number of companies, both within and outside of the enterprise and cloud computing infrastructure industry, hold a large number of patents covering aspects of storage, servers, networking, desktop, security, virtualization, database management, ~~and~~ cloud services **products, and other technologies relevant to our** products. In addition to these patents, participants in these technology and market areas typically also protect their technology through copyrights, as trade secrets and by contractual means. As a result, there is frequent litigation based on allegations of infringement, misappropriation or other violations of intellectual property rights. We have received, and in the future may receive, inquiries from other intellectual property holders and may become subject to **allegations and** claims **, in litigation and outside litigation,** that we infringed or are infringing their intellectual property rights, particularly as we expand our presence in the market and face increasing competition. There can be no assurance that we will be successful in defending against these allegations or **claims or in** reaching a business resolution that is satisfactory to us. In addition, parties may claim that the names and branding ~~of~~ **that we use for** our ~~solutions~~ **company and our various products and services** infringe their trademark rights in certain countries or territories. If such a claim were to prevail, we may have to change the names and branding ~~of our solutions~~ **that we use** in the affected **countries or** territories and we could incur other costs. We currently have a number of agreements in effect pursuant to which we have agreed to defend, indemnify and hold harmless our end customers, suppliers and channel and other partners from damages and costs which may arise from ~~the~~ **allegations of** infringement **, or actual infringement,** by our ~~solutions~~ **products and services** of third- party patents or other intellectual property rights in the United States and **/ or** in other countries. The scope of these **defense and** indemnity obligations varies, but may, in some instances, include indemnification for damages and expenses, including attorneys' fees. A claim that our solutions infringe a third party' s intellectual property rights, even if untrue, could harm our relationships with our end customers and / or channel partners, may deter future end customers from purchasing our solutions and could expose us to costly litigation and settlement expenses. Even if we are not a party to any litigation between a customer and a third party relating to infringement by our ~~solutions~~ **products or services** , an adverse outcome in any such litigation could make it more difficult for us to defend our solutions against intellectual property infringement claims in any subsequent litigation in which we are a named party. Any of these results could harm our brand and operating results. Our defense of intellectual property rights claims brought against us or our end customers, suppliers and channel partners, ~~with or without~~ **regardless of whether the claims have** merit, could be time- consuming, expensive to litigate or settle, divert management resources and attention and force us to acquire intellectual property rights and licenses, which may involve substantial royalty or other payments. Further, a party making such a claim, if successful, could secure a judgment that requires us to pay substantial damages. An adverse determination also could prevent us from offering ~~our~~ - **or** ~~solutions~~ **delivering our products and services** to our end customers **or channel partners,** and may require that we procure or develop substitute solutions that do not infringe, which could require significant effort and expense. We may have to seek a license for the technology **at issue** , which may not be available on terms favorable or acceptable to us or at all, and as a result may significantly increase our operating expenses or require us to restrict our business activities in one or more respects. Any of these events could adversely affect our business, operating results, financial condition and prospects. The success of our business depends in part on our ability to protect and enforce our intellectual property rights. We rely on a combination of patent, copyright, service mark, trademark and trade secret laws, as well as confidentiality procedures and contractual restrictions and covenants, to establish and protect our proprietary rights, all of which provide only limited protection. Effective patent, trademark, service mark, copyright and trade secret protection may not be available in every country in which our solutions are available. We cannot be certain that the steps we have taken will prevent unauthorized use of our technology or the reverse engineering of our technology. Moreover, others may independently develop technologies that are competitive to ours or infringe our intellectual property. An inability to adequately protect and enforce our intellectual property and other proprietary rights could seriously harm our business, operating results, financial condition and prospects. We cannot assure you that any patents will be issued with respect to our currently pending patent applications in a manner that gives us adequate defensive protection or competitive advantages, if at all, or that any patents issued to us will not be challenged, invalidated or circumvented. We have filed for patents in the United States and in certain international jurisdictions, but such protections may not be available in all countries in which we operate or in which we seek to enforce our intellectual property rights, or may be difficult to enforce in practice. Our currently issued patents and any patents that may be issued in the future with respect to pending or future patent applications may not provide sufficiently broad protection or they may not prove to be enforceable in actions against alleged infringers. Protecting against the unauthorized use of our intellectual property, solutions and other proprietary rights is expensive and difficult, particularly internationally. Litigation may be necessary in the future to enforce or defend our intellectual property rights or to determine the validity and scope of the proprietary rights of others. Any such litigation could result in substantial costs and diversion of management resources, either of which could harm our business, operating results and financial condition. Further, many of our current and potential competitors have the ability to dedicate substantially greater resources to defending intellectual property infringement claims and to enforcing their intellectual property rights than we have. Attempts to enforce our rights against third parties could also provoke these third parties to assert their own intellectual property or other rights against us, or result in a holding that invalidates or narrows the scope of our rights, in whole or in part. **Our transition to a subscription- based business model has resulted in, and may continue to result in, a direct or indirect compression to our topline results, and if we fail to successfully manage the transition, our business, operating results and free cash flow may be adversely affected. Our transition to a subscription- based business model entails significant known and unknown risks and uncertainties, and we cannot assure you that we will be able to manage the transition successfully.** If we fail to **manage the transition successfully** ~~maintain an effective system of internal controls~~ , ~~our ability to produce timely and accurate financial statements or~~ **our** ~~comply - based business model,or manage the transition successfully and in a timely manner.If we do not complete the transition,or if we fail to manage the transition successfully and in a timely manner,our~~ revenues,business and operating results may be adversely affected.Moreover,we may not realize all of the anticipated benefits of the subscription ~~transition,even if we successfully complete the~~ transition.The transition to a subscription- based business model also means that our historical results,especially those achieved before we began the transition,may not be indicative of our future results. **Our** ~~Regardless of how we manage the transition,our~~ total billings and revenue have been ~~and will continue to be~~ adversely impacted by the transition,particularly when compared to historical periods,due primarily to two factors.First,subscription **- based sales,including sales of term- based licenses where revenue is currently recognized upfront,may in some instances have a lower total dollar value than sales of licenses for the life of the device because they may be of a shorter term than the actual or assumed life of the device.Second,the revenue associated** with ~~applicable regulations could be~~ **certain SaaS subscription purchases is recognized ratably over the term of the subscription, resulting in less upfront revenue as** ~~impaired~~ - **compared** ~~. As a public company, we are subject~~ to **our term** ~~the reporting requirements of the Exchange Act, the Sarbanes~~ - **based licenses and historical life** ~~Oxley Act of 2002 (" Sarbanes - Oxley Act") and the rules and regulations~~ of **- device licenses** ~~the Nasdaq Stock Market~~ . ~~We expect that the requirements of these~~ **These** ~~rules and regulations will continue~~ **factors may also make it difficult** to increase our ~~legal, accounting and financial compliance costs, make~~ **revenue in a given period through additional sales in the** ~~some~~ **same** ~~activities more difficult~~ **period. In addition** , ~~time~~ **due to the generally shorter terms of subscription** - ~~consuming and costly~~ **based licenses as compared to our historical life- of- device licenses** , **maintaining our historically high customer renewal rates** and ~~place significant strain~~ **minimizing customer churn have become increasingly important. Our subscription customers have no obligation to renew their subscriptions for our solutions after the expiration of the subscription term, and may decide not to renew their subscriptions, or to renew only for a portion of our solutions or** on **pricing terms** ~~our personnel, systems and resources. The Sarbanes- Oxley Act requires, among other things, that we maintain effective disclosure controls and procedures and internal control over financial reporting. We are continuing to develop and refine our disclosure controls, internal control over financial reporting and other procedures~~ that are ~~designed~~ **less favorable** to ~~ensure and~~ **us.Our customers' renewal rates may decline or fluctuate as a result of a number of factors,including their level of satisfaction with our solutions,their ability** to continue ~~to retrain~~ **their operations and spending levels,the pricing of** our **solutions** ~~seasoned sales employees who have historically focused on appliance sales~~ and ~~selling software licenses for~~ the ~~life~~ **availability** of **competing solutions at** the **time of renewal** ~~device on selling subscription- based licenses in order to maintain and increase their productivity.As a result,our~~ - **or hardware refresh** ~~sales and marketing costs may increase~~ .In addition,we have adjusted,and may in the future need to further adjust,our go- to- market cost structure,particularly as it relates to how we structure,effect,and compensate our sales teams,including for renewal transactions,to become more efficient as ~~we~~ **part of our** transition to ~~the~~ **a** subscription- based business model.In particular,to align with **our** ~~the new~~ subscription- based business model,starting in fiscal 2021,we adjusted our sales compensation structure,which was previously based primarily on total contract value,to one ~~that is based primarily on annual contract~~ that ~~information required~~ **is based primarily on ACV, which has caused our average contract term lengths** to **decline and**

thereby negatively impact our topline results. Those adjustments may negatively affect the productivity of our sales teams, cause our sales teams to prioritize shorter- term transactions, cause a change in the mix of solutions sold and the mix of revenue among solutions sold, and cause our renewal rates to fluctuate or decline, and there is no assurance that we will be ~~disclosed by us in~~ **able to successfully implement** the ~~reports~~ **adjustments in a timely or cost- effective manner, or** that we will ~~file with the SEC, is recorded, processed, summarized and reported within the time periods specified in SEC rules and forms, and that information required to~~ be **able** ~~disclosed in reports under the Exchange Act is accumulated and communicated~~ to **realize all** ~~our~~ - **or** ~~principal executive~~ **any of the expected benefits from such adjustments. If our customers do not renew their subscriptions for our solutions, demand pricing or other concessions prior to renewal, or if our renewal rates fluctuate or decline, our total billings and revenue will fluctuate or decline, and our business** and financial ~~officers~~ **results will be negatively affected** . ~~Our current controls and any~~ **Furthermore, our future financial profitability will depend significantly on renewals driving topline growth at a much lower cost than** new **customer contracts** ~~controls that we develop may become inadequate because of changes in conditions in our business. Further~~ , **and renewal rates failing** ~~weaknesses in our internal controls may be discovered in the future. Any failure~~ to ~~develop~~ **meet** ~~or~~ **our expectations** ~~maintain effective controls, or any difficulties encountered in their implementation or improvement,~~ could **also** harm our operating results **and delay** ~~or~~ **our profitability. Additional risks associated with our transition to a subscription- based business model include, but are not limited to: • if current or prospective end customers prefer our historical life- of- device licenses, adoption of our subscription- based model may not meet our expectations; • our transition could** cause **historical life- of- device licenses,adoption of our subscription- based model may not meet our expectations,or may take longer to achieve than anticipated;• our transition could cause** confusion or concerns among current or prospective end customers and partners,including ~~confusion or~~ concerns **regarding** ~~arising from~~ recent changes to our pricing and packaging models;• we may be unsuccessful in **implementing or** maintaining subscription- based pricing models,or we may implement a pricing model or strategy that is not optimal and could negatively affect adoption,renewal rates and our business results;• our end customers may shift purchases to our lower priced subscription offerings ~~,which could negatively affect our overall financial results;• we may see increased discounting behavior from our sales employees and,if we are unable to monitor,prevent and manage such~~ us ~~to~~ **as part of the transition. If we** fail to ~~meet~~ **anticipate these unknowns, whether due to a lack of information, precedent,** ~~our~~ - **or** ~~reporting obligations~~ **otherwise, or if we fail to properly manage expected risks** and ~~may~~ **/ or execute on our transition to a subscription- based business model, our business and operating** ~~result~~ **results ,** ~~in a restatement of our financial statements for prior periods. Any failure to implement~~ and ~~maintain effective internal controls also could~~ **our ability to accurately forecast our future operating results, may be** adversely ~~affect~~ **affected** the results of periodic management evaluations and...... procedures, and providing significant management oversight . In addition, **we** ~~our independent registered public accounting firm is also required to formally attest to the effectiveness of our internal control over financial reporting and~~ may **undergo additional business model changes** ~~issue a report that is adverse~~ in the **future to adapt to changing market demands,** ~~event it is not satisfied with the level at~~ which **may entail known** ~~our controls are documented, designed or operating. Any failure to maintain the adequacy of our internal controls, or consequent inability to produce accurate financial statements on a timely basis, or an~~ **and unknown risks** ~~adverse report from our independent auditors, could increase our operating costs~~ and **uncertainties** ~~could materially impair our ability to operate our business and could have a material and adverse effect on our operating results and could cause a decline in the price of our securities. In addition, if we are unable to continue to meet these requirements, we may not be able to remain listed on the Nasdaq Global Select Market~~ . Failure to comply with laws and regulations applicable to our business could subject us to fines and penalties and could also cause us to lose end customers in the public sector or negatively impact our ability to contract with the public sector. Our business is subject to regulation by various federal, state, local and foreign governmental agencies, including agencies responsible for monitoring and enforcing employment and labor laws, antitrust laws, workplace safety, product safety, environmental laws, consumer protection laws, anti- bribery laws, import / export controls, federal securities laws and tax laws and regulations. In certain jurisdictions, these regulatory requirements may be more stringent than in the United States. Noncompliance with applicable regulations or requirements could subject us to investigations, sanctions, mandatory product recalls, enforcement actions, disgorgement of profits, fines, damages and civil and criminal penalties or injunctions. If any governmental sanctions are imposed, or if we do not prevail in any possible civil or criminal litigation, our business, reputation, operating results and financial condition could be adversely affected. In addition, responding to any action will likely result in a significant diversion of management' s attention and resources and an increase in third- party professional fees. Enforcement actions and sanctions could harm our business, operating results and financial condition. In addition, we must comply with laws and regulations relating to the formation, administration and performance of contracts with the public sector, including U. S. federal, state and local governmental organizations, which affect how we and our channel partners do business with governmental agencies. Selling our solutions to the U. S. government, whether directly or through channel partners, also subjects us to certain regulatory and contractual requirements. Failure to comply with these requirements by either us or our channel partners could subject us to investigations, fines and other penalties, which could have an adverse effect on our business, operating results, financial condition and prospects. As an example, the U. S. Department of Justice (" DOJ") and the General Services Administration (" GSA") have in the past pursued claims against and financial settlements with IT vendors under the False Claims Act and other statutes related to pricing and discount practices and compliance with certain provisions of GSA contracts for sales to the federal government. The DOJ and GSA continue to actively pursue such claims. Violations of certain regulatory and contractual requirements could also result in us being suspended or debarred from future government contracting. Any of these outcomes could have an adverse effect on our revenue, operating results, financial condition and prospects. These laws and regulations impose added costs on our business, and failure to comply with these or other applicable regulations and requirements, including noncompliance in the past, could lead to claims for damages from our channel partners, penalties, termination of contracts, loss of exclusive rights in our intellectual property and temporary suspension or permanent debarment from government contracting. Any such damages, penalties, disruptions or limitations in our ability to do business with the public sector could have an adverse effect on our business and operating results. We are subject to governmental regulation and other legal obligations, particularly related to privacy, data protection and information security, and our actual or perceived failure to comply with such obligations could adversely affect our business and operating results. Compliance with such laws could also impair our efforts to maintain and expand our customer base, and thereby decrease our revenue. Personal privacy, data protection and information security are significant issues in the United States and the other jurisdictions where we offer our solutions. The regulatory framework for privacy and security issues worldwide is rapidly evolving and is likely to remain uncertain for the foreseeable future. Our handling of data is subject to a variety of global laws and regulations, including regulation by various government agencies, including the U. S. Federal Trade Commission (" FTC") and various state, local and foreign bodies, data protection authorities, and agencies. The U. S. federal and various state and foreign governments have adopted or proposed limitations on the collection, use, storage, disclosure and transfer of personal information of individuals, including end customers and employees. In the United States, the FTC and many state attorneys general are applying federal and state consumer protection laws to the online collection, use and dissemination of data. Additionally, many foreign countries and governmental bodies, including in Australia, Brazil, the European Economic Area (" EEA"), UK, Switzerland, India, Japan, China, and numerous other jurisdictions in which we operate or conduct our business, have laws and regulations concerning the collection and use of personal information obtained from their residents or by businesses operating within their jurisdiction. These laws and regulations often are more restrictive than those in the United States. For example, the General Data Protection Regulation (" GDPR"), which became effective in May 2018, superseded prior EU data protection legislation, and the UK General Data Protection regulation ~~(" UK GDPR ")~~, both impose more stringent data protection requirements, provide an enforcement authority which substantially increases compliance costs, and impose large penalties for noncompliance. Such laws and regulations may require companies to implement new privacy and security policies, conduct transfer impact assessments, permit individuals to access, correct and delete personal information stored or maintained by such companies, inform individuals of security breaches that affect their personal information, and, among others, obtain individuals' consent to use personal information for certain purposes. In addition, some countries have enacted or are currently considering legislation that imposes local storage and processing of data to avoid any form of transfer to a third country, or other restrictions on transfer and disclosure of personal data outside of that country which may impact our compliance obligations, potentially exposing us to liability, and increase the cost and complexity of delivering our products and services. We also expect that there will continue to be new proposed laws, regulations, industry standards, and case law concerning privacy, data protection and information security in the United States, the European Economic Area and other jurisdictions, and we cannot yet determine the impact these developments may have on our business. This increases uncertainty and may require us to change our data practices and / or change our technology solutions, business model or processes, which may in turn adversely affect demand for our products. ~~Among~~ **While** the ~~recent developments~~ **EU- U. S. Data Privacy Framework accepted by the European Commission in July 2023 provides us with a transfer mechanism for data from the European Union** , data transfers **continue to be scrutinized** ~~have been under increasing scrutiny~~ by **regulators in** the EEA ~~and~~ **,** UK **and** ~~regulators. Recent rulings (such as Schrems II by the~~ **other countries with similar transfer restrictions** ~~Court of Justice of the European Union) require~~ **requiring** organizations to ensure that the data is protected to a standard that is ~~"~~ **"** essentially equivalent ~~"~~ **"** to that under **the** GDPR and / or other applicable laws and to document this. As a result of these and future data transfer developments, we may experience a reluctance from current or prospective **customers in the** EEA, UK, **Switzerland** and ~~Swiss customers~~ **other similar countries** to use our products and may find it necessary to make changes to our data transfer mechanisms and handling of personal data, including with respect to the provision of our products and services. This may adversely impact our business, financial condition, and operating results. In the United States, more states are adopting their own data protection legislation, creating a complex privacy landscape from state to state. California enacted the California Consumer Privacy Act (" CCPA"), which went into effect on January 1, 2020 and, among other things, requires covered companies to provide new disclosures to California consumers and afford such consumers new abilities to opt ~~-~~out of the sale of their personal information. In November 2020, California voters passed the California Privacy Rights Act (" CPRA"), which significantly amended the CCPA and generally expanded consumers' privacy rights and protections with respect to their personal information. Colorado, Virginia, Connecticut, and Utah all recently passed privacy legislation taking effect over the course of 2023. We cannot yet predict the full impact of these laws on our business or operations, but it may continue to require us to modify our data processing practices and policies and to incur substantial costs and expenses in an effort to comply. Moreover, as a result of current and proposed data protection and privacy laws addressing the use of personal data for marketing purposes, including the European Commission' s draft ePrivacy Regulation which is intended to replace the ePrivacy Directive in the EEA, as well as the CCPA / CPRA, we face an increased difficulty in marketing to current and potential customers, as these laws impact the ability to use internet- based services and tracking technologies, such as cookies, which impacts our ability to spread awareness of our products and services and, in turn, grow a customer base in some regions. We also expect to incur additional costs to comply with the requirements of these laws. As we begin to offer more cloud- based services, we will increasingly be positioned as a data processor, which imposes additional obligations under the foregoing and other laws and regulations relating to privacy and data protection, and may increase our liability exposure by operation of law, contract, or penalties for noncompliance. Additionally, we expect that existing laws, regulations and standards may be interpreted in new manners in the future. Current or future laws, regulations, standards and other obligations, as well as changes in the interpretation of existing laws, regulations, standards and other obligations could impair our or our customers' ability to collect, use or disclose information relating to individuals, which could decrease demand for our solutions, require us to restrict our business operations, increase our costs and impair our ability to maintain and grow our customer base and increase our revenue. Although we are working to comply with those federal, state and foreign laws and regulations, industry standards, contractual obligations and other legal obligations that apply to us, those laws, regulations, standards and obligations are evolving and may be modified, interpreted and applied in an inconsistent manner from one jurisdiction to another, and may conflict with one another, other requirements or legal obligations, our practices or the features of our solutions. As such, we cannot assure ongoing compliance with all such laws or regulations, industry standards, contractual obligations and other legal obligations. Any failure or perceived failure by us to comply with federal, state or foreign laws or regulations, industry standards, contractual obligations or other legal obligations, or any actual or suspected security incident, whether or not resulting in unauthorized access to, or acquisition, release or transfer of personal information or other data, may result in governmental enforcement actions and prosecutions, private litigation, fines and penalties or adverse publicity and could cause our customers to lose trust in us, which could have an adverse effect on our reputation, brand and business. Any inability to adequately address privacy and security concerns, even if unfounded, or comply with applicable laws, regulations, policies, industry standards, contractual obligations or other legal obligations could result in additional cost and liability to us, damage our reputation and brand, inhibit sales and adversely affect our business and operating results. Failure to comply with **anti-** ~~anticorruption~~ ---- **corruption** and anti- money laundering laws, including the U. S. Foreign Corrupt Practices Act of 1977, as amended (" FCPA"), and similar laws associated with our activities outside of the United States could subject us to penalties and other adverse consequences. We are subject to the FCPA, the U. S. domestic bribery statute contained in 18 U. S. C. § 201, the U. S. Travel Act, the USA PATRIOT Act, the United Kingdom Bribery Act of 2010 (" U. K. Bribery Act") and possibly other anti- bribery and anti- money laundering laws in countries in which we conduct activities. We face significant risks if we fail to comply with the FCPA and other **anti-** ~~anticorruption~~ ---- **corruption** laws that prohibit companies and their employees and third- party intermediaries from authorizing, offering or providing, directly or indirectly, improper payments or benefits to foreign government officials, political parties and private- sector recipients for the purpose of obtaining or retaining business, directing business to any person or securing any advantage. In many foreign countries, particularly in countries with developing economies, it may be a local custom that businesses engage in practices that are prohibited by the FCPA or other applicable laws and regulations. In addition, we use various third parties to sell our solutions and conduct our business abroad. We or our third- party intermediaries may have direct or indirect interactions with officials and employees of government agencies or state- owned or affiliated entities and we can be held liable for the corrupt or other illegal activities of these third- party intermediaries, our employees, representatives, contractors, partners and agents, even if we do not explicitly authorize such activities. We continue to update and implement our FCPA / anti- corruption compliance program and no assurance can be given that all of our employees and agents, as well as those companies to which we outsource certain of our business operations, will not take actions in violation of our policies and applicable law, for which we may be ultimately held responsible. Any violation of the FCPA, other applicable **anti-** ~~anticorruption~~ ---- **corruption** laws and anti- money laundering laws could result in whistleblower complaints, adverse media coverage, investigations, loss of export privileges, severe criminal or civil sanctions and, in the case of the FCPA, suspension or debarment from U. S. government contracts, which could have a material and adverse effect on our reputation, brand, business, operating results and prospects. In addition, responding to any enforcement action may result in a materially significant diversion of management' s attention and resources and significant defense costs and other third- party professional fees. We are subject to governmental export and import controls that could impair our ability to compete in international markets or subject us to liability if we violate the controls. Our solutions are subject to U. S. export controls, including the Export Administration Regulations and economic sanctions administered by the Office of Foreign Assets Control, and we incorporate encryption technology into certain of our solutions. These encryption products and the underlying technology may be exported outside of the United States only with the required export authorizations, including by license, a license exception or other appropriate government authorizations, including the filing of an encryption registration. Furthermore, our activities are subject to the U. S. economic sanctions laws and regulations that prohibit the shipment of certain products and services without the required export authorizations, including to countries, governments and persons targeted by U. S. embargoes or sanctions. Additionally, the U. S. government has recently been critical of existing trade agreements and may impose more stringent export and import controls. Obtaining the necessary export license or other authorization for a particular sale may be time- consuming and may result in the delay or loss of sales opportunities even if the export license ultimately may be granted. While we take precautions to prevent our solutions from being exported in violation of these laws, including obtaining authorizations for our encryption products, implementing IP address blocking and screenings against U. S. government and international lists of restricted and prohibited persons, we cannot guarantee that the precautions we take will prevent violations of export control and sanctions laws. Violations of U. S. sanctions or export control laws can result in significant fines or penalties and possible incarceration for responsible employees and managers could be imposed for criminal violations of these laws. We also note that if our channel partners fail to obtain appropriate import, export or re- export licenses or permits, we may also be adversely affected, through reputational harm as well as other negative consequences including government investigations and penalties. We presently incorporate export control compliance requirements into our channel partner agreements; however, no assurance can be given that our channel partners will be able to comply with such requirements. Also, various countries, in addition to the United States, regulate the import and export of certain encryption and other technology, including import and export licensing requirements, and have enacted laws that could limit our ability to distribute our solutions or could limit our end customers' ability to implement our solutions in those countries. Changes in our solutions or future changes in export and import regulations may create delays in the introduction of our solutions in international markets, prevent our end customers with international operations from deploying our solutions globally or, in some cases, prevent the export or import of our solutions to certain countries, governments, or persons altogether. From time to time, various governmental agencies have proposed additional regulation of encryption technology, including the escrow and government recovery of private encryption keys. Any change in export or import regulations, economic sanctions or related legislation, increased export and import controls stemming from U. S. government policies, or change in the countries, governments, persons or technologies targeted by such regulations, could result in decreased use of our solutions by, or in our decreased ability to export or sell our solutions to, existing or potential end customers with international operations. Any decreased use of our solutions or limitation on our ability to export or sell our solutions would adversely affect our business, operating results and prospects. Our international operations expose us to additional risks, and failure to manage those risks could adversely affect our business, operating results and cash flows. We derive a significant portion of our revenue from end customers and channel partners outside the United States. We derived approximately 46 %, ~~46~~ **44** % and 44 % of our total revenue from our international customers based on bill- to- location for fiscal ~~2020,~~ 2021 ~~and~~ **,** 2022 **, and 2023** , respectively. We are continuing to adapt to and develop strategies to address international markets but there is no guarantee that such efforts will have the desired effect. As of July 31, ~~2022~~ **2023** , approximately ~~56~~ **58** % of our full- time employees were located outside of the United States. We expect that our international activities will continue to grow over the foreseeable future as we continue to pursue opportunities in existing and new international markets, which will require significant management attention and financial resources. We are subject to risks associated with having significant worldwide operations, including, but not limited to: • business practices may differ from those in the United States and may require us in the future to include terms other than our standard terms in customer, channel partner, employee, consultant and other contracts; • political, economic and social instability or uncertainty around the world, including the results and impact of the United Kingdom' s separation from the European Union, commonly known as" Brexit"; • potential changes in trade relations arising from policy initiatives implemented by, or statements made by, the U. S. government, which has been critical of existing and proposed trade agreements; • the potential impact of tariffs or other trade restrictions imposed by, or threatened to be imposed by, the U. S. government, such as the tariffs imposed on Chinese imports to the United States; • greater difficulty in enforcing contracts, judgments and arbitration awards in international courts, and in collecting accounts receivable and longer payment and collection periods; • greater risk of unexpected changes in regulatory practices, tariffs and tax laws and treaties; • risks associated with trade restrictions and foreign legal requirements, including the importation, certification and localization of our solutions required in foreign countries; • greater risk of a failure of foreign employees, partners, distributors and resellers to comply with both U. S. and foreign laws, including antitrust regulations, the FCPA, the U. K. Bribery Act, U. S. or foreign sanctions regimes and export or import control laws and any trade regulations ensuring fair trade practices; • heightened risk of unfair or corrupt business practices in certain geographies and of improper or fraudulent sales arrangements that may impact financial results and result in restatements of, or irregularities in, financial statements; • requirements to comply with foreign privacy, data protection and information security laws and regulations and the risks and costs of noncompliance **; • increased expectations from foreign customers and other stakeholders about our performance relating to environmental, social and governance factors (such as climate- related performance), and requirements to comply with foreign sustainability standards or initiatives, including new sustainability standards or initiatives in the European Union** ; • reduced or uncertain protection for intellectual property rights in some countries; • impediments to the flow of foreign exchange capital payments and receipts due to exchange controls instituted by certain foreign governments; • increased expenses incurred in establishing and maintaining corporate entities, office space and equipment for our international operations; • difficulties in managing and staffing international offices and increased travel, infrastructure and legal and regulatory compliance costs associated with multiple international locations, including costs related to additional regulatory reviews or audits, financial accounting and reporting obligations and international cybersecurity requirements; • greater difficulty in identifying, attracting and retaining local experienced personnel, and the costs and expenses associated with such activities; • the challenge of managing a development team in geographically disparate locations; • management communication and integration problems resulting from cultural and geographic dispersion; • differing employment practices and labor relations issues; • fluctuations in exchange rates between the U. S. dollar and foreign currencies in markets where we do business; and • treatment of revenue from international sources for tax purposes and changes in tax laws, regulations or official interpretations, including being subject to foreign tax laws and being liable for paying withholding, income or other taxes in foreign jurisdictions. As we expand our business globally, our success will depend, in large part, on our ability to anticipate and effectively manage these risks. These factors and other factors could harm our ability to gain future international revenue and, consequently, materially impact our business, operating results and financial condition. The ~~expansion of our existing international operations and~~ entry into additional international markets will require significant management attention and financial resources. Our failure to successfully manage our international operations and the associated risks effectively could limit the future growth of our business. A number of our solutions incorporate software provided under open source licenses which may restrict or impose certain obligations on how we use or distribute our solutions or subject us to various risks and challenges, which could result in increased development expenses, delays or disruptions to the release or distribution of those solutions, inability to protect our intellectual property rights and increased competition. Certain significant components of our solutions incorporate or are based upon open source software, and we may incorporate open source software into other solutions in the future. Such open source software is generally licensed under open source licenses, including, for example, the GNU General Public License, the GNU Lesser General Public License," Apache- style" licenses," BSD- style" licenses and other open source licenses. The use of open source software subjects us to a number of risks and challenges, including, but not limited to: • If open source software programmers, most of whom we do not employ, do not continue to develop and enhance open source technologies, our development expenses could increase and our product release and upgrade schedules could be delayed. • Open source software is open to further development or modification by anyone. As a result, others may develop such software to be competitive with our platform and may make such competitive software available as open source. It is also possible for competitors to develop their own solutions using open source software, potentially reducing the demand for, and putting price pressure on, our solutions. • The licenses under which we license certain types of open source software may require that, if we modify the open source software we receive, we are required to make such modified software and other related proprietary software of ours publicly available without cost and on the same terms. In addition, some open source licenses appear to be permissive in that internal use of the open source software is allowed, but prohibit commercial uses, or treat provision of cloud services as triggering the requirement to make proprietary software publicly available. Accordingly, we monitor our use of open source software in an effort to avoid subjecting our proprietary software to such conditions and others we do not intend. Although we believe that we have complied with our obligations under the various applicable licenses for open source software that we use, our processes used to monitor how open source software is used could be subject to error. In addition, there is little or no legal precedent governing the interpretation of terms in most of these licenses and licensors sometimes change their license terms. Therefore, any improper usage of open source, including a failure to identify changes in license terms, could result in unanticipated obligations regarding our solutions and technologies, which could have an adverse impact on our intellectual property rights and our ability to derive revenue from solutions incorporating the open source software. • If an author or other third party that distributes such open source software were to allege that we had not complied with the conditions of one or more of these licenses, we could be required to incur legal expenses defending against such allegations, or engineering expenses in developing a substitute solution. If we are unable to successfully address the challenges of integrating offerings based upon open source technology into our business, our business and operating results may be adversely affected and our development costs may increase. **The effects** ~~likelihood or frequency~~ of ~~future resurgence of~~ **a pandemic or major public health concern such as** the COVID- 19 **pandemic (including any variants) and the actions taken in response,including our own,may materially affect how we and our customers and partners are operating our businesses,and the extent to which the effects of any such pandemic or major public health concern and such actions would impact our business,financial performance,results of operations and stock price would be highly uncertain and difficult to predict.Epidemics,pandemics,other outbreaks of novel diseases or other major public health concerns could cause disruptions in our or our end customers' or channel partners' businesses,our suppliers' and manufacturers' operations or the global economy as a whole.For example,the COVID- 19 pandemic (including any variants) caused significant disruptions,volatility and uncertainty to the global economy and unprecedented strains on governments,health care systems,educational institutions,businesses and individuals around the world,including in nearly all of the regions in which we operate.In response to the COVID- 19 pandemic,authorities,businesses,and individuals implemented numerous unprecedented measures from time to time,including travel bans and restrictions,quarantines,shelter- in-place,stay- at- home,remote work and social distancing orders,and shutdowns.In the event of another** pandemic or other similar major public health concerns ~~.In response to the COVID- 19 pandemic,we took a number of steps to protect and assist our employees,customers,vendors,suppliers,and partners,including by:temporarily closing all of our offices around the world (including our California headquarters);encouraging our employees to work remotely;implementing travel restrictions that prohibit all non- essential business travel;and postponing,cancelling,withdrawing from,or converting to virtual- only experiences (where possible and appropriate) our in- person customer,industry,analyst,investor,and employee events.While we have generally reopened our offices around the world,for so long as the pandemic continues~~ ,our employees may ~~continue to~~ be exposed to health and safety risks,and governmental protocols may require us to again close ~~those~~ **our** offices **and implement precautionary measures** ~~that have since been reopened~~ .The COVID- 19 pandemic and the measures taken in response to the pandemic ~~,including our own measures,have already~~ caused,and **in the future pandemics or other major public health concerns** may ~~continue to~~ cause,various adverse effects on the global economy and our business.Those effects include,but are not limited to:• ~~Delays~~ **delays** or disruptions in our or our partners' supply chains and data center operations,including delays,difficulties or disruptions in procuring and shipping,or an inability to procure or ship,the hardware appliances (or any components thereof) on which our software solutions run,including our Nutanix- branded NX hardware line,which may negatively affect our ability to close transactions with our customers and partners and / or to recognize the revenue from those transactions;• ~~Decisions~~ **decisions** by our customers and potential customers ~~,particularly in industries most impacted by the COVID- 19 pandemic,~~ to reduce IT spending or delay or abandon their planned or future purchases,which may reduce the demand for our solutions and / or result in extended sales cycles;• ~~Decisions~~ **decisions** by our customers to purchase **or renew** our software solutions on shorter subscription terms than they have historically,and / or request to only pay for the initial year of a multi- year subscription term upfront,which could negatively impact our financial performance,and our cash flow in particular,when compared to historical periods;• ~~Our~~ **our** customers and partners experiencing liquidity issues or entering bankruptcy or similar proceedings,which would impact our ability to collect payments in a timely manner,if at all;• ~~Shifts~~ **shifts** in industry trends,for example, ~~towards~~ **toward** large public cloud providers,which may reduce the demand for our solutions;• ~~An~~ **an** inability to meet in person or otherwise effectively communicate with our current or potential customers,vendors,suppliers,and partners,which may negatively affect our current and future relationships with such customers,vendors,suppliers,and partners and our ability to generate demand for our solutions;• ~~Additional~~ **additional** delays,cancellations,or changes to user and industry conferences and other marketing events relating to our solutions,including our own customer and partner events,which may negatively impact our ability to obtain new and retain existing customers ~~,~~ and effectively market our solutions;• ~~An~~ **an** inability to provide 24x7 worldwide support and / or replacement parts to our end customers in a timely manner or at all;• ~~Delays~~ **delays** or disruptions to our product roadmap,and our ability to deliver new products,features,or enhancements in a timely manner or at all;• ~~Potential~~ **potential** for increased cyber attacks and security challenges to the extent that our employees and those of our partners,customers and service providers work remotely from non-corporate managed networks ~~during the ongoing COVID- 19 pandemic and potentially beyond~~ ;• ~~Adoption~~ **adoption** of new laws or regulations,or changes to existing laws or regulations,including any restrictions or health and safety requirements that may be imposed ~~if and when we start re- opening our global offices~~ and any new or additional restrictions against immigration and travel (such as cancellations or restrictions on the availability of visas,delays in the issuance of visas or suspensions of entry),which may create additional regulatory uncertainty and cause us to incur additional expenses in order to comply with,or due to delays or changes caused or mandated by,such laws or regulations and / or materially impair our ability to hire and retain skilled professionals;• ~~Increased~~ **increased** rate of attrition among our employee base,and inability to attract,recruit,retain and,where applicable,ramp to full productivity,qualified employees and key personnel;• ~~Changes~~ **changes** in our work environment and workforce,which may present operational and workplace culture challenges;• ~~Difficulties~~ **difficulties** or delays in ramping,training,and retaining new sales teams in an effective manner due in part to the inability to provide in- person trainings;• ~~Negative~~ **negative** physical and mental health impacts on,and resulting unavailability or reduced productivity of,our employees as a result of such employees or their family members contracting the virus,being placed in quarantine or self-isolation,being in jurisdictions where travel or other activities remain restricted,or due to prolonged social distancing measures;• ~~A~~ **a** significant and / or prolonged decline in,or increase in volatility relating to,the global financial and other capital markets,including significant and prolonged volatilities in stock prices,interest rates and exchange rates,and / or or a potential global recession or depression,which would adversely affect,potentially materially,our business and stock price,as well as our ability to access capital markets on terms favorable or acceptable to us,if at all;• ~~Changes~~ **changes** in our internal controls,policies and procedures due to **hybrid or** remote work arrangements,which may result in significant deficiencies or material weaknesses in our internal controls in the preparation of our financial reports,and the resulting increased costs of controls and compliance oversight activities;• ~~An~~ **an** inability to execute our business continuity plans and / or maintain our critical business processes;and • ~~Increased~~ **increased** quarterly fluctuations in,and an inability to forecast or difficulties or delays in forecasting,our financial performance or results of operations,as well as related impacts to any financial guidance we may issue from time to time,including any modification or withdrawal thereof.The duration,scope and ultimate impact of **any** ~~the COVID- 19~~ pandemic **or other similar major public health concern** and the actions taken in response on the global economy and our business remain highly fluid,cannot be predicted with any degree of certainty,and will be highly dependent upon numerous factors,many of which are beyond our control,including the actions of governments,businesses and other enterprises in response to the pandemic and the extent and effectiveness of those actions ~~.While governments and central banks in several parts of the world have enacted fiscal and monetary stimulus measures to counteract the negative macroeconomic impacts of COVID- 19 pandemic,the effectiveness and adequacy of such stimulus measures,as well as their future availability,remain uncertain.The discontinuation or reduction in scope of such stimulus measures may cause a further decline in the global macroeconomic conditions and financial hardships for our customers and partners,thereby exacerbating the adverse effects of the pandemic on our business,including those described above~~ .New epidemics,pandemics,other outbreaks of novel diseases or major public health concerns may arise at any time.If such epidemics,pandemics,outbreaks or major public health concern were to occur,or if we are not able to effectively respond to and manage the impact of such epidemic,pandemic,outbreak or other major public health concern,our business,operations and financial performance,and the price of **our securities will be negatively affected,potentially materially.** We are exposed to fluctuations in currency exchange rates, which could negatively affect our operating results. Our sales contracts are denominated in U. S. dollars, and therefore, substantially all of our revenue is not subject to foreign currency risk. However, **any** ~~the recent~~ relative strengthening of the U. S. dollar **would** ~~has increased, and may continue to~~ increase ~~,~~ the real cost of our solutions to our end customers outside of the United States, which could adversely affect our financial condition and operating results. In addition, an increasing portion of our operating expenses is incurred outside the United States, is denominated in foreign currencies such as the Euro, the Pound Sterling, the Indian Rupee, the Canadian Dollar and the Australian Dollar, and is subject to fluctuations due to changes in foreign currency exchange rates. In particular, current geopolitical instability and fiscal and monetary policies have caused, and may continue to cause, significant volatility in the currency exchange rates, and such volatility may continue for the foreseeable future. If we become more exposed to currency fluctuations and are not able to successfully hedge against the risks associated with currency fluctuations, our operating results could be adversely affected. Furthermore, such currency fluctuations may also adversely impact our ability to accurately predict our future financial results. To date, we have not entered into any hedging arrangements with respect to foreign currency risk or other derivative instruments. Taxing authorities may successfully assert that we should have collected or in the future should collect sales and use, value added or similar taxes, and we could be subject to liability with respect to past or future sales, which could adversely affect our operating results. We do not collect sales and use, value added or similar taxes in all jurisdictions in which we have sales, and we have been advised that such taxes are not applicable to our products and services in certain jurisdictions. Sales and use, value added and similar tax laws and rates vary greatly by jurisdiction. Certain jurisdictions in which we do not collect such taxes may assert that such taxes are applicable. ~~The U. S. Supreme Court' s decision in South Dakota v. Wayfair, Inc., which increased states' ability to assert taxing jurisdiction on out- of- state retailers, could result in additional jurisdictions asserting that sales and use or other taxes apply to our products and services. The assertion that such taxes are applicable by a jurisdiction in which we do not collect such taxes could result in tax assessments, penalties and interest, to us or our end customers for past amounts, and we may be required to collect such taxes in the future.~~ If we are unsuccessful in collecting such taxes from our end customers, we could be held liable for such costs, which may adversely affect our operating results. Our international operations may subject us to potential adverse tax consequences. We have expanded our international operations and staff to better support our growth into the international markets. Our corporate structure and associated transfer pricing policies contemplate the business flows and future growth into the international markets, and consider the functions, risks and assets of the various entities involved in the intercompany transactions. The amount of taxes we pay in different jurisdictions may depend on the application of the tax laws of the various jurisdictions, including the United States, to our international business activities, changes in tax rates, new or revised tax laws or interpretations of existing tax laws and policies and our ability to operate our business in a manner consistent with our corporate structure and intercompany arrangements. The taxing authorities of the jurisdictions in which we operate may challenge our methodologies for pricing intercompany transactions pursuant to the intercompany arrangements or disagree with our determinations as to the income and expenses attributable to specific jurisdictions. If such a challenge or disagreement were to occur, and our position was not sustained, we could be required to pay additional taxes, interest and penalties, which could result in one- time tax charges, higher effective tax rates, reduced cash flows and lower overall profitability of our operations. Our financial statements could fail to reflect adequate reserves to cover such a contingency. Changes in global tax laws could increase our worldwide tax rate and could have a material adverse effect on our business, cash flow, results of operations or financial conditions. Global tax developments applicable to multinational businesses may have a material impact ~~to~~ **on** our business, cash flow from operating activities, or financial results. The Biden administration has made several corporate income tax proposals, including ~~proposed increases~~ **substantial changes** to the ~~U. S. corporate~~ **global intangible low- taxed** income **rules** ~~tax rate, global minimum tax, and increased taxation of international business operations~~. International organizations such as the Organization for Economic Cooperation and Development, have published Base Erosion and Profit Shifting action plans that ~~, if adopted~~ **many countries are starting to implement. The potential effects of Pillar Two may vary depending on specific provisions and rules implemented** by **each** ~~countries~~ **country** ~~where we do business, could~~ **that adopts Pillar Two. These changes may** increase our tax obligations in these countries. In addition, several countries have proposed or enacted Digital Services Taxes ~~(" DST")~~, many of which would apply to revenues derived from digital services. We will continue to assess the ongoing impact of these current and pending changes to global tax legislation and the impact on **our** ~~the Company' s~~ future financial statements upon the finalization of laws, regulations and additional guidance. In addition, as we continue to evaluate our corporate structure, any changes to the taxation of undistributed foreign earnings could also change our plans regarding reinvestment of such earnings. Due to the large scale of our U. S. and international business activities, many of these enacted and proposed changes to the taxation of our activities could increase our worldwide effective tax rate and have an adverse effect on our operating results, cash flow or financial condition. Certain ~~EU~~ **European Union** and other jurisdictions have introduced anti- hybrid provisions ~~, which came into force in EU member states on January 1, 2020 (subject to relevant derogations)~~. The scope of these rules is wide- reaching and can apply to disallow certain deductions for corporate tax purposes where hybrid entities exist within a company structure. These provisions may place additional burden on our management to assess the impact of the rules and potentially create additional tax costs. ~~EU~~ **European Union** countries and other jurisdictions will continue to interpret or issue additional guidance on how provisions of the anti- hybrid will be applied, which, if applicable, may materially impact our financial statements and cash flow. Separately, as a result of the complexity of, and lack of clear precedent or authority with respect to, the application of various income tax laws to our corporate structure, tax authorities may challenge how we report our transactions, which may increase our costs and impact our operations. We are subject to income taxes as well as non- income- based taxes, in both the U. S. and various foreign jurisdictions. Many judgments are required in determining our worldwide provision for income taxes and other tax liabilities, and we are under audit by various tax authorities, which often do not agree with positions taken by us on our income and non- income- based tax returns. Although we believe that our estimates are reasonable, the ultimate tax outcome may differ from the amounts recorded in our consolidated financial statements and may materially affect our financial results in the period or periods for which such determination is made. Our ability to use our net operating loss carryforwards and certain other tax attributes may be limited. In general, under Section 382 of the United States Internal Revenue Code of 1986, as amended (the" Code"), a corporation that undergoes an ownership change is subject to limitations on its ability to utilize its pre- change net operating losses (" NOLs"), and other tax attributes to offset future taxable income. An ownership change occurs when a company’ s" five- percent shareholders" (as defined in Section 382 of the Code) collectively increase their ownership in the company by more than 50 percentage points (by value) over a rolling three- year period. Similar limitations may apply for state tax purposes. If our existing NOLs are subject to limitations arising from previous ownership changes, our ability to utilize NOLs could be limited by Section 382 of the Code. We may experience ownership changes in the future as a result of subsequent shifts in our stock ownership. In addition, at the state level, there may be periods during which the use of net operating losses is suspended or otherwise limited. Our business is subject to the risks of natural disasters (including extreme weather), man- made problems and other similar events that may be outside of our control. Significant natural disasters (such as earthquakes, fires, floods, and extreme weather), man- made problems (such as significant power outages, security breaches, acts of terrorism or war, civil unrests, or geopolitical turmoil), and other similar events that may be outside of our control could have an adverse impact on our business and operating results. For example, despite the implementation of network security measures, our networks also may be vulnerable to computer viruses, break- ins and similar disruptions from unauthorized tampering with our solutions. Further, both our corporate headquarters and our main contract manufacturers are located in the San Francisco Bay Area, a region known for seismic activity. In addition, natural disasters (including extreme weather) and man- made problems could cause disruptions in our or our end customers’ or channel partners’ businesses, our suppliers’ and manufacturers’ operations or the global economy as a whole. We also rely on IT systems to communicate among our workforce and with third parties. Any disruption to our communications, whether caused by a natural disaster or by man- made problems, such as power disruptions, could adversely affect our business. We do not have a formal disaster recovery plan or policy in place and do not currently require that our manufacturing partners have such plans or policies in place. To the extent that any such disruptions result in delays or cancellations of orders or impede our suppliers’ or our manufacturers’ ability to timely deliver our solutions and product components, or the deployment of our solutions, our business, operating results and financial condition would be adversely affected. We do maintain what we believe are commercially reasonable levels of business interruption insurance. However, such insurance may not adequately cover our losses in the event of a significant disruption in our business. If we are the victim of a cyber attack or other cyber security incident and our networks, computer systems or software solutions are breached or unauthorized access to sensitive or proprietary information, including employee or customer data, otherwise occurs, our business operations may be interrupted, our reputation and brand may be damaged, and we may incur significant liabilities. Cyber attacks designed to gain access to sensitive or proprietary information by breaching mission critical systems of large organizations are constantly evolving, and high- profile electronic security breaches leading to the unauthorized release of sensitive or proprietary information, including employee and customer information, have occurred at a number of large companies in recent years. Companies in our industry have reported that they have been subject to such cyber attacks, including attacks potentially from nation- state actors, and we could be subject to similar attempted attacks. More generally, computer malware, viruses, social engineering (predominantly spear phishing attacks) and general hacking have become prevalent in our industry, particularly against cloud services, and we and companies like us can suffer security breaches from a variety of causes, whether due to third- party action, software bugs or vulnerabilities or coding errors, physical break- ins, employee error, malfeasance or otherwise. In addition, retaliatory acts by Russia in response to Western sanctions could include cyber attacks that could disrupt the economy or that could also either directly or indirectly impact our operations. We regularly face a wide variety of attempted attacks of this nature, some of which may be successful, although none to- date have had a significant impact on our business. As we transition to offering more cloud- based solutions, as well as those based on our partnerships with third party public cloud providers, we and our third- party public cloud providers may increasingly be the target of cyber threats. Because the techniques used and vulnerabilities exploited to obtain unauthorized access or to sabotage systems change frequently, and generally are not identified until they are launched against a target, we may be unable to anticipate these techniques or vulnerabilities or implement adequate preventative measures. We may also experience security breaches that may remain undetected for an extended period. If any unauthorized access to or security breach of our solutions occurs, such an event could result in the loss of data, loss of intellectual property or trade secrets, loss of business, severe reputational or brand damage adversely affecting end customer or investor confidence, regulatory investigations and orders and other enforcement actions, litigation, indemnity obligations, damages for contract breach and penalties for violation of privacy, data protection and other applicable laws, regulations or contractual obligations. We may also be subject to potentially significant costs for remediation that may include liability for stolen assets or information and repair of system damage that may have been caused or incentives offered to end customers or other business partners in an effort to maintain business relationships after a breach and other liabilities. Additionally, any such event or perceived event could impact our reputation and brand, harm customer confidence, hurt our sales and expansion into existing and new markets or cause us to lose potential or existing end customers. Any actual, potential or anticipated attack may cause us to incur increasing costs, including costs to deploy additional personnel and protection technologies, train employees and engage third- party experts and consultants. Furthermore, a high- profile security breach suffered, or perceived to have been suffered, by an industry peer may entail a general loss of trust in our industry and thereby have a similar adverse impact on our business and financial performance as a direct breach suffered by us. We could be required to expend significant capital and other resources to alleviate problems caused by such actual or perceived breaches and to remediate our systems, we could be exposed to a risk of loss, litigation or regulatory action and possible liability, and our ability to operate our business may be impaired. In addition, if the security measures of our end customers, partners, vendors, or suppliers are compromised, even without any actual compromise of our own systems or of our solutions used by such end customers, partners, vendors, or suppliers, we may face negative publicity, reputational harm or brand damage if our end customers, partners, vendors, or suppliers or anyone else incorrectly attributes the blame for such security breaches to us or our solutions. If end customers believe that our solutions do not provide adequate security for the storage of personal or other sensitive or proprietary information or the transmission of such information over the internet, our business will be harmed. End customers' concerns about security or privacy may deter them from using our solutions for activities that involve personal or other sensitive information, which may significantly affect our business and operating results. Moreover, we have acquired a number of companies, products, services and technologies over the years. Although we devote significant resources to address any security issues with respect to such acquisitions, we may still inherit additional risks as we integrate these companies, products, services and technologies into our business and solutions. **Investors' and other stakeholders' expectations of our performance relating to environmental, social and governance factors may impose additional costs and expose us to new risks. There is an increasing focus from certain investors, customers, partners, employees, other stakeholders, and regulators concerning environmental, social and governance matters (" ESG"). Some investors may use these non- financial performance factors to guide their investment strategies and, in some cases, may choose not to invest in us if they believe our policies and actions relating to ESG are inadequate.** We ~~have expanded~~ **may face reputational damage in the event that we do not meet the ESG standards set by various constituencies. As ESG best practices and reporting standards continue to develop, we may incur increasing costs relating to ESG monitoring and reporting and complying with ESG initiatives. For example, the SEC has recently proposed climate change and ESG reporting requirements, which, if approved, would increase our compliance costs. We may also face greater costs to comply with new ESG standards or initiatives in the European Union. We publish** ~~and~~ **an annual ESG report, which reports, among other things, our greenhouse gas emissions and our efforts to manage our emissions. In addition, our annual ESG report provides highlights of how we are supporting our workforce, including our diversity, equity, inclusion, and belonging efforts. Our disclosures on these matters, or a failure to meet evolving stakeholder expectations for ESG practices and reporting, may potentially harm our reputation and customer relationships. Due to new regulatory standards and market standards, certain new or existing customers, particularly those in the European Union, may impose stricter ESG guidelines or mandates for, and may scrutinize relationships more closely with, their counterparties, including us, which may lengthen sales cycles or increase our costs. Furthermore, if our competitors' ESG performance is perceived to be better than ours, potential or current investors may elect to invest with our competitors instead. In addition, in the event that we communicate certain initiatives or goals regarding ESG matters, we could fail, or be perceived to fail, in our achievement of such initiatives or goals, or we could be criticized for the scope of such initiatives or goals. If we fail to satisfy the expectations of investors, customers, employees and other stakeholders or our initiatives are not executed as planned, our business, financial condition, results of operations, and prospects could be adversely affected. We** may further expand through acquisitions of, or investments in, other companies **(or vice versa through divestitures)** , each of which may divert our management' s attention, resulting in additional dilution to our stockholders and consumption of resources that are necessary to sustain and grow our business. Our business strategy may, from time to time, include acquiring other complementary products, technologies or businesses **or divesting certain products** . We also may enter into relationships with other businesses in order to expand our solutions, which could involve preferred or exclusive licenses, additional channels of distribution or discount pricing or investments in other companies. Negotiating these transactions can be time- consuming, difficult and expensive, and our ability to close these transactions may be subject to third- party approvals, such as government regulatory approvals, which are beyond our control. Consequently, we can make no assurance that these transactions once undertaken and announced, will close. These kinds of acquisitions **, divestitures** or investments may result in unforeseen expenditures and operating and integration difficulties, especially if the acquisitions **, divestitures** or investments are more complex in structure and scope, including due to the geographic location of the acquired company. In particular, we may encounter difficulties assimilating or integrating the businesses, technologies, products, personnel or operations of companies that we may acquire, particularly if the key personnel of the acquired business choose not to work for us. We may have difficulty retaining the customers of any acquired business or the acquired technologies or research and development expectations may prove unsuccessful. Acquisitions **or divestitures** may also disrupt our ongoing business, divert our resources, require significant management attention that would otherwise be available for development of our business and may be viewed negatively by our end customers, investors or securities analysts. We may not successfully evaluate or utilize the acquired technology or personnel, or accurately forecast the financial impact of an acquisition **or divestiture** transaction, including accounting charges. Any acquisition or investment could expose us to unknown liabilities and risks, and we may incur additional costs and expenses necessary to address an acquired company' s failure to comply with laws and governmental rules and regulations. Moreover, we cannot assure you that the anticipated benefits of any acquisition or investment would be realized in a timely manner, if at all, or that we would not be exposed to unknown liabilities. In connection with these types of transactions, we may issue additional equity securities that would dilute our stockholders, use cash that we may need in the future to operate our business, incur debt on terms unfavorable to us or that we are unable to repay, incur large charges or substantial liabilities, encounter difficulties integrating diverse business cultures and become subject to adverse tax consequences, substantial depreciation or deferred compensation charges. These challenges related to acquisitions **, divestitures** or investments could adversely affect our business, operating results, financial condition and prospects. As of July 31, ~~2022~~ **2023** , we had outstanding ~~$ 145. 7 million aggregate principal amount of 0 % convertible senior notes due 2023 (the" 2023 Notes"),~~ $ 750. 0 million aggregate principal amount of 2. 50 % convertible senior notes due 2026 (the" 2026 Notes") ~~,~~ and $ 575. 0 million aggregate principal amount of 0. 25 % convertible senior notes due 2027 (the ~~“~~ **"** 2027 Notes, ~~”~~ **"** together with the ~~2023 Notes and the~~ 2026 Notes, the ~~“~~ **"** Notes ~~”~~ **"**). Servicing the Notes may require a significant amount of cash, and we may not have sufficient cash or the ability to raise the funds necessary to settle conversions of the Notes in cash, to repay the Notes at maturity, or to repurchase the Notes upon a fundamental change. Holders of each series of Notes will have the right to require us to repurchase all or a portion of their Notes upon the occurrence of a fundamental change before the applicable maturity date at a repurchase price equal to 100 % of the principal amount of such Notes to be repurchased, plus accrued and unpaid special interest, if any. In addition, upon conversion of the Notes, unless we elect to deliver solely shares of our Class A 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. Moreover, we will be required to repay the Notes of a series in cash at their maturity unless earlier converted or repurchased. ~~For example, the 2023 Notes mature on January 15, 2023, unless earlier converted or repurchased.~~ We may not have enough available cash or be able to obtain financing at the time we are required to make repurchases of Notes of a series surrendered therefor or pay cash with respect to Notes of such series being converted or at their maturity. In addition, our ability to repurchase Notes of a series or to pay cash upon conversions of such Notes or at their maturity may be limited by law, regulatory authority or agreements governing our future indebtedness. Our failure to repurchase Notes of a series at a time when the repurchase is required by the applicable indenture or to pay cash upon conversions of such Notes or at their maturity as required by the applicable indenture would constitute a default under such indenture. A default under the applicable indenture or the fundamental change itself could also lead to a default under agreements governing our future indebtedness. Moreover, the occurrence of a fundamental change under the applicable indenture could constitute an event of default under any such agreement. If the payment 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 or to pay cash amounts due upon conversion, upon required repurchase or at maturity of the applicable series of Notes. The 2026 Notes bear interest at a rate of 2. 50 % per annum, with such interest to be paid in kind on the 2026 Notes held by Bain **Capital, LP (" Bain")** through an increase in the principal amount of the 2026 Notes, and paid in cash on any 2026 Notes transferred to entities that are not affiliated with Bain ~~Capital, LP (" Bain")~~ , on a semi- annual basis. The 2027 Notes bear interest at a rate of 0. 25 % per annum, with such interest to be paid semi- annually in arrears on each April 1 and October 1. Our ability to make scheduled payments of interest depends on our future performance, which is subject to economic, financial, competitive, and other factors beyond our control. Our business may not be able to generate cash flows from operations in the future that are sufficient to service our debt and make necessary capital expenditures. If we are unable to generate such cash flows, we may be required to adopt one or more alternatives, such as selling assets, restructuring debt, or obtaining additional debt financing or 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. Higher prevailing interest rates and / or a tightening supply of credit would adversely affect the terms upon which we would be able to refinance our indebtedness, if at all. As a result, 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. In addition, any of our future debt agreements may contain restrictive covenants that may prohibit us from adopting any of these alternatives. The conditional conversion feature of the Notes, if triggered, may adversely affect our financial condition and operating results. In the event the conditional conversion feature of the applicable series of Notes is triggered, holders of such series of Notes will be entitled to convert their Notes at any time during specified periods at their option. If one or more holders elect to convert their Notes, unless we elect to satisfy our conversion obligation by delivering solely shares of our Class A 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 in cash, which could adversely affect our liquidity. In addition, even if holders of a series of Notes do not elect to convert their Notes, we could be required under applicable accounting rules to reclassify all or a portion of the outstanding principal of such series of Notes as a current rather than long- term liability, which would result in a material reduction of our net working capital. The accounting method for convertible debt securities that may be settled in cash, such as the Notes, has had, and may continue to have, a material effect on our reported financial results. On August 1, 2021, we adopted Accounting Standards Update (" ASU") 2020-06. Our adoption of this new standard requires us to use the if- converted method for our diluted earnings per share calculation, the effect of which is that the transaction is accounted for as if all of the outstanding Notes were to be converted into shares of our Class A common stock. As a result, our diluted earnings per share could be adversely affected in the future. For more information on our adoption of ASU 2020- 06, refer to Note 1 of Notes to Consolidated Financial Statements included in Part II, Item 8 ~~,~~ of this Annual Report on Form 10- K. The ~~convertible note hedge and warrant transactions entered into in connection with the issuance of the 2023 Notes may affect the value of our Class A common stock, and we are subject to counterparty risk with respect to the convertible note hedge transactions. In connection with the pricing of the 2023 Notes in January 2018, we entered into convertible note hedge transactions with one or more of the initial purchasers of the 2023 Notes and / or their respective affiliates or other financial institutions (the" Option Counterparties"). We also entered into warrant transactions with the Option Counterparties pursuant to which we sold warrants for the purchase of our Class A common stock. In connection with privately negotiated exchange and note repurchase transactions that we entered into in September 2021, we terminated portions of these convertible note hedge transactions and warrant transactions. The convertible note hedge transactions are generally expected to reduce the potential dilution upon any conversion of 2023 Notes and / or offset any cash payments we are required to make in excess of the principal amount upon conversion of any 2023 Notes. The warrant transactions could separately have a dilutive effect to the extent that the market price per share of our Class A common stock exceeds the strike price of the warrants. In addition, the Option Counterparties and / or their respective affiliates may modify their hedge positions by entering into or unwinding various derivatives with respect to our Class A common stock and / or purchasing or selling our Class A common stock in secondary market transactions prior to the maturity of the 2023 Notes (and are likely to do so during any observation period related to a conversion of 2023 Notes or following any repurchase of 2023 Notes by us on any fundamental change repurchase date or otherwise). This activity could also cause or avoid an increase or a decrease in the market price of our Class A common stock. In addition, if any such convertible note hedge and warrant transactions fail to become effective, the Option Counterparties may unwind their hedge positions with respect to our Class A common stock, which could adversely affect the value of our Class A common stock. The potential effect, if any, of these transactions and activities on the market price of our Class A common stock will depend in part on market conditions and cannot be ascertained at this time. Any of these activities could adversely affect the value of our Class A common stock. The Option Counterparties are financial institutions or affiliates of financial institutions, and we are subject to the risk that one or more of such Option Counterparties may default under the convertible note hedge transactions. Our exposure to the credit risk of the Option Counterparties will not be secured by any collateral. If any Option Counterparty becomes subject to bankruptcy or other insolvency proceedings, we will become an unsecured creditor in those proceedings with a claim equal to our exposure at that time under our transactions with that Option Counterparty. Our exposure will depend on many factors but, generally, an increase in our exposure will be correlated to an increase in our Class A common stock market price and in the volatility of the market price of our Class A common stock. In addition, upon a default by an Option Counterparty, we may suffer adverse tax consequences and dilution with respect to our Class A common stock. We can provide no assurance as to the financial stability or viability of any Option Counterparty. The~~ market price of our securities may be volatile and may decline. The market price of our securities has fluctuated and may continue to fluctuate substantially. The market price of our securities depends on a number of factors, including those described in this" Risk Factors" section, many of which are beyond our control and may not be related to our operating performance. These fluctuations could cause you to lose all or part of your investment in our securities. Factors that could cause fluctuations in the market price of our securities include the following: • price and volume fluctuations in the overall stock market from time to time; • volatility in the market prices and trading volumes of high technology stocks; • changes in operating performance and stock market valuations of other technology companies generally, or those in our industry in particular; • changes in financial estimates by any analysts who follow our company, including as a result of any current and future business model transitions (including our ~~ongoing~~ transition to a subscription- based business model), or our failure to meet these estimates or the expectations of investors; • the financial projections we may provide to the public, any changes in these projections ~~or~~ **,** ~~our~~ **or any** failure to meet **or exceed** these projections; • announcements by us or our competitors of new products and solutions or new or terminated significant contracts, commercial relationships or capital commitments; • public analyst or investor reaction to our press releases, other public announcements and filings with the ~~SEC~~ **Securities and Exchange Commission** ; • rumors and market speculation involving us or other companies in our industry; • actual or anticipated changes or fluctuations in our operating results; • actual or anticipated developments in our business or our competitors' businesses or the competitive landscape generally; • actual or threatened litigation involving us, our industry or both, or investigations by regulators into our operations or those of our competitors; • developments or disputes concerning our intellectual property or our solutions, or third- party proprietary rights; • rumored, announced or completed acquisitions of businesses or technologies of or by us or our competitors; • new laws or regulations or new interpretations of existing laws or regulations applicable to our business; • changes in accounting standards, policies, guidelines, interpretations or principles; • any major changes in our management or our Board of Directors; • general economic conditions and slow or negative growth of our markets; and • other events or factors which may be outside of our control, such as political and social unrest, terrorist attacks, hostilities, war, malicious human acts, climate change, natural disasters (including extreme weather), pandemics or other major public health concerns ~~(such as the ongoing COVID- 19 pandemic)~~ , and other similar events, or responses to these events. In addition, the stock market in general, and the market for technology companies in particular, has experienced extreme price and volume fluctuations that have often been unrelated or disproportionate to the operating performance of those companies. Broad market and industry factors may seriously affect the market price of our securities, regardless of our actual operating performance. In addition, in the past, following periods of volatility in the overall market and the market prices of a particular company' s securities, securities class action litigation has often been instituted against that company. For example, following our earnings release in February 2019, the price of our Class A common stock fell significantly and, as a result, multiple class action securities lawsuits **were** ~~have been~~ filed against us, as well as multiple shareholder derivative claims. **Any** ~~These securities litigation matters, as well as any additional~~ securities litigation matters that may be instituted against us ~~,~~ could result in substantial costs, divert our management' s attention and resources from our business, and adversely impact our reputation and brand. This could have an adverse effect on our business, operating results and financial condition. Sales of substantial amounts of our Class A common stock in the public markets, or the perception that they might occur, could reduce the price that our securities might otherwise attain and may dilute your voting power and your ownership interest in us. Sales of a substantial number of shares of our Class A common stock in the public markets, particularly sales by our directors, executive officers and significant stockholders, or the perception that these sales could occur **(including public disclosure of sales contemplated by 10b5- 1 trading plans)** , could adversely affect the market price of our Class A common stock. We have reserved a substantial number of shares of our Class A common stock for issuance upon vesting or exercise of our equity compensation plans ~~,~~ **and** upon conversion of the ~~Notes and in relation to warrant transactions we entered into in connection with the pricing of the 2023~~ Notes. We have also registered the offer and sale of all shares of our Class A common stock that we may issue under our equity compensation plans. We may also issue our shares of Class A common stock or additional securities convertible into shares of our Class A common stock from time to time in connection with a financing, acquisition, investments or otherwise. Any such issuance could result in substantial dilution to our existing stockholders and cause the market price of our Class A common stock to decline. Conversion of our Notes may dilute the ownership interest of existing stockholders, or may otherwise depress the price of our securities. The conversion of some or all of our Notes, to the extent we deliver shares upon conversion thereof, will dilute the ownership interests of existing stockholders, reduce our earnings per share and potentially have an adverse effect on the price of our securities. Any sales in the public market of our Class A common stock issuable upon such conversion could adversely affect prevailing market prices of our securities. In addition, the existence of the Notes may encourage short selling by market participants because the conversion of the Notes could be used to satisfy short positions, or anticipated conversion of the Notes into shares of our Class A common stock could depress the price of our securities. **We cannot guarantee that our share repurchase program will be fully consummated or that it will enhance long- term stockholder value. In August 2023, our Board of Directors authorized the repurchase of up to $ 350. 0 million of our Class A common stock. The authorization has no fixed expiration date and does not obligate us to repurchase any specified number or dollar value of shares. We cannot guarantee that the share repurchase program will be fully consummated or that it will enhance long- term stockholder value. Share repurchases under the program could affect, and increase the volatility of, the price of our Class A common stock and will diminish our cash reserves. In addition, as part of the Inflation Reduction Act signed into law in August 2022, the United States implemented a 1 % excise tax on the value of certain stock repurchases by publicly traded companies. This tax could increase the costs to us of any share repurchases. The program may be modified, suspended or discontinued at any time, and any future announcement of a termination of the program could result in a decrease in the price of our Class A common stock.** If financial or industry analysts do not publish research or reports about our business, if they have difficulty understanding the changes to our business model, or if they issue inaccurate or unfavorable research regarding our securities, our stock price and trading volume could decline. The trading market for our securities will be influenced by the research and reports that industry or financial analysts publish about us or our business. We do not control these analysts or the content and opinions included in their reports. In addition, we are in a period of transition to a subscription- based business model in the long term, which analysts may not have historically reflected, or may not accurately in the future reflect, in their research. The foregoing factors could affect analysts' ability to accurately forecast our results and make it more likely that we fail to meet their estimates. In the event we obtain industry or financial analyst coverage, if any of the analysts who cover us issue an inaccurate or unfavorable opinion regarding our securities, the price of our securities would likely decline. In addition, the stock prices of many companies in the high technology industry have declined significantly after those companies have failed to meet, or in some cases failed to significantly exceed, the financial guidance publicly announced by the companies or the expectations of analysts. If our financial results fail to meet (or ~~significantly~~ exceed) our announced guidance or the expectations of analysts or public investors, analysts could downgrade our Class A common stock or publish unfavorable research about us. If one or more of these analysts cease coverage of our company or fail to publish reports on us regularly, we could lose visibility in the financial markets, which in turn could cause the price of our securities or trading volume to decline, potentially significantly. Certain provisions in our charter documents and under Delaware law could make an acquisition of our company more difficult, limit attempts by our stockholders to replace or remove members of our Board of Directors or current management and may adversely affect the market price of our securities. Our amended and restated certificate of incorporation and amended and restated bylaws contain provisions that could delay or prevent a change in control of our company. These provisions could also make it difficult for stockholders to elect directors that are not nominated by the current members of our Board of Directors or take other corporate actions, including effecting changes in our management. These provisions include: • a classified Board of Directors with three- year staggered terms **(which will be phased out starting**

with our 2023 annual meeting of stockholders so that our Board of Directors will be fully declassified by our 2025 annual meeting of stockholders) , which could delay the ability of stockholders to change the membership of a majority of our Board of Directors; • the ability of our Board of Directors to issue shares of preferred stock and to determine the price and other terms of those shares, including preferences and voting rights, without stockholder approval, which could be used to significantly dilute the ownership of a hostile acquirer; • the exclusive right of our Board of Directors to elect a director to fill a vacancy created by the expansion of our Board of Directors or the resignation, death or removal of a director, which prevents stockholders from being able to fill vacancies on our Board of Directors; • a prohibition on stockholder action by written consent, which forces stockholder action to be taken at an annual or special meeting of our stockholders; • the requirement that a special meeting of stockholders may be called only by the chairman of our Board of Directors, our lead independent director, our president, our secretary or a majority vote of our Board of Directors, which could delay the ability of our stockholders to force consideration of a proposal or to take action, including the removal of directors ~~; • the requirement for the affirmative vote of holders of at least 66 2 / 3 % of the voting power of all of the then outstanding shares of the voting stock, voting together as a single class, to amend the provisions of our amended and restated certificate of incorporation relating to the issuance of preferred stock and management of our business or our amended and restated bylaws, which may inhibit the ability of an acquirer to effect such amendments to facilitate an unsolicited takeover attempt~~ ; • the ability of our Board of Directors, by majority vote, to amend our amended and restated bylaws, which may allow our Board of Directors to take additional actions to prevent an unsolicited takeover and inhibit the ability of an acquirer to amend our amended and restated bylaws to facilitate an unsolicited takeover attempt; and • advance notice procedures with which stockholders must comply to nominate candidates to our Board of Directors or to propose matters to be acted upon at a stockholders' meeting, which may discourage or deter a potential acquirer from conducting a solicitation of proxies to elect the acquirer' s own slate of directors or otherwise attempting to obtain control of us. In addition, as a Delaware corporation, we are subject to Section 203 of the Delaware General Corporation Law. These provisions may prohibit large stockholders, in particular those owning 15 % or more of our outstanding voting stock, from merging or combining with us for a certain period of time. **Our amended and restated bylaws designate the Court of Chancery of the State of Delaware and, to the extent enforceable, the federal district courts of the United States of America as the exclusive forums for certain disputes between us and our stockholders, which will restrict our stockholders' ability to choose the judicial forum for disputes with us or our directors, officers, or employees. Our amended and restated bylaws provide that the Court of Chancery of the State of Delaware is the exclusive forum for the following types of actions or proceedings under Delaware statutory or common law: any derivative action or proceeding brought on our behalf, any action asserting a breach of a fiduciary duty, any action arising pursuant to the Delaware General Corporation Law, our amended and restated certificate of incorporation, or our amended and restated bylaws, or any action asserting a claim against us that is governed by the internal affairs doctrine. This choice of forum provision does not apply to suits brought to enforce a duty or liability created by the Exchange Act or any other claim for which the federal courts have exclusive jurisdiction. Furthermore, Section 22 of the Securities Act creates concurrent jurisdiction for federal and state courts over all such Securities Act actions. Accordingly, both state and federal courts have jurisdiction to entertain such claims. To prevent having to litigate claims in multiple jurisdictions and the threat of inconsistent or contrary rulings by different courts, among other considerations, our amended and restated bylaws provide that the federal district courts of the United States of America will be the exclusive forum for resolving any complaint asserting a cause of action arising under the Securities Act. While the Delaware courts have determined that such choice of forum provisions are facially valid, a stockholder may nevertheless seek to bring a claim in a venue other than those designated in the exclusive forum provisions. This may require significant additional costs associated with resolving such action in other jurisdictions and there can be no assurance that the provisions will be enforced by a court in those other jurisdictions. These choice of forum provisions may limit a stockholder' s ability to bring a claim in a judicial forum that it finds favorable for disputes with us or our directors, officers, or other employees. If a court were to find either exclusive- forum provision in our amended and restated bylaws to be inapplicable or unenforceable in an action, we may incur additional costs associated with resolving the dispute in other jurisdictions, which could seriously harm our business.** We do not intend to pay dividends in the foreseeable future. As a result, your ability to achieve a return on your investment will depend on appreciation in the price of our Class A common stock. We have never declared or paid any cash dividends on our Class A common stock. We ~~currently intend to retain all available funds and any future earnings for use in the operation and expansion of our business and~~ do not anticipate paying any dividends on our Class A common stock in the foreseeable future. Any determination to pay dividends in the future will be at the discretion of our Board of Directors. Accordingly, investors must rely on sales of their Class A common stock after price appreciation, which may never occur, as the only way to realize any future gains on their investments.