UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-Q

(Mark One)

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

For the quarterly period ended March 31, 2023

or

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

For the transition period from _________ to _________

Commission File Number: 001-35628

PERFORMANT FINANCIAL CORPORATION

(Exact name of registrant as specified in its charter)

Delaware	**20-0484934**
(State or other jurisdiction of incorporation or organization)	**(I.R.S. Employer Identification No.)**

Performant Financial Corporation
333 North Canyons Parkway
Livermore, CA 94551
(925) 960-4800
(Address, including zip code and telephone number, including area code of registrant's principal executive offices)

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

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

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

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

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

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

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

Title of each class	Trading Symbol(s)	Name of exchange on which registered
Common Stock, par value $.0001 per share	PFMT	The Nasdaq Stock Market LLC

The number of shares of Common Stock outstanding as of May 8, 2023 was 75,505,108.

PERFORMANT FINANCIAL CORPORATION
QUARTERLY REPORT ON FORM 10-Q
FOR THE QUARTER ENDED MARCH 31, 2023
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PERFORMANT FINANCIAL CORPORATION AND SUBSIDIARIES
Consolidated Balance Sheets
(In thousands)

	March 31, 2023 (Unaudited)	December 31, 2022
Assets		
Current assets:		
Cash and cash equivalents	$ 12,335	$ 23,384
Restricted cash	81	81
Trade accounts receivable	15,636	15,794
Contract assets	8,993	11,460
Prepaid expenses and other current assets	3,623	3,665
Income tax receivable	3,083	3,123
Total current assets	43,751	57,507
Property, equipment, and leasehold improvements, net	10,527	10,897
Goodwill	47,372	47,372
Right-of-use assets	794	2,057
Other assets	1,194	1,000
Total assets	$ 103,638	$ 118,833
Liabilities and Stockholders' Equity		
Current liabilities:		
Current maturities of notes payable, net of unamortized debt issuance costs of $58 and $17, respectively	$ 1,192	$ 983
Accrued salaries and benefits	5,818	6,938
Accounts payable	971	1,262
Other current liabilities	2,017	2,252
Contract liabilities	—	438
Estimated liability for appeals and disputes	863	1,106
Lease liabilities	623	1,228
Total current liabilities	11,484	14,207
Notes payable, net of current portion and unamortized debt issuance costs of $484 and $316, respectively	10,016	18,184
Lease liabilities	189	1,076
Other liabilities	887	881
Total liabilities	22,576	34,348
Commitments and contingencies (note 3 and note 4)		
Stockholders' equity:		
Common stock, $0.0001 par value. Authorized, 500,000 shares at March 31, 2023 and December 31, 2022 respectively; issued and outstanding 75,505 and 75,505 shares at March 31, 2023 and December 31, 2022, respectively	7	7
Additional paid-in capital	143,059	142,261
Accumulated deficit	(62,004)	(57,783)
Total stockholders' equity	81,062	84,485
Total liabilities and stockholders' equity	$ 103,638	$ 118,833

See accompanying notes to consolidated financial statements.

PERFORMANT FINANCIAL CORPORATION AND SUBSIDIARIES

Consolidated Statements of Operations

(In thousands, except per share amounts)

(Unaudited)

	Three Months Ended March 31,	
	2023	**2022**
Revenues	$ 25,729	$ 27,083
Operating expenses:		
Salaries and benefits	22,449	20,439
Other operating expenses	7,069	8,131
Total operating expenses	29,518	28,570
Loss from operations	(3,789)	(1,487)
Gain on sale of certain recovery contracts	3	—
Interest expense	(414)	(155)
Loss before provision for income taxes	(4,200)	(1,642)
Provision for income taxes	21	31
Net loss	$ (4,221)	$ (1,673)
Net loss per share		
Basic	$ (0.06)	$ (0.02)
Diluted	$ (0.06)	$ (0.02)
Weighted average shares		
Basic	75,505	69,873
Diluted	75,505	69,873

See accompanying notes to consolidated financial statements.

PERFORMANT FINANCIAL CORPORATION AND SUBSIDIARIES
Consolidated Statement of Changes in Stockholders’ Equity
(In thousands)
(Unaudited)

	Three Months Ended March 31, 2023					Three Months Ended March 31, 2022				
	Common Stock		Additional Paid-In Capital	Accumulated Deficit	Total	Common Stock		Additional Paid-In Capital	Accumulated Deficit	Total
	Shares	Amount				Shares	Amount			
Balances at beginning of period	75,705	$ 7	$142,261	$ (57,783)	84,485	69,281	$ 7	$133,662	$ (51,246)	$ 82,423
Stock-based compensation expense	—	—	798	—	798	—	—	558	—	558
Proceeds from exercise of stock options	—	—	—	—	—	3,863	—	5,563	—	5,563
Net loss	—	—	—	(4,221)	(4,221)	—	—	—	(1,673)	(1,673)
Balances at end of period	75,705	$ 7	$143,059	$ (62,004)	$ 81,062	73,144	$ 7	$139,783	$ (52,919)	$ 86,871

See accompanying notes to consolidated financial statements.

PERFORMANT FINANCIAL CORPORATION AND SUBSIDIARIES

Consolidated Statements of Cash Flows

(In thousands)

(Unaudited)

	Three Months Ended March 31, 2023	Three Months Ended March 31, 2022
Cash flows from operating activities:		
Net loss	$ (4,221)	$ (1,673)
Adjustments to reconcile net loss to net cash (used in) provided by operating activities:		
Loss on disposal of assets and impairment of long-lived assets	32	(17)
Depreciation and amortization	1,247	1,102
Right-of-use assets amortization	1,263	475
Stock-based compensation	798	558
Interest expense from debt issuance costs	35	24
Gain on sale of certain recovery contracts	(3)	—
Changes in operating assets and liabilities:		
Trade accounts receivable	158	971
Contract assets	2,467	(762)
Prepaid expenses and other current assets	42	(864)
Income tax receivable	40	74
Other assets	(194)	(2)
Accrued salaries and benefits	(1,120)	(2,541)
Accounts payable	(291)	67
Contract liabilities and other current liabilities	(673)	(1,815)
Estimated liability for appeals, disputes, and refunds	(243)	281
Lease liabilities	(1,492)	(536)
Other liabilities	6	7
Net cash used in operating activities	(2,149)	(4,651)
Cash flows from investing activities:		
Purchase of property, equipment, and leasehold improvements	(909)	(700)
Proceeds from sale of certain recovery contracts	3	—
Net cash used in investing activities	(906)	(700)
Cash flows from financing activities:		
Repayment of notes payable	(7,750)	(125)
Debt issuance costs paid	(244)	(2)
Proceeds from exercise of warrants	—	5,563
Net cash (used in) provided by financing activities	(7,994)	5,436
Net increase in cash, cash equivalents and restricted cash	(11,049)	85
Cash, cash equivalents and restricted cash at beginning of period	23,465	19,550
Cash, cash equivalents and restricted cash at end of period	$ 12,416	$ 19,635
Reconciliation of the Consolidated Statements of Cash Flows to the Consolidated Balance Sheets:		
Cash and cash equivalents	$ 12,335	$ 17,432
Restricted cash	81	2,203
Total cash, cash equivalents and restricted cash at end of period	$ 12,416	$ 19,635
Supplemental disclosures of cash flow information:		
Cash paid (received) for income taxes	$ 5	$ 1
Cash paid for interest	$ 582	$ 176

See accompanying notes to consolidated financial statements.

1. Organization and Description of Business

(a) Basis of Presentation and Organization

The accompanying unaudited consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America ("U.S. GAAP"), for interim financial information and with the instructions to Form 10-Q and Article 10 of Regulation S-X. Accordingly, they do not include all of the information and notes required by U.S. GAAP for complete financial statements. In the opinion of management, the interim unaudited consolidated financial statements furnished herein include all adjustments necessary (consisting only of normal recurring adjustments) for a fair presentation of our financial position at March 31, 2023, and December 31, 2022,the results of our operations for the three months ended March 31, 2023 and 2022, and cash flows for the three months ended March 31, 2023 and 2022. Interim financial statements are prepared on a basis consistent with our annual consolidated financial statements. The interim financial statements included herein should be read in conjunction with the consolidated financial statements and related notes included in our annual report on Form 10-K for the year ended December 31, 2022.

Performant Financial Corporation (the Company, "we", or "our") is a leading provider of technology-enabled audit, recovery and analytics services in the United States with a focus in the healthcare payment integrity services industry. The Company works with healthcare payers through claims auditing and eligibility-based (also known as coordination-of-benefits or COB) services to identify improper payments. The Company engages clients in both government and commercial markets. Clients of the Company typically operate in complex and highly regulated environments and contract for their payment integrity needs in order to reduce losses on improper healthcare payments. The Company also has a call center which serves clients with multifaceted consumer engagement needs. The Company historically worked in recovery markets such as defaulted student loans, tax receivables, and commercial recovery.

The Company's consolidated financial statements include the operations of Performant Financial Corporation (Performant), its wholly-owned subsidiary Performant Business Services, Inc. (PBS), and PBS's wholly-owned subsidiaries Performant Recovery, Inc. (PRI) and Performant Technologies, LLC (PTL). Performant is a Delaware corporation headquartered in California and was formed in 2003. PBS is a Nevada corporation founded in 1997. PRI is a California corporation founded in 1976. PTL is a California limited liability company that was formed in 2004. All intercompany balances and transactions have been eliminated in consolidation.

The Company is managed and operated as one business, with a single management team that reports to the Chief Executive Officer.

The preparation of the consolidated financial statements, in conformity with U.S. GAAP, requires management to make certain estimates and assumptions that affect the reported amounts of assets and liabilities, primarily accounts receivable, contract assets, goodwill, right-of-use assets, estimated liability for appeals and disputes, lease liabilities, other liabilities, provision for income taxes, and disclosure of contingent liabilities at the date of the consolidated financial statements, and the reported amounts of revenues.

(b) Revenues, Accounts Receivable, Contract Assets, Contract Liabilities, Estimated Liability for Appeals and Disputes

The Company derives its revenues primarily from providing audit, recovery, and analytics services. Revenues are recognized upon completion of these services for its customers, in an amount that reflects the consideration the Company expects to be entitled to in exchange for those services.

The Company determines revenue recognition through the following steps:

- Identification of the contract with a customer
- Identification of the performance obligations in the contract
- Determination of the transaction price
- Allocation of the transaction price to the performance obligations in the contract; and
- Recognition of revenue when, or as, the performance obligations are satisfied.

The Company accounts for a contract when it has approval and commitment from both parties, the rights of the parties are identified, payment terms are identified, the contract has commercial substance and collectability of consideration is probable.

The Company's contracts generally contain a single performance obligation, delivered over time as a series of services that are substantially the same and have the same pattern of transfer to the client, as the promise to transfer the individual services is not separately identifiable from other promises in the contracts and, therefore, not distinct.

The Company's contracts are composed primarily of variable consideration. Fees earned under the Company's audit and recovery service contracts consist primarily of contingency fees based on a specified percentage of the amount the Company enables its clients to recover. The contingency fee percentage for a particular recovery depends on the type of recovery or claim facilitated.

The Company either applies the as-invoiced practical expedient where its right to consideration corresponds directly to its right to invoice its clients, or the variable consideration allocation exception where the variable consideration is attributable to one or more, but not all, of the services promised in a series of distinct services that form part of a single performance obligation. As such the Company has elected the optional exemptions related to the as-invoiced practical expedient and the variable consideration allocation exception whereby the disclosure of the amount of transaction price allocated to the remaining performance obligations is not required.

The Company estimates variable consideration only if it can reasonably measure the progress toward complete satisfaction of the performance obligation using an output method based on reliable information, and recognizes such revenue over the performance period only if it is probable that a significant reversal in the amount of cumulative revenue recognized will not occur. Any change made to the measure of progress toward complete satisfaction of our performance obligation is recorded as a change in estimate. The Company exercises judgment to estimate the amount of constraint on variable consideration based on the facts and circumstances of the relevant contract operations and availability and reliability of data. The Company reviews the constraint on variable consideration at least quarterly. While the Company believes the estimates made are reasonable and appropriate, different assumptions and estimates could materially impact the amount of variable consideration recognized.

For contracts that contain a refund right, the Company estimates its refund liability for each claim, as needed, and recognizes revenue net of such estimate.

Under certain contracts, consideration can include periodic performance-based bonuses which can be awarded based on the Company's performance under the specific contract. These performance-based bonuses are considered variable and may be constrained by the Company until there is not a risk of a significant reversal.

The Company has applied the as-invoiced practical expedient or the variable consideration allocation exception to contracts with performance obligations that have an average remaining duration of less than a year.

For healthcare claims audit contracts, the Company may recognize revenue upon delivering its findings from claims audits, when sufficient reliable information is available to the Company for estimating the variable consideration earned based on an output metric that reasonably measures the Company's satisfaction of its performance obligation.

For eligibility-based or COB contracts, the Company recognizes revenue when insurance companies or other responsible parties have remitted payments to its clients.

For customer care / outsourced services clients, the Company recognizes revenues based on the volume of processed transactions or the quantity of labor hours provided.

The following table presents revenue disaggregated by category (in thousands) for the three months ended March 31, 2023 and 2022:

	Three Months Ended March 31,	
	2023	2022
	(in thousands)	
Eligibility-based	$ 12,480	$ 14,215
Claims-based	10,412	9,149
Healthcare Total	22,892	23,364
Recovery [1]	19	118
Customer Care / Outsourced Services	2,818	3,601
Total Revenues	$ 25,729	$ 27,083

(1) Represented defaulted student loans and tax receivables markets, which substantially concluded in 2021.

Trade accounts receivable are recorded at the invoiced amount and do not bear interest. Amounts collected on trade accounts receivable are included in cash used in operating activities in the consolidated statements of cash flows. The Company determines the allowance for doubtful accounts by specific identification. Account balances are charged off against the allowance after all means of collection have been exhausted and the potential for recovery is considered remote. The allowance for doubtful accounts was $0 as of March 31, 2023 and December 31, 2022.

Contract assets were $9.0 million and $11.5 million as of March 31, 2023 and December 31, 2022, respectively. Contract assets relate to the Company’s rights to consideration for services completed during the respective years, but not invoiced at the reporting date, and receipt of payment is conditional upon factors other than the passage of time.

Contract assets primarily consist of commissions the Company estimates it has earned from completed claims audit findings submitted to healthcare clients. The decrease in contract assets resulted from invoiced amounts offset by additional consideration earned for services provided to healthcare clients during the period.

Contract assets are recorded to accounts receivable when the Company's right to payment becomes unconditional, which is generally when healthcare providers have paid our clients. There was no impairment loss related to contract assets for the three months ended March 31, 2023 and 2022.

The Company had contract liabilities of $0.0 million and $0.4 million as of March 31, 2023 and December 31, 2022, respectively. The Company’s contract liabilities relate to certain reimbursable costs due to a healthcare client.

Healthcare providers of our clients have the right to appeal claims audit findings and may pursue additional appeals if the initial appeal is found in favor of healthcare clients. For coordination-of-benefits (COB) contracts, insurance companies or other responsible parties may dispute the Company’s findings regarding our clients not being the primary payer of healthcare claims. Total estimated liability for appeals and disputes was $0.9 million as of March 31, 2023 and $1.1 million as of December 31, 2022. This represents the Company’s best estimate of the amount probable of being refunded to the Company’s healthcare clients.

At March 31, 2023, the Company had capitalized costs to fulfill a contract of $0.2 million in prepaid expenses and other current assets. Amortization of such capitalized costs to fulfill was immaterial for the three months ended March 31, 2023.

(c) Prepaid Expenses and Other Current Assets

At March 31, 2023, prepaid expenses and other current assets were $3.6 million and included approximately $2.0 million related to prepaid software licenses and maintenance agreements, $1.2 million for prepaid insurance, and $0.4 million for various other prepaid expenses. At December 31, 2022, prepaid expenses and other current assets were $3.7 million and included approximately $1.5 million related to prepaid software licenses and maintenance agreements, $1.8 million for prepaid insurance, and $0.4 million for various other prepaid expenses.

(d) Impairment of Goodwill and Long-Lived Assets

The balance of goodwill was $47.4 million as of March 31, 2023 and $47.4 million as of December 31, 2022, which was net of accumulated impairment loss of $34.2 million. Goodwill is reviewed for impairment at least annually in December or as certain events or conditions arise during the year. The Company may first assess qualitative factors for indicators of impairment to determine whether it is necessary to perform the quantitative goodwill impairment test. In performing the quantitative assessment of goodwill, if the carrying value of the Company, as one reporting unit, exceeds its fair value, goodwill is considered impaired. The amount of impairment loss is measured as the difference between the carrying value and the fair value of the reporting unit.

Impairment testing is based upon the best information available and estimates of fair value which incorporate assumptions marketplace participants would use in making their estimates of fair value. Significant assumptions and estimates are required, including, but not limited to, our market capitalization, projecting future cash flows and other assumptions, to estimate the fair value of the reporting unit. Although the Company believes the assumptions and estimates made are reasonable and appropriate, different assumptions and estimates could materially impact the amount of impairment. Based on management's analysis, there was no impairment to goodwill as of March 31, 2023 and 2022.

Long-lived assets and intangible assets that are subject to amortization are evaluated for impairment whenever events or changes in circumstances indicate that the carrying amount of such assets or intangibles may not be recoverable. Recoverability of assets to be held and used is measured by a comparison of the carrying amount of the assets to future undiscounted net cash flows expected to be generated by the assets. If such assets are considered to be impaired, the impairment to be recognized is measured by the amount by which the carrying amount of the assets exceeds the fair value of the assets. For the three months ended March 31, 2023 and 2022, there was no impairment.

(e) Other Current Liabilities

As of March 31, 2023, other current liabilities primarily included $1.7 million for services received for which we have not received an invoice, and $0.3 million for estimated workers' compensation claims incurred but not reported, third party fees, and accrued interest under our Credit Agreement (Note 3). As of December 31, 2022, other current liabilities primarily included $1.8 million for services received for which we have not received an invoice, and $0.5 million for accrued interest under our Credit Agreement, estimated workers' compensation claims incurred but not reported and third party fees and equipment financing payables.

(f) New Accounting Pronouncements

In February 2020, the Financial Accounting Standards Board (FASB) issued ASU 2020-02, "Financial Instruments - Credit Losses (Topic 326) and Leases (Topic 842) – Amendments to SEC Paragraphs Pursuant to SEC Staff Accounting Bulletin No. 119 and Update to SEC Section on Effective Date Related to Accounting Standards Update No. 2016-02, Leases (Topic 842)." This ASU provides updated guidance on how an entity should measure credit losses on financial instruments, including trade receivables, held at the reporting date. The amendments make each Topic easier to understand and easier to apply by eliminating inconsistencies and providing clarifications. It also addresses transition and open effective date information for Topic 842. ASU 2016-13, ASU 2018-19, ASU 2019-04, ASU 2019-05, ASU 2019-11 and ASU 2020-02 (collectively, "ASC 326") are effective for public entities for fiscal years beginning after December 15, 2019, except for Smaller Reporting Companies. This ASU is effective for the Company for fiscal years, and interim periods within those fiscal years, beginning after December 15, 2022. The Company's adoption of this ASU had no impact on our financial position, results of operations, or cash flows.

2. Property, Equipment, and Leasehold Improvements

Property, equipment, and leasehold improvements consist of the following at March 31, 2023 and December 31, 2022 (in thousands):

	March 31, 2023	December 31, 2022
Building and leasehold improvements	3,703	3,785
Furniture and equipment	3,085	3,094
Computer hardware and software	77,737	76,906
	84,525	83,785
Less accumulated depreciation and amortization	(73,998)	(72,888)
Property, equipment and leasehold improvements, net	$ 10,527	$ 10,897

Depreciation and amortization expense was $1.2 million and $1.1 million for the three months ended March 31, 2023 and 2022, respectively.

3. Notes Payable

As of March 31, 2023 and December 31, 2022, $11.8 million and $19.5 million, respectively, was outstanding under the Company's credit agreement with MUFG Union Bank, N.A. (the Credit Agreement). The Company’s interest rate under the Credit Agreement at March 31, 2023 and December 31, 2022 was 8.5% and 7.5%, respectively.

On December 17, 2021, the Company entered into a Credit Agreement with MUFG Union Bank, N.A. The Credit Agreement includes a $20 million term loan commitment, which was fully advanced at closing and a $15 million revolving loan commitment. Subject to certain customary exceptions, the obligations under the Credit Agreement are, or will be, guaranteed by each of the Company’s existing and future, direct or indirect, domestic subsidiaries. The obligations of the Company under the Credit Agreement are secured by liens on substantially all of the assets of the Company and each of its domestic subsidiaries that are guarantors under the Credit Agreement.

On March 13, 2023, the Company entered into a First Amendment to the Credit Agreement (the “First Amendment”) to amend the Credit Agreement to, among other things, terminate the revolving loan commitment in full and to establish a new maturity date of December 31, 2024 for the term loan. As a result of the First Amendment to the Credit Agreement, the Company does not have any further borrowing capacity under the Credit Agreement. In connection with the First Amendment, the Company voluntarily prepaid $7.5 million of the outstanding principal of the term loan.

Pursuant to the Credit Agreement, after giving effect to the First Amendment described above, the Company is required to repay the aggregate outstanding principal amount of the term loan under the Credit Agreement in quarterly installments commencing March 31, 2022 in an amount that would result in amortization of (a) 2.5% of the original term loan principal in the first full year following commencement of amortization, (b) 5.0% of the original term loan principal in the second full year following commencement of amortization, and (c) 10.0% of the original term loan principal in the third full year following commencement of amortization. In addition, the Company must make mandatory prepayments of the term loan principal under the Credit Agreement with the net cash proceeds received in connection with certain specified events, including certain asset sales, casualty and condemnation events (subject to customary reinvestment rights). Any remaining outstanding principal balance of the term loan under the Credit Agreement is repayable on the maturity date. Amounts repaid or prepaid by the Company with respect to the term loan under the Credit Agreement cannot be reborrowed.

Under the Credit Agreement, after giving effect to the First Amendment described above, the term loan generally may bear interest based on term SOFR (the secured overnight financing right) or an annual base rate, as applicable, plus an applicable margin based on the Company’s leverage ratio each quarter that may range between 2.50% per annum and 4.00% per annum, in the case of term SOFR loans and between 1.50% per annum and 3.00% per annum in the case of base rate loans. The SOFR rate was approximately 4.5% as of March 31, 2023. In addition, a commitment fee based on the unused availability if there are outstanding revolving loan commitments is also payable which may vary from 0.30% per annum to 0.50% per annum, also based on the Company’s leverage ratio, however, the revolving commitment was terminated in connection with the First Amendment described above.

The Credit Agreement contains certain customary representations, warranties, and affirmative and negative covenants of the Company and its subsidiaries that restrict the Company's and its subsidiaries' ability to take certain actions, including, incurrence of indebtedness, creation of liens, making certain investments, mergers or consolidations, dispositions of assets, assignments, sales or transfers of equity in subsidiaries, repurchase or redemption of capital stock, entering into certain transactions with affiliates, or changing the nature of the Company's business. The Credit Agreement, after giving effect to the First Amendment described above, also contains financial covenants, which require the Company to maintain, as of the last day of each fiscal quarter commencing (a) as of September 30, 2023, a total leverage ratio of not greater than (i) 10.00 to 1.00, (b) as of December 31, 2023 and as of the last day of each fiscal quarter thereafter, (i) a total leverage ratio of not greater than 2.50 to 1.00, and (ii) a fixed charge coverage ratio of not less than 1.20 to 1.00 and (c) prior to the earlier December 31, 2023 and the date that the Company's leverage ratio is not greater than 2.50 to 1.00 and its fixed charge coverage ratio is not less than 1.20 to 1.00, a minimum amount of unrestricted cash subject to a perfected security interest in favor of MUFG Union Bank, N.A. more specifically set forth in the Credit Agreement. The obligations under the Credit Agreement may be accelerated or the commitments terminated upon the occurrence of events of default under the Credit Agreement, which include payment defaults, defaults in the performance of affirmative and negative covenants, the inaccuracy of representations or warranties, bankruptcy and insolvency related defaults, cross defaults to other material indebtedness, defaults arising in connection with changes in control, and other customary events of default.

Other than the terms relating to the First Amendment as set forth above, the terms of the original Credit Agreement with MUFG Union Bank, N.A. remain in full force and effect.

Outstanding debt obligations were as follows (in thousands):

	March 31, 2023	December 31, 2022
Principal amount	$ 11,750	$ 19,500
Less unamortized discount and issuance costs	(541)	(333)
Notes payable, net of unamortized discount and issuance costs	11,209	19,167
Less current maturities, net of unamortized discount and issuance costs	(1,193)	(983)
Long-term notes payable, net of current maturities and unamortized discount and issuance costs	$ 10,016	$ 18,184

The following is a schedule, by years, of maturities of notes payable as of March 31, 2023 (in thousands):

Year Ending December 31,	Amount
Remainder of 2023	$ 750
2024	11,000
Total notes payable	$ 11,750

4. Leases

The Company has entered into various non-cancelable operating lease agreements for office facilities and equipment with lease periods expiring between 2023 and 2026. Certain of these arrangements have free rent periods and/or escalating rent payment provisions. As such, the Company recognizes rent expense under such arrangements on a straight-line basis in accordance with U.S. GAAP. Some leases include options to renew. The Company does not assume renewals in its determination of the lease term unless the renewals are deemed to be reasonably assured at lease commencement. The lease agreements do not contain any material residual value guarantees or material restrictive covenants. Leases with an initial term of twelve months or less are not recorded on the balance sheet.

Operating lease expense was $0.3 million and $0.5 million for the three months ended March 31, 2023 and 2022, respectively.

Supplemental cash flow and other information related to operating leases were as follows:

	March 31, 2023	March 31, 2022
Weighted Average Remaining Lease Term (in years)	1.4	2.4
Weighted Average Discount Rate	5.2%	6.4%
Cash paid for amounts included in the measurement of operating lease liabilities	$0.2 million	$0.6 million

The following is a schedule, by years, of maturities of lease liabilities as of March 31, 2023 (in thousands):

Year Ending December 31,	Amount
Remainder of 2023	$ 602
2024	157
2025	82
2026	3
Total undiscounted cash flows	$ 844
Less imputed interest	(32)
Present value of lease liabilities	$ 812

5. Stock-Based Compensation

(a) Stock Options

Total stock-based compensation expense charged as salaries and benefits expense in the consolidated statements of operations was $0.8 million and $0.6 million for the three months ended March 31, 2023 and 2022 respectively.

The following table sets forth a summary of the Company's stock option activity for the three months ended March 31, 2023:

	Outstanding Options	Weighted average exercise price per share	Weighted average remaining contractual life (Years)	Aggregate Intrinsic Value (in thousands)
Outstanding at December 31, 2022	250,000	$ 10.31	0.90	$ 20
Granted	—	—		—
Forfeited	(96,000)	13.39		—
Exercised	—	—		—
Outstanding at March 31, 2023	154,000	$ 8.39	1.10	$ 17
Vested, exercisable, expected to vest[1] at March 31, 2023	154,000	$ 8.39	1.10	$ 17
Exercisable at March 31, 2023	154,000	$ 8.39	1.10	$ 17

[1] Options expected to vest reflect an estimated forfeiture rate.

The Company recognizes share-based compensation costs as expense on a straight-line basis over the option vesting period, which generally is four years. As of March 31, 2023, all options have vested and there was no unrecognized compensation costs.

(b) Restricted Stock Units and Performance Stock Units

The following table summarizes restricted stock unit and performance stock unit activity for the three months ended March 31, 2023:

	Number of Awards	Weighted average grant date fair value per share
Outstanding at December 31, 2022	3,904,606	$ 2.85
Granted	16,000	3.23
Forfeited	(28,898)	3.29
Vested and converted to shares, net of units withheld for taxes	—	
Outstanding at March 31, 2023	3,891,708	$ 2.85
Expected to vest at March 31, 2023	3,427,154	$ 2.85

Restricted stock units and performance stock units granted under the Performant Financial Corporation Amended and Restated 2012 Stock Incentive Plan generally vest over periods between one year and four years.

As of March 31, 2023, there was approximately $7.5 million of total unrecognized compensation cost related to unvested restricted stock units granted to employees. This unrecognized compensation cost is expected to be recognized over an estimated weighted-average amortization period of approximately 2.9 years.

6**. Income Taxes**

The Company's effective income tax rate changed to (1)% for the three months ended March 31, 2023 from (2)% for the three months ended March 31, 2022. Similar to March 31, 2022, the primary driver of the effective income tax rate is the overall losses from operations for the three months ended March 31, 2023, for which no benefit is recognized due to valuation allowance.

The Company files income tax returns with the U.S. federal government and various state jurisdictions. The Company operates in a number of state and local jurisdictions, most of which have never audited our records. Accordingly, the Company is subject to state and local income tax examinations based upon the various statutes of limitations in each jurisdiction. For tax years before 2018, the Company is subject to examination and assessment to the extent of net operating losses carryback refunds requested. The Company has an ongoing federal examination by the Internal Revenue Service for the 2018 tax year.

7. Net Income (Loss) per Share

For the three months ended March 31, 2023 and 2022, basic net income (loss) per share is calculated by dividing net income (loss) by the sum of the weighted average number of shares of common stock outstanding during the period. Diluted earnings per share is calculated by dividing net income by the weighted average number of shares of common stock and dilutive common share equivalents outstanding during the period. Common share equivalents consist of stock options, restricted stock units, performance stock units, and warrants. When there is a loss in the period, dilutive common share equivalents are excluded from the calculation of diluted earnings per share, as their effect would be anti-dilutive. For example, for the three months ended March 31, 2023 and 2022, respectively, diluted weighted average shares outstanding are the same as basic average shares outstanding. When there is net income in the period, the Company excludes stock options, restricted stock units, performance stock units, and warrants from the calculation of diluted earnings per share when their combined exercise price and unamortized fair value exceeds the average market price of the Company's common stock because their effect would be anti-dilutive.

The following table reconciles the basic to diluted weighted average shares outstanding using the treasury stock method (shares in thousands):

	Three Months Ended March 31,	
	2023	2022
Weighted average shares outstanding – basic	75,505	69,873
Dilutive effect of stock options	—	—
Weighted average shares outstanding – diluted	75,505	69,873

Since the Company was in a loss position for all periods presented, basic net loss per share is the same as diluted net loss per share, as the inclusion of all potential common shares outstanding would have been anti-dilutive. Potentially dilutive securities that were not included in the diluted per share calculations because they would be anti-dilutive were as follows (shares in thousands):

	Three Months Ended March 31,	
	2023	2022
Options to purchase common stock	154	1,529
RSUs	3,892	2,950
Warrants outstanding	—	2,447
Total	4,046	6,926

8. Subsequent Events

The Company has evaluated subsequent events through the date these consolidated financial statements are filed with the Securities and Exchange Commission and there are no other events that have occurred that would require adjustments or disclosures to our consolidated financial statements.

ITEM 2. MANAGEMENT’S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS.

You should read the following discussion in conjunction with our consolidated financial statements (unaudited) and related notes included elsewhere in this report. This report on Form 10-Q contains forward-looking statements that involve risks and uncertainties. The words “believe,” “may,” “will,” “estimate,” “continue,” “anticipate,” “design,” “intend,” “expect” and similar expressions are intended to identify forward-looking statements. We have based these forward-looking statements largely on our current expectations and projections about future events and trends that we believe may affect our financial condition, results of operations, strategy, short-term and long-term business operations and objectives, and financial needs. These forward-looking statements are subject to a number of risks, uncertainties and assumptions, including those described in “Risk Factors” under Item 1A of Part II of this report. In light of these risks, uncertainties and assumptions, the forward-looking events and trends discussed in this report may not occur, and actual results could differ materially and adversely from those anticipated or implied in the forward-looking statements. Forward-looking statements include, but are not limited to, statements about our ability to generate revenue following long implementation periods associated with new customer contracts; the high level of revenue concentration among our largest customers; our client relationships and our ability to maintain such client relationships; many of our customer contracts are subject to periodic renewal, are not exclusive, do not provide for committed business volumes; downturns in domestic or global economic conditions and other macroeconomic factors; our ability to generate sufficient cash flows to fund our ongoing operations and other liquidity needs; our ability to hire and retain employees with specialized skills that are required for our healthcare business; anticipated trends and challenges in our business and competition in the markets in which we operate; the impact of COVID-19 on our business and operations, opportunities and expectations for the markets in which we operate; our ability to maintain compliance with the covenants in our debt agreements; the adaptability of our technology platform to new markets and processes; failure of our or third parties' operating systems and technology infrastructure could disrupt our operation and the threat of breach of the Company's security measures or failure or unauthorized access to confidential data that we possess; our growth strategy of expanding in our existing markets and considering strategic alliances or acquisitions; maintaining, protecting and enhancing our intellectual property; our expectations regarding future expenses; expected future financial performance; and our ability to comply with and adapt to industry regulations and compliance demands. The forward-looking statements in this report speak only as of the date hereof. We expressly disclaim any obligation or undertaking to release publicly any updates or revisions to any forward-looking statements contained herein to reflect any change in our expectations with regard thereto or any change in events, conditions or circumstances on which any such statement is based.

Overview

We provide technology-enabled audit, recovery, and analytics services in the United States primarily to the healthcare industry. We work with healthcare payers through claims auditing and eligibility-based (also known as coordination-of-benefits or COB) services to identify improper payments. We engage clients in both government and commercial markets. Our clients typically operate in complex and highly regulated environments and contract for their payment integrity needs in order to reduce losses on improper healthcare payments. We also have a call center which serves clients with complex consumer engagement needs.

Our revenue model is generally success-based as we earn fees based on the aggregate correct audits and/or amount of funds that we enable our clients to recover from our audits. Our services do not require significant upfront investments by our clients and we offer our clients the opportunity to recover significant funds that may otherwise be lost. Because our model is based upon the success of our efforts, our business objectives are aligned with those of our clients and we are generally not reliant on their spending budgets.

COVID-19 Pandemic Update

We continue to face uncertainty around the breadth and duration of business disruptions related to the COVID-19 pandemic, as well as its impact on the U.S. economy, the ongoing business operations of our clients, and the results of our operations and financial condition. While our management team continues to actively monitor the impacts of the COVID-19 pandemic and may take further actions to our business operations that we determine are in the best interests of our employees and clients, or as required by federal, state, or local authorities, the continuing impact of the COVID-19 pandemic on our results of operations, financial condition, or liquidity for fiscal year 2023 and beyond cannot be estimated at this point.

The following discussions are subject to the effects of the COVID-19 pandemic on our ongoing business operations.

Sources of Revenues

We derive a substantial portion of our revenues from services provided to our clients in the healthcare market. We also derive revenues from our outsourced call center services.

	Three Months Ended March 31,			
		2023		2022
	(in thousands)			
Eligibility-based	$	12,480	$	14,215
Claims-based		10,412		9,149
Healthcare Total		22,892		23,364
Recovery [(1)]		19		118
Customer Care / Outsourced Services		2,818		3,601
Total Revenues	$	25,729	$	27,083

(1) Represents revenues derived from the defaulted student loans and tax receivables markets.

Healthcare Revenues

We derive revenues from both commercial and government clients by providing healthcare payment integrity services, which include claims-based and eligibility-based services. Revenues earned under claims-based contracts in the healthcare market are driven by auditing, identifying, and sometimes recovering improperly paid claims through both automated and manual review of such claims. Eligibility-based services, which may also be referred to as coordination-of-benefits or COB, involve identifying and recovering payments in situations where our client should not be the primary payer of healthcare claims because a member has other forms of insurance coverage. We are paid contingency fees by our clients based on a percentage of the dollar amount of improper claims recovered as a result of our efforts. The revenues we recognize are net of our estimate of claims that may be overturned by appeal or disputed following payment by the provider.

For our healthcare business, our business strategy is focused on utilizing our technology-enabled services platform to provide claims-based, eligibility-based, and analytical services for healthcare payers. Revenues from our healthcare services were $22.9 million for the three months ended March 31, 2023 compared to revenues of $23.4 million from our healthcare services during for the three months ended March 31, 2022.

In October 2017, we were awarded the national exclusive Medicare Secondary Payer, Commercial Payment Center (MSP) contract by the centers for Medicare and Medicaid Services (CMS). In December 2022, we were re-awarded this MSP contract, which commenced in March 2023. This contract has a six-year term, consisting of one base year and five additional one-year options.

Under this MSP contract, we are responsible for coordination-of-benefits claims, which includes identifying and recovering payments in situations where Medicare should not be the primary payer of healthcare claims because a beneficiary has other forms of insurance coverage, such as through an employer group health plan or certain other payers.

In 2016, CMS awarded two new Medicare Recovery Audit Contractor (RAC) contracts to us, for audit Regions 1 and 5. The RAC contract award for Region 1 allows us to continue our audit of payments under Medicare's Part A and Part B for all provider types other than Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS) and home health and hospice within an 11 state region in the Northeast and Midwest. The Region 5 RAC contract provides for the post-payment review of DMEPOS and home health and hospice claims on a nation-wide basis.

In March 2021, CMS re-awarded the Region 1 RAC contract to us after a competitive procurement process. This contract has an eight-and-a-half year term.

In January 2022, we were awarded the indefinite delivery, indefinite quantity contract by the U.S. Department of Health and Human Services, Office of the Inspector General (HHS OIG), which has a base term of one year and four additional one-year options, the first of which has been exercised. Under this contract, we provide medical review and consultative services associated with the oversight activities of the HHS OIG, primarily assessing services and claims for Medicare fee-for-service payments for Part A and Part B. This contract was awarded via a full-and-open competitive procurement.

In November 2022, we were re-awarded the Medicare RAC contract for Region 2. This contract allows us to audit payments under Medicare's Part A and Part B for all provider types other than DMEPOS and home health and hospice within a 14 state region in the Midwest and South. This contract was initially awarded to us through a procurement process on March 24, 2022, and following a voluntary corrective action process that was initiated by CMS, the agency re-affirmed its initial contract award. This contract has an initial eight-and-a-half year term.

Recently, we have expanded the scope of services that we provide to our healthcare clients, and we continue to implement new programs for existing and new healthcare clients. We believe this growth trend should continue as our suite of payment integrity services and our customer relationships continue to mature. We currently anticipate that our healthcare revenues will drive the majority of our overall revenue growth.

Recovery Revenues

During 2021, we sold certain of our non-healthcare recovery contracts and decided not to renew or restart existing contracts in the recovery market, nor pursue new non-healthcare recovery contracts. Accordingly, revenues from recovery markets such as defaulted student loans and tax receivables were minimal.

Customer Care / Outsourced Services Revenues

We derive our revenues from first party call center and other outsourced services. Our revenues for these services include contingency fees, fees based on dedicated headcount and tasks completed on behalf of our clients.

Costs and Expenses

We generally report two categories of operating expenses: salaries and benefits and other operating expense. Salaries and benefits expenses consist primarily of salaries and performance incentives paid and benefits provided to our employees. Other operating expenses include expenses related to our use of subcontractors, other production related expenses, including costs associated with data processing, retrieval of medical records, printing and mailing services, amortization and other outside services, as well as general corporate and administrative expenses.

Factors Affecting Our Operating Results

Our results of operations are influenced by a number of factors, including costs associated with commencing new contracts, claim recovery volume, contingency fees, regulatory matters, client contract cancellation and macroeconomic factors.

Costs Associated with Commencing New Contracts

When we obtain an engagement with a new client or a new contract with an existing client, it typically takes a long period of time to plan our services in detail, which includes integrating our technology, processes and resources with the client's operations and hiring new employees, before we receive any revenues from the new client or new contract. Due to the upfront costs we incur in connection with the implementation of new contracts, which may not be recoverable in the event of contract termination, and the delays we face in recognizing initial revenue from any such new contracts, our profitability can be negatively impacted by any delays associated with new contract implementations. Our clients may also experience delays in obtaining approvals or managing protests from unsuccessful bidders or delays associated with system implementations, as we had experienced before with certain clients. If we are not able to pay the upfront expenses out of cash from operations or availability of borrowings under our lending arrangements, we may need to scale back our operations or alter our business plans, either of which could have a negative effect on future revenues that we may earn under any such new client or new contract engagements.

Claims Recovery Volume

The number of claims that we are allowed or permitted to audit on behalf of our healthcare clients within our claims-based services has a direct impact on our revenues. Most of our contracts in our claims-based services permit our clients to unilaterally change the amount of claims that we are able to audit on the client's behalf at any given time. Further, the type and scale of claims which are deemed permissible for us to audit by certain of our healthcare clients may change from time-to-time. Non-permissible claims may result from client product lines which are determined by our clients to be out of scope of our audit services, claims related to excluded providers or excluded provider groups, changes in policy, or other factors such as geographies disrupted by natural disasters or a global pandemic like the COVID-19 pandemic. For example, the COVID-19 pandemic has had a negative impact on overall hospital utilization rates in the United States. This negative impact on overall hospital utilization rates has caused delays with the healthcare industry as a whole, which in turn has had a negative impact on our healthcare business.

The level of claims volume provided by our healthcare clients also impacts the revenues we earn from our eligibility-based services. To the extent the claim recovery volume that we are allowed or permitted to audit on behalf of our healthcare clients is negatively impacted by any of the factors set forth above, our revenues and results of operations will be adversely impacted.

Contingency Fees

Our revenues consist primarily of contract-based contingency fees. The contingency fee percentages that we earn are set by our clients or agreed upon during the bid process and may change from time to time either under the terms of existing contracts or pursuant to the terms of contract renewals. Changes in contingency fee percentages set by our clients may have a material effect on our revenues and results of operations.

Regulatory Matters

Each of the markets which we serve is highly regulated. Accordingly, changes in regulations that affect the types of receivables and claims that we are able to service or audit or the manner in which any such receivables and claims can be recovered will affect our revenues and results of operations.

For example, in March 2020, CMS paused medical review activities under our two RAC contracts as a result of the COVID-19 pandemic, which were later resumed in August 2020.

In addition, our entry into the healthcare market was facilitated by the passage of the Tax Relief and Health Care Act of 2006, which mandated CMS to contract with private firms to audit Medicare claims in an effort to increase the recovery of improper Medicare payments. Any changes to the regulations that affect the Medicare program or the audit and recovery of Medicare claims could have a significant impact on our revenues and results of operations.

Client Contract Cancellation or Non-Renewal

We derive a substantial portion of our revenues from contracts with a limited number of our largest clients. Substantially all of our contracts (i) entitle our clients to unilaterally terminate their contractual relationship with us at any time without penalty and (ii) are subject to competitive procurement or renewal processes from time to time. Our revenues could decline if we lose one or more of our significant clients, either due to a contract cancellation or our inability to be awarded a new contract in connection with a competitive renewal process. Further, our revenues could be negatively impacted if one or more of our significant clients decides to limit the amount of claims that we are allowed to audit or reduces the level of placements provided under an existing contract, or if the terms of compensation for our services change under any existing contracts, or if any of our significant clients is acquired by an entity that does not wish to continue use our services.

Macroeconomic Factors

Certain macroeconomic factors influence our business and results of operations. For example, the growth in Medicare expenditures or claims made to private healthcare providers resulting from changes in healthcare costs or the healthcare industry taken as a whole, as well as the fiscal budget tightening of federal, state and local governments as a result of general economic weakness and lower tax revenues.

Critical Accounting Policies

Our consolidated financial statements are prepared in accordance with accounting principles generally accepted in the United States, or U.S. GAAP. The preparation of these consolidated financial statements requires us to make estimates and assumptions that affect the reported amounts of assets, liabilities, revenues, costs and expenses and related disclosures. We base our estimates on historical experience and on various other assumptions that we believe to be reasonable under the circumstances. In many instances, we could have reasonably used different accounting estimates, and in other instances changes in the accounting estimates are reasonably likely to occur from period-to-period. Accordingly, actual results could differ significantly from the estimates made by our management. To the extent that there are material differences between these estimates and actual results, our future financial statement presentation, financial condition, results of operations and cash flows will be affected. We believe that the accounting policies discussed below are critical to understanding our historical and future performance, as these policies relate to the more significant areas involving management’s judgments and estimates.

Revenue Recognition

We derive our revenues primarily from providing audit, recovery, and analytics services. Revenues are recognized upon completion of these services for our customers, in an amount that reflects the consideration we expect to be entitled to in exchange for those services.

We determine revenue recognition through the following steps:

- Identification of the contract with a customer
- Identification of the performance obligations in the contract
- Determination of the transaction price
- Allocation of the transaction price to the performance obligations in the contract; and
- Recognition of revenue when, or as, the performance obligations are satisfied

We account for a contract when it has approval and commitment from both parties, the rights of the parties are identified, payment terms are identified, the contract has commercial substance and collectability of consideration is probable.

Our contracts generally contain a single performance obligation, delivered over time as a series of services that are substantially the same and have the same pattern of transfer to a client, as the promise to transfer the individual services is not separately identifiable from other promises in the contracts and, therefore, not distinct.

Our contracts are composed primarily of variable consideration. Fees earned under our audit and recovery service contracts consist primarily of contingency fees based on a specified percentage of the amount we enable our clients to recover. The contingency fee percentage for a particular recovery depends on the type of recovery or claim facilitated.

We generally either apply the as-invoiced practical expedient, where our right to consideration corresponds directly to our right to invoice our clients, or the variable consideration allocation exception, where the variable consideration is attributable to one or more, but not all, of the services promised in a series of distinct services that form part of a single performance obligation. As such, we have elected the optional exemptions related to the as-invoiced practical expedient and the variable consideration allocation exception, whereby the disclosure of the amount of transaction price allocated to the remaining performance obligations is not required.

We estimate variable consideration only if we can reasonably measure our progress toward complete satisfaction of the performance obligation using an output method based on reliable information, and recognize such revenue over the performance period only if it is probable that a significant reversal in the amount of cumulative revenue recognized will not occur. Any change made to the measure of progress toward complete satisfaction of our performance obligation is recorded as a change in estimate. We exercise judgment to estimate the amount of constraint on variable consideration based on the facts and circumstances of the relevant contract operations and availability and reliability of data. Although we believe the estimates made are reasonable and appropriate, different assumptions and estimates could materially impact the amount of variable consideration.

For contracts that contain a refund right, these amounts are considered variable consideration, and we estimate our refund liability for each claim and recognize revenue net of such estimate.

Under certain contracts, consideration can include periodic performance-based bonuses which can be awarded based on our performance under the specific contract. These performance-based awards are considered variable and may be constrained by us until there is not a risk of a material reversal.

We have applied the as-invoiced practical expedient and the variable consideration allocation exception to contracts with performance obligations that have an average remaining duration of less than a year.

Trade accounts receivable are recorded at the invoiced amount and do not bear interest. Amounts collected on trade accounts receivable are included in cash used in operating activities in the consolidated statements of cash flows. The Company determines the allowance for doubtful accounts by specific identification. Account balances are charged off against the allowance after all means of collection have been exhausted and the potential for recovery is considered remote. The allowance for doubtful accounts was $0 as of March 31, 2023 and December 31, 2022.

Contract assets totaled $9.0 million and $11.5 million as of March 31, 2023 and December 31, 2022, respectively. Contract assets relate to our right to consideration for services completed but not invoiced at the reporting date, and receipt of payment is conditional upon factors other than the passage of time. Contract assets primarily consist of commissions that we estimate we have earned from completed claims audit findings submitted to healthcare clients. The increase in contract assets resulted from additional consideration earned for services provided to our healthcare clients, offset by invoiced amounts.

Contract assets are recorded to accounts receivable when our right to payment becomes unconditional, which is generally when healthcare providers or payers have paid our clients. There was no impairment loss related to contract assets for the three months ended March 31, 2023 and 2022.

Contract liabilities totaled $0.0 million and $0.4 million as of March 31, 2023 and December 31, 2022, respectively. Our contract liabilities related to certain reimbursable costs due to a client.

Healthcare providers of our clients have the right to appeal claims audit findings and may pursue additional appeals if the initial appeal is found in favor of healthcare clients. For coordination-of-benefits contracts, insurance companies or other responsible parties may dispute our findings regarding our clients not being the primary payer of healthcare claims. Total estimated liability for appeals and disputes was $0.9 million as of March 31, 2023 and $1.1 million as of December 31, 2022. This represents our best estimate of the amount probable of being refunded to our healthcare clients.

As of March 31, 2023, we had capitalized costs to fulfill a contract of $0.2 million in prepaid expenses and other current assets. Amortization of such capitalized costs to fulfill was immaterial for the three months ended March 31, 2023.

Recent Accounting Pronouncements

See "New Accounting Pronouncements" in Note 1(f) of the Consolidated Financial Statements included in Part I - Item 1 of this report.

Results of Operations

Three Months Ended March 31, 2023 compared to the Three Months Ended March 31, 2022

The following table represents our historical operating results for the periods presented:

	Three Months Ended March 31,			
	2023	2022	$ Change	% Change
	(in thousands)			
Consolidated Statement of Operations Data:				
Revenues	$ 25,729	$ 27,083	$ (1,354)	(5)%
Operating expenses:				
Salaries and benefits	22,449	20,439	2,010	10 %
Other operating expenses	7,069	8,131	(1,062)	(13)%
Total operating expenses	29,518	28,570	948	3 %
Income (loss) from operations	(3,789)	(1,487)	(2,302)	(155)%
Gain on sale of certain recovery contracts	3	—	3	100 %
Interest expense	(414)	(155)	(259)	(167)%
Loss before provision for income taxes	(4,200)	(1,642)	(2,558)	156 %
Provision for income taxes	21	31	10	32 %
Net loss	$ (4,221)	$ (1,673)	$ (2,548)	(152)%

Revenues

Total revenues were $25.7 million for the three months ended March 31, 2023, a decrease of approximately $1.4 million, or 5%, compared to total revenues of $27.1 million for the three months ended March 31, 2022.

Healthcare revenues were $22.9 million for the three months ended March 31, 2023, representing a decrease of $0.5 million, or 2%, compared to the three months ended March 31, 2022. Revenues from eligibility-based services during the three months ended March 31, 2023 were $12.5 million, or 12% lower than the three months ended March 31, 2022. Revenues from claims-based services during the three months ended March 31, 2023 were $10.4 million, or 14% higher than the three months ended March 31, 2022. The overall decrease in healthcare revenues was primarily attributable to a decrease in the volume of claims within our eligibility-based services during the quarter, partially offset by growth from our claims-based and eligibility-based services from our implemented statements of work as well as new program implementations.

Customer Care / Outsourced Services revenues were approximately $2.8 million, representing a decrease of $0.8 million, or 22%, compared to the three months ended March 31, 2022. The change was due to a decrease in demand for our outsourced services.

Salaries and Benefits

Salaries and benefits expense was $22.4 million for the three months ended March 31, 2023, an increase of $2.0 million, or 10%, compared to salaries and benefits expense of $20.4 million for the three months ended March 31, 2022. The increase in salaries and benefits expense was primarily driven by an increase in both salaries and headcount related to continued expansion in our healthcare business during the period.

Other Operating Expenses

Other operating expenses were $7.1 million for the three months ended March 31, 2023, compared to $8.1 million for the three months ended March 31, 2022. This decrease in other operating expenses was primarily due to a decrease of certain reimbursable costs due to a client, lower communication and postage expenses, and a decrease in lease expenses.

Loss from Operations

As a result of the factors described above, loss from operations was $3.8 million for the three months ended March 31, 2023, compared to loss from operations of $1.5 million for the three months ended March 31, 2022. This increase of $2.3 million in loss from operations during the three months ended March 31, 2023 was driven primarily by a decrease in total revenues, and an increase in total operating expenses due primarily to the increase in salaries and benefits during the period, partially offset by a decrease in other operating expenses.

Interest Expense

Interest expense was $0.4 million during the three months ended March 31, 2023, compared to $0.2 million for the three months ended March 31, 2022, representing an increase of approximately $0.2 million. This increase in interest expense is primarily due to a higher interest rate during the three months ended March 31, 2023.

Income Taxes

We recognized an income tax expense of $21 thousand for the three months ended March 31, 2023, compared to an income tax expense of $31 thousand for the three months ended March 31, 2022. Our effective income tax rate was (1)% and (2)% for the three months ended March 31, 2023 and 2022, respectively. Similar to the three months ended March 31, 2022, the primary driver of our effective income tax rate is the overall losses from operations for the three months ended March 31, 2023 for which no benefit is recognized due to recognition of a full valuation allowance.

Net Loss

As a result of the factors described above, net loss was $4.2 million for the three months ended March 31, 2023, which represented an increase in net loss of approximately $2.5 million, or 152%, compared to net loss of $1.7 million for the three months ended March 31, 2022.

Adjusted EBITDA and Adjusted Net Income

To provide investors with additional information regarding our financial results, we have disclosed in the table below adjusted EBITDA and adjusted net income, both of which are non-U.S. GAAP financial measures. We have provided a reconciliation below of adjusted EBITDA to net income and adjusted net income to net income, the most directly comparable U.S. GAAP financial measure to these non-U.S. GAAP financial measures.

We have included adjusted EBITDA and adjusted net income in this report because they are key measures used by our management and board of directors to understand and evaluate our core operating performance and trends and to prepare and approve our annual budget. Accordingly, we believe that adjusted EBITDA and adjusted net income provide useful information to investors and analysts in understanding and evaluating our operating results in the same manner as our management and board of directors.

Our use of adjusted EBITDA and adjusted net income has limitations as an analytical tool, and you should not consider it in isolation or as a substitute for analysis of our results as reported under U.S. GAAP. Some of these limitations are:

- although depreciation and amortization are non-cash charges, the assets being depreciated and amortized may have to be replaced in the future, and adjusted EBITDA does not reflect cash capital expenditure requirements for such replacements or for new capital expenditure requirements;

- adjusted EBITDA does not reflect interest expense on our indebtedness;

- adjusted EBITDA does not reflect changes in, or cash requirements for, our working capital needs;

- adjusted EBITDA does not reflect tax payments;

- adjusted EBITDA and adjusted net income do not reflect the potentially dilutive impact of equity-based compensation;

- adjusted EBITDA and adjusted net income do not reflect the impact of certain non-operating expenses resulting from matters we do not consider to be indicative of our core operating performance; and

- other companies may calculate adjusted EBITDA and adjusted net income differently than we do, which reduces its usefulness as a comparative measure.

Because of these limitations, you should consider adjusted EBITDA and adjusted net income alongside other financial performance measures, including net income and our other U.S. GAAP results. The following tables present a reconciliation of adjusted EBITDA and adjusted net income for each of the periods indicated:

	Three Months Ended March 31,	
	2023	2022
	(in thousands)	
Adjusted EBITDA:		
Net income (loss)	$ (4,221)	$ (1,673)
Provision for income taxes	21	31
Interest expense [1]	414	155
Stock-based compensation	798	558
Depreciation and amortization	1,247	1,102
Severance expenses [3]	63	142
Other [4]	(1)	$ 4
Adjusted EBITDA	$ (1,679)	$ 319

	Three Months Ended March 31,	
	2023	2022
	(in thousands)	
Adjusted Net Income (Loss):		
Net income (loss)	$ (4,221)	$ (1,673)
Stock-based compensation	798	558
Amortization of debt issuance costs [2]	35	24
Severance expenses [3]	63	142
Other [4]	(1)	$ 4
Tax adjustments [5]	(246)	(200)
Adjusted net income (loss)	$ (3,572)	$ (1,145)

	Three Months Ended March 31,	
	2023	2022
	(in thousands)	
Adjusted Net Income (Loss) Per Diluted Share:		
Net income (loss)	$ (4,221)	$ (1,673)
Plus: Adjustment items per reconciliation of adjusted net income (loss)	649	528
Adjusted net income (loss)	$ (3,572)	$ (1,145)
Adjusted net income (loss) per diluted share	$ (0.05)	$ (0.02)
Diluted average shares outstanding	75,505	69,873

(1) Represents interest expense and amortization of debt issuance costs related to our Credit Agreement.

(2) Represents amortization of debt issuance costs related to our Credit Agreement.

(3) Represents severance expenses incurred in connection with a reduction in force for our non-healthcare recovery services.

(4) Represents professional fees related to strategic corporate development activities and gain on sale of certain non-healthcare recovery contracts in prior years.

(5) Represents tax adjustments assuming a marginal tax rate of 27.5% at full profitability.

Liquidity and Capital Resources

Our primary sources of liquidity are cash flows from operations, and cash and cash equivalents on hand. Cash and cash equivalents, which includes restricted cash and consists primarily of cash on deposit with banks, totaled $12.4 million as of March 31, 2023 compared to $23.5 million as of December 31, 2022. The $11.1 million decrease in the balance of our cash and cash equivalents from December 31, 2022 to March 31, 2023, was primarily due to $8.0 million used in financing activities, $2.1 million used in operating activities, and $0.9 million used in investing activities. The $8.0 million in cash used in financing activities was primarily the result of $7.5 million in prepayment of outstanding principal in connection with an amendment to our Credit Agreement.

On December 17, 2021, we entered into the Credit Agreement with MUFG Union Bank, N.A. The Credit Agreement originally included a $20 million term loan commitment, which was fully advanced at closing, and a $15 million revolving loan commitment, which was undrawn as of March 31, 2023. On March 13, 2023, we entered into a First Amendment to the Credit Agreement to amend the Credit Agreement to, among other things, terminate the revolving loan commitment in full and to establish a new maturity date of December 31, 2024 for the term loan. In connection with the First Amendment to the Credit Agreement, we voluntarily prepaid $7.5 million of the outstanding principal of the term loan.

Our ability to fund our business plans, capital expenditures and to fund our other liquidity needs depends on our financial and operating performance, which is subject to prevailing economic and competitive conditions and to certain financial, business and other factors beyond our control, and the availability of cash and cash equivalents on hand. Our current financial projections show that we expect to be able to maintain a level of cash flows from operating activities sufficient to permit us to fund our ongoing and planned business operations and to fund our other liquidity needs. If, however, we are required to obtain additional borrowings to fund our ongoing or future business operations, there can be no assurance that we will be successful in obtaining such additional borrowings or upon terms that are acceptable to us.

Our Credit Agreement contains, and any agreements to refinance our debt likely will contain, certain financial covenants, including the maintenance of minimum fixed charge coverage ratio and total debt to EBITDA ratio, as well as restrictive covenants that require us to limit our ability to incur additional debt, including to finance future operations or other capital needs, and to engage in other activities that we may believe are in our long-term best interests, including to dispose of or acquire assets. We are in compliance with our covenants under the Credit Agreement. However, conditions may change for a variety of reasons in the future that may affect our ability to maintain compliance with our financial or restrictive covenants. Our failure to comply with these financial covenants or the restrictive covenants may result in an event of default, which, if not cured or waived, could accelerate the maturity of our indebtedness or result in modifications to our credit terms.

Cash flows from operating activities

Cash used in operating activities was $2.1 million for the three months ended March 31, 2023, primarily as a result of the net loss, a decrease in accrued salaries and benefits, offset by a decrease in contract assets during the period. Cash used in operating activities was $4.7 million for the three months ended March 31, 2022, primarily as a result of changes in accrued salaries and benefits and contract liabilities and other current liabilities during the period.

Cash flows from investing activities

Cash used in investing activities of $0.9 million for the three months ended March 31, 2023 primarily related to capital expenditures for information technology, data storage, hardware, telecommunication systems and security enhancements to our information technology systems. Cash used in investing activities for the three months ended March 31, 2022 was $0.7 million, which was used primarily for similar cash expenditure purposes as set forth above.

Cash flows from financing activities

Cash used in financing activities of $8.0 million for the three months ended March 31, 2023 was primarily attributable to repayments of notes payable during the period. Cash provided by financing activities for the three months ended March 31, 2022 was $5.4 million, primarily attributable to $5.6 million in proceeds from the exercise of warrants by ECMC, offset by $0.1 million in repayments of notes payable.

Restricted Cash

As of March 31, 2023, restricted cash included in current assets on our consolidated balance sheet was $0.1 million.

Notes Payable

On December 17, 2021, we entered into the Credit Agreement with MUFG Union Bank, N.A. The Credit Agreement originally included a $20 million term loan commitment, which was fully advanced at closing and a $15 million revolving loan commitment. Subject to certain customary exceptions, the obligations under the Credit Agreement are, or will be, guaranteed by each of our existing and future, direct or indirect, domestic subsidiaries that are guarantors under the Credit Agreement.

On March 13, 2023, we entered into a First Amendment to the Credit Agreement to amend the Credit Agreement to, among other things, terminate the revolving loan commitment in full and to establish a new maturity date of December 31, 2024 for the term loan. As a result of the First Amendment to the Credit Agreement, we do not have any further borrowing capacity under the Credit Agreement.

As of March 31, 2023, $11.8 million was outstanding under the Credit Agreement. The Company's annual interest rate at March 31, 2023 was 8.5%. In connection with the First Amendment described above, we voluntarily prepaid $7.5 million of the outstanding principal of the term loan.

Pursuant to the Credit Agreement, after giving effect to the First Amendment described above, we are required to repay the aggregate outstanding principal amount of the term loan under the Credit Agreement in quarterly installments which commenced on March 31, 2022 in an amount that would result in amortization of (a) 2.5% of the original term loan principal in the first full year following commencement of amortization, (b) 5.0% of the original term loan principal in the second full year following commencement of amortization, and (c) 10% of the original term loan principal in the third full year following commencement of amortization. In addition, we must make mandatory prepayments of the term loan principal under the Credit Agreement with the net cash proceeds received in connection with certain specified events, including certain asset sales, casualty and condemnation events (subject to customary reinvestment rights). Any remaining outstanding principal balance of the term loan under the Credit Agreement is repayable on the maturity date. Amounts repaid or prepaid with respect to the term loan under the Credit Agreement cannot be reborrowed.

Under the Credit Agreement, after giving effect to the First Amendment described above, the term loan generally may bear interest based on term SOFR (the secured overnight financing right) or an annual base rate, as applicable, plus an applicable margin based on our leverage ratio each quarter that may range between 2.50% per annum and 4.00% per annum in the case of term SOFR loans, and between 1.50% per annum and 3.00% per annum in the case of base rate loans. In addition, a commitment fee based on unused availability if there are outstanding revolving loan commitments is also payable which may vary from 0.30% per annum to 0.50% per annum, also based on our leverage ratio, however, the revolving commitment was terminated in connection with the First Amendment described above.

The Credit Agreement contains certain customary representations, warranties, and affirmative and negative covenants by us and our subsidiaries that restrict the Company's and its subsidiaries' ability to take certain actions, including, incurrence of indebtedness, creation of liens, making certain investments, mergers or consolidations, dispositions of assets, assignments, sales or transfers of equity in subsidiaries, repurchase or redemption of capital stock, entering into certain transactions with affiliates, or changing the nature of the Company's business. The Credit Agreement, after giving effect to the First Amendment described above, also contains financial covenants, which require us to maintain, as of the last day of each fiscal quarter commencing (a) as of September 30, 2023, a total leverage ratio of not greater than 10.00 to 1.00, (b) as of December 31, 2023 and as of the last day of each fiscal quarter thereafter, (i) a total leverage ratio of not greater than 2.50 to 1.00, and (ii) a fixed charge coverage ratio of not less than 1.20 to 1.00 and (c) prior to the earlier December 31, 2023 and the date that the Company's leverage ratio is not greater than 2.50 to 1.00 and its fixed charge coverage ratio is not less than 1.20 to 1.00, a minimum amount of unrestricted cash subject to a perfected security interest in favor of MUFG Union Bank more specifically set forth in the Credit Agreement. The obligations under the Credit Agreement may be accelerated or the commitments terminated upon the occurrence of events of default under the Credit Agreement, which include payment defaults, defaults in the performance of affirmative and negative covenants, the inaccuracy of representations or warranties, bankruptcy and insolvency related defaults, cross defaults to other material indebtedness, defaults arising in connection with changes in control, and other customary events of default.

ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

We do not hold or issue financial instruments for trading purposes. We conduct all of our business in U.S. currency and therefore do not have any material direct foreign currency risk. We do have exposure to changes in interest rates with respect to the borrowings under our senior secured credit facility, which bear interest at a variable rate based on SOFR. For example, if the interest rate on our borrowings increased 100 basis points (1%), our annual interest expense would increase by approximately $0.1 million.

While we currently hold our excess cash in an operating account, in the future we may invest all or a portion of our excess cash in short-term investments, including money market accounts, where returns may reflect current interest rates. As a result, market interest rate changes may impact our interest expense and interest income. This impact, if applicable, will depend on variables such as the magnitude of interest rate changes and the level of our borrowings under our credit facility or excess cash balances.

ITEM 4. DISCLOSURE CONTROLS AND PROCEDURES

Evaluation of Disclosure Controls and Procedures

We maintain a system of disclosure controls and procedures that are designed to ensure that information required to be disclosed in the Company's reports under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the Securities and Exchange Commission's rules and forms, and that such information is accumulated and communicated to management, including our Chief Executive Officer and the Chief Accounting Officer, as appropriate, to allow timely decisions regarding required disclosure.

In designing and evaluating the disclosure controls and procedures, our management recognized that any controls and procedures, no matter how well designed and operated, can provide only reasonable not absolute, assurance of achieving the desired control objectives. Our disclosure controls and procedures have been designed to meet reasonable assurance standards. Additionally, in designing internal controls and procedures, our management necessarily was required to apply its judgment in evaluating the cost-benefit relationship of possible disclosure controls and procedures. The design of any disclosure controls and procedures also is based in part upon certain assumptions about the likelihood of future events, and there can be no assurance that any design will succeed in achieving its stated goals under all potential future conditions.

Management, with the participation of our Chief Executive Officer and our Chief Accounting Officer, has evaluated the effectiveness of our disclosure controls and procedures, as defined in Rule 13a-15(e) under the Exchange Act, and concluded that our disclosure controls and procedures were not effective at the reasonable assurance level as of March 31, 2023.

As described in Item 9A of our Annual Report on the Form 10-K for the year ended December 31, 2022, management identified control deficiencies related to the design and operation of information technology general controls ("ITGCs") around user access and change management for certain information technology ("IT") systems which resulted in a material weakness. A material weakness is a deficiency, or a combination of deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of the company's annual or interim financial statements will not be prevented or detected on a timely basis. The material weakness did not result in any material misstatement of our consolidated financial statements for the periods presented. Subsequent to the identification of the material weakness, we performed supplemental procedures and found no evidence of improper changes or changes with direct or consequential impact on internal controls over financial reporting.

We have started the process of designing and implementing effective internal control measures to improve the Company's internal controls over financial reporting and to remediate this material weakness. Our efforts include modifying ITGCs over user access and change management, enhancing our documentation to evidence execution of these ITGCs, and implementing additional controls designed to detect issues that could arise over users with elevated access rights. We are planning to complete such enhancements in 2023.

We believe that these actions, collectively, will remediate the material weakness. However, the material weakness cannot be considered remediated until the applicable controls operate for a sufficient period of time and our management has concluded, through testing, that these controls are operating effectively. We intend to continue to monitor and upgrade our internal controls as necessary or appropriate for our business but cannot provide assurance that such improvements will be sufficient to provide us with effective internal control over financial reporting.

Changes in Internal Control over Financial Reporting

Other than the information provided above, there were no changes in our internal control over financial reporting that occurred during the first quarter of 2023, that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

PART II. OTHER INFORMATION

ITEM 1. LEGAL PROCEEDINGS

We are involved in various legal proceedings that arise from our normal business operations. These actions generally derived from student loan recovery services we provided historically, and generally assert claims for violations of the Fair Debt Collection Practices Act or similar federal and state consumer credit laws. While litigation is inherently unpredictable, we believe that none of these legal proceedings, individually or collectively, will have a material adverse effect on our financial condition or our results of operations.

ITEM 1A. RISK FACTORS

Our business, financial condition, results of operations and liquidity are subject to various risks and uncertainties, including those described below, and as a result, the trading price of our common stock could decline.

Risks Related to Our Business

We typically face a long period to start up a new contract which may cause us to incur expenses before we receive revenues from new clients or new contract relationships.

If we are successful in obtaining an engagement with a new client or a new contract with an existing client, we typically have a long implementation period in which the services are planned in detail and we integrate our technology, processes and resources with the client’s operations. If we enter into a contract with a new client, we typically will not receive revenues until implementation is completed and work under the contract actually begins, which can be a substantial period of time. Our clients may also experience delays in obtaining approvals or managing protests from unsuccessful bidders, or delays associated with technology or system implementations, such as the delays experienced with the implementation of our RAC contracts with CMS. We incur significant expenses associated with new contracts before we receive corresponding revenues under any such new contract, because we operate under a model in which we generally hire employees to provide services to a new client once a contract is signed and otherwise incur significant upfront implementation expenses. If we are not able to pay the upfront expenses for commencing new contracts out of cash from operations or availability of cash on hand or borrowings under our lending arrangements, we may be required to scale back our operations or alter our business plans to account for cash shortages, either of which could prevent us from earning future revenues under any such new client or contract engagements. Further, if we are not successful in maintaining contractual commitments after the expenses we incur during our typically long implementation cycle, our cash flows and results of operations could be adversely affected.

Revenues generated from a limited number of our largest clients represent a substantial majority of our revenues. Any termination of or deterioration in our relationship with any of our significant clients would result in a decline in our revenues.

We derive a substantial portion of our revenues from a limited number of our largest clients. Substantially all of our contracts (i) entitle our clients to unilaterally terminate their contractual relationship with us at any time without penalty and (ii) are subject to competitive procurement or renewal processes from time to time. Further, substantially all of our contracts allow our clients to unilaterally change the amount of work available to us. If one of our largest clients terminates any of our existing contracts, or chooses not to renew an existing contract in connection with a competitive procurement or renewal process, our revenues and results of operations may be materially harmed. Further, if one of our significant clients decides to limit the amount of claims that we are allowed to audit or if the terms of compensation for our services change or if there is a reduction in the level of placements provided by any of these clients, our revenues could decline, which would harm our business, financial condition and results of operations. Lastly, our revenues could be adversely affected if one of our significant clients is acquired by an entity that does not wish to continue to use our services.

Many of our contracts with our clients are not exclusive and do not commit our clients to provide specified volumes of business. In addition, the terms of these contracts may be changed unilaterally and on short notice by our clients. As a consequence, there is no assurance that we will be able to maintain our revenues and operating results.

Many of our existing contracts enable our clients to terminate their contractual relationship with us at any time without penalty, potentially leading to loss of business or renegotiation of terms. Further, most of our contracts allow our clients to unilaterally change the amount of work available to us or the payment terms at any given time. In addition, many of our contracts are not exclusive, with our clients retaining multiple service providers with whom we must continue to compete for additional work. Therefore, despite our contractual relationships with our clients, our contracts do not provide assurance that we will generate a minimum amount of revenues or that we will receive a specific volume of work. For example, in March 2020, CMS paused medical review activities under our then current RAC contracts related to the COVID-19 pandemic, which were later resumed in August 2020. This pause in medical review activities under our RAC contracts had a negative impact on our 2020 and 2021 results of operations. If any of our clients modify terms of service, including the success fees we are able to earn, or any of these clients establish more favorable relationships with our competitors, our future revenues may be adversely affected.

Our ability to derive revenues under our current healthcare contracts will depend in part on the number and types of potentially improper claims that we are allowed to audit or otherwise pursue by our clients, and our results of operations may be harmed if the scope of claims that we are allowed to pursue and be compensated for is limited.

Our revenues under our current healthcare contracts depend in part on the number and types of potentially improper claims that we are allowed to audit or otherwise pursue on behalf of our clients. For example, under CMS's Medicare recovery audit program, RAC contractors have not been permitted to seek the recovery of an improper claim unless that particular type of claim has been pre-approved by CMS to ensure compliance with applicable Medicare payment policies, as well as national and local coverage determinations. As work under the first RAC contract progressed, CMS placed increasing restrictions on the scope of audits permitted by RAC contractors and these restrictions have not been relaxed under our current RAC contracts. Accordingly, the long-term growth of revenues we derive under our three existing RAC contracts, or any additional contracts we may enter into with CMS, will depend on the scope of improper claims that CMS allows us to pursue and our ability to successfully identify improper claims within the permitted scope.

In addition, our commercial healthcare clients also have the ability to unilaterally restrict or expand the type and volume of claims we are allowed to audit or otherwise provide services. Any future limitations on the type or volume of claims that we are permitted to audit or otherwise review on behalf of our clients in the healthcare market could have a material negative impact on our business, financial condition and results of operations.

Our indebtedness could adversely affect our business and financial condition and reduce the funds available to us for other purposes, and our failure to comply with the covenants contained in our Credit Agreement could result in an event of default that could adversely affect our results of operations.

Our ability to make scheduled payments under our Credit Agreement and to fund our other liquidity needs depends on our financial and operating performance, which is subject to prevailing economic and competitive conditions and to certain financial, business and other factors beyond our control, such as the recent global economic downturn as the result of the COVID-19 pandemic. We cannot make assurances that we will maintain a level of cash flows from operating activities or other capital resources sufficient to permit us to pay the principal and interest on our indebtedness and to fund our other liquidity needs. If our cash flows and capital resources are insufficient to fund our debt service obligations and allow us to maintain compliance with the covenants under our Credit Agreement or to fund our other liquidity needs, we may be forced to reduce or delay capital expenditures, alter our business plans, curtail the services we provide to our current or future clients, sell assets or operations, seek additional capital or restructure or refinance our indebtedness. We cannot ensure that we would be able to take any of these actions, that these actions would be successful and permit us to meet our scheduled debt service obligations or that these actions would be permitted under the terms of our existing or future debt agreements, including our Credit Agreement with MUFG Union Bank. If we cannot make scheduled payments on our debt, we will be in default and, as a result, our debt holders could declare all outstanding principal and interest to be due and payable, and foreclose against the assets securing our borrowings and we could be forced into bankruptcy or liquidation.

Our Credit Agreement contains, and any agreements to refinance our debt likely will contain, certain financial and restrictive covenants that limit our ability to incur additional debt, including to finance future operations or other capital needs, and to engage in other activities that we may believe are in our long-term best interests, including to dispose of or acquire assets. Our failure to comply with these covenants may result in an event of default, which, if not cured or waived, could accelerate the maturity of our indebtedness or result in modifications to our credit terms. If our indebtedness is accelerated, we may not have sufficient cash resources to satisfy our debt obligations and we may not be able to continue our operations as planned.

The U.S. federal government accounts for a significant portion of our revenues, and any loss of business from, or change in our relationship with the U.S. federal government would result in a significant decrease in our revenues and operating results.

We have historically derived and are likely to continue to derive a significant portion of our revenues from the U.S. federal government. We currently hold five contracts with agencies of the U.S. federal government within our healthcare business. The continuation and exercise of renewal options on our U.S. federal government contracts and any new U.S. federal government contracts are, among other things, contingent upon succeeding within competitive bidding processes, changes in federal government spending, the availability of adequate funding for the applicable federal government agency, or other regulatory changes, such as the pause in activities under our RAC contracts in 2020 as a result of the COVID-19 pandemic, could adversely affect our financial performance. The loss of business from the U.S. federal government, or significant policy changes or financial pressures within the agencies of the U.S. federal government that we serve would result in a significant decrease in our revenues, which would adversely affect our business, financial condition and results of operations.

Downturns in domestic or global economic conditions and other macroeconomic factors could harm our business and results of operations.

Various macroeconomic factors influence our business and results of operations. These include overall healthcare spending in the U.S. and the volume of healthcare claims that we audit on behalf of our clients, which are both impacted by domestic and global economic conditions, rates of unemployment and similar factors, movements in interest rates, and changes in healthcare costs, governmental policies toward Medicare expenditures or the healthcare industry taken as a whole. Changes in the overall economy could lead to a reduction in overall recovery rates by our clients, which in turn could adversely affect our business, financial condition and results of operations. For example, our business and the businesses of our customers have been/were materially and adversely affected by recent inflationary trends and the impact of the COVID-19 pandemic which have caused, and may continue to cause, a slowdown in global economic activity, which has resulted in a significant negative impact on our financial condition and results of operations. Political tensions resulting in economic instability, such as due to military activity or civil hostilities among Russia and Ukraine and the related response, including sanctions or other restrictive actions, by the United States and/or other countries, or other similar events, may have an adverse impact on our business, financial condition, and results of operations.

We may not have sufficient cash flows from operations or availability of funds under our lending arrangements to fund our ongoing operations and our other liquidity needs, which could adversely affect our business and financial condition.

Our ability to fund our business plans, capital expenditures and to fund our other liquidity needs depends on our financial and operating performance, which is subject to prevailing economic and competitive conditions and to certain financial, business and other factors beyond our control and the availability of cash on hand and borrowings under our existing lending facility. As a result of the First Amendment to our Credit Agreement with MUFG Union Bank, which became effective March 13, 2023, we do not have any further borrowing capacity under the Credit Agreement. We cannot make assurances that we will maintain a level of cash flows from operating activities sufficient to permit us to fund our ongoing and planned business operations and to fund our other liquidity needs. If we are required to obtain borrowings to fund our ongoing or future business operations, there can be no assurance that we will be successful in obtaining such borrowings or upon terms that are acceptable to us. While we believe our financial projections are attainable, there can be no assurances that our financial results will be recognized in a timeframe necessary to meet our ongoing cash requirements. If our cash flows and capital resources are insufficient to fund our planned business operations or to fund our other liquidity needs, we may be forced to reduce or delay capital expenditures, alter our business plans, curtail the services we provide to our current or future clients, sell assets or operations, seek additional capital or restructure or refinance our indebtedness, any of which could have an adverse effect on our financial condition and results of operations.

We may not be able to manage our potential growth effectively and our results of operations could be negatively affected.

We believe our RAC contracts, MSP CRC contract, and other commercial healthcare contracts continue to provide the opportunity for growth in our business. However, our focus on growth and the expansion of our healthcare and other businesses may place additional demands on our management, operations and financial resources and will require us to incur additional expenses. We cannot be sure that we will be able to manage our performance under any significant new contracts effectively. In order to successfully perform under any significant new contracts, our expenses will increase to recruit, train and manage additional qualified employees and subcontractors and to expand and enhance our administrative infrastructure and continue to improve our management, financial and information systems and controls. If we cannot manage our growth effectively, our expenses may increase, and our results of operations could be negatively affected.

The growth of our healthcare business will require us to hire and retain employees with specialized skills and failure to do so could harm our ability to grow our business.

The growth of our healthcare business will depend in part on our ability to recruit, train and manage additional qualified employees. Our healthcare-related operations require us to hire registered nurses and experts in Medicare coding. Finding, attracting and retaining employees with these skills is a critical component of providing our healthcare-related recovery and audit services, and our inability to staff these operations appropriately represents a risk to our healthcare service offering and associated revenues. An inability to hire qualified personnel, particularly to serve our healthcare clients, may restrain the growth of our business.

We face significant competition in connection with obtaining, retaining and performing under our client contracts, and an inability to compete effectively in the future could harm our relationships with our clients, which would impact our ability to maintain our revenues and operating results.

We operate in highly competitive markets and face significant competition from other companies in providing our services and sourcing contracts with new clients or new contracts with existing clients. Accordingly, maintaining high levels of service under our contracts, and doing so in a cost-effective manner, are important factors in our ability to maintain existing contracts and obtain new contracts and grow our revenues and net income. Any failure to achieve these objectives could result in the loss of existing contractual relationships either by a client’s decision to terminate existing contractual relationship or in connection with a competitive contract re-bidding process, or the inability to obtain new client contracts, any of which could harm our business, financial condition and results of operations. Some of our current and potential competitors in the markets in which we operate may have greater financial, marketing, technological or other resources than we do. The ability of any of our competitors and potential competitors to adopt new and effective technology to better serve our markets may allow them to gain market strength. Increasing levels of competition in the future could result in lower fees, lower volumes of contracted services or higher costs for resources. Any inability to compete effectively in the markets that we serve could adversely affect our business, financial condition and results of operations.

The novel coronavirus (COVID-19) pandemic has had and may continue to have a material adverse impact on our business, results of operations and financial condition, as well as on the operations and financial performance of many of our customers. We are unable to predict the extent to which the prolonged duration of COVID-19 pandemic as well as any new coronavirus variants, and associated impacts will continue to adversely impact our business, results of operations, and financial condition.

Our business and the businesses of our customers have been and may continue to be materially and adversely affected by the impact of the COVID-19 pandemic that has caused, and may continue to cause, the global slowdown in economic activity. Because the severity, magnitude and duration of the COVID-19 pandemic and its economic consequences are uncertain, rapidly changing and difficult to predict, the COVID-19 pandemic’s impact on our operations and financial performance, as well as its impact on our ability to successfully execute our business strategies and initiatives, remains uncertain and difficult to predict. Further, the ultimate impact of the COVID-19 pandemic on our operations and financial performance depends on many factors that are not within our control, including, but not limited to: governmental and business actions that have been and continue to be taken in response to the pandemic; the impact of the COVID-19 pandemic and actions taken in response on global and regional economies and economic activity; the availability of federal, state or local funding programs; general economic uncertainty and financial market volatility; global economic conditions and levels of economic growth; and the pace of economic recovery when the COVID-19 pandemic subsides.

Given the economic hardships caused as a result of the COVID-19 pandemic, certain of our customers have chosen and may continue to choose to delay the services that we provide, and additional customers may choose to similarly delay the audit and recovery services that we provide, either of which could have a material negative impact on our revenues and results of operations. In addition, the COVID-19 pandemic has also had a negative impact on overall hospital utilization rates in the United States. This negative impact on overall hospital utilization rates has caused delays with the healthcare industry as a whole, which in turn has had a negative impact on our healthcare business. Any additional disruptions to the services that we provide to our customers as a result of the COVID-19 pandemic or otherwise could result in a negative impact on our revenues and results of operations.

Further, a prolonged period of generating lower cash flows from operations as a result of the COVID-19 pandemic could adversely affect our financial condition and the achievement of our strategic objectives. Conditions in the financial and credit markets may also limit the availability of funding or increase the cost of funding, which could adversely affect our business, financial position and results of operations. While we believe our financial projections are attainable, there can be no assurances that our financial results will be recognized in a timeframe necessary to meet our ongoing cash requirements.

Our results of operations may fluctuate on a quarterly or annual basis and cause volatility in the price of our stock.

Our revenues and operating results could vary significantly from period-to-period and may fail to match our past performance because of a variety of factors, some of which are outside of our control. Any of these factors could cause the price of our common stock to fluctuate. Factors that could contribute to the variability of our operating results include, but are not limited to, the following:

- the schedules of government agencies for awarding contracts;
- our ability to maintain contractual commitments after the expenses we incur during our typically long implementation cycle for new customer contracts;
- our ability to successfully identify improper Medicare claims and the number and type of potentially improper claims that CMS authorizes us to pursue under our RAC contracts;
- our ability to continue to generate revenues under our private healthcare contracts;
- the loss or gain of significant clients or changes in the contingency fee rates or other significant terms of our business arrangements with our significant clients;
- technological and operational issues that may affect our clients and regulatory changes in the markets we service; and
- general industry and macroeconomic conditions.

A failure of our operating systems or technology infrastructure, or those of our third-party vendors and subcontractors, could disrupt the operation of our business.

A failure of our operating systems or technology infrastructure, or those of our third-party vendors and subcontractors, could disrupt our operations. Our operating systems and technology infrastructure are susceptible to damage or interruption from various causes, including acts of God and other natural disasters, power losses, computer systems failures, Internet and telecommunications or data network failures, global health crises, operator error, computer viruses, losses of and corruption of data and similar events. The occurrence of any of these events could result in interruptions, delays or cessations in service to our clients, reduce the attractiveness of our recovery services to current or potential clients and adversely impact our financial condition and results of operations. While we have backup systems in many of our operating facilities, an extended outage of utility or network services may harm our ability to operate our business. Further, the situations we plan for and the amount of insurance coverage we maintain for losses as result of failures of our operating systems and infrastructure may not be adequate in any particular case.

If our security measures are breached or fail and unauthorized access is obtained to our clients' confidential data, our services may be perceived as insecure, the attractiveness of our services to current or potential clients may be reduced, and we may incur significant liabilities.

Our services involve the storage and transmission of confidential information relating to our clients and their customers, including health, financial, credit, payment and other personal or confidential information. Although our data security procedures are designed to protect against unauthorized access to confidential information, our computer systems, software and networks may be vulnerable to unauthorized access and disclosure of our clients' confidential information. Further, we may not effectively adapt our security measures to evolving security risks, address the security and privacy concerns of existing or potential clients as they change over time, or be compliant with federal, state, and local laws and regulations with respect to securing confidential information. Unauthorized access to confidential information relating to our clients and their customers could lead to reputational damage which could deter our clients and potential clients from selecting our services, or result in termination of contracts with those clients affected by any such breach, regulatory action, and claims against us.

Our business is increasingly dependent on critical, complex, and interdependent information technology (IT) systems, including internet-based systems, some of which are managed or hosted by third parties, to support business processes as well as internal and external communications. The size and complexity of our IT systems make us potentially vulnerable to IT system breakdowns, malicious intrusion, and computer viruses, which may result in the impairment of our ability to operate our business effectively. In addition, having a significant portion of our employees work remotely due to the COVID-19 pandemic can strain our information technology infrastructure, which may affect our ability to operate effectively, may make us more susceptible to communications disruptions, and expose us to greater cybersecurity risks.

In the event of any unauthorized access to personal or other confidential information, we may be required to expend significant resources to investigate and remediate vulnerabilities in our security procedures, and we may be subject to fines, penalties, litigation costs, and financial losses that are either not insured against or not fully covered through any insurance maintained by us. If one or more of such failures in our security and privacy measures were to occur, our business, financial condition and results of operations could suffer.

If our software vendors or utility and network providers fail to deliver or perform as expected our business operations could be adversely affected.

Our recovery services depend in part on third-party providers, including software vendors and utility and network providers. Our ability to service our clients depends on these third-party providers meeting our expectations and contractual obligations in a timely and effective manner. Our business could be materially and adversely affected, and we might incur significant additional liabilities, if the services provided by these third-party providers do not meet our expectations or if they terminate or refuse to renew their relationships with us on similar contractual terms.

Litigation may result in substantial costs of defense, damages or settlement, any of which could subject us to significant costs and expenses.

We are party to lawsuits in the normal course of business, particularly in connection with our student loan recovery services. For example, we are regularly subject to claims that we have violated the guidelines and procedures that must be followed under federal and state laws in communicating with consumer debtors. We may not ultimately prevail or otherwise be able to satisfactorily resolve any pending or future litigation, which may result in substantial costs of defense, damages or settlement. In the future, we may be required to alter our business practices or pay substantial damages or settlement costs as a result of litigation proceedings, which could adversely affect our business operations and results of operations.

If we are unable to adequately protect our proprietary technology, our competitive position could be harmed, or we could be required to incur significant costs to enforce our rights.

The success of our business depends in part upon our proprietary technology platform. We rely on a combination of copyright, trademark, and trade secret laws, as well as on confidentiality procedures and non-compete agreements, to establish and protect our proprietary technology rights. The steps we have taken to deter misappropriation of our proprietary technology may be insufficient to protect our proprietary information. In particular, we may not be able to protect our trade secrets, know-how and other proprietary information adequately. Although we use reasonable efforts to protect this proprietary information and technology, our employees, consultants and other parties may unintentionally or willfully disclose our information or technology to competitors. Enforcing a claim that a third party illegally obtained and is using any of our proprietary information or technology is expensive and time consuming, and the outcome is unpredictable. We rely, in part, on nondisclosure, confidentiality and invention assignment agreements with our employees, consultants and other parties to protect our trade secrets, know-how and other intellectual property and proprietary information. These agreements may not be self-executing, or they may be breached, and we may not have adequate remedies for such breach. Moreover, third parties may independently develop similar or equivalent proprietary information or otherwise gain access to our trade secrets, know-how and other proprietary information. Any infringement, misappropriation or other violation of our patents, trademarks, copyrights, trade secrets, or other intellectual property rights could adversely affect any competitive advantage we currently derive or may derive from our proprietary technology platform and we may incur significant costs associated with litigation that may be necessary to enforce our intellectual property rights.

Claims by others that we infringe their intellectual property could force us to incur significant costs or revise the way we conduct our business.

Our competitors protect their proprietary rights by means of patents, trade secrets, copyrights, trademarks and other intellectual property. Any party asserting that we infringe, misappropriate or violate their intellectual property rights may force us to defend ourselves, and potentially our clients, against the alleged claim. These claims and any resulting lawsuit, if successful, could be time-consuming and expensive to defend, subject us to significant liability for damages or invalidation of our proprietary rights, prevent us from operating all or a portion of our business or force us to redesign our services or technology platform or cause an interruption or cessation of our business operations, any of which could adversely affect our business and operating results. In addition, any litigation relating to the infringement of intellectual property rights could harm our relationships with current and prospective clients. The risk of such claims and lawsuits could increase if we increase the size and scope of our services in our existing markets or expand into new markets.

Risks Related to Regulations and Legislation

We identified a material weakness in our internal control over financial reporting. If we are unable to remediate this material weakness, or if we experience additional material weaknesses or other deficiencies in the future, or otherwise fail to maintain an effective system of internal control over financial reporting, we may not be able to accurately or timely report our financial results, which could result in loss of investor confidence and adversely impact our stock price.

As a public company, we are subject to the reporting requirements of the Securities Exchange Act of 1934, or the Exchange Act, the Sarbanes-Oxley Act of 2002, or the Sarbanes-Oxley Act, the Dodd-Frank Act and other applicable securities rules and regulations. In particular, we are subject to reporting obligations under Section 404 of the Sarbanes-Oxley Act that require us to include a management report on our internal control over financial reporting in our annual report, which contains management’s assessment of the effectiveness of our internal control over financial reporting, and are further required to adhere to the auditor attestation requirements with respect to the to the effectiveness of our internal control over financial reporting under Section 404 of the Sarbanes-Oxley Act.

Internal controls related to the operation of technology systems are critical to maintaining adequate internal control over financial reporting. As disclosed in our Annual Report on Form 10-K for the year ended December 31, 2022, during the fourth quarter of fiscal 2022, management identified a material weakness in the design and operation of internal control related to information technology general controls (ITGCs) in the areas of user access and program change-management over certain information technology (IT) systems that support our financial reporting processes. We have begun the process of designing and implementing measures to improve our internal controls over financial reporting and to remediate this material weakness. While there can be no assurance that our efforts will be successful, we plan to remediate this material weakness during fiscal 2023. Our ability to comply with the annual internal control report requirements will depend on the effectiveness of our financial reporting and data systems and controls across our company. We expect these systems and controls to involve significant expenditures and to may become more complex as our business grows. To effectively manage this complexity, we will need to continue to improve our operational, financial, and management controls, and our reporting systems and procedures. Our inability to successfully remediate our existing or any future material weaknesses or other deficiencies in our internal control over financial reporting or any failure to implement required new or improved controls, or difficulties encountered in the implementation or operation of these controls, could harm our operating results and cause us to fail to meet our financial reporting obligations or result in material misstatements in our financial statements, which could limit our liquidity and access to capital markets, adversely affect our business and investor confidence in our financial statements, and adversely impact our stock price.

Future legislative or regulatory changes affecting the markets in which we operate could impair our business and operations.

The markets in which we operate are highly regulated, and any future changes in the regulatory landscape could have a material effect on our business and financial condition. For example, the Medicare program, is a subject of significant legislative and regulatory focus, and we cannot anticipate how future changes in government policy may affect our business and operations. Any future changes in the legislation and regulations that govern these markets, may require us to adapt our business to the new circumstances and we may be unable to do so in a manner that does not adversely affect our business and operations.

We are subject to extensive regulations regarding the use and disclosure of confidential personal information and failure to comply with these regulations could cause us to incur liabilities and expenses.

We are subject to a wide array of federal and state laws and regulations regarding the use and disclosure of confidential personal information and security. For example, the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA), as amended, and related state laws subject us to substantial restrictions and requirements with respect to the use and disclosure of the personal health information that we obtain in connection with our contracts with CMS and we must establish administrative, physical and technical safeguards to protect the confidentiality of this information. Similar protections extend to the type of personal financial and other information we acquire from our student loan, state tax and federal receivables clients. We are required to notify affected individuals and government agencies of data security breaches involving protected health and certain personally identifiable information. These laws and regulations also require that we develop, implement and maintain written, comprehensive information security programs containing safeguards that are appropriate to protect personally identifiable information or health information against unauthorized access, misuse, destruction or modification. Federal law generally does not preempt state law in the area of protection of personal information, and as a result we must also comply with state laws and regulations. Regulation of privacy, data use and security require that we incur significant expenses, which could increase in the future as a result of additional regulations, all of which adversely affects our results of operations. Failure to comply with these laws and regulations can result in penalties and in some cases expose us to civil lawsuits.

Our legacy student loan recovery business is subject to extensive regulation and consumer protection laws and our failure to comply with these regulations and laws may subject us to liability and result in significant costs.

Our student loan recovery business is subject to regulation and oversight by various state and federal agencies, particularly in the area of consumer protection. The Fair Debt Collection Practices Act (FDCPA), and related state laws provide specific guidelines that we must follow in communicating with holders of student loans and regulates the manner in which we can recover defaulted student loans. Some state attorney generals have been active in this area of consumer protection regulation. We are subject, and may be subject in the future, to inquiries and audits from state and federal regulators, as well as frequent litigation from private plaintiffs regarding compliance under the FDCPA and related state regulations. We are also subject to the Fair Credit Reporting Act (FCRA), which regulates consumer credit reporting and may impose liability on us to the extent adverse credit information reported to a credit bureau is false or inaccurate. Our compliance with the FDCPA, FCRA and other federal and state regulations that affect our student loan recovery business may result in significant costs, including litigation costs. We are also subject to regulations promulgated by the United States Consumer Financial Protection Bureau (CFPB), which, among other things, establishes regulations regarding consumer financial protection laws. In addition, the CFPB has investigatory and enforcement authority with respect to whether persons are engaged in unlawful acts or practices in connection with the collection of consumer debts.

Risks Related to our Common Stock

The price of our common stock could be volatile, and you may not be able to sell your shares at or above the public offering price.

Since our initial public offering in August 2012, the price of our common stock, as reported by NASDAQ Global Select Market, has ranged from a low sales price of $0.54 on June 1, 2020 to a high sales price of $14.09 on March 4, 2013. The trading price of our common stock may be significantly affected by various factors, including: quarterly fluctuations in our operating results; the financial projections we may provide to the public, any changes in those projections or our failure to meet those projections; changes in investors' and analysts' perception of the business risks and conditions of our business; our ability to meet the earnings estimates and other performance expectations of financial analysts or investors; unfavorable commentary or downgrades of our stock by equity research analysts; changes in our capital structure, such as future issuances of debt or equity securities; our success or failure to obtain new contract awards; lawsuits threatened or filed against us; strategic actions by us or our competitors, such as acquisitions or restructurings; new legislation or regulatory actions; changes in our relationship with any of our significant clients; fluctuations in the stock prices of our peer companies or in stock markets in general; and general economic conditions.

Our significant stockholders have the ability to influence significant corporate activities and our significant stockholders' interests may not coincide with yours.

Prescott Group Management, L.L.C., First Light Asset Management, LLC, Parthenon Capital Partners, and Mill Road Capital Management LLC beneficially owned approximately 20.9%, 10.3%, 6.0% and 4.6% of our common stock, respectively, as of March 31, 2023. As a result of their ownership, these significant stockholders have the ability to influence the outcome of matters submitted to a vote of stockholders and, through our board of directors, the ability to influence decision making with respect to our business direction and policies. Mill Road Capital Management LLC currently has a representative sitting on our Board of Directors. These significant stockholders may have interests different from our other stockholders' interests and may vote in a manner adverse to those interests. Matters over which these significant stockholders can, directly or indirectly, exercise influence include:

• mergers and other business combination transactions, including proposed transactions that would result in our

stockholders receiving a premium price for their shares;

• other acquisitions or dispositions of businesses or assets;

• incurrence of indebtedness and the issuance of equity securities;

• repurchase of stock and payment of dividends; and

• the issuance of shares to management under our equity incentive plans.

In addition, even though Parthenon Capital Partners does not currently have a representative sitting on our Board of Directors, Parthenon Capital Partners does have a contractual right to designate a number of directors proportionate to its stock ownership if and when Parthenon owns greater than 10% of our common stock. Further, under our amended and restated certificate of incorporation, Parthenon Capital Partners does not have any obligation to present to us, and Parthenon Capital Partners may separately pursue, corporate opportunities of which it becomes aware, even if those opportunities are ones that we would have pursued if granted the opportunity.

General Risks

We may undertake strategic transactions or other corporate restructuring that prove unsuccessful, strain or divert our resources and harm our results of operations and stock price.

We may consider strategic transactions or other corporate restructurings that could include the acquisition of other companies in our industry or in new markets, or the sale or divestiture of, or the wind down of existing portions of our business. We may not be able to successfully complete any such strategic transaction and, if completed, any such acquisition or divestiture may fail to achieve the intended financial results. We may not be able to successfully integrate any acquired businesses with our own and we may be unable to maintain our standards, controls and policies. Further, acquisitions may place additional constraints on our resources by diverting the attention of our management from other business concerns. Moreover, any acquisition may result in a potentially dilutive issuance of equity securities, the incurrence of additional debt, the amortization expenses related to intangible assets, and the potential impairment charges related to intangible assets or goodwill, all of which could adversely affect our results of operations and stock price. Further, despite any projected cost savings related to any proposed divestiture or wind down of any existing portion of our business, any such divestiture or wind down could result in an adverse effect on our revenues and results of operations.

Our business may be harmed if we lose members of our management team or other key employees.

We are highly dependent on members of our management team and other key employees and our future success depends in part on our ability to retain these people. Our inability to continue to attract and retain members of our management team and other key employees could adversely affect our business, financial condition and results of operations.

Anti-takeover provisions contained in our certificate of incorporation and bylaws could impair a takeover attempt that our stockholders may find beneficial.

Our amended and restated certificate of incorporation and amended and restated bylaws contain provisions that could have the effect of rendering more difficult or discouraging an acquisition deemed undesirable by our board of directors. Our corporate governance documents include the following provisions: establishing a classified board of directors so that not all members of our board are elected at one time; providing that directors may be removed by stockholders only for cause; authorizing blank check preferred stock, which could be issued with voting, liquidation, dividend and other rights superior to our common stock; limiting the ability of our stockholders to call and bring business before special meetings and to take action by written consent in lieu of a meeting; limiting our ability to engage in certain business combinations with any “interested stockholder,” other than Parthenon Capital Partners, for a three-year period following the time that the stockholder became an interested stockholder; requiring advance notice of stockholder proposals for business to be conducted at meetings of our stockholders and for nominations of candidates for election to our board of directors; requiring a super majority vote for certain amendments to our amended and restated certificate of incorporation and amended and restated bylaws; and limiting the determination of the number of directors on our board of directors and the filling of vacancies or newly created seats on the board, to our board of directors then in office. These provisions, alone or together, could have the effect of delaying or deterring a change in control, could limit the opportunity for our stockholders to receive a premium for their shares of our common stock, and could also affect the price that some investors are willing to pay for our common stock.

ITEM 2. UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS

None.

ITEM 3. DEFAULTS UPON SENIOR SECURITIES

None.

ITEM 4. MINE SAFETY DISCLOSURES

Not Applicable.

ITEM 5. OTHER INFORMATION

None.

ITEM 6. EXHIBITS

(A) Exhibits:

Exhibit No.	Description
31.1	Certification of the Chief Executive Officer pursuant to Rule 13a-14(a)/15d-14(a)
31.2	Certification of the Principal Financial Officer pursuant to Rule 13a-14(a)/15d-14(a)
32.1[(1)]	Certification of the Chief Executive Officer pursuant to 18 USC Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
32.2[(1)]	Certification of the Principal Financial Officer pursuant to 18 USC Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
101.INS[(2)]	XBRL Instance Document
101.SCH[(2)]	XBRL Taxonomy Extension Scheme
101.CAL[(2)]	XBRL Taxonomy Extension Calculation Linkbase
101.DEF[(2)]	XBRL Taxonomy Extension Definition Linkbase Document
101.LAB[(2)]	XBRL Taxonomy Extension Label Linkbase
101.PRE[(2)]	XBRL Taxonomy Extension Presentation Linkbase
104	Cover Page Interactive Data File (formatted as Inline XBRL and contained in Exhibit 101).

(1) The material contained in Exhibit 32.1 and Exhibit 32.2 is not deemed “filed” with the Securities and Exchange Commission and is not to be incorporated by reference into any filing of the Company under the Securities Act of 1933 or the Securities Exchange Act of 1934, whether made before or after the date hereof and irrespective of any general incorporation language contained in such filing, except to the extent that the registrant specifically incorporates it by reference.

(2) In accordance with Rule 406T of Regulation S-T, the information furnished in these exhibits will not be deemed “filed” for purposes of Section 18 of the Exchange Act. Such exhibits will not be deemed to be incorporated by reference into any filing under the Securities Act or Exchange Act.

SIGNATURES

Pursuant to the requirement of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

PERFORMANT FINANCIAL CORPORATION

Date: May 10, 2023

By: **/s/ Simeon M. Kohl**

Simeon M. Kohl

Chief Executive Officer (Principal Executive Officer)

By: **/s/Rohit Ramchandani**

Rohit Ramchandani

Chief Financial Officer

Exhibit 31.1

CERTIFICATION OF THE CHIEF EXECUTIVE OFFICER PURSUANT TO SECURITIES EXCHANGE ACT RULES 13A-14(A) AND 15D-14(A)

I, Simeon M. Kohl, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Performant Financial Corporation;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
   a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
   b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
   c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
   d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
   a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
   b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: May 10, 2023

/s/ Simeon M. Kohl

Simeon M. Kohl

Chief Executive Officer

Exhibit 31.2

CERTIFICATION

I, Rohit Ramchandani, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Performant Financial Corporation;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
   a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
   b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
   c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
   d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
   a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
   b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: May 10, 2023

/s/ Rohit Ramchandani

Rohit Ramchandani
Chief Financial Officer (Principal Financial Officer)

Exhibit 32.1

CERTIFICATION OF CHIEF EXECUTIVE OFFICER PURSUANT TO 18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

I, Simeon M. Kohl, Chief Executive Officer of Performant Financial Corporation, do hereby certify to the best of my knowledge, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that the Quarterly Report of Performant Financial Corporation on Form 10-Q for the quarter ended March 31, 2023 to which this certification is attached fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 and that information contained in such Quarterly Report on Form 10-Q fairly presents, in all material respects, the financial condition and results of operations of Performant Financial Corporation.

Date: May 10, 2023

By: **/s/ Simeon M. Kohl**

Simeon M. Kohl

Chief Executive Officer

Exhibit 32.2

CERTIFICATION OF PRINCIPAL FINANCIAL OFFICER PURSUANT TO 18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

I, Rohit Ramchandani, Chief Financial Officer (Principal Financial Officer) of Performant Financial Corporation, do hereby certify to the best of my knowledge, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that the Quarterly Report of Performant Financial Corporation on Form 10-Q for the quarter ended March 31, 2023 to which this certification is attached fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 and that information contained in such Quarterly Report on Form 10-Q fairly presents, in all material respects, the financial condition and results of operations of Performant Financial Corporation.

Date: May 10, 2023

By: **/s/ Rohit Ramchandani**

Rohit Ramchandani
Chief Financial Officer (Principal Financial Officer)