**Risk Factors Comparison 2024-02-29 to 2023-02-17 Form: 10-K**

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The following discussion of risk factors known to us contains important information for the understanding of our " forward- looking statements, " which are discussed immediately ~~following~~ **preceding Part I,** Item ~~7A.~~ **1, " Business "** of this **Annual Report on** Form 10- K and elsewhere. These risk factors should also be read in conjunction with **Part II,** Item 7 ~~.~~ **, "** Management' s Discussion and Analysis of Financial Condition and Results of Operations, **"** and the Consolidated Financial Statements and related notes included in this **Annual Report on** Form 10- K. We urge you to consider carefully the risks described below, which discuss the material factors that make an investment in our securities speculative or risky, as well as in other reports and materials that we file with the SEC and the other information included or incorporated by reference in this **Annual Report on** Form 10- K. ~~A manifestation~~ **The occurrence** of any of the following risks and uncertainties, or additional risks and uncertainties not currently known to us or that we currently deem immaterial, could, in circumstances we may or may not be able to accurately predict, materially adversely affect our business, operations, reputation, financial condition, results of operations, cash flows, liquidity, growth, prospects and stock price. ~~Summary~~ Risk Factors **Summary** Risks Related to Our Business and Industry • Our limited operating history at current scale and our nascent industry make evaluating our business and prospects difficult. • Our distributed generation offerings may not receive widespread market acceptance. • ~~Our operations may continue to be adversely affected by the coronavirus outbreak. •~~ Sufficient demand for our hardware and software- enabled services may not develop or take longer to develop than we anticipate. • Battery storage costs may not continue to decline. • Estimates and assumptions used to determine the size of our total addressable market may be inaccurate. • We currently face and will continue to face significant competition. **• If we do not successfully execute on our new product and new market opportunities, our operating results could be adversely affected.** Risks Relating to Our Operations ~~• Supply chain disruption and competition could result in insufficient inventory and negatively affect our business.~~ • We face risks resulting from supplier concentration and limited supplier capacity. • **We depend on significant customers for a substantial portion of our revenue. If we fail to retain or expand our customer relationships or significant customers reduce their purchases, our revenue could decline significantly. • Our business is subject to risks associated with construction, utility interconnection and delays. • Supply chain disruption and competition could result in insufficient inventory and negatively affect our business. • Our estimates of variable consideration related to revenue recognition in connection with guarantees that we have issued under certain customer contracts are difficult to estimate, and if our subsequent estimates differ significantly from initial estimates, we will be required to record an adjustment in a subsequent period. •** Long- term supply agreements could result in insufficient inventory. • Our hardware and software- enabled services involve a lengthy sales and installation cycle. If we fail to close sales on a regular and timely basis **,** it could adversely affect our business. • We may fail to attract and retain qualified management and technical personnel, which may adversely affect our ability to compete and grow our business. • We may not be able to develop, produce, market ~~and~~ **or** sell our hardware and software- enabled services successfully. • We have incurred significant losses in the past and ~~expect~~ **may continue** to incur net losses through **at least** ~~2023~~ **2024** . • We may be unable to reduce our cost structure. • Any future acquisitions we undertake may disrupt our business, adversely affect operations, dilute our stockholders, and expose us to significant costs and liabilities. • Our current and planned foreign operations will subject us to additional business, financial, regulatory, and competitive risks. • If any energy storage systems procured from OEM suppliers and provided to our customers contain manufacturing defects, our business and financial results could be adversely affected. • Estimates of useful life for our energy storage systems and related hardware and software- enabled services may be inaccurate, and our OEM suppliers may not meet service and performance warranties and guarantees. • Future product recalls could materially adversely affect our business, financial condition and operating results. • Any disruption of, or interference with, our use of Amazon Web Services could adversely affect our business. • Any failure to offer high- quality technical support services may adversely affect our relationships with our customers. • Our business currently depends on the availability of rebates, tax credits and other financial incentives. • The economic benefit of our energy storage systems to our customers depends on the cost of electricity available from alternative sources. • We face risks related to our DevCo business model. • **If** ~~We depend on significant~~ customers **do not continue to use our subscription offerings** ~~for~~ - **or if** ~~a substantial portion of our revenue. If~~ we fail to ~~retain or~~ expand ~~our customer relationships~~ **the availability of hardware and software- enabled services,** ~~or~~ **our operating results will be adversely affected** ~~significant customers reduce their purchases, our revenue could decline significantly~~ . Risks Related to Third- Party Partners • We are exposed to interconnection and transmission facility development and curtailment risks. • We may not successfully maintain relationships with third parties such as contractors and developers. Risks Related to Our Intellectual Property and Technology • Our future growth depends on our ability to continue to develop and maintain our proprietary technology. • We may experience ~~IT~~ **information technology** or data security failures. • Our technology could have undetected defects, errors or bugs in hardware or software. • We may not adequately secure, protect and enforce our intellectual property rights and trademarks **. • We may need to defend ourselves against claims that we have infringed, misappropriated, or otherwise violated the intellectual property rights of others** . Regulatory Risks • The installation and operation of our energy storage systems are subject to environmental laws and regulations. • Existing regulations and changes to such regulations may reduce demand for our energy storage systems. • Our business could be adversely affected by trade tariffs or other trade barriers. • Negative attitudes toward renewable energy from lawmakers and others may adversely affect our business, including by delaying permits for our customers' projects. **• Opposition to our customers' project requests for permits could adversely affect our operating plans.** Additional Risks

Related to Our Securities • If we fail to maintain an effective system of disclosure controls and internal control over financial reporting, our ability to produce timely and accurate consolidated financial statements or comply with applicable regulations could be impaired. • We may issue a significant number of shares in the future in connection with investments or acquisitions. • ~~We do not intend to pay cash dividends for the foreseeable future. •~~ Analysts may not publish sufficient or any research about our business or may publish inaccurate or unfavorable research. • The trading price of our common stock is volatile. • Certain provisions of **our** ~~the Company's~~ organizational documents may have an anti- takeover effect. • **Our** ~~The Company's~~ exclusive forum provision may limit **our** ~~the Company's~~ stockholders' ability to obtain a favorable judicial forum for disputes. • The capped call transactions entered into in connection with the pricing of our **2028 and 2030** Convertible Notes may adversely affect the market price of our stock. General Risk Factors • We will continue to incur significant costs as a result of operating as a public company. • **Current and** ~~Future~~ **future** litigation, investigations or regulatory or administrative proceedings could have a material adverse effect on our business. From our inception in 2009 through 2012, we were focused principally on research and development activities relating to our energy storage systems technology. We did not sell any of our battery hardware and software- enabled services and did not recognize any material revenue until fairly recently. As a result, we have a limited history operating our business at its current scale, and therefore a limited history upon which you can base an investment decision. There is rising demand for clean electric power solutions that can provide electric power with lower carbon emissions with high availability. One such solution is distributed, renewable energy generation, which is supplementing and replacing conventional generation sources, given its increasingly compelling economics. Among other renewable energy market trends, we expect our business results to be driven by declines in the cost of generation of renewable power both on an absolute basis and relative to other energy sources (as evidenced by current solar and wind generation deployments), decreases in the cost of manufacturing battery packs and a rapidly growing energy storage market driven by increasing demand from commercial and industrial customers, utilities and grid operators. However, predicting our future revenue and appropriately budgeting for our expenses is difficult, and we have limited insight into trends that may emerge and affect our business. The distributed generation industry is emerging and our distributed generation offerings may not receive widespread market acceptance. The implementation and use of distributed generation at scale is still relatively nascent, and we cannot be sure that potential customers will accept such solutions broadly, or our hardware and software- enabled services more specifically. Enterprises may be unwilling to adopt our offerings over traditional or competing power sources for any number of reasons, including the perception that our technology is unproven, lack of confidence in our business model, unavailability of back- up service providers to operate and maintain the energy storage systems, and lack of awareness of our related hardware and software- enabled services. Because this is an emerging industry, broad acceptance of our hardware and software- enabled services is subject to a high level of uncertainty and risk. If the market develops more slowly than we anticipate, our business may be adversely affected. **Pandemics and** ~~Our operations may continue to be adversely affected by the~~ **other public health emergencies, including the emergence of new** COVID- 19 **variants resulting in another** pandemic, ~~and we face disruption risks from the pandemic that~~ could adversely affect our business **, results of operations and financial condition** . The COVID- 19 pandemic **caused** ~~has resulted in~~ the extended shutdown of certain businesses in the U. S., Europe and Asia, which ~~has~~ resulted ~~, and may~~ in **various** ~~the future result, in~~ disruptions ~~or delays~~ to our supply chain **,** increases in the costs of equipment ~~, components~~ and materials ~~and has resulted in~~ , and ~~may result in further, significant disruptions to our customer base. Any disruption in these businesses will likely negatively~~ -- **negative** ~~affect~~ **impacts on** our sales and operating results. ~~To date,~~ **The emergence of a new pandemic or other public health emergency (including a resurgence of** COVID- 19 ~~has had a limited adverse impact on our~~ - **or** ~~operations, supply chains~~ **any variant thereof)** and ~~hardware and software- enabled services. Due to~~ governmental responses to limit the spread of ~~COVID- 19 and~~ **such pandemic or health emergency, could in the future** ~~resulting~~ --- **result** ~~global economic effects, we may experience significant and unpredictable reductions~~ in **similar material adverse impacts to the** demand for our ~~hardware~~ **products** and ~~software- enabled~~ services ~~. The continued effect of the COVID- 19 pandemic is highly uncertain and cannot be predicted and there is no assurance that it will not have a material adverse impact on our business~~ , financial condition **,** and results of operations ~~. The extent of the effect will depend on future developments, including actions taken to contain COVID- 19, whether these effects persist, the duration and severity of additional outbreaks and the availability and effectiveness of vaccines and treatments for COVID- 19 globally~~ . If renewable energy technologies are not suitable for widespread adoption, or if sufficient demand for our hardware and software- enabled services does not develop or takes longer to develop than we anticipate, our sales may decline and we may be unable to achieve or sustain profitability. The market for renewable, distributed energy generation is emerging and rapidly evolving, and its future success is uncertain. If renewable energy generation proves unsuitable for widespread commercial deployment or if demand for our renewable energy hardware and software- enabled services fails to develop sufficiently, our revenue, market share and profitability would be adversely impacted. Many factors may influence the widespread adoption of renewable energy generation and demand for our hardware and software- enabled services, including, but not limited to the cost- effectiveness of renewable energy technologies as compared with conventional and competitive technologies, the performance and reliability of renewable energy products as compared with conventional and non- renewable products, fluctuations in economic and market conditions that impact the viability of conventional and competitive alternative energy sources, increases or decreases in the prices of oil, coal and natural gas, continued deregulation of the electric power industry and broader energy industry, and the availability or effectiveness of government subsidies and incentives. You should consider our prospects in light of the risks and uncertainties emerging companies encounter when introducing new products and services into a nascent industry. The failure of renewable energy hardware costs to continue to decline would have a negative effect on our business and financial condition. The growth and profitability of our business depends on the continued decline in the cost of battery storage, solar photovoltaic (" PV ") system components and related hardware. Over the last decade, the cost of renewable energy hardware has generally declined; however, ~~the cost of lithium ion based battery storage systems have~~ increased ~~in recent months. Increased~~ demand and global supply chain constraints could cause ~~additional~~ price increases. If, for whatever reason, there is a sustained increase in the price of battery storage systems, solar PV system components or related hardware, our business and financial condition will be negatively affected. If the estimates and assumptions we use to determine the size of our total addressable market are inaccurate, our future growth rate may be **negatively** affected and the potential growth of our business may be limited. Market estimates and growth forecasts are subject to significant uncertainty and are based on assumptions and estimates that may prove to be inaccurate. Even if the markets in which we compete meet our size estimates and forecasted growth, our business could fail to grow at similar rates, if at all. The assumptions relating to our market opportunities include, but are not limited to, the following: (i) Wood Mackenzie research forecasts that the U. S. energy storage market, excluding the residential market, is expected to reach a total value of approximately 46. 5 GWh in 2025; (ii) general declines in lithium- ion battery costs and in the cost of renewable generation; (iii) growing demand for renewable energy ~~.~~**;** and (iv) increased complexity of the electrical grid. Our market opportunities are also based on the assumption that our existing and future offerings will be more attractive to our customers and potential customers than competing products and services. If these assumptions prove inaccurate, our business, financial condition and results of operations could be adversely affected. We compete for customers, financing partners and incentive dollars with other providers of energy storage systems and asset performance monitoring and control solutions. Many providers of electricity, such as traditional utilities and other companies offering distributed generation products, have longer operating histories, customer incumbency advantages, access to and influence with local and state governments, and more capital resources than we do. Significant developments in alternative energy storage and management technologies or improvements in the efficiency or cost of traditional energy sources, including coal, oil, natural gas used in combustion or nuclear power, may materially and adversely affect our business and prospects in ways we cannot anticipate. We may also face new competitors who are not currently in the market, including as a result of the IRA and its anticipated impacts and benefits to our industry. If we fail to adapt to changing market conditions and to compete successfully with new competitors, we will limit our growth and adversely affect our business results. **Our future growth will depend on expanding and diversifying our new product and new market opportunities, and if we do not successfully execute on our new product and new market plans, or if our new product and new market opportunities are more limited than we expect, our operating results and future growth prospects could be adversely affected. We are attempting to enhance our future growth opportunities by expanding our existing products and services, including our modular energy storage systems and higher- margin software and services, and investing in the research and development of new offerings. Additionally, we are seeking to expand the markets in which we sell our products and services. If we do not appropriately allocate our resources in line with the market and developing opportunities, our results of operations and future growth prospects could be adversely affected. Our investments also may not result in the growth we expect, or the timing of when we expect it, for a variety of reasons, including but not limited to, changes in growth trends, evolving and changing markets and increasing competition, market opportunities, and technology and product innovation. We may introduce new technologies or products that do not work, are not delivered on a timely basis, are not developed according to product and / or cost specifications, or are not well received by customers. Moreover, there may be fewer opportunities than we expect due to a decline in business or economic conditions or a decreased demand in these markets or for our new products from our expectations, our inability to successfully execute our sales and marketing plans, or for other reasons. In addition to our current growth opportunities, our future growth may be reliant on our ability to identify and develop potential new growth opportunities. This process is inherently risky and may result in investments in time and resources for which we do not achieve any return or value. These risks are enhanced by attempting to introduce multiple breakthrough technologies and products simultaneously. Our growth opportunities and those opportunities we may pursue are subject to rapidly changing and evolving technologies and industry standards, and may be replaced by new technology concepts or platforms. If we do not develop innovative and reliable product offerings and enhancements in a cost- effective and timely manner that are attractive to customers in these markets; if we are otherwise unsuccessful in competing in these new product categories; if the new product categories in which we invest our limited resources do not emerge as expected or do not produce the growth or profitability we expect, or when we expect it, or if we do not correctly anticipate changes and evolutions in technology and platforms, our business and results of operations may be adversely affected.** We are subject to supply chain risk and our suppliers may fail to deliver components according to schedules, prices, quality and volumes that are acceptable to us, which could negatively affect our results of operations. We purchase our components and materials from international and domestic vendors, and are exposed to supply chain risks arising from logistics disruptions. Unexpected changes in business conditions, **the macroeconomic environment, geopolitical instability,** materials pricing, including inflation of raw material costs, labor issues, wars, natural disasters, health epidemics **,** such as the COVID- 19 pandemic, trade and shipping disruptions, port congestions and other factors beyond our or our suppliers' control could also affect these suppliers' ability to deliver components to us or to remain solvent and operational. ~~For example, the Company' s industry continues to face shortages and shipping delays affecting the supply of inverters, enclosures, battery modules and associated component parts for inverters and battery energy storage systems available for purchase. These shortages and delays can be attributed in part to the COVID- 19 pandemic and resulting government action, as well as broader macroeconomic conditions that may persist once the immediate effects of the pandemic have subsided, and have been exacerbated by the ongoing conflict between Russia and Ukraine.~~ In addition, international supply is also exposed to risks related to tariffs and sanctions, as well as political, social, and economic instability in regions where we source products and material. For example, in recent years, China and the U. S. have each imposed tariffs, and there remains a potential for further trade barriers and the possibility of an escalated trade war between China and the U. S. These or other tariffs could adversely affect our hardware component prices and negatively affect any plans to sell products in China and other impacted international markets. Disruptions in the availability of key equipment, components or materials such as lithium may adversely affect our business, prospects and operations, and volatility in prices and availability of such items may negatively affect our customer relationships and ability to plan for future growth. We also face risks resulting from supplier concentration and limited supplier capacity. We rely on a very small number of suppliers of energy storage systems and other equipment. If any of our suppliers were unable or unwilling to provide us with contracted quantities in a timely manner at prices, quality levels and volumes acceptable to us, we would have very limited alternatives for supply, and we may not be able to contract for and receive suitable alternative supply in a timely manner for our customers, or at all. Such an event may impair our ability to meet scheduled deliveries of our products to customers, which may cause our customers to cancel orders and subject us to liability, **including liquidated damages to our customers,** and may materially adversely affect our customer relationships, business, prospects, financial condition and results of operations. We may also be unsuccessful in our ~~continuous~~ **continued** efforts to negotiate with existing suppliers to obtain cost reductions and avoid unfavorable changes to terms. Global demand has increased for lithium- ion battery cells, which ~~may~~ **has** ~~cause~~ **caused** challenges for our suppliers, including delays or price volatility. Any such delays or reduced availability of energy storage systems or other component materials may impact our sales and operating results. Further, these risks may increase as **the** market demand for our offerings grows. Additionally, some of our suppliers supply systems and components to other businesses, including businesses engaged in the production of consumer electronics and other industries unrelated to energy storage systems. There are also larger purchasers of certain parts and materials that we supply to our customers. As a result, we may be unable to procure a sufficient supply of the items **we require** in the event that our suppliers fail to produce sufficient quantities to satisfy the demands of all of their customers. Any of these occurrences could materially adversely affect our business, prospects, financial condition and results of operations. We have entered into long- term supply agreements that could result in insufficient inventory and negatively affect our results of operations. We have entered into long- term supply agreements with certain suppliers of battery storage systems and other components of our energy storage systems. Some of these supply agreements provide for fixed or inflation- adjusted pricing and substantial prepayment obligations. Additionally, if our suppliers provide insufficient inventory at the level of quality required to meet customer demand, or if our suppliers are unable or unwilling to provide us with the contracted quantities, we will have limited alternatives for supply and our results of operations could be materially and negatively impacted. Further, we face significant specific counterparty risk under long- term supply agreements when dealing with certain suppliers without a long, stable production and financial history. Given the uniqueness of our product, some of our suppliers do not have a long operating history and may not have ~~substantial~~ **sufficient** capital resources. In the event any such supplier experiences financial difficulties, it may be difficult or may require substantial time and expense to replace such **a** supplier. We do not know whether we will be able to maintain long- term supply relationships with our critical suppliers, or secure new long- term supply agreements. Additionally, we procure many of the battery storage systems and components of our energy storage systems from non- U. S. suppliers, which exposes us to risks **,** including **but not limited to** unforeseen increases in costs or interruptions in supply arising **from macroeconomic or geopolitical factors and** from changes in applicable international trade regulations, such as taxes, tariffs, or quotas. Any of the foregoing could materially adversely affect our business, financial condition and results of operations. Our hardware and software- enabled services involve a lengthy sales and installation cycle. If we fail to close sales on a regular and timely basis **,** it could adversely affect our business, financial condition and results of operations. Amounts included in our ~~pipeline and~~ contracted backlog may not result in actual revenue or translate into profits. Our sales cycle is typically six to 12 months for our hardware and software- enabled services, but can vary considerably. In order to make a sale, we must typically provide a significant level of education to prospective customers regarding the use and benefits of our hardware and software- enabled services. The period between initial discussions with a potential customer and the sale of even a single energy storage system typically depends on a number of factors, including the potential customer' s budget and decision as to the type of financing it chooses to use, as well as the arrangement of such financing. Prospective customers often undertake a significant evaluation process, which may further extend the sales cycle **, and which evaluation may be negatively impacted by general market and economic conditions such as inflation, rising interest rates, availability of capital, a recessionary environment, geopolitical instability, energy availability and costs, and the availability and effects of government initiatives** . We view potential contracts with developers and independent power producers for energy optimization services and transfer of energy storage systems that are currently being pursued by our direct ~~salesforce~~ **sales force** and channel partners as part of our pipeline ~~. Our pipeline is an internal metric based on numerous assumptions and limitations, and is calculated using our own data, which has neither been prepared or audited in accordance with U. S. GAAP, nor been independently verified by third parties. We cannot guarantee that our pipeline provides an accurate indication of our future or expected results, or will result in meaningful revenue or profitability~~ . Currently, the time between the entry into a sales contract with a customer and the installation of our energy storage systems can range from nine to 18 months, or more. This lengthy sales and installation cycle is subject to a number of significant risks over which we have little or no control. We characterize contracts that have been signed but not yet installed as a booking that becomes part of our backlog. Because of both the long sales and installation cycles, we may expend significant resources without generating a sale or producing revenue from our bookings and backlog. These lengthy sales and installation cycles increase the risk that our customers may fail to satisfy their payment obligations, cancel orders before the completion of the transaction or delay the planned date for installation. Cancellation rates may be affected by factors outside of our control including **, but not limited to,** an inability to install an energy storage system at the customer' s chosen location because of permitting or other regulatory issues, unanticipated changes in the cost or availability of alternative sources of electricity available to the customer or other reasons unique to each customer. Our operating expenses are based on anticipated sales levels, and many of our expenses are fixed. If we are unsuccessful in closing sales after expending significant resources or if we experience delays or cancellations, our business, financial condition and results of operations could be adversely affected. Additionally, we have ongoing arrangements with our customers and target customers. Some of these arrangements are evidenced by contracts or long- term contract partnership arrangements. If these arrangements are terminated or if we are unable to continue to fulfill the obligations under such contracts or arrangements, our business, financial condition and results of operations could be adversely affected. If we are unable to attract and retain key employees and hire qualified management, technical, engineering and sales personnel, our ability to compete and successfully grow our business could be adversely affected. We believe that our success and our ability to reach our strategic objectives are highly dependent on the contributions of our key management, technical, engineering, finance and sales personnel. The loss of the services of any of our senior executives and other key employees could disrupt our operations, delay the development and introduction of our hardware and software- enabled services, and negatively affect our business, financial condition and operating results. In addition, our ability to manage our growth effectively, including **our ability to** ~~expanding~~ --- **expand** our market presence in international markets ~~will be affected~~ **, is impacted** by our ability to successfully expand our management team, hire and train new personnel and implement and enhance human resources administrative systems. Our success in hiring, attracting and retaining senior management and other experienced and highly skilled employees will depend in part on our ability to provide competitive compensation packages and a high- quality work environment and maintain a desirable corporate culture. To help attract, retain, and motivate qualified employees, we use ~~share~~ **stock** - based awards, such as restricted stock units, and performance- based cash incentive awards. Sustained declines in our stock price, or lower stock price performance relative to **our** competitors, can reduce the retention value of our ~~share~~ **stock** - based awards. We may not be able to attract, integrate, train, motivate or retain current or additional highly qualified personnel, and our failure to do so could adversely affect our business, financial condition and operating results. Furthermore, there is continued and increasing competition for talented individuals in our field, and competition for qualified personnel is especially intense in the San Francisco Bay Area, where our principal offices are located. In addition to longstanding competition for highly skilled and technical personnel, we face increased competitive pressures and employee cost inflation in tighter labor markets, such as **was** ~~has been~~ experienced during the COVID- 19 pandemic. Industry competition and cross- industry labor market pressures may negatively impact our ability to attract and retain our executive officers and other key technology, sales, marketing and support personnel and drive increases in our employee costs, both of which could adversely affect our business, financial condition and results of operations. We have incurred significant losses in the past and **may** ~~expect to~~ incur net losses through at least ~~2023~~ **2024** . Since our inception in 2009, we have incurred significant net losses and have used significant cash in our business. As of December 31, ~~2022~~ **2023** , we had an accumulated deficit of approximately $ ~~632~~ **772** . ~~1~~ **5** million. We expect to continue to expand our operations, including by investing in sales and marketing, research and development, staffing systems and infrastructure to support our growth. Under our current plans, we expect to incur net losses on a GAAP basis through at least ~~2023~~ **2024** . Our ability to achieve profitability in the future will depend on a number of factors, including: • **increasing sales to existing customers and attracting new customers for our hardware and software- enabled services; • improving our gross margins; •** growing our sales volume; • **managing operating expenses** ~~increasing sales to existing customers and attracting new customers for our hardware and software- enabled services~~ ; • improving our ability to procure energy storage systems from OEMs on cost- effective terms ~~; • improving our consolidated gross margins reflecting the ability to maintain favorable contract pricing and terms with our customers for our hardware and software- enabled services~~ ; • improving the effectiveness of our sales and marketing activities; • attracting and retaining key talent in a competitive marketplace; • operating our systems profitably for the benefit of our customers; and • the availability of incentives, including those associated with the IRA. Even if we do achieve profitability when expected, we may be unable to sustain or increase our profitability in the future. If we are not able to continue to reduce our cost structure in the future, our ability to become profitable may be impaired. We must continue to reduce the costs of operation of our energy storage systems, and production and operation of our asset performance monitoring and control solutions, to expand our market. Additionally, certain of our existing service contracts were entered into based on projections regarding service cost reductions that assume continued advances in lowering the cost of delivery of our services, which we may be unable to realize. While we have been successful in reducing some of our costs to date, some of our costs have increased, and we could experience additional cost increases in the future. Any such increases could slow our growth and cause our financial results and operational metrics to suffer. In addition, we may face increases in our other expenses, including increases in wages or other labor costs, as well as marketing, sales or related costs. We ~~will~~ **expect to** continue to make significant investments to drive growth in the future. ~~To~~ **In order to** expand into new markets while still maintaining our current margins, we will need to continue to reduce our costs. Increases in any of these costs, or our failure to achieve projected cost reductions, could adversely affect our business, financial condition and results of operations. If we are unable to reduce our cost structure in the future, we may not be able to achieve profitability or we may fail to do so on a satisfactory timeline, which could have a material adverse effect on our business and prospects. Acquisitions are an important element of our business strategy, and we may pursue future acquisitions to increase revenue, expand our market position, add to our service offerings and technological capabilities, respond to dynamic market conditions, or for other strategic or financial purposes. However, we cannot assure you that we will **be able to** identify suitable acquisition candidates or complete any acquisitions on favorable terms, or at all. In addition, any acquisitions we do complete, including our acquisition of AlsoEnergy, would involve a number of risks, which may include the following: • the identification, acquisition and integration of acquired businesses require substantial attention from management. The diversion of management' s attention and any difficulties encountered in the integration process could hurt our business; • the identification, acquisition and integration of acquired businesses requires significant investment, including to determine which new service offerings we might wish to acquire, harmonize service offerings, expand management capabilities and market presence, and improve or increase development efforts and technology features and functions; • the anticipated benefits from any acquisition may not be achieved on a timely basis or at all, including as a result of loss of clients or personnel of the target, other difficulties in supporting and transitioning the target' s clients, difficulties in managing expanded operations and operations in foreign jurisdictions in which we have never operated, the inability to realize expected synergies from an acquisition, or negative organizational cultural effects arising from the integration of new personnel; • we may face difficulties in integrating the personnel, technologies, solutions, operations, and existing contracts of the acquired business; • we may fail to identify all of the problems, liabilities, risks or other shortcomings or challenges of an acquired company, technology or solution, including issues related to intellectual property, solution quality or architecture, income tax and other regulatory compliance practices, revenue recognition or other accounting or internal control practices, or employee or client issues; • to pay for future acquisitions, we could issue additional shares of our common stock or pay cash. Issuance of shares would dilute stockholders. See "- We may issue a significant number of shares in the future in connection with investments or acquisitions " below. Use of cash reserves could diminish our ability to respond to other opportunities or challenges. Borrowing to fund any cash purchase price would result in increased fixed obligations and could also include covenants or other restrictions that would impair our ability to manage our operations; • acquisitions expose us to the risk of assumed known and unknown liabilities including contract, tax, regulatory or other legal, and other obligations incurred by the acquired business or fines or penalties, for which indemnity obligations, escrow arrangements or insurance may not be available or may not be sufficient to provide coverage; • new business acquisitions can generate significant intangible assets that result in substantial related amortization charges and the potential for goodwill impairments in the future; • the operations of acquired businesses, or our adaptation of those operations, may require that we apply revenue recognition or other accounting methodologies, assumptions, and estimates that are different from those we use in our current business, which could complicate our financial statements, expose us to additional accounting and audit costs, and increase the risk of accounting errors; • acquired businesses may have insufficient internal controls that we must remediate, and the integration of acquired businesses may require us to modify or enhance our own internal controls, in each case resulting in increased administrative expense and risk that we experience control deficiencies or fail to comply with the requirements of Section 404 of the Sarbanes- Oxley Act of 2002; and • acquisitions can sometimes lead to disputes with the former owners of the acquired company, which can result in increased legal expenses, management distraction and the risk that we may suffer an adverse judgment if we are not the prevailing party in the dispute. Our current and planned foreign operations expose us to additional business, financial, regulatory and geopolitical risks, and any adverse event could have a material adverse effect on our results of operations. As a result of our acquisition of AlsoEnergy, we now operate in more than 50 countries, including the United States and Canada, and in multiple **European Union ("** EU **")** and Latin American countries and Asia. Prior to our acquisition of AlsoEnergy, we operated in only three countries. We may in the future evaluate further opportunities to expand into new geographic markets and introduce new product offerings and services that are an extension of our existing business. We also may from time to time acquire businesses or product lines with the potential to strengthen our market position, enable us to enter attractive markets, expand our technological capabilities, or provide synergy opportunities. We have very limited experience operating outside of the U. S. Managing our international expansion will require additional resources and controls, including additional manufacturing and assembly facilities. Furthermore, any additional markets that we may enter could have different characteristics from the markets in which we currently operate, and our success will depend on our ability to adapt properly to these differences. Any further international expansion could subject our business to risks associated with international operations, including: • compliance with multiple, potentially conflicting and changing governmental laws, regulations and permitting processes, including trade, labor, environmental, banking, employment, privacy and data protection laws and regulations, such as the EU Data Privacy Directive, as well as tariffs, export quotas, customs duties and other trade restrictions; • compliance with U. S. and foreign anti- bribery laws, including the Foreign Corrupt Practices Act of 1977, as amended; • difficulties in collecting payments in foreign currencies and associated foreign currency exposure; • compliance with potentially conflicting and changing laws of taxing jurisdictions where we conduct business and applicable U. S. tax laws as they relate to international operations, the complexity and adverse consequences of such tax laws and potentially adverse tax consequences due to changes in such tax laws; • the laws of some countries do not protect proprietary rights as fully as do the laws of the U. S. As a result, we may not be able to protect our proprietary rights adequately outside of the U. S.; • regional ~~economic~~ **macroeconomic** and ~~political~~ **geopolitical** conditions; • conformity with applicable business customs, including translation into foreign languages and associated expenses; • lack of availability of government incentives and subsidies; • potential changes to our established business model; • cost of alternative power sources, which could vary meaningfully outside the U. S.; • difficulties in staffing and managing foreign operations in an environment of diverse culture, laws and customers, and the increased travel, infrastructure and legal and compliance costs associated with international operations; • customer installation challenges which we have not encountered before, which may require the development of a unique model for each country; • differing levels of demand among members of our customer base, including commercial and industrial customers, utilities, independent power producers and project developers; and • restrictions on repatriation of earnings. As a result of these risks, any future international expansion efforts that we may undertake (as well as our acquisition of AlsoEnergy) may not be successful and may negatively affect our results of operations and profitability. In addition, there may be adverse effects to our business if there is instability, disruption or destruction in a significant geographic region, regardless of cause, including war, terrorism, riot, civil insurrection or social unrest; and natural or man- made disasters, including famine, flood, fire, earthquake, storm or disease. The U. S. government and other governments in jurisdictions in which we operate have imposed severe sanctions and export controls against Russia and Russian interests, and have threatened additional sanctions and controls. The ongoing conflict between Russia and Ukraine has exacerbated shortages and shipping delays affecting certain components and supplies. It is not possible to predict the broader consequences of this conflict, which could include further sanctions, embargoes, greater regional instability, geopolitical shifts and other adverse effects on macroeconomic conditions, **international trade,** currency exchange rates, supply chains and financial markets. Our platform performance may not meet our customers' expectations or needs. The renewable energy projects that our customers construct and own are subject to various operating risks that may cause them to generate less value for our customers than expected. These risks include a failure or wearing out of our or our operators', customers' or utilities' equipment; an inability to find suitable replacement equipment or parts; ~~less~~ **lower** than expected supply or quality of the project' s source of electricity ~~and~~ **or** faster than expected diminishment of such electricity supply; or volume disruption in our supply collection and distribution system. Any extended interruption or failure of our customer' s projects for any reason to generate the expected amount of output could adversely affect our business, financial condition and results of operations. In addition, there has been in the past, and may be in the future, an adverse impact on our customers' willingness to continue to procure additional hardware and software- enabled services from us if any of our customer' s projects incur operational issues that indicate expected future cash flows from the project are less than the project' s carrying value. Any such outcome could adversely affect our operating results or ability to continue to grow our sales volume or to increase sales to existing customers or new customers. The energy storage systems we pair with our Athena ® platform are complex energy solutions. We rely on our OEM suppliers to control the quality of the battery storage equipment and other components that make up the energy storage system sold to our customers. We are not involved in the manufacture of the batteries or other components of the energy storage systems. As a result, our ability to seek recourse for liabilities and recover costs from our OEM suppliers depends on our contractual rights as well as the financial condition and integrity of such OEM suppliers that supply us with the batteries and other components of our energy storage systems. Such systems may contain undetected or latent errors or defects. In the past, we have discovered latent defects in energy storage systems. In connection with such defects, we could incur significant expenses or disruptions of our operations, including to our energy storage network, that would prevent us from performing the automated data engineering required to support our AI processes and energy storage network. Any manufacturing defects or other failures of our energy storage systems to perform as expected could cause us to incur significant re- engineering costs, divert the attention of our personnel from operating and maintenance efforts, expose us to adverse regulatory action and litigation and significantly and adversely affect customer satisfaction, market acceptance and our business reputation. Furthermore, our OEM suppliers may be unable to correct manufacturing defects or other failures of any energy storage systems in a manner satisfactory to our customers, which could adversely affect customer satisfaction, market acceptance and our business reputation. On rare occasions, lithium- ion batteries can rapidly release the energy they contain by venting smoke and flames in a manner that can ignite nearby materials as well as other lithium- ion batteries. ~~This faulty result~~ **Any such occurrences** could subject us to lawsuits, product recalls or redesign efforts, all of which would be time consuming and expensive. Also, negative public perceptions regarding the suitability of lithium- ion batteries for energy applications or any future incident involving lithium- ion batteries, such as a plant, vehicle or other fire, even if such incident does not involve hardware provided by us, could adversely affect our business and reputation. If our estimates of useful life for our energy storage systems and related hardware and software- enabled services are inaccurate, or if our OEM suppliers do not meet service and performance warranties and guarantees, our business and financial results could be adversely affected. We sell hardware and software- enabled services to our customers. Our software- enabled services are essential to the operation of these hardware products. As a result, in connection with the sales of energy storage hardware, we enter into recurring long- term services agreements with customers for the usage of our Athena platform for approximately ~~10~~ **3** to 20 years. Our pricing of services contracts is based upon the value we expect to deliver to our customers, including considerations such as the useful life of the energy storage system and prevailing electricity prices. We also provide performance warranties and guarantees covering the efficiency and output performance of our software- enabled services. We do not have a long history with a large number of field deployments, and our estimates may prove to be incorrect. Failure to meet these performance warranties and guarantee levels may require us to refund our service contract payments to the customer, or require us to make cash payments to the customer based on actual performance, as compared to expected performance. Further, the occurrence of any defects, errors, disruptions in service, or other performance problems, interruptions, or delays associated with our energy storage systems or the Athena platform, whether in connection with day- to- day operations or otherwise, could result in: • loss of customers; • loss or delayed market acceptance and sales of our hardware and software- enabled services; • delays in payment to us by customers; • injury to our reputation and brand; • legal claims, including warranty and service level agreement claims, against us; or • diversion of our resources, including through increased service and warranty expenses or financial concessions, and increased insurance costs. The costs incurred in correcting any material defects or errors in our hardware and software or other performance problems may be substantial and could adversely affect our business, financial condition and results of operations. Any product recall in the future, whether it involves our or a competitor' s product, may result in negative publicity, damage our brand and materially and adversely affect our business, financial condition and results of operations. In the future, we may voluntarily or involuntarily initiate a recall if any of our products are proven to be or possibly could be defective or noncompliant with applicable environmental laws and regulations, including health and safety standards. Such recalls involve significant expense and diversion of management attention and other resources, which could adversely affect our brand image, as well as our business, financial condition and operating results. We primarily rely on Amazon Web Services to deliver our services to users on our Athena platform, and any disruption of, or interference with, our use of Amazon Web Services could adversely affect our business, financial condition and results of operations. We currently host our Athena platform and support our energy storage network operations on one or more data centers provided by Amazon Web Services (" AWS "), a third- party provider of cloud infrastructure services. We do not have control over the operations of the facilities of AWS that we use. AWS' facilities are vulnerable to damage or interruption from natural disasters, cybersecurity attacks, terrorist attacks, power outages, and similar events or acts of misconduct. Our Athena platform' s continuing and uninterrupted performance is critical to our success. We have experienced, and expect that in the future we will experience, interruptions, delays, and outages in service and availability from time to time due to a variety of factors, including infrastructure changes, human or software errors, website hosting disruptions and capacity constraints. In addition, any changes in AWS' service levels may adversely affect our ability to meet the requirements of users on our Athena platform. Since our Athena platform' s continuing and uninterrupted performance is critical to our success, sustained or repeated system failures would reduce the attractiveness of our hardware and software- enabled services to customers. It may become increasingly difficult to maintain and improve our performance, as we expand and our energy storage network grows, increasing customer reliance on the Athena platform. Any negative publicity arising from any disruptions to AWS' facilities, and as a result, our Athena platform could adversely affect our reputation and brand and may adversely affect the usage of our hardware and software- enabled services. Any of the above circumstances or events may adversely affect our reputation and brand, reduce the availability or usage of our hardware and software- enabled services, lead to a significant short- term loss of revenue, increase our costs, and impair our ability to attract new users, any of which could adversely affect our business, financial condition and results of operations. Our commercial agreement with AWS will remain in effect until terminated by AWS or us. AWS may terminate the agreement for convenience by providing us at least thirty (30) days' advance notice. AWS may also terminate the agreement for cause upon a material breach of the agreement, subject to AWS providing prior written notice and a 30- day cure period, and may in some cases terminate the agreement immediately for cause upon written notice. Even though our platform is entirely in the cloud, we believe that we could transition to one or more alternative cloud infrastructure providers on commercially reasonable terms. If our agreement with AWS is terminated or we add additional cloud infrastructure service providers, we may experience significant costs or downtime for a short period in connection with the transfer to, or the addition of, new cloud infrastructure service providers. However, we do not believe that such transfer to, or the addition of, new cloud infrastructure service providers would adversely affect our business, financial condition and results of operations over the longer term. Any failure to offer high- quality technical support services may adversely affect our relationships with our customers and adversely affect our financial results. Our customers depend on our support organization to resolve any technical issues relating to our hardware and software- enabled services. In addition, our sales process is highly dependent on the quality of our hardware and software- enabled services, on our business reputation and on strong recommendations from our existing customers. Any failure to maintain high- quality and highly- responsive technical support, or a market perception that we do not maintain high- quality and highly- responsive support, could adversely affect our reputation, our ability to sell our products to existing and prospective customers, and our business, financial condition and results of operations. We offer technical support services with our hardware and software- enabled services and may be unable to respond quickly enough to accommodate short- term increases in demand for support services, particularly as we increase the size of our customer base. We also may be unable to modify the format of our support services to compete with changes in support services provided by competitors. It is difficult to predict demand for technical support services and if demand increases significantly, we may be unable to provide satisfactory support services to our customers. Additionally, increased demand for these services, without corresponding revenue, could increase costs and adversely affect our business, financial condition and results of operations. Our business currently depends on the availability of rebates, tax credits and other financial incentives. The reduction, modification, or elimination of government economic incentives could cause our revenue to decline and adversely affect business, financial condition and results of operations. The U. S. federal government and some state and local governments provide incentives to end users and purchasers of our energy storage systems in the form of rebates, tax credits and other financial incentives, such as system performance payments and payments for renewable energy credits associated with renewable energy generation. In addition, some countries outside the United States also provide incentives to current and future end users and purchasers of our energy storage systems. We rely on these governmental rebates, tax credits and other financial incentives to significantly lower the effective price of the hardware and software- enabled services we offer to our customers. However, these incentives may expire on a particular date, end when the allocated funding is exhausted, or be reduced or terminated as a matter of regulatory or legislative policy. Our energy storage systems and asset performance monitoring and control solutions have qualified for tax exemptions, incentives or other customer incentives in many states. Some states have utility procurement programs and / or renewable portfolio standards for which our technology is eligible. Our offerings are currently installed in various U. S. states, each of which may have its own enabling policy framework. There is no guarantee that these policies will continue to exist in their current form, or at all. Such state programs may face increased opposition on the U. S. federal, state and local levels in the future. Changes in incentive programs could reduce demand for our offerings, impair sales financing and adversely impact our business results. The economic benefit of our offerings to our customers depends on the cost of electricity available from alternative sources, including local electric utility companies, which cost structure is subject to change. The economic benefit of our offerings to our customers includes, among other things, the benefit of reducing such customer' s payments to the local electric utility company. The rates at which electricity is available from a customer' s local electric utility company is subject to change and any changes in such rates may affect the relative benefits of our energy storage systems. Factors that could influence these rates include the effect of energy conservation initiatives that reduce electricity consumption, construction of additional power generation plants (including nuclear, coal or natural gas), and technological developments by others in the electric power industry. Further, the local electric utility may impose " departing load, " " standby " or other charges on our customers in connection with their acquisition of our energy storage systems, the amounts of which are outside of our control and which may have a material impact on the economic benefit of our energy storage systems to our customers. Changes in the rates offered by local electric utilities and / or in the applicability or amounts of charges and other fees imposed by such utilities on customers acquiring our energy storage systems could adversely affect the demand for our energy storage systems. Additionally, even with available subsidies for our systems, the electricity produced by our energy storage systems is currently not cost competitive in some geographic markets, and we may be unable to reduce our costs to a level at which our energy storage systems would be competitive in such markets. As such, unless the cost of electricity in these markets rises or we are able to generate demand for our energy storage systems based on benefits other than electricity cost savings, our potential for growth in those markets may be limited. Our business is subject to risks associated with construction, utility interconnection ~~, cost overruns~~ and delays, including those related to obtaining government permits and other contingencies that may arise in the course of completing installations. Although we ~~generally~~ are not regulated as a utility, federal, state and local government statutes and regulations concerning electricity heavily influence the ~~market~~ **demand** for our products and services. These statutes and regulations often relate to electricity pricing, net metering, incentives, taxation and the rules surrounding the interconnection of customer- owned electricity generation for specific technologies. In the U. S., governments frequently modify these statutes and regulations. Governments, often acting through state utility or public service commissions, **may** change ~~and~~ **or** adopt different requirements for utilities and rates for commercial customers on a regular basis. Changes, or in some cases a lack of change, in any of the laws, regulations, ordinances or other rules that apply to customer installations and new technology could make it more costly for our customers to install and operate our energy storage systems on particular sites, and in turn could negatively affect our ability to deliver cost savings to customers for the purchase of electricity. The installation and operation of our energy storage systems at a particular site is also generally subject to oversight and regulation in accordance with national, state and local laws and ordinances relating to building codes, safety, environmental protection and related matters, and typically requires obtaining and keeping in good standing various local and other governmental approvals and permits, including environmental approvals and permits, that vary by jurisdiction. In some cases, these approvals and permits require periodic renewal. It is difficult and costly to track the requirements of every individual authority having jurisdiction over energy storage system installations, to design our energy storage systems to comply with these varying standards, and for our customers to obtain all applicable approvals and permits. We cannot predict whether or when all permits required for a given customer' s project will be granted or whether the conditions associated with the permits will be achievable. The denial or delay of a permit or utility connection essential to a project or the imposition of impractical conditions would impair our customer' s ability to develop the project. In addition, we cannot predict whether the permitting process will be lengthened due to complexities and appeals. Delay in the review and permitting process for a project can impair or delay our customers' abilities to develop that project or increase the cost so substantially that the project is no longer attractive to our customers. Furthermore, unforeseen delays in the review and permitting process could delay the timing of the installation of our energy storage systems and could therefore adversely affect the timing of the recognition of revenue related to hardware acceptance by our customer, which could adversely affect our operating results in a particular period. In addition, the successful installation of our energy storage systems is dependent upon the availability of and timely connection to the local electric grid. We may be unable to obtain the required consent and authorization of local utilities to ensure successful interconnection to energy grids to enable the successful discharge of renewable energy to customers. Any delays in our customers' ability to connect with utilities, delays in the performance of installation- related services or poor performance of installation- related services will have an adverse effect on our results and could cause operating results to vary materially from period to period. Our business depends on customers renewing their services subscriptions. If customers do not continue to use our subscription offerings or if we fail to expand the availability of hardware and software- enabled services available to our customers, our business and operating results will be adversely affected. In addition to upfront sale of hardware and network integration, we depend on customers continuing to subscribe to services enabled by our Athena platform. Therefore, it is important that customers renew their subscriptions when the contract term expires, increase their purchases of our hardware and network solutions and enhance their subscriptions. Customers may decide not to renew their subscriptions with a similar contract period, at the same prices or terms or with the same or a greater number of users or level of functionality. Customer retention may decline or fluctuate as a result of a number of factors, including satisfaction with software- enabled services and features, functionality of our energy storage hardware and software- enabled services, prices, the features and pricing of competing products, reductions in spending levels, mergers and acquisitions involving customers and deteriorating general economic conditions. If customers do not renew their subscriptions, if they renew on less favorable terms, if they fail to increase their purchase of our hardware and software- enabled services, or if they fail to refer us their customers and partners as potential new customers, our business, financial condition and results of operations will be adversely affected. Changes in subscriptions or pricing models may not be reflected in near- term operating results. We generally recognize subscription revenue from customers ratably over the terms of their contracts. As a result, most of the subscription revenue reported in each quarter is derived from the recognition of deferred revenue relating to subscriptions entered into during previous quarters. Consequently, a decline in new or renewed subscriptions in any single quarter will likely have only a small impact on revenue for that quarter. However, such a decline will negatively affect revenue in future quarters. In addition, the severity and duration of events may not be predictable and their effects could extend beyond a single quarter. Accordingly, the effect of significant downturns in sales and market acceptance of subscription services, and potential changes in pricing policies or rate of renewals, may not be fully apparent until future periods. Severe weather events, including the effects of climate change, are inherently unpredictable and may have a material adverse effect on our financial results and financial condition. Our business, including our customers and suppliers, may be exposed to severe weather events and natural disasters, such as tornadoes, tsunamis, tropical storms (including hurricanes), earthquakes, windstorms, hailstorms, severe thunderstorms, flooding, wildfires and other fires, extreme heatwaves, drought and power shut- offs causing, among other things, disruptions to our supply chain or utility interconnections and / or damage to energy storage systems installed at our customers' sites. Such damage or disruptions may prevent us from being able to satisfy our contractual obligations or may reduce demand from our customers for our energy storage systems causing our operating results to vary significantly from one period to the next. We may incur losses in our business in excess of: (1) those experienced in prior years, (2) the average expected level used in pricing, or (3) current insurance coverage limits. The incidence and severity of severe weather conditions and other natural disasters are inherently unpredictable. Climate change is projected to affect the occurrence of certain natural events, such as an increase in the frequency or severity of wind and thunderstorm events, and tornado or hailstorm events due to increased convection in the atmosphere; more frequent wildfires and subsequent landslides in certain geographies; higher incidence of deluge flooding; and the potential for an increase in severity of the hurricane events due to higher sea surface temperatures. Changing market dynamics, global policy developments and the increasing frequency and impact of extreme weather events on critical infrastructure in the U. S. and elsewhere as a result of climate change have the potential to disrupt our business, the business of our suppliers and the business of our customers, and may cause us to experience higher attrition, losses and additional costs to maintain or resume operations. Additionally, climate change and the occurrence of severe weather events may adversely impact the demand, price, and availability of insurance. Due to significant variability associated with future changing climate conditions, we are unable to predict the impact climate change will have on our business. Increased scrutiny from stakeholders and regulators regarding ESG practices and disclosures, including those related to sustainability, and disclosure could result in additional costs and adversely impact our business and reputation. Companies across all industries are facing ~~increasing~~ **increased** scrutiny **regarding** ~~relating to~~ their ~~Environmental, Social and Governance ("~~ ESG ~~")~~ practices and disclosures and institutional and individual investors are increasingly using ESG screening criteria in making investment decisions. Our disclosures on these matters or a failure to satisfy evolving stakeholder expectations for ESG practices and reporting may potentially harm our reputation and impact employee retention, customer relationships and access to capital. For example, certain market participants use third- party benchmarks or scores to measure a company' s ESG practices in making investment decisions and customers and supplies may evaluate our ESG practices or require that we adopt certain ESG policies as a condition of awarding contracts. In addition, our failure or perceived failure to pursue or fulfill our goals, targets and objectives or to satisfy various reporting standards within the timelines we announce, or at all, could expose us to government enforcement actions and private litigation. Our ability to achieve any goal or objective, including with respect to environmental and diversity initiatives and compliance with ESG reporting standards, is subject to numerous risks, many of which are outside of our control. Examples of such risks include the availability and cost of technologies and products that meet sustainability and ethical supply chain standards, evolving regulatory requirements affecting ESG standards or disclosures, our ability to recruit, develop and retain diverse talent in our labor markets, and our ability to develop reporting processes and controls that comply with evolving standards for identifying, measuring and reporting ESG metrics. Methodologies for reporting ESG data may be updated and previously reported ESG data may be adjusted to reflect improvement in availability and quality of third- party data, ~~changing~~ **changes in** assumptions, changes in the nature and scope of our operations and other changes in circumstances. Our processes and controls for reporting ESG matters across our operations and supply chain are evolving along with multiple disparate standards for identifying, measuring, and reporting ESG metrics, including ESG- related disclosures that may be required by the SEC, European and other regulators, and such standards may change over time, which could result in significant revisions to our current goals, reported progress in achieving such goals, or ability to achieve such goals in the future. As ESG best- practices, reporting standards and disclosure requirements continue to develop, we may incur increasing costs related to ESG monitoring and reporting. We Face Risks Related to our DevCo Business Model From time to time, we have entered into strategic joint ventures with qualified third parties to develop energy storage power generation projects (" DevCo Projects "), as more fully described ~~above~~ under Note 1 — Business, ~~of~~ **in** the **accompanying** ~~Notes~~ **notes** to the consolidated financial statements in Part II, Item 8, " Financial Statements and Supplementary Data " of this Annual Report on Form 10- K. These projects require upfront investment by us and involve a high degree of risk. The success of this business model depends in large part on the successful development, financing and construction of projects. However, such projects ultimately may not be commercially viable or may not result in an adequate return of capital and, in pursuing these projects, we may incur unanticipated liabilities. Successful completion of a project may be adversely affected, delayed or rendered infeasible by numerous factors, including: • interconnection costs and capacity constraints; • transmission grid congestion issues; • delays in obtaining required governmental permits and approvals; • regulatory changes that adversely affect energy storage participation in wholesale markets; • changes in wholesale market energy and ancillary services prices and costs; • construction delays and contractor or developer partner performance shortfalls; • cost overruns, including costs related to renting or owning land necessary to develop DevCo Projects; • labor, equipment, and material supply shortages, failures or disruptions; and • force majeure and other events out of our control. In addition, our joint venture partners may at any time have economic, business or legal interests or goals that are inconsistent with the goals of the DevCo Project. Disagreements with our business partners may impede our ability to recognize the benefits of our DevCo Projects. Our joint venture partners may be unable or unwilling to meet their performance or other obligations under the operative documents, and we may be required to fulfill those obligations or to dissolve and liquidate the DevCo Project. If a DevCo Project experiences any of the factors listed above or otherwise fails to reach completion or is significantly delayed, we could lose all or a portion of our development capital investment ~~and our cash advances to purchase hardware~~. If a DevCo Project fails then we may be unable to recover our investment. Losing or delaying return of all or a portion of our investments in our DevCo Projects could have a material adverse effect on our business, financial condition and results of operations. We depend on a small number of significant customers for our sales, and a small number of customers have historically accounted for a material portion of our revenue. The loss of any one of our significant customers, their inability to perform under their contracts, their termination or failure to renew their contracts with us, or their default in payment could cause our revenue **and our working capital** to decline materially **. As of December 31, 2023, we had $ 302. 8 million of accounts receivable including $ 190. 2 million of unbilled receivables. Certain of our unbilled arrangements totaling $ 73. 5 million as of December 31, 2023, with our significant customers have variability as to the timing and price, which the realization may differ from what is currently projected by the Company** . For the near future, we may continue to derive a significant portion of our revenue from a small number of customers. For the fiscal year ended December 31, ~~2022~~ **2023** , one customer accounted for approximately ~~46~~ **26** % of our revenue. Loss of a significant customer or a significant reduction in pricing or order volume from a significant customer could materially reduce our revenue and operating results in any reporting period. In addition, we are subject to credit risk of our customers, and our operating results depend on receipt of timely payments from our customers. Any delay in payment by our customers may have an adverse effect on revenue and operating results. There is no assurance that we will be able to collect all or any of the amounts owed to us in a timely matter. If any of our customers face unexpected situations such as financial difficulties, we may not be able to receive full or any payment of the uncollected sums or enforce any judgment debts against such clients, and our business, results of operations and financial condition **could be materially and adversely affected. Our estimates of variable consideration related to revenue recognition in connection with guarantees that we have issued under certain customer contracts are difficult to estimate, as they are based on**

**estimates and assumptions that management believes to be reasonable but may materially differ from actual results. For example, in certain customer contracts, we previously agreed to provide a guarantee that the value of hardware purchased by a customer will not decline for a certain period of time. Under these guarantees, if such customers were unable to install or designate the hardware to a specified project within such period of time, we would be required to assist the customer in re- marketing the hardware for resale by the customer. Such guarantees provide that, in such cases, if the customer resells the hardware for less than the amount initially sold to the customer, we will be required to compensate the customer for any shortfall in resale price of the hardware from the initial contract purchase price. We account for such guarantees as variable consideration at each measurement date. We update our estimate of variable consideration, including changes in estimates related to such guarantees, each quarter for facts or circumstances that have changed from the time of the initial estimate. For example, we recorded a net revenue reduction of $ 35. 1 million in hardware revenue during the year ended December 31, 2023. If our future estimates of variable consideration with respect to these or other guarantees differ significantly from initial estimates, we would need to record an adjustment to earnings to reverse the revenue previously recognized, and depending on the magnitude of any such adjustment, our results of operations** could be materially and adversely affected. Our hardware and software- enabled services rely on interconnections to distribution and transmission facilities that are owned and operated by third parties, and as a result, are exposed to interconnection and transmission facility development and curtailment risks. Our hardware and software- enabled services are interconnected with electric distribution and transmission facilities owned and operated by regulated utilities necessary to deliver the electricity that our storage systems produce. A failure or delay in the operation or development of these distribution or transmission facilities could result in a loss of revenues or breach of a contract because such a failure or delay could limit the amount of renewable electricity that our energy storage systems deliver or delay the completion of our customers' construction projects. In addition, certain of our energy storage systems' generation may be curtailed without compensation due to distribution and transmission limitations, reducing our revenues and impairing our ability to capitalize fully on a particular customer project' s potential. Such a failure or curtailment at levels above our expectations could impact our ability to satisfy agreements entered into with our suppliers and adversely affect our business. Our growth depends in part on the success of our relationships with third parties, including contractors and project developers We rely on third- party general contractors to install energy storage systems at our customers' sites. We currently work with a limited number of general contractors, which has impacted and may continue to impact **,** our ability to facilitate customer installations as planned. Our work with contractors or their subcontractors may have the effect of our being required to comply with additional rules (including rules unique to our customers), working conditions, site remediation and other union requirements, which can add costs and complexity to an installation project. The timeliness, thoroughness and quality of the installation- related services performed by our general contractors and their subcontractors in the past have not always met our expectations or standards **,** and in the future may not meet our expectations and standards ~~and it~~ **. It** may be difficult to find and train third- party general contractors that meet our standards at a competitive cost. In addition, we are investing resources in establishing strategic relationships with market players across a variety of industries, including large renewable project developers, to generate new customers. These programs may not roll out as quickly as planned or produce the results we anticipated. A significant portion of our business depends on attracting new partners and retaining existing partners. Negotiating relationships with our partners, investing in due diligence efforts with potential partners, training such third parties and contractors and monitoring them for compliance with our standards require significant time and resources and may present greater risks and challenges than expanding a direct sales or installation team. If we are not successful in establishing or maintaining our relationships with these third parties, our ability to grow our business and address our market opportunity could be impaired. Even if we are able to establish and maintain these relationships, we may not be able to execute on our goal of leveraging these relationships to meaningfully expand our business, brand **estimates of variable consideration related to revenue** recognition **,** and customer base. Such ~~circumstance~~ **circumstances** would limit our growth potential and our opportunities to generate significant additional revenue or cash flows. We must maintain customer confidence in our long- term business prospects in order to grow our business. Customers may be less likely to purchase our hardware and services if they do not believe that our business will succeed or that our services and support and other operations will continue in the long term. Similarly, suppliers and other third parties will be less likely to invest time and resources in developing business relationships with us if they do not believe that our business will succeed. Accordingly, in order to build and maintain our business, we must maintain confidence among customers, suppliers, analysts, ratings agencies and other parties in our hardware and software- enabled services, long- term financial viability and business prospects. Maintaining such confidence may be particularly complicated by certain factors including those that are largely outside of our control, such as our limited operating history, customer unfamiliarity with our hardware and software- enabled services, delivery and service operations to meet demand, competition, future changes in the evolving distributed and renewable energy markets or uncertainty regarding sales performance compared with market expectations. Accordingly, in order to grow our business, we must maintain confidence among our customers, OEM suppliers, third- party general contractor partners, financing partners and other parties in our long- term business prospects. This may be particularly complicated by factors such as: • our limited operating history at current scale; • our historical and anticipated near- term lack of profitability; • unfamiliarity with or uncertainty about our energy storage systems and the overall perception of the distributed and renewable energy generation markets; • prices for electricity in particular markets; • competition from alternate sources of energy; • warranty or unanticipated service issues we may experience in connection with third- party manufactured hardware and our proprietary software; • the environmental consciousness and perceived value of environmental programs to our customers; • the size of our expansion plans in comparison to our existing capital base and the scope and history of operations; and • the availability and amount of incentives, credits, subsidies or other programs to promote installation of energy storage systems. Several of these factors are largely outside our control, and any negative perceptions about our long- term business prospects, even if unfounded, would likely adversely affect our business, financial condition and results of operations. If we are unsuccessful in developing and maintaining our proprietary technology, including our Athena platform, our ability to attract and retain partners could be impaired, our competitive position could be adversely affected and our revenue could be reduced. Our future growth depends on our ability to continue to develop and maintain our proprietary technology that supports our hardware and software- enabled services, including our Athena platform. In the event that our current or future products and services require features that we have not developed or licensed, or we lose the benefit of an existing license, we will be required to develop or obtain such technology through purchase, license or other arrangements. If the required technology is not available on commercially reasonable terms, or at all, we may incur additional expenses in an effort to internally develop the required technology. We have received patents and have filed patent applications with respect to certain aspects of our technology, and we generally rely on patent protection with respect to our proprietary technology, as well as a combination of trade secrets and copyright law, employee and third- party non- disclosure agreements and other protective measures to protect intellectual property rights pertaining to our proprietary technology and hardware and software- enabled services. There can be no assurance that the steps taken by us to protect any of our proprietary technology will be adequate to prevent misappropriation of these technologies by third parties. If we were unable to maintain our existing proprietary technology, our ability to attract and retain customers could be impaired, our competitive position could be adversely affected, and our revenue could be reduced. A failure of our information technology (“ IT ”) and data security infrastructure could adversely affect our business and operations. The efficient operation of our business depends on our IT systems, some of which are managed by third- party service providers. We rely upon the capacity, reliability and security of our IT and data security infrastructure and our ability to effectively manage our business data, accounting, financial, legal and compliance functions, communications, supply chain, order entry and fulfillment, and expand and ~~continually~~ **routinely** update this infrastructure in response to the changing needs of our business. Our existing IT systems and any new IT systems we utilize may not perform as expected. If we experience a problem with the functioning of an important IT system or a security breach of our IT systems, including during system upgrades or new system implementations, the resulting disruptions could adversely affect our business. Despite our implementation of reasonable security measures, our IT systems, like those of other companies, are vulnerable to damages from computer viruses, natural disasters, fire, power loss, telecommunications failures, personnel misconduct, human error, unauthorized access, physical or electronic security breaches, cyber- attacks (including malicious and destructive code, phishing attacks, ransomware, and denial of service attacks), and other similar disruptions. Such attacks or security breaches may be perpetrated by bad actors internally or externally (including computer hackers, persons involved with organized crime, or foreign state or foreign state- supported actors). Cybersecurity threat actors employ a wide variety of methods and techniques that are constantly evolving, increasingly sophisticated, and difficult to detect and successfully defend against **. Moreover, we may not have the current capability to detect certain vulnerabilities, which may allow those vulnerabilities to persist in our systems over long periods of time** . Geopolitical tensions or conflicts, such as Russia’ s invasion of Ukraine, may further heighten the risk of cyber- attacks. We have experienced such incidents in the past, and any future incidents could expose us to claims, litigation, regulatory or other governmental investigations, administrative fines and potential liability. Any system failure, accident or security breach could result in disruptions to our operations. A material network breach in the security of our or our service providers’ IT systems could include the theft of our trade secrets, customer information, human resources information or other confidential data, including but not limited to personally identifiable information. Although past incidents have not had a material adverse effect on our business operations or financial performance, to the extent that any disruptions or security breach results in a loss or damage to our data, or an inappropriate disclosure of confidential, proprietary or customer information, it could cause significant damage to our reputation, affect our relationships with our customers and strategic partners, lead to claims against us from governments and private plaintiffs, and otherwise adversely affect our business. We cannot guarantee that future cyberattacks, if successful, will not have a material effect on our business or financial results. Many governments have enacted laws requiring companies to provide notice of cyber incidents involving certain types of data, including personal data. If an actual or perceived cybersecurity breach of security measures, unauthorized access to our system or the systems of the third- party vendors that we rely upon, or any other cybersecurity threat occurs, we may incur liability, costs, or damages, contract termination, our reputation may be compromised, our ability to attract new customers could be negatively affected, and our business, financial condition, and results of operations could be materially and adversely affected. Any compromise of our security could also result in a violation of applicable domestic and foreign security, privacy or data protection, consumer and other laws, regulatory or other governmental investigations, enforcement actions, and legal and financial exposure, including potential contractual liability. In addition, we may be required to incur significant costs to protect against and remediate damage caused by these disruptions or security breaches in the future. While we carry cyber insurance, we cannot be certain that our coverage will be adequate for liabilities actually incurred, that insurance will continue to be available to us on commercially reasonable terms, or at all, or that any insurer will not deny coverage as to any future claim. Our technology, including the Athena platform, could have undetected defects, errors or bugs in hardware or software which could reduce market adoption, damage our reputation with current or prospective customers and / or expose us to product liability and other claims that could materially and adversely affect our business. We may be subject to claims that our hardware and software- enabled services, including the Athena platform have malfunctioned and persons were injured or purported to be injured. Any insurance that we carry may not be sufficient or it may not apply to all situations. Similarly, to the extent that such malfunctions are related to components obtained from third- party vendors, such vendors may not assume responsibility for such malfunctions. In addition, our customers could be subjected to claims as a result of such incidents and may bring legal claims against us to attempt to hold us liable. Any of these events could adversely affect our brand, relationships with customers, operating results or financial condition. Furthermore, our Athena platform is complex, developed for over a decade by many developers, and includes a number of licensed third- party commercial and open- source software libraries. Our software has contained defects and errors and may in the future contain undetected defects or errors. We ~~are continuing~~ **continue** to evolve the features and functionality of our platform through updates and enhancements, and as we do, we may introduce additional defects or errors that may not be detected until after deployment to customers through our hardware. In addition, if our hardware and software- enabled services, including any updates or patches, are not implemented or used correctly or as intended, inadequate performance and disruptions in service may result. Any defects or errors in product or services offerings, or the perception of such defects or errors, or other performance problems could result in any of the following, each of which could adversely affect our business, financial condition and results of operations: • expenditure of significant financial and product development resources, including recalls, in efforts to analyze, correct, eliminate or work around errors or defects; • loss of existing or potential customers or partners; • interruptions or delays in sales; • delayed or lost revenue; • delay or failure to attain market acceptance; • delay in the development or release of new functionality or improvements; • negative publicity and reputational harm; • sales credits or refunds; • exposure of confidential or proprietary information; • diversion of development and customer service resources; • breach of warranty claims; • legal claims under applicable laws, rules and regulations; and • the expense and risk of litigation. Although we have contractual protections, such as warranty disclaimers and limitation of liability provisions, in many of our agreements with customers, resellers and other business partners, such protections may not be uniformly implemented in all **guarantees that we have issued under certain customer** contracts and, where implemented, may not fully or effectively protect from claims by customers, resellers, business partners or other third parties. Any insurance coverage or indemnification obligations of suppliers may not adequately cover all such claims, or cover only a portion of such claims. A successful product liability, warranty, or other similar claim could have an adverse effect on our business, financial condition and operating results. In addition, even claims that ultimately are unsuccessful could result in expenditure of funds in litigation, divert management' s time and other resources and cause reputational harm. Our failure to adequately secure, protect and enforce our intellectual property rights may undermine our competitive position, and litigation to protect our intellectual property rights may be costly. Although we have taken many protective measures to protect our intellectual property, including trade secrets, policing unauthorized use of proprietary technology can be difficult and expensive. For example, many of our software developers reside in California and we cannot legally prevent them from working for a competitor. Also, litigation may be necessary to enforce our intellectual property rights, protect our trade secrets, or determine the validity and scope of the proprietary rights of others. Such litigation may result in our intellectual property rights being challenged, limited in scope or declared invalid or unenforceable. We cannot be certain that the outcome of any litigation will be in our favor, and an adverse determination in any such litigation could impair our intellectual property rights and may adversely affect our business, prospects and reputation. We rely primarily on patent, trade secret and trademark laws, and non- disclosure, confidentiality, and other types of contractual restrictions to establish, maintain, and enforce our intellectual property and proprietary rights. However, our rights under these laws and agreements afford us only limited protection and the actions we take to establish, maintain, and enforce our intellectual property rights may not be adequate. For example, our trade secrets and other confidential information could be disclosed in an unauthorized manner to third parties, our owned or licensed intellectual property rights could be challenged, invalidated, circumvented, infringed, or misappropriated or our intellectual property rights may not be sufficient to provide us with a competitive advantage, any of which could have a material adverse effect on our business, financial condition and results of operations. **Additionally** ~~For example~~, we rely on our brand names, trade names and trademarks to distinguish our products and services, such as our Athena ® platform, from the products of our competitors; however, third parties may oppose our trademark applications, or otherwise challenge our use of such trademarks. In the event that our trademarks are successfully challenged and we lose rights to use those trademarks, we could be forced to rebrand our products and services, which could result in the loss of goodwill and brand recognition. In addition, the laws of some countries do not protect proprietary rights as fully as do the laws of the U. S. As a result, we may not be able to protect our proprietary rights adequately abroad. Our patent applications may not result in issued patents, and our issued patents may not provide adequate protection, which may have a material adverse effect on our ability to prevent others from commercially exploiting products similar to ours. We cannot be certain that our pending patent applications will result in issued patents or that any of our issued patents will afford protection against a competitor. The status of patents involves complex legal and factual questions, and the breadth of claims allowed is uncertain. As a result, we cannot be certain that the patent applications that we file will result in patents being issued, or that our patents and any patents that may be issued to us in the future will afford protection against competitors with similar technology. In addition, patent applications filed in foreign countries are subject to laws, rules and procedures that differ from those of the U. S., and thus we cannot be certain that foreign patent applications related to issued U. S. patents will be issued in other regions. Furthermore, even if these patent applications are accepted and the associated patents issued, some foreign countries provide significantly less effective patent enforcement than in the U. S. In addition, patents issued to us may be infringed upon or designed around by others and others may obtain patents that we need to license or design around, either of which would increase costs and may adversely affect our business, prospects, and operating results. We may need to defend ourselves against claims that we infringe, have misappropriated or otherwise violate the intellectual property rights of others, which may be time consuming and would cause us to incur substantial costs. Companies, organizations, or individuals, including our competitors, may hold or obtain patents, trademarks, or other proprietary rights that they may in the future believe are infringed by our products and services. Although we are not currently subject to any claims related to intellectual property, these companies holding patents or other intellectual property rights allegedly relating to our technologies could, in the future, make claims or bring suits alleging infringement, misappropriation or other violations of such rights, or otherwise asserting their rights and seeking licenses or injunctions. Several of the proprietary components used in our energy storage systems have been subjected to infringement challenges in the past. We also generally indemnify our customers against claims that the hardware and software- enabled services we supply infringe, misappropriate, or otherwise violate third- party intellectual property rights, and we may therefore be required to defend our customers against such claims. If a claim is successfully brought in the future and we or our hardware and software- enabled services are determined to have infringed, misappropriated, or otherwise violated a third- party' s intellectual property rights, we may be required to do one or more of the following: • cease selling products or services that incorporate the challenged intellectual property; • pay substantial damages (including treble damages and attorneys' fees if our infringement is determined to be willful); • obtain a license from the holder of the intellectual property right, which license may not be available on reasonable terms or at all; or • redesign our products or services, which may not be possible or cost-effective. Any of the foregoing could adversely affect our business, financial condition and operating results. In addition, any litigation or claims, whether or not valid, could adversely affect our reputation, result in substantial costs, and divert resources and management attention. We also license technology from third parties, and incorporate components supplied by third parties into our hardware. We may face claims that our use of such technology or components infringes or otherwise violates the rights of others, which would subject us to the risks described above. We may seek indemnification from our licensors or suppliers under our contracts with them, but our rights to indemnification or our suppliers' resources may be unavailable or insufficient to cover our costs and losses. The installation and operation of our energy storage systems are subject to environmental laws and regulations in various jurisdictions, and there is uncertainty with respect to the interpretation of certain environmental laws and regulations to our energy storage systems, especially as these regulations evolve over time. We are subject to national, state and local environmental laws and regulations, as well as environmental laws in those foreign jurisdictions in which we operate. Environmental laws and regulations can be complex and **are evolving** ~~may change often~~. These laws can give rise to liability for administrative oversight costs, cleanup costs, property damage, bodily injury, fines and penalties. We are committed to compliance with applicable environmental laws and regulations, including health and safety standards, and we ~~continually~~ **routinely** review the operation of our energy storage systems for health, safety and compliance. Our energy storage systems, like other battery technology- based products of which we are aware, produce small amounts of hazardous wastes and air pollutants, and we seek to ~~ensure that they are handled~~ **handle these materials** in accordance with applicable regulatory standards. Maintaining compliance with laws and regulations can be challenging given the changing patchwork of environmental laws and regulations that prevail at the U. S. federal, state, regional and local levels and in foreign countries in which we operate. Most existing environmental laws and regulations preceded the introduction of battery technology and were adopted to apply to technologies existing at the time, namely large, coal, oil or gas- fired power plants. Currently, there is generally little guidance from these agencies on how certain environmental laws and regulations may, or may not, be applied to our technology. In many instances, our technology is moving faster than the development of applicable regulatory frameworks. It is possible that regulators could delay or prevent us from conducting our business in some way pending agreement on, and compliance with, shifting regulatory requirements. Such actions could delay the sale to and installation by customers of energy storage systems, require their modification or replacement, result in fines, or trigger claims of performance warranties and defaults under customer contracts that could require us to refund hardware or service contract payments, any of which could adversely affect our business, financial performance and reputation. Existing regulations and changes to such regulations impacting the electric power industry may create technical, regulatory and economic barriers which could significantly reduce demand for our energy storage systems. The market for electricity generation products is heavily influenced by U. S. federal, state, local and foreign government regulations and policies, as well as by tariffs, internal policies and practices of electric utility providers. These regulations, tariffs and policies often relate to electricity pricing and technical interconnection of customer-owned electricity generation. These regulations, tariffs and policies are often modified and could continue to change, and this could result in a significant reduction in demand for our energy storage systems. For example, utility companies commonly charge fees industrial customers for disconnecting from the electric grid or for having the capacity to use power from the electric grid for back- up purposes. These fees could change, increasing the cost to our customers of using our offerings and making them less economically attractive. Negative attitudes toward renewable energy projects from the U. S. government, other lawmakers and regulators, and activists could adversely affect our business, financial condition and results of operations. Parties with an interest in other energy sources, including lawmakers, regulators, policymakers, environmental and advocacy organizations or other activists may invest significant time and money in efforts to delay, repeal or otherwise negatively influence regulations and programs that promote renewable energy. Many of these parties have substantially greater resources and influence than we have. Further, changes in U. S. federal, state or local political, social or economic conditions, including a lack of legislative focus on these programs and regulations, could result in their modification, delayed adoption or repeal. Any failure to adopt, delay in implementing, expiration, repeal or modification of these programs and regulations, or the adoption of any programs or regulations that encourage the use of other energy sources over renewable energy, could adversely affect our business, financial condition and results of operations. Opposition to our customers' project requests for permits or successful challenges or appeals to permits issued for their projects could adversely affect our operating plans. A decrease in acceptance of renewable energy projects by local populations, an increase in the number of legal challenges, or an unfavorable outcome of such legal challenges could adversely affect the financial condition of our customers and reduce their demand for our hardware and software- enabled services. For example, persons, associations and groups could oppose renewable energy projects in general or our customers' projects specifically, citing, for example, misuse of water resources, landscape degradation, land use, food scarcity or price increase and harm to the environment. Moreover, regulation may restrict the development of renewable energy plants in certain areas. In order to develop a renewable energy project, our customers are typically required to obtain, among other things, environmental impact permits or other authorizations and building permits, which in turn require environmental impact studies to be undertaken and public hearings and comment periods to be held during which any person, association or group may oppose a project. The effect of such public opposition to renewable energy projects and any resulting reduction in customer demand for our hardware and software- enabled services could adversely affect our business, financial condition and results of operations. Changes in the U. S. trade environment, including the imposition of import tariffs, could adversely affect the amount or timing of our revenues, results of operations or cash flows. Escalating trade tensions, particularly between the United States and China, have led to increased tariffs and trade restrictions, including tariffs applicable to certain materials and components for products used in solar energy projects and the renewable energy market more broadly, such as module supply and availability. More specifically, in March 2018, the United States imposed a 25 % tariff on steel imports and a 10 % tariff on aluminum imports pursuant to Section ~~301~~ **232** of the Trade **Expansion** Act of ~~1974~~ **1962** and has imposed additional tariffs on steel and aluminum imports pursuant to Section ~~232~~ **301** of the Trade ~~Expansion~~ Act of ~~1962~~ **1974** . To the extent we source products that contain overseas supplies of steel and aluminum, these tariffs could result in interruptions in the supply chain and negatively affect costs and our gross margins. Additionally, in January 2018, the United States adopted a tariff on imported solar modules and cells pursuant to Section 201 of the Trade Act of 1974. The tariff was initially set at 30 %, with a gradual reduction over four years to 15 %. While this tariff does not apply directly to the components we import, it may indirectly affect us by affecting the financial viability of solar energy projects, which could in turn reduce demand for our products. Furthermore, in July 2018, the United States adopted a 10 % tariff on a long list of products imported from China under Section 301 of the Trade Act of 1974, including, inverters and power optimizers, which became effective on September 24, 2018. In June 2019, the Office of the U. S. Trade Representative increased the rate of such tariffs from 10 % to 25 %. While these tariffs are not directly applicable to our products, they could negatively affect the solar energy projects in which our products are used, which could lead to decreased demand for our products. In addition, the United States currently imposes antidumping and countervailing duties on certain imported crystalline silicon photovoltaic (" PV ") cells and modules from China and Taiwan. Such antidumping and countervailing duties can change over time pursuant to annual reviews conducted by the U. S. Department of Commerce (" USDOC "), and an increase in duty rates could have an adverse impact on our operating results. In February 2022, Auxin Solar Inc., a U. S. producer of crystalline silicon PV products, petitioned the USDOC to investigate alleged circumvention of antidumping and countervailing duties on **crystalline silicon PV cell and module imports assembled and completed in Cambodia, Malaysia, Thailand, and Vietnam. In August 2023, USDOC issued a final determination that certain** Chinese ~~imports~~ **producers are circumventing antidumping and countervailing duties** by **shipping** crystalline silicon PV cells and **modules through Cambodia, Malaysia, Thailand, and Vietnam for minor processing. The United States has suspended until June 2024 collection of antidumping and countervailing duties on crystalline silicon PV cell and** module imports **from** ~~assembled and completed in Cambodia, Malaysia, Thailand, and Vietnam. On March 28, 2022, the~~ **those four countries** ~~USDOC announced that it would investigate the circumvention alleged in the petition~~ . The timing and progress of many of our customers' projects depend upon the supply of PV cells and modules. As a result, if the ~~USDOC makes negative circumvention determinations~~ **if the United States begins collecting antidumping and countervailing duties on such products** , it could adversely affect our business, financial condition and results of operations. Tariffs, and the possibility of additional tariffs in the future, have created uncertainty in the industry. This has resulted in, and may continue to result in, some project delays. If the price of solar systems or energy storage systems in the United States increases, the use of these products could become less economically feasible and could reduce our gross margins or reduce the demand of such systems manufactured and sold, which in turn may decrease demand for our products. Additionally, existing or future tariffs may negatively affect key customers, suppliers, and manufacturing partners. Such outcomes could adversely affect the amount or timing of our revenues, results of operations or cash flows, and continuing uncertainty could cause sales volatility, price fluctuations or supply shortages, or cause our customers to advance or delay their purchase of our products. It is difficult to predict what further trade- related actions governments may take, which may include additional or increased tariffs and trade restrictions, and we may be unable to quickly and effectively react to such actions. **Some products that we import may also be affected by the Uyghur Forced Labor Prevention Act (the " UFLPA "), which was signed into law by President Biden on December 23, 2021. According to U. S. Customs and Border Protection, " it establishes a rebuttable presumption that the importation of any goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part in the Xinjiang Uyghur Autonomous Region of the People' s Republic of China, or produced by certain entities, is prohibited by Section 307 of the Tariff Act of 1930 and that such goods, wares, articles, and merchandise are not entitled to entry to the U. S. The presumption applies unless the Commissioner of U. S. Customs and Border Protection determines that the importer of record has complied with specified conditions and, by clear and convincing evidence, that the goods, wares, articles, or merchandise were not produced using forced labor. " There continues to be uncertainty regarding how to achieve full compliance with the UFLPA, whether related to sufficient traceability of materials or other factors. This has created a significant compliance burden and caused supply chain constraints and project delays for our customers that import certain products (including solar panels and related components) from China. Although our own product delivery schedules have not been materially affected thus far, future developments in the enforcement of the UFLPA and related withhold release orders issued by the U. S. Customs and Border Protection may result in disruptions to our own supply chains and future sales, and therefore negatively impact our business, financial condition, and results of operations.** Additional Risks Related to our Securities and Our Capital Structure We may issue securities in the future in connection with investments or acquisitions or otherwise. The amount of shares of common stock issued in connection with an investment or acquisition could constitute a material portion of our then-outstanding shares of common stock. Any issuance of additional securities in connection with investments or acquisitions may result in additional dilution to our stockholders ~~. We currently intend to retain our future earnings, if any, to finance the further development and expansion of our business, and do not intend to pay cash dividends in the foreseeable future. Any future determination to pay dividends will be at the discretion of our board of directors and will depend on our financial condition, results of operations, capital requirements, restrictions contained in future agreements and financing instruments, business prospects and such other factors as our board of directors deems relevant~~ . We are subject to the reporting requirements of the Exchange Act, the Sarbanes- Oxley Act of 2002 (the " Sarbanes- Oxley Act ") and the rules and regulations of the applicable listing standards of the NYSE. 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~~ **continue** to develop and refine our disclosure controls 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. We ~~are~~ also ~~continuing~~ **continue** to improve our internal control over financial reporting. In order to maintain and improve the effectiveness of our disclosure controls and procedures and internal control over financial reporting, we have expended, and anticipate that we will continue to expend, significant resources, including accounting- related costs and significant management oversight. Our current controls and any new controls that we develop may become inadequate because of changes in conditions in our business. In addition, changes in accounting principles or interpretations could also challenge our internal controls and require that we establish new business processes, systems, and controls to accommodate such changes. Additionally, if these new systems, controls, or standards and the associated process changes do not give rise to the benefits that we expect or do not operate as intended, it could adversely affect our financial reporting systems and processes, our ability to produce timely and accurate financial reports, or the effectiveness of internal control over financial reporting. Moreover, our business may be harmed if we experience problems with any new systems and controls that result in delays in their implementation or increased costs to correct any post- implementation issues that may arise. Further, weaknesses in our disclosure controls and internal control over financial reporting may be discovered in the future. Any failure to develop or maintain effective controls or any difficulties encountered in their implementation or improvement could harm our business or cause us to fail to meet our reporting obligations and may result in a restatement of our consolidated financial statements for prior periods. Any failure to implement and maintain effective internal control over financial reporting also could adversely affect 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. 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 trading price of our common stock. In addition, if we are unable to continue to meet these requirements, we may not be able to remain listed on the NYSE. We are required to provide an annual management report on the effectiveness of our internal control over financial reporting. Our independent registered public accounting firm is required to formally attest to the effectiveness of our internal control over financial reporting. Our independent registered public accounting firm may issue a report that is adverse in the event it is not satisfied with the level at which our internal control over financial reporting is documented, designed, or operating. Any failure to maintain effective disclosure controls and internal control over financial reporting could harm our business and could cause a decline in the trading price of our common stock. If analysts do not publish research about our business or if they publish inaccurate or unfavorable research, our stock price and trading volume could decline. The trading market for our common stock depends in part on the research and reports that analysts publish about our business. We do not have any control over these analysts. If one or more of the analysts who cover us downgrade our common stock or publish inaccurate or unfavorable research about our business, ~~the price of our common stock would likely decline. If few analysts cover us,~~ demand for our common stock could decrease and our common stock price and trading volume may decline. Similar results may occur if one or more of these analysts stop covering us in the future or fail to publish reports on us regularly. The trading price of our common stock has been and ~~is~~ **will** likely ~~to~~ continue to be volatile **and is subject** ~~. You may not be able~~ to ~~resell~~ **fluctuations in response to various factors, some of which are beyond our control. These fluctuations could cause you to lose all or part of** your ~~shares at an attractive~~ **investment in our common stock. Factors that could cause fluctuations in the trading** price ~~due to a number~~ of **our common stock include** ~~factors such as those listed in "- Risks Relating to Stem' s Business and Industry " and~~ the following: • results of operations that vary from the expectations of securities analysts and investors; • results of operations that vary from those of our competitors; • **volatility in** the **trading prices** ~~effects of the COVID- 19 pandemic~~ and **trading volumes of technology stocks** ~~its effect on the Company' s business and financial conditions~~ ; • changes in expectations as to **our** ~~the Company' s~~ future financial performance, including financial estimates and investment recommendations by securities analysts and investors; • declines in the market prices of stocks generally; • strategic actions by us or our competitors; • announcements by us or our competitors of significant contracts, acquisitions, joint ventures, other strategic relationships or capital commitments; • any significant change in **our** ~~the Company' s~~ senior management; • changes in general ~~economic~~ **macroeconomic** or market conditions or trends in **our** ~~the Company' s~~ industry or markets, including as a result of a general economic slowdown or a recession, increasing interest rates and changes in monetary policy, or inflationary pressures; • changes in business or regulatory conditions, including new laws or regulations or new interpretations of existing laws or regulations applicable to **our** ~~the Company' s~~ business; • future sales of our common stock or other securities or the incurrence of significant debt; • investor perceptions or the investment opportunity associated with our common stock relative to other investment alternatives; • the public' s response to press releases or other public announcements by us or third parties, including **our** ~~the Company' s~~ filings with the SEC; • litigation involving **us** ~~the Company~~ , **our** ~~the Company' s~~ industry, or both, or investigations by regulators into **our** ~~the Company' s~~ operations or those of **our** ~~the Company' s~~ competitors; • financial and operating guidance, if any, that we provide to the public, **and** any changes in this guidance or **our** ~~the Company' s~~ failure to meet this guidance ~~; • the development and sustainability of an active trading market for our common stock~~ ; • actions by institutional or activist stockholders; • changes in accounting standards, policies, guidelines, interpretations or principles; and • other events or factors, including those resulting from natural disasters, **geopolitical instability or** war, acts of terrorism or responses to these events. These broad market and industry fluctuations may adversely affect the market price of our common stock, regardless of our actual operating performance. In addition, **in** ~~price volatility may be greater if the public~~

~~float and trading volume of our common stock is low. In~~ the past, following periods of market volatility, stockholders have instituted securities class action litigation **against companies** . ~~If we~~ **For example, in May and July 2023, two putative securities class actions** were ~~involved in~~ **filed against us and certain of our current and former officers and directors alleging claims under Sections 10 (b) and 20 (a) of the** ~~securities~~ **Securities Exchange Act of 1934 and Sections 11 and 15 of the Securities Act of 1933. The lawsuits seek damages,** litigation **costs and interest. Securities litigation against us could result in substantial costs and divert our management' s time and attention from other business concerns** , ~~it~~ **which** could have a **material adverse effect on our** ~~substantial cost and divert resources and the attention of executive management from the Company' s~~ business **,** regardless of the outcome of such litigation **. We may be the target of additional litigation of this type in the future** . Our financial condition and results of operations and other key metrics are likely to fluctuate on a quarterly basis in future periods, which could cause our results for a particular period to fall below expectations, resulting in a severe decline in the price of our common stock. Our financial condition and results of operations and other key metrics have fluctuated significantly in the past and may continue to fluctuate in the future due to a variety of factors, many of which are beyond our control. For example, the amount of revenue we recognize in a given period is materially dependent on the volume of purchases of our energy storage systems and software- enabled services in that period **, as well as on a small number of customers** . In addition to the other risks described herein, the following factors could also cause our financial condition and results of operations to fluctuate on a quarterly basis: • the timing of customer installations of our hardware, which may depend on many factors such as availability of inventory, product quality or performance issues, or local permitting requirements, utility requirements, environmental, health and safety requirements, weather and customer facility construction schedules, and availability and schedule of our third- party general contractors; • the sizes of particular customer hardware installations and the number of sites involved in any particular quarter; • delays or cancellations of energy storage system purchases and installations; • fluctuations in our service costs, particularly due to unaccrued costs of servicing and maintaining energy storage systems; • weaker than anticipated demand for our energy storage systems due to changes in government incentives and policies; • interruptions in our supply chain; • the timing and level of additional purchases by existing customers; • unanticipated expenses or installation delays incurred by customers due to changes in governmental regulations, permitting requirements by local authorities at particular sites, utility requirements and environmental, health and safety requirements; and • disruptions in our sales, production, service or other business activities resulting from our inability to attract and retain qualified personnel. In addition, our revenue, key operating metrics and other operating results in future quarters may fall short of the expectations of investors and financial analysts, which could have an adverse effect on the price of our common stock. Certain provisions of our Amended and Restated Charter and Amended and Restated Bylaws may have an anti- takeover effect and may delay, defer or prevent a merger, acquisition, tender offer, takeover attempt or other change of control transaction that a stockholder might consider in its best interest, including those attempts that might result in a premium over the market price for the shares held by our stockholders. These provisions, among other things: • establish a staggered board of directors divided into three classes serving staggered three- year terms, such that not all members of our board of directors will be elected at one time; • authorize our board of directors to issue new series of preferred stock without stockholder approval and create, subject to applicable law, a series of preferred stock with preferential rights to dividends or our assets upon liquidation, or with superior voting rights to our existing common stock; • eliminate the ability of stockholders to call special meetings of stockholders; • eliminate the ability of stockholders to fill vacancies on our board of directors; • establish advance notice requirements for nominations for election to our board of directors or for proposing matters that can be acted upon by stockholders at our annual stockholder meetings; • permit our board of directors to establish the number of directors; • provide that our board of directors is expressly authorized to make, alter or repeal our Amended and Restated Bylaws; • provide that stockholders can remove directors only for cause and only upon the approval of not less than 66 2 / 3 of all outstanding shares of our voting stock; • require the approval of not less than 66 2 / 3 of all outstanding shares of our voting stock to amend our Amended and Restated Bylaws and specific provisions of our Amended and Restated Charter; and • limit the jurisdictions in which certain stockholder litigation may be brought. As a Delaware corporation, we are subject to the anti- takeover provisions of Section 203 of the **Delaware General Corporation Law (the “** DGCL **”)** , which prohibits a Delaware corporation from engaging in a business combination specified in the statute with an interested stockholder (as defined in the statute) for a period of three ~~(3)~~ years after the date of the transaction in which the person first becomes an interested stockholder, unless the business combination is approved in advance by a majority of the independent directors or by the holders of at least two- thirds of the outstanding disinterested shares. The application of Section 203 of the DGCL could also have the effect of delaying or preventing a change of control of **us** ~~our company~~ . These anti- takeover provisions could make it more difficult for a third- party to acquire us, even if the third- party' s offer may be considered beneficial by many of our stockholders. As a result, our stockholders may be limited in their ability to obtain a premium for their shares. These provisions could also discourage proxy contests and make it more difficult for you and other stockholders to elect directors of your choosing and to cause us to take other corporate actions you desire. Our Amended and Restated Charter designates the Court of Chancery of the State of Delaware as the sole and exclusive forum for certain types of actions and proceedings that may be initiated by our stockholders, which could limit our stockholders' ability to obtain a favorable judicial forum for disputes with us or our directors, officers, employees or stockholders. Our Amended and Restated Charter provides that, that, unless we consent in writing to the selection of an alternative forum, the sole and exclusive forum, to the fullest extent permitted by law, for (i) any derivative action or proceeding brought on our behalf, (ii) any action asserting a breach of a fiduciary duty owed by any director, officer or other employee to us or our stockholders, (iii) any action asserting a claim against us or any director, officer, or other employee arising pursuant to the DGCL, (iv) any action to interpret, apply, enforce, or determine the validity of our second amended and restated certificate of incorporation or amended and restated bylaws, or (v) any other action asserting a claim that is governed by the internal affairs doctrine, shall be the Court of Chancery of the State of Delaware (or another state court or the federal court located within the State of Delaware if the Court of Chancery does not have or declines to accept jurisdiction), in all cases subject to the court' s having jurisdiction over indispensable parties named as defendants. In addition, our Amended and Restated Charter provides that the federal district courts of the United States will be the exclusive forum for resolving any complaint asserting a cause of action arising under the Securities Act but that the forum selection provision does not apply to claims brought to enforce a duty or liability created by the Securities Exchange Act of 1934, as amended, (the " Exchange Act "). Although we believe these provisions benefit us by providing increased consistency in the application of Delaware law for the specified types of actions and proceedings, the provisions may have the effect of discouraging lawsuits against us or our directors and officers. Alternatively, if a court were to find the choice of forum provision contained in our Amended and Restated Charter to be inapplicable or unenforceable in an action, we might incur additional costs associated with resolving such action in other jurisdictions, which could harm our business, financial condition, and operating results. For example, under the Securities Act, federal courts have concurrent jurisdiction over all suits brought to enforce any duty or liability created by the Securities Act, and investors cannot waive compliance with the federal securities laws and the rules and regulations thereunder. Any person or entity purchasing or otherwise acquiring any interest in our shares of capital stock shall be deemed to have notice of and consent to this exclusive forum provision, but will not be deemed to have waived our compliance with the federal securities laws and the rules and regulations thereunder. ~~Our ability to issue shares of common stock beyond 400 million may be affected by a recent Delaware Court of Chancery decision A recent decision of the Delaware Court of Chancery involving a Delaware special purpose acquisition company' s (" SPAC ") that did not obtain a separate " class vote " of the SPAC' s Class A common stockholders in connection with certain amendments to that SPAC' s certificate of incorporation (the " Decision ") has created uncertainty as to whether such a vote was required under Section 242 (b) (2) of the DGCL. This in turn has created uncertainty as to whether the Company properly authorized and can issue common stock beyond the 400 million shares originally authorized in the Company' s prior Certificate of Incorporation, even though the Company' s stockholders voted on April 27, 2021, in favor of an increase in the number of authorized common stock from 400 million to 500 million (the " Share Increase "). As of the date of this Annual Report on Form 10- K, the Company has issued only 154. 6 million shares of common stock and reserved 50. 5 million shares of common stock, primarily for the exercise or vesting of outstanding long- term incentive awards and the potential issuance of our common stock in connection with the conversion of the 2028 Convertible Notes. The Share Increase was approved at the time of the business combination between Stem and Star Peak Energy Transition Corp. by a majority of our outstanding shares of common stock. The Company did not obtain a separate vote of a majority of the Class A common stock for the Share Increase Amendment. While the Company does not believe that a separate vote of the Class A common stock was required to approve the Share Increase, the Decision raises the question whether the Company was required to obtain a separate affirmative vote of the Class A common stock in order to increase the authorized share count from 400 million to 500 million under the Delaware General Corporation Law. In light of the Court' s December 27, 2022 decision, we are considering various options, including potentially seeking validation of the Share Increase Amendment by the Court pursuant to Section 205 of the DGCL.~~ The capped call transactions we entered into in connection with the pricing of our 2028 **and 2030** Convertible Notes may adversely affect the market price of our common stock. In connection with the pricing of the 2028 **and 2030** Convertible Notes, we entered into capped call transactions with several affiliates of the Initial Purchasers (the " Option Counterparties "). The capped call transactions are expected generally to reduce potential dilution to our common stock upon conversion of any **2028 and 2030** Convertible Notes and / or offset any cash payments we are required to make in excess of the principal amount of converted ~~Notes~~ **notes** , as the case may be, with such reduction and / or offset subject to a cap. 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 common stock and / or purchasing or selling our common stock in secondary market transactions and prior to the maturity of the **2028 and 2030** Convertible Notes (and are likely to do so on each exercise date for the capped call transactions or following any termination of any portion of the capped call transactions in connection with any repurchase, redemption or early conversion of the **2028 and 2030** Convertible Notes). This activity could cause or avoid an increase or decrease in the market price of our common stock. We are subject to counterparty risk with respect to the capped call transactions. The Option Counterparties are financial institutions, and we are subject to the risk that any or all of them might default under the capped call transactions. Our exposure to the credit risk of the option counterparties is not secured by any collateral. Past global economic conditions have resulted in the actual or perceived failure or financial difficulties of many financial institutions. If an option counterparty becomes subject to insolvency proceedings, we will become an unsecured creditor in those proceedings with a claim equal to our exposure at that time under the capped call transactions with such option counterparty. Our exposure will depend on many factors but, generally, an increase in our exposure will be correlated to an increase in the market price and in the volatility of our common stock. In addition, upon a default by an option counterparty, we may suffer more dilution than we currently anticipate with respect to our common stock. We can provide no assurance as to the financial stability or viability of the option counterparties. Our management team has limited experience managing a public company. Most members of our management team have limited experience managing a publicly traded company, interacting with public company investors, and complying with the increasingly complex laws pertaining to public companies. Our management team may not successfully or efficiently manage us as a public company that is subject to significant regulatory oversight and reporting obligations under the federal securities laws and the ~~continuous~~ scrutiny of securities analysts and investors. These new obligations and constituents require significant attention from our senior management and could divert their attention away from the day- to- day management of our business, which could adversely affect our business, results of operations and financial condition. Future litigation or administrative proceedings could have a material adverse effect on our business, financial condition, and results of operations. We have been and continue to be involved in legal proceedings, ~~administrative proceedings,~~ claims, and other litigation. In addition, since our energy storage product is a new type of product in a nascent market, we have in the past needed and may in the future need to seek the amendment of existing regulations or, in some cases, the creation of new regulations, in order to operate our business in some jurisdictions.

Such regulatory processes may require public hearings concerning our business, which could expose us to subsequent litigation. Unfavorable outcomes or developments relating to proceedings to which we are a party or transactions involving our products and services, such as judgments for monetary damages, injunctions, or denial or revocation of permits, could have a material adverse effect on our business, financial condition, and results of operations. In addition, settlement of claims could adversely affect our financial condition and results of operations. Our operating results may be adversely affected by unfavorable ~~economic~~ **macroeconomic , geopolitical,** and market conditions. Unfavorable ~~economic~~ **macroeconomic** conditions, such as a general slowdown or recession of the global or U. S. economy, uncertainty and volatility in the financial markets, ~~or~~ inflation ~~and~~ **or** rising interest rates, **as well as geopolitical conditions** could reduce investment in projects that make use of our services. In addition, sustained unfavorable ~~economic~~ **macroeconomic** conditions might also have a negative impact on many of our customers or suppliers, which could impair their ability to meet their obligations to us. If economic and market conditions globally, in the U. S. or in other key markets become more volatile or deteriorate further, we may experience material impacts on our business, financial condition and results of operations.