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DELTA REPORT

10-Q

OTRK - ONTRAK, INC.

10-Q - MARCH 31, 2024 COMPARED TO 10-Q - SEPTEMBER 30, 2023

The following comparison report has been automatically generated

TOTAL DELTAS	1956
CHANGES	204
DELETIONS	1033
ADDITIONS	719

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-Q

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

For the quarterly period ended **September 30, 2023** **March 31, 2024**

Commission File Number **001-31932**

Ontrak, Inc.

(Exact name of registrant as specified in its charter)

Delaware	**88-0464853**
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification No.)

333 S. E. 2nd Avenue, Suite 2000, Miami, FL 33131
(Address of principal executive offices, including zip code)

(310) 444-4300
(Registrant's telephone number, including area code)

2200 Paseo Verde Parkway, Suite 280, Henderson, NV 89052
(Former name, former address and former fiscal year, if changed since last report)

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, $0.0001 par value	OTRK	The NASDAQ Capital Market

Indicate by check mark whether the registrant (1) has filed all reports required to be filed 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 x No o

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted 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 such files). Yes x No o

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 definitions of “large accelerated filer,” “accelerated filer,’’ “smaller reporting company,” and “emerging growth company” in Rule 12b-2 of the Exchange Act. (Check one):

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

As of November 14, 2023 May 8, 2024, there were 27,563,898 47,967,363 shares of the registrant's common stock, $0.0001 par value per share, outstanding.

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In this Quarterly Report on Form 10-Q, all references to "Ontrak," "Ontrak, Inc.," "we," "us," "our" or the "Company" mean Ontrak, Inc., its wholly-owned subsidiaries and variable interest entities, except where it is made clear that the term means only the parent company. The Company's common stock, par value $0.0001 per share, is referred to as "common stock" and the Company's 9.50% Series A Cumulative Perpetual Preferred Stock, par value $0.0001 per share, is referred to as "Series A Preferred Stock."

PART I - FINANCIAL INFORMATION

Item 1. Financial Statements

ONTRAK, INC.
CONDENSED CONSOLIDATED BALANCE SHEETS
(in thousands, except share and per share data)

		September 30, 2023	December 31, 2022		
	March 31, 2024			March 31, 2024	December 31, 2023
Assets	**Assets**	*(unaudited)*			
Current assets:	Current assets:				
Cash and cash equivalents		$ 3,227	$ 5,032		
Restricted cash - current		6,000	4,477		
Current assets:					
Current assets:					
Cash					
Cash					
Cash					
Receivables, net					
Receivables, net					
Receivables, net	Receivables, net	212	973		
Unbilled receivables	Unbilled receivables	351	453		
Deferred costs - current		203	156		
Deferred costs					
Deferred costs					
Deferred costs					
Prepaid expenses and other current assets	Prepaid expenses and other current assets	2,691	3,168		
Total current assets	**Total current assets**	**12,684**	**14,259**		
Long-term assets:	Long-term assets:				
Property and equipment, net	Property and equipment, net	1,769	2,498		
Restricted cash - long-term		—	204		
Property and equipment, net					
Property and equipment, net					
Goodwill					
Goodwill					
Goodwill	Goodwill	5,713	5,713		
Intangible assets, net	Intangible assets, net	210	1,125		
Other assets	Other assets	186	1,326		
Operating lease right-of-use assets	Operating lease right-of-use assets	206	632		
Total assets	**Total assets**	**$ 20,768**	**$ 25,757**		
Liabilities and stockholders' equity	**Liabilities and stockholders' equity**				
Current liabilities:	Current liabilities:				
Current liabilities:					
Current liabilities:					
Accounts payable					
Accounts payable					

Accounts payable	Accounts payable	$ 1,139	$ 1,927	
Accrued compensation and benefits	Accrued compensation and benefits	743	1,987	
Deferred revenue	Deferred revenue	300	326	
Current portion of operating lease liabilities	Current portion of operating lease liabilities	53	653	
Other accrued liabilities, includes $6,000 related party deposit (see Note 10)		8,921	4,576	
Current portion of operating lease liabilities				
Current portion of operating lease liabilities				
Other accrued liabilities				
Total current liabilities	**Total current liabilities**	**11,156**	**9,469**	
Total current liabilities				
Total current liabilities				
Long-term liabilities:	Long-term liabilities:			
Long-term debt, net				
Long-term debt, net				
Long-term debt, net	Long-term debt, net	14,060	10,065	
Long-term operating lease liabilities	Long-term operating lease liabilities	181	546	
Total liabilities	**Total liabilities**	**25,397**	**20,080**	
Total liabilities				
Total liabilities				
Commitments and contingencies	Commitments and contingencies			Commitments and contingencies
Stockholders' (deficit) equity:				
Preferred stock, $0.0001 par value; 50,000,000 shares authorized; 3,770,265 shares issued and outstanding at each of September 30, 2023 and December 31, 2022		—	—	
Common stock, $0.0001 par value; 500,000,000 shares authorized; 4,916,963 and 4,527,914 shares issued and outstanding at September 30, 2023 and December 31, 2022, respectively		3	3	
Stockholders' equity:				

Preferred stock, $0.0001 par value; 50,000,000 shares authorized; 3,770,265 shares issued and outstanding at each of March 31, 2024 and December 31, 2023			
Preferred stock, $0.0001 par value; 50,000,000 shares authorized; 3,770,265 shares issued and outstanding at each of March 31, 2024 and December 31, 2023			
Preferred stock, $0.0001 par value; 50,000,000 shares authorized; 3,770,265 shares issued and outstanding at each of March 31, 2024 and December 31, 2023			
Common stock, $0.0001 par value; 500,000,000 shares authorized; 43,950,678 and 38,466,979 shares issued and outstanding at March 31, 2024 and December 31, 2023, respectively			
Additional paid-in capital	Additional paid-in capital	459,633	448,415
Accumulated deficit	Accumulated deficit	(464,265)	(442,741)
Total stockholders' (deficit) equity		(4,629)	5,677
Total liabilities and stockholders' (deficit) equity		**$ 20,768**	**$ 25,757**
Total stockholders' equity			
Total liabilities and stockholders' equity			

See notes to condensed consolidated financial statements.

ONTRAK, INC.
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS
(unaudited, in thousands, except per share data)

	Three Months Ended September 30,	Nine Months Ended September 30,

		2023		2022	2023	2022
				Three Months Ended March 31,		
				Three Months Ended March 31,		
				Three Months Ended March 31,		
			2024			
			2024			
			2024			
Revenue						
Revenue						
Revenue	Revenue	$ 3,715		$ 2,843	$ 9,204	$ 12,004
Cost of revenue	Cost of revenue	1,040		1,436	2,691	6,488
Cost of revenue						
Cost of revenue						
Gross profit						
Gross profit						
Gross profit	Gross profit	2,675		1,407	6,513	5,516
Operating expenses:	Operating expenses:					
Operating expenses:						
Operating expenses:						
Research and development						
Research and development						
Research and development	Research and development	1,552		2,833	4,733	9,113
Sales and marketing	Sales and marketing	822		1,151	2,649	3,893
Sales and marketing						
Sales and marketing						
General and administrative						
General and administrative						
General and administrative	General and administrative	4,365		7,552	14,593	27,694
Restructuring, severance and related charges	Restructuring, severance and related charges	—		934	457	934
Restructuring, severance and related charges						
Restructuring, severance and related charges						
Total operating expenses						
Total operating expenses						
Total operating expenses	Total operating expenses	6,739		12,470	22,432	41,634
Operating loss	Operating loss	(4,064)		(11,063)	(15,919)	(36,118)
Operating loss						
Operating loss						
Other income (expense), net		38		(1,241)	324	(3,213)
Other (expense) income , net						
Other (expense) income , net						
Other (expense) income , net						

Interest expense, net					
Interest expense, net					
Interest expense, net	Interest expense, net	(2,392)	(440)	(6,009)	(2,996)
Loss before income taxes	Loss before income taxes	(6,418)	(12,744)	(21,604)	(42,327)
Income tax (expense) benefit		—	(20)	80	(140)
Loss before income taxes					
Loss before income taxes					
Income tax expense					
Income tax expense					
Income tax expense					
Net loss	Net loss	(6,418)	(12,764)	(21,524)	(42,467)
Dividends on preferred stock - declared and undeclared		(2,239)	(2,239)	(6,716)	(6,716)
Net loss					
Net loss					
Dividends on preferred stock - undeclared					
Dividends on preferred stock - undeclared					
Dividends on preferred stock - undeclared					
Net loss attributable to common stockholders					
Net loss attributable to common stockholders					
Net loss attributable to common stockholders	Net loss attributable to common stockholders	$ (8,657)	$ (15,003)	$ (28,240)	$ (49,183)
Net loss per common share, basic and diluted	Net loss per common share, basic and diluted	$ (1.76)	$ (3.70)	$ (5.85)	$ (13.42)
Net loss per common share, basic and diluted					
Net loss per common share, basic and diluted					
Weighted-average common shares outstanding, basic and diluted	Weighted-average common shares outstanding, basic and diluted	4,905	4,056	4,827	3,666
Weighted-average common shares outstanding, basic and diluted					
Weighted-average common shares outstanding, basic and diluted					

See notes to condensed consolidated financial statements.

ONTRAK, INC.
CONDENSED CONSOLIDATED STATEMENTS OF STOCKHOLDERS' (DEFICIT) EQUITY
(unaudited, in thousands, except share andper share data)

	Preferred Stock		Preferred Stock	Common Stock	Additional Paid-In Capital	Accumulated Deficit	Total Stockholders' Equity
	Shares						
	Preferred Stock	Common Stock	Additional Paid-In Capital	Accumulated Deficit	Total Stockholders'		

	Shares	Amount	Shares	Amount			Equity (Deficit)
Balance at June 30, 2023	**3,770,265**	**$ —**	**4,887,874**	**$ 3**	**$458,600**	**$(457,847)**	**$ 756**
Balance at December 31, 2023							
Balance at December 31, 2023							
Balance at December 31, 2023							
Debt issuance costs							
Debt issuance costs							
Debt issuance costs							
Common stock issued relating to settlement of contingent consideration							
Pre-Funded Warrants exercised							
Public Offering Warrants exercised							
Restricted stock units vested, net							
Stock-based compensation expense							
Stock-based compensation expense							
Stock-based compensation expense							
Net loss							
Net loss							
Net loss							
Balance at March 31, 2024							
Balance at December 31, 2022							
Balance at December 31, 2022							
Balance at December 31, 2022							
Common stock issued for financing							
Warrants issued in connection with Keep Well Notes							
Loss on extinguishment of debt with related party							

Restricted stock units vested, net	—	—	1,174	—	(1)	—	(1)
Warrants issued in debt financing, adjusted for repricings	—	—	—	—	237	—	237
Stock-based compensation expense	—	—	—	—	797	—	797
Fractional shares issued in connection with reverse stock split	—	—	27,915	—	—	—	—
Net loss	—	—	—	—	—	(6,418)	(6,418)
Balance at September 30, 2023	**3,770,265**	**$ —**	**4,916,963**	**$ 3**	**$459,633**	**$(464,265)**	**$ (4,629)**
Balance at June 30, 2022	**3,770,265**	**$ —**	**3,491,309**	**$ 2**	**$440,601**	**$(420,871)**	**$ 19,732**
Common stock issued relating to registered direct offering, net	—	—	833,334	1	3,293	—	3,294
Common stock issued for financing	—	—	123,275	—	1,249	—	1,249
Warrants issued in debt financing	—	—	—	—	334	—	334
Restricted stock units vested, net							
Restricted stock units vested, net	—	—	4,703	—	(3)	—	(3)
401(k) employer match	—	—	33,074	—	144	—	144
Stock-based compensation expense	—	—	—	—	1,219	—	1,219
Net loss	—	—	—	—	—	(12,764)	(12,764)
Balance at September 30, 2022	**3,770,265**	**$ —**	**4,485,695**	**$ 3**	**$446,837**	**$(433,635)**	**$ 13,205**
Balance at December 31, 2022	**3,770,265**	**$ —**	**4,527,914**	**$ 3**	**$448,415**	**$(442,741)**	**$ 5,677**
Common stock issued for financing	—	—	339,689	—	—	—	—
Warrants issued in debt financing, adjusted for repricings	—	—	—	—	11,034	—	11,034
Loss on extinguishment of debt with related party	—	—	—	—	(2,153)	—	(2,153)
Restricted stock units vested, net	—	—	2,548	—	(3)	—	(3)
401(k) employer match	—	—	18,897	—	—	—	—
Stock-based compensation expense	—	—	—	—	2,340	—	2,340
Fractional shares issued in connection with reverse stock split	—	—	27,915	—	—	—	—
Net loss	—	—	—	—	—	(21,524)	(21,524)
Balance at September 30, 2023	**3,770,265**	**$ —**	**4,916,963**	**$ 3**	**$459,633**	**$(464,265)**	**$ (4,629)**

Balance at December 31, 2021	**3,770,265**	**$ —**	**3,446,698**	**$ 2**	**$436,721**	**$(391,168)**	**$ 45,555**
Preferred dividends declared	—	—	—	—	(2,239)	—	(2,239)
Common stock issued relating to registered direct offering, net	—	—	833,334	1	3,293	—	3,294
Common stock issued relating to settlement of contingent consideration	—	—	5,569	—	293	—	293
Common stock issued for financing and consulting services	—	—	132,534	—	1,351	—	1,351
Warrants issued in debt financing	—	—	—	—	617	—	617
Restricted stock units vested, net	—	—	5,268	—	(6)	—	(6)
401(k) employer match	—	—	62,292	—	525	—	525
Stock-based compensation expense	—	—	—	—	6,282	—	6,282
Net loss	—	—	—	—	—	(42,467)	(42,467)
Balance at September 30, 2022	**3,770,265**	**$ —**	**4,485,695**	**$ 3**	**$446,837**	**$(433,635)**	**$ 13,205**
Balance at March 31, 2023							

See notes to condensed consolidated financial statements.

ONTRAK, INC.
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(unaudited, in thousands)

	For the Nine Months Ended September 30,	
	2023	**2022**
Cash flows from operating activities		
Net loss	$ (21,524)	$ (42,467)
Adjustments to reconcile net loss to net cash used in operating activities:		
Stock-based compensation expense	2,340	6,282
Write-off of debt issuance costs	—	3,334
Write-off of other asset	100	—
Paid-in-kind interest expense	3,110	—
Gain on termination of operating lease	(471)	—
Depreciation expense	876	2,222
Amortization expense	3,924	1,946
Change in fair value of warrant liability	(26)	(121)
401(k) employer match in common shares	—	528
Common stock issued for consulting services	—	102
Changes in operating assets and liabilities:		
Receivables	761	1,348
Unbilled receivables	102	2,823
Prepaid expenses and other current assets	917	2,966

Accounts payable	(736)	758
Deferred revenue	(27)	(153)
Leases liabilities	(154)	(160)
Other accrued liabilities	(1,074)	(1,928)
Net cash used in operating activities	(11,882)	(22,520)
Cash flows from investing activities		
Purchase of property and equipment	(196)	(1,004)
Net cash used in investing activities	(196)	(1,004)
Cash flows from financing activities		
Proceeds from Keep Well Notes	8,000	11,000
Proceeds from Keep Well Agreement held in escrow	6,000	—
Repayments of 2024 Notes	—	(39,194)
Proceeds from issuance of common stock	—	4,000
Common stock issuance costs	—	(706)
Dividends paid	—	(2,239)
Debt issuance costs	(449)	(792)
Finance lease obligations	(126)	(226)
Financed insurance premium payments	(1,830)	(2,325)
Payment of taxes related to net-settled stock awards	(3)	(6)
Net cash provided by (used in) financing activities	11,592	(30,488)
Net change in cash and restricted cash	(486)	(54,012)
Cash and restricted cash at beginning of period	9,713	65,946
Cash and restricted cash at end of period	$ 9,227	$ 11,934
Supplemental disclosure of cash flow information:		
Interest paid	$ 55	$ 2,307
Income taxes paid	3	210
Non-cash financing and investing activities:		
Warrants issued in connection with Keep Well Notes and 2024 Notes	$ 11,034	$ 780

		For the Three Months Ended March 31,
		For the Three Months Ended March 31,
		For the Three Months Ended March 31,
	2024	
	2024	
	2024	
Cash flows from operating activities		
Cash flows from operating activities		
Cash flows from operating activities		
Net loss		
Net loss		
Net loss		
Adjustments to reconcile net loss to net cash used in operating activities:		
Adjustments to reconcile net loss to net cash used in operating activities:		
Adjustments to reconcile net loss to net cash used in operating activities:		
Stock-based compensation expense		
Stock-based compensation expense		

Stock-based compensation expense
Paid-in-kind interest expense
Paid-in-kind interest expense
Paid-in-kind interest expense
Gain on termination of operating lease
Gain on termination of operating lease
Gain on termination of operating lease
Depreciation expense
Depreciation expense
Depreciation expense
Amortization expense
Amortization expense
Amortization expense
Change in fair value of warrant liability
Change in fair value of warrant liability
Change in fair value of warrant liability
Changes in operating assets and liabilities:
Changes in operating assets and liabilities:
Changes in operating assets and liabilities:
Receivables
Receivables
Receivables
Unbilled receivables
Unbilled receivables
Unbilled receivables
Prepaid expenses and other current assets
Prepaid expenses and other current assets
Prepaid expenses and other current assets
Accounts payable
Accounts payable
Accounts payable
Deferred revenue
Deferred revenue
Deferred revenue
Leases liabilities
Leases liabilities
Leases liabilities
Other accrued liabilities
Other accrued liabilities
Other accrued liabilities
Net cash used in operating activities
Net cash used in operating activities
Net cash used in operating activities
Cash flows from investing activities
Cash flows from investing activities
Cash flows from investing activities
Purchase of property and equipment
Purchase of property and equipment
Purchase of property and equipment
Net cash used in investing activities
Net cash used in investing activities

Net cash used in investing activities			
Cash flows from financing activities			
Cash flows from financing activities			
Cash flows from financing activities			
Proceeds from Keep Well Notes			
Proceeds from Keep Well Notes			
Proceeds from Keep Well Notes			
Proceeds from warrants exercised			
Proceeds from warrants exercised			
Proceeds from warrants exercised			
Finance lease obligations			
Finance lease obligations			
Finance lease obligations			
Financed insurance premium payments			
Financed insurance premium payments			
Financed insurance premium payments			
Net cash (used in) provided by financing activities			
Net cash (used in) provided by financing activities			
Net cash (used in) provided by financing activities			
Net change in cash and restricted cash			
Net change in cash and restricted cash			
Net change in cash and restricted cash			
Cash and restricted cash at beginning of period			
Cash and restricted cash at beginning of period			
Cash and restricted cash at beginning of period			
Cash and restricted cash at end of period			
Cash and restricted cash at end of period			
Cash and restricted cash at end of period			
Supplemental disclosure of cash flow information:			
Supplemental disclosure of cash flow information:			
Supplemental disclosure of cash flow information:			
Interest paid			
Interest paid			
Interest paid			
Non-cash financing and investing activities:			
Non-cash financing and investing activities:			
Non-cash financing and investing activities:			
Warrants issued in connection with Keep Well Notes			
Warrants issued in connection with Keep Well Notes			
Warrants issued in connection with Keep Well Notes			
Debt issuance costs			
Debt issuance costs			
Debt issuance costs			
Loss on extinguishment of debt with related party	Loss on extinguishment of debt with related party	2,153	—
Common stock issued in connection with Keep Well Agreement		—	1,249
Financed insurance premium		284	352
Loss on extinguishment of debt with related party			
Loss on extinguishment of debt with related party			
Finance lease and accrued purchases of property and equipment			

Finance lease and accrued purchases of property and equipment			
Finance lease and accrued purchases of property and equipment	Finance lease and accrued purchases of property and equipment	23	31
Common stock issued to settle contingent consideration	Common stock issued to settle contingent consideration	—	293
Accrued debt issuance costs		266	138
Common stock issued to settle contingent consideration			
Common stock issued to settle contingent consideration			

See notes to condensed consolidated financial statements.

ONTRAK, INC.
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(unaudited)

Note 1. Organization

Company Overview

Ontrak, Inc. ("Ontrak," "Company," "we," "us" or "our") is an artificial intelligence ("AI")-powered AI-powered and telehealth-enabled, virtualized technology-enabled behavioral healthcare company, whose mission is to help improve the health and save the lives of as many people as possible. The Company's technology-enabled platform provides utilizes claim-based analytics and predictive modeling to provide analytic insights throughout the delivery of our personalized treatment care program. The Company's program predicts people whose chronic disease will improve with behavior change, recommends effective care pathways that people are willing to follow, and engages and guides them to and through the care and treatment they need. By combining predictive analytics with human engagement, we deliver improved member health and validated outcomes and savings to healthcare payors.

The Company's integrated, technology-enabled OntrakTM programs solutions are designed to provide healthcare solutions to members with behavioral conditions that cause or exacerbate chronic medical conditions such as diabetes, hypertension, coronary artery disease, chronic obstructive pulmonary disease, and congestive heart failure, which result in high medical costs. Ontrak has a unique ability to engage these members, who may not otherwise seek behavioral healthcare, leveraging proprietary enrollment capabilities built on deep insights into the drivers of care avoidance. Ontrak integrates evidence-based psychosocial and medical interventions delivered either in-person or via telehealth, along with care coaching and in-market community care coordinators coaches who address the social and environmental determinants of health, including loneliness. health. The Ontrak programs seek to improve member health and deliver validated cost savings to healthcare payors.

Basis of Presentation

The accompanying condensed consolidated financial statements include Ontrak, Inc. and , its wholly-owned subsidiaries and its variable interest entities. The accompanying condensed consolidated financial statements for Ontrak, Inc. have been prepared in accordance with generally accepted accounting principles in the United States of America ("GAAP") and instructions to Form 10-Q and Article 8 of Regulation S-X. All intercompany balances and transactions have been eliminated in consolidation. Certain information and note disclosures normally included in the annual consolidated financial statements prepared in accordance with GAAP have been condensed or omitted pursuant to such rules and regulations. In the opinion of management, the accompanying condensed financial statements includes all adjustments (consisting of normal recurring adjustments) necessary for the fair presentation of the interim periods presented. Interim results are not necessarily indicative of the results that may be expected for any other interim period or for the entire fiscal year. The accompanying unaudited financial information should be read in conjunction with the audited financial statements and the notes thereto included in the Company's Annual Report on Form 10-K for the year-ended December 31, 2022 December 31, 2023 (the "2022 10-K" "2023 10-K"), filed with the Securities and Exchange Commission ("SEC" ("SEC"), from which the consolidated balance sheet as of December 31, 2022 December 31, 2023 has been derived. The Company operates as one segment.

The Company generates revenues from fees charged for the services it provides services to commercial (employer funded), managed Medicare Advantage, managed Medicaid and dual duel eligible (Medicare and Medicaid) populations to generate revenues. populations. The Company also provides generates revenues from the fees charged for mental health and wellbeing support services it provides to members of employer customers under the Company's LifeDojo wellbeing solution. The Company aims to increase the number of members that are eligible for its solutions by signing new contracts and identifying more eligible members under within customers with whom the Company has existing contracts.

We have incurred significant net losses and negative operating cash flows since our inception, and we expect to continue to incur net losses and negative operating cash flow, in part due to the negative impact on our operations by customer terminations. As of September 30, 2023 March 31, 2024, our cash and restricted cash was $9.2 million $6.4 million and we had working capital of approximately $1.5 million $5.7 million. For the nine three months ended September 30, 2023 March 31, 2024, our average monthly cash burn rate from operations was $1.3 million $1.1 million.

On March 28, 2024, the Company and Acuitas Capital LLC (together with its affiliates, "Acuitas") entered into a sixth amendment (the "Sixth Amendment") to Master Note Purchase Agreement dated as of April 15, 2022 (as amended to date, the "Keep Well Agreement"). Throughout Under the year ended December 31, 2022 Sixth Amendment, the Company may issue up to a total of $15.0 million of senior secured convertible promissory notes (each a "Demand Note") (see Note 10 below for more information), with the initial note in the principal amount of $1.5 million (the "Initial Demand Note") issued on April 5, 2024 and another note in the principal amount of $1.5 million issued on May 8, 2024 (see Note 14 below). Acuitas, in its sole discretion, may purchase from the Company, and the Company will issue and sell to Acuitas, up to an additional $12.0 million in principal amount of Demand Notes.

As of March 31, 2024, $2.2 million of secured debt, including accrued paid-in-kind interest, issued under the Keep Well Agreement was outstanding. As of the filing date of this report, approximately $5.3 million of secured debt, including accrued paid-in-kind interest, issued under the Keep Well Agreement was outstanding, $3.0 million of which is payable upon demand of the holder, and the balance of which matures on May 14, 2026, unless it becomes due and payable in full earlier, whether by acceleration or otherwise.

In March 2023 and in March 2023, February 2024, as part of the Company's continued cost saving measures to reduce its operating costs and to better align with its previously stated strategic initiatives, the Company implemented a number of reduction reductions in workforce and vendor cost optimization plans. The Company has begun began realizing the full effect of these plans and expects continued effects to be realized during the remainder of cost saving measures in 2023 and beyond, in 2024, including a decrease in the Company's operating costs and an improvement in the Company's average monthly cash flow from operations. The These cost optimization plans were necessary to right size the Company's business commensurate with its then current customer base.

In addition to revenue From April 1, 2024 through the filing date of this report, the Company received a total of $1.4 million of cash proceeds from operations, our primary source the exercise of working capital has historically been borrowing under the Keep Well Agreement (as defined in Note 10 below) warrants by certain holders thereof and raising capital in equity offerings. As of September 30, 2023, $6.0 million was available to be borrowed under the Keep Well Agreement. In November 2023, such $6.0 million was applied toward the purchase of warrants the Company issued in a private placement to Humanitario Capital LLC, an affiliate total of Acuitas Capital LLC 4,016,664 shares of its common stock (see Note 14 for information regarding the private placement) below).

Management plans to continue to execute on executing its strategy to increase liquidity by continuing to (i) explore other sources of capital with either debt or equity financing for future liquidity needs; (ii) manage operating costs by strategically pursuing cost optimization initiatives; and (iii) pursue executing our growth strategy by by: (a) expanding sales and marketing resources to acquire new and diverse customers across major health plans, value based provider groups and self-insurance employers; (b) executing on our better market penetration strategy by providing full scale customized behavioral health solutions, addressing customer needs across all member acuity levels while mitigating vendor fatigue by becoming a principal customer partner; (c) leveraging our AI technology and new predictive algorithms to improve identification and outreach, create more efficiencies, enhance coaching solutions and create more proof points; and (d) opportunistically pursuing partnerships that we believe will accelerate growth.

We will need additional capital to successfully execute our growth strategy. In addition to revenue from business operations, since April 2022, the Company's primary source of working capital has been borrowings under the Keep Well Agreement and raising capital in equity offerings. We may seek to raise additional capital through equity or debt financings, however, when we can affect such financings and how much capital we can raise depends on a variety of factors, including, among others, market conditions, the trading price of our common stock and our determination as to the appropriate sources of funding for our operations. In addition, under the securities purchase agreement we entered into in connection with the public offering completed in November 2023, we are generally prohibited from issuing shares of our common stock or common stock equivalents for capital raising purposes through May 12, 2024; however, from and after February 12, 2024, we may issue shares of our common stock or common stock equivalents for capital raising purposes if the per share price is $0.60 or greater. There can be no assurance that other capital will be available when needed or that, if available, it will be obtained on terms favorable to us and our stockholders, that we will be successful in implementing cost optimization initiatives, or that we will be successful in executing our growth strategy. In addition, the Keep Well Agreement contains various financial and other covenants, and any non-compliance with those covenants could result in an acceleration of the repayment of the amounts outstanding thereunder. Furthermore, equity or debt financings may have a dilutive effect on the holdings of our existing stockholders, and debt financings may subject us to restrictive covenants, operational restrictions and security interests in our assets.

Regardless of our success in raising additional capital, in the future, we expect our cash on hand as of September 30, 2023 March 31, 2024, together with the approximately $5.5 $3.0 million we received in exchange for Demand Notes issued on April 5, 2024 and May 8, 2024, the $1.4 million of net cash proceeds raised we received from the public offering completed in November 2023 exercise of warrants since April 1, 2024 through the filing date of this report and the reclassification of $6.0 million from restricted cash to unrestricted cash in connection with amount potentially available for borrowing under the completion of the private placement in November 2023 (see Note 14 for information regarding the public offering and private placement completed in November 2023), Keep Well Agreement, will be sufficient to meet our obligations for at least the next 12 months from the date the financial statements in this report are released.

Reverse Stock Split

At the special meeting of the Company's stockholders held in February 2023 (the “2023 Special Meeting”), the Company’s stockholders approved a proposal to give the Company’s Board of Directors the authority, at its discretion, to file a certificate of amendment to the Company’s amended and restated certificate of incorporation to effect a reverse split of our outstanding common stock at a ratio that is not less than 1:4 and not greater than 1:6, without reducing the authorized number of shares of the Company’s common stock, with the final ratio to be selected by the Company’s Board of Directors in its discretion, and to be effected, if at all, in the sole discretion of the Company’s Board of Directors at any time within one year of the date of the 2023 Special Meeting without further approval or authorization of the Company’s stockholders.

On July 27, 2023, the Company filed a certificate of amendment to its amended and restated certificate of incorporation with the Secretary of State of the State of Delaware implementing a 1-for-6 reverse stock split. Fractional shares of the Company's common stock resulting from the reverse split were automatically rounded up to the nearest whole share. The Company's common stock began trading on the NASDAQ Capital Market on a post-split basis at the open of trading on July 28, 2023. The Company's common stock continues to trade under the symbol "OTRK," but was assigned a new CUSIP number (683373302).

All restricted stock units, stock options and warrants to purchase shares of the Company's common stock and securities convertible or exchangeable for shares of the Company's common stock (including the Series A Preferred Stock) outstanding immediately prior to the reverse stock split, and the shares of the Company's common stock reserved for issuance under the

Company's equity incentive plans immediately prior to the reverse stock split, was adjusted by dividing the applicable number of shares of common stock by six and, as applicable, multiplying the exercise price or conversion price by six or dividing the exchange rate by six. In addition, as discussed in Note 10 below, the exercise price of the Keep Well Warrants (as defined in Note 10 below)and the conversion price of the Keep Well Notes (as defined in Note 10 below) were subject to other adjustment mechanisms. For additional information regarding the effect of the reverse stock split on the Keep Well Warrants and the Keep Well Notes, see the Company's definitive proxy statement for the 2023 Special Meeting, a copy of which was filed with the SEC on January 20, 2023.

All common share and common stock per share amounts presented herein for all periods have the prior year period has been retroactively adjusted to reflect the impact of the 1-for-6 reverse stock split.

Recently Adopted Accounting Standards

In October 2021, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update ("ASU") No. 2021-08, "Business Combinations (Topic 805) - Accounting for Contract Assets and Contract Liabilities from Contracts with Customers" ("ASU 2021-08"), which improves the accounting for acquired revenue contracts with customers in a business combination by addressing diversity in practice and inconsistency related to recognition of an acquired contract liability, and payment terms and their effect on subsequent revenue recognized by the acquirer. The amendments in ASU 2021-08 require that an entity (acquirer) recognize and measure contract assets and contract liabilities acquired in a business combination in accordance with Topic 606 - Revenue from Contracts with Customers. The amendments in ASU 2021-08, however, do not affect the accounting for other assets or liabilities that may arise from revenue contracts with customers in accordance with Topic 606, such as refund liabilities, or in a business combination, such as customer-related intangible assets and contract-based intangible assets. ASU 2021-08 is effective for fiscal years beginning after December 15, 2022, including interim periods within those fiscal years. The amendments in ASU 2021-08 should be applied prospectively to business combinations occurring on or after the effective date of the amendments. The adoption of ASU 2021-08 on January 1, 2023 did not have a material effect on our condensed consolidated financial statements.

In October 2020, the FASB issued ASU No. 2020-10, "Codification Improvements" ("ASU 2020-10"), which includes amendments to improve consistency of disclosures by ensuring that all guidance that require disclosures or provides an option for an entity to provide information in the notes to the financial statement is codified in the disclosure section of the codification. ASU 2020-10 is effective for public companies, other than smaller reporting companies, for fiscal years beginning after December 15, 2020. For all other entities, ASU 2020-10 is effective for fiscal years beginning after December 15, 2021, and interim periods beginning after December 15, 2022. The adoption of ASU 2020-10 on January 1, 2023 did not have a material effect on our condensed consolidated financial statements.

In June 2016, the FASB issued ASU No. 2016-13, "Financial Instruments - Credit Losses (Topic 326) - Measurement of Credit Losses on Financial Instruments" ("ASU 2016-13"), which requires recognition of an estimate of lifetime expected credit losses as an allowance. For companies eligible to be smaller reporting company as defined by the SEC, ASU 2016-13 is effective for annual reporting periods beginning after December 15, 2022, including interim periods within those annual periods. The adoption of ASU 2016-13 on January 1, 2023 did not have a material effect on our condensed consolidated financial statements.

Recently Issued Accounting Pronouncements

Since the date on which the Company filed the 2022 2023 10-K, there were no recently adopted account standards or new accounting standards issued, but not yet adopted by the Company, which are expected to materially affect the Company's condensed consolidated financial statements.

Note 2. Restricted Cash

The following table provides a reconciliation of cash, cash equivalents and restricted cash total as presented in the condensed consolidated statement of cash flows for the periods presented (in thousands):

	September 30, 2023	December 31, 2022
Cash and cash equivalents	$ 3,227	$ 5,032
Restricted cash - current:		

Dividend payments on preferred stock (1)	—	4,477
Cash in escrow (2)	6,000	—
Subtotal - Restricted cash - current	6,000	4,477
Restricted cash - long term:		
Letter of credit (3)	—	204
Subtotal - Restricted cash - long term	—	204
Cash, cash equivalents and restricted cash	$ 9,227	$ 9,713

	March 31,	
	2024	2023
Cash	$ 6,400	$ 7,393
Restricted cash - current:		
Dividend payments on preferred stock (1)	—	4,477
Letter of credit (2)	—	204
Subtotal - Restricted cash - current	—	4,681
Cash and restricted cash	$ 6,400	$ 12,074

(1) As of December 31, 2022, the amount represented Amount represents the cash balance that was remaining in an account funded with a portion of the proceeds from the sale of the Series A Preferred Stock for the payment of dividends thereon until through August 2022. The use of such funds for the payment of such dividends was subject to compliance with applicable laws. In April 2023, the Company's board of directors determined that the use of such funds for other corporate purposes was in the best interests of the Company and its common stockholders after considering its fiduciary duties to the Company's common stockholders. Therefore, the amount was classified as unrestricted cash in April 2023.

(2) Represents cash received under the Keep Well Agreement in June and September 2023 and held in a separate account pursuant to the terms of the Keep Well Agreement. See Note 10 below for more information. The amount has been included in "Other accrued liabilities" on the condensed consolidated balance sheet as of September 30, 2023.

(3) The A letter of credit ("LOC") was required under the terms of the lease for our Santa Monica, California office. In accordance with the lease termination agreement entered into on February 16, 2023 (as discussed in Note 9 below), the LOC was canceled cancelled on June 16, 2023.

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Note3. Receivables and Revenue Concentration

The following table is a summary of concentration of credit risk by customer revenues as a percentage of our total revenue:

		Three Months Ended September 30,		Nine Months Ended September 30,				
		Three Months Ended March 31, Three Months Ended March 31, Three Months Ended March 31,						
Percentage of Revenue	Percentage of Revenue	2023	2022	2023	2022	Percentage of Revenue	2024	2023
Customer A	Customer A	57.8 %	35.7 %	55.4 %	28.8 %	Customer A	62.1 %	52.0 %

Customer B	Customer B	32.6	48.1	33.8	47.8			
Customer C	Customer C	2.9	11.6	2.7	16.2			
Remaining customers	Remaining customers	6.7	4.6	8.1	7.2			
Remaining customers								
Remaining customers								
Total	Total	100.0 %	100.0 %	100.0 %	100.0 %	Total	100.0 %	100.0 %

The following table is a summary of concentration of credit risk by customer accounts receivables as a percentage of our total accounts receivable:

Percentage of Accounts Receivable	**September 30, 2023**	**December 31, 2022**
Customer D	82.9 %	3.7 %
Customer C	17.1	1.2
Customer A	—	39.1
Customer B	—	35.7
Customer E	—	20.3
Total	100.0 %	100.0 %

Percentage of Accounts Receivable	**March 31, 2024**	**December 31, 2023**
Customer D	74.6 %	— %
Customer C	25.4	—
Total	100.0 %	— %

The Company applies the specific identification method for assessing provision for doubtful accounts. credit losses. There was no bad debt expense during the three months ended March 31, 2024 or 2023.

Customer Notification

On October 10, 2023, the Company was notified by a health plan customer of its intent not to continue using the Company's services after February 2024. The customer advised us to cease enrollment of any new members from that customer immediately. The customer also informed us that its decision was related to the customer's change in any strategy and not reflective of the three performance or nine value of the Company's services. For the three months ended September 30, 2023 and 2022. March 31, 2024, the Company billed this customer approximately $0.5 million, representing billings for services rendered through February 2024.

Other receivable - Insurance Recoveries

The Company is involved in various securities class actions and purported stockholder derivative complaints, and the Company has incurred legal costs related to the SEC/Department of Justice (the "DOJ") investigation of the Company's former Chief Executive Officer and Chairman of the Board of Directors, as described in Note 13 below. The Company maintains a corporate liability insurance policy which provides coverage for legal defense costs (the "Insurance Policy"). costs. The terms of the Insurance Policy this insurance policy provide that the insurer will pay the third party directly on behalf of the Company for such claims. legal defense costs. Based on the Company's analysis, the Company's obligation as the primary obligor of the invoices for legal defense costs has not been transferred to the insurer and as such, the Company records these legal claims costs as an other receivable with a corresponding liability on the condensed its consolidated balance sheet. As of September 30, 2023 March 31, 2024, the Company submitted cumulative claims for legal defense costs totaling approximately $2.4 $3.6 million, of such legal costs, of which $1.2 $3.3 million has been paid by the insurer to the third parties. The Company has $1.2 $0.3 million of claims for legal defense costs recorded as an other receivable included in "Prepaid expenses and other current assets" and $1.2 $0.3 million as part of "Other accrued liabilities" on the its condensed consolidated balance sheet as of September 30, 2023 March 31, 2024.

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Note 4. Property and Equipment

Property and equipment consisted of the following (in thousands):

		September 30, 2023	December 31, 2022	March 31, 2024	December 31, 2023
	March 31, 2024				
Software	Software	$ 4,527	$ 6,882		
Computers and equipment	Computers and equipment	416	466		
ROU assets - finance lease	ROU assets - finance lease	375	375		
Leasehold improvements		—	17		
Software development in progress	Software development in progress				
Software development in progress	Software development in progress	37	—		
Subtotal	Subtotal	5,355	7,740		
Less: Accumulated depreciation and amortization	Less: Accumulated depreciation and amortization	(3,586)	(5,242)		
Property and equipment, net	Property and equipment, net	$ 1,769	$ 2,498		

Total depreciation and amortization expense relating to property and equipment presented above was $0.3 $0.2 million and $0.8 $0.3 million for the three months ended September 30, 2023 March 31, 2024 and 2022, respectively, and $0.9 million and $2.3 million for the nine months ended September 30, 2023 and 2022, 2023, respectively.

Capitalized Internal Use Software Costs

During the three months ended September 30, 2023 March 31, 2024 and 2022, 2023, the Company capitalized $0.1 $0.04 million and $0.2 $0.1 million, respectively, of costs relating to development of internal use software, and recorded $0.3 million and $0.8 million, respectively, of amortization expense relating to capitalized internal use software, which was included in total depreciation and amortization expense as described above.

During the nine months ended September 30, 2023 and 2022, the Company capitalized $0.2 million and $1.0 million, respectively, of costs relating to development of internal use software, and recorded $0.8 million and $2.1 $0.3 million, respectively, of amortization expense relating to capitalized internal use software, which was included in total depreciation and amortization expense as described above.

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Note 5. Goodwill and Intangible Assets

Goodwill

The carrying amount of indefinite-lived goodwill was $5.7 million as of September 30, 2023 March 31, 2024 and December 31, 2022 December 31, 2023.

Intangible Assets

The following table sets forth amounts recorded for intangible assets subject to amortization (in thousands):

	At September 30, 2023	At December 31, 2022

		Weighted Average Estimated Useful Life (years)	Gross Value	Accumulated Amortization	Net Carrying Value	Gross Value	Accumulated Amortization	Net Carrying Value
Acquired software technology	Acquired software technology	3	$3,500	$ (3,403)	$ 97	$3,500	$ (2,528)	$ 972
Customer relationships	Customer relationships	5	270	(157)	113	270	(117)	153
Total	Total		$3,770	$ (3,560)	$ 210	$3,770	$ (2,645)	$1,125

At March 31, 2024

	Weighted Average Estimated Useful Life (years)						Weighted Average Estimated Useful Life (years)	Gross Value	Accumulated Amortization	Net Carrying Value	Gross Value	
											At March 31, 2024	
Customer relationships	5		270	(220)	50			50		270		(171)

Amortization expense for intangible assets presented above was $0.05 million and $0.3 million for each of the three months ended September 30, 2023 March 31, 2024 and 2022, and $0.9 million for each of the nine months ended September 30, 2023 and 2022. 2023, respectively.

At September 30, 2023 March 31, 2024, estimated amortization expense for intangible assets for each year thereafter was as follows (in thousands):

Remainder of 2023	$	111
2024		54
2025		45
Total	$	210

Remainder of 2024	$	50
Total	$	50

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Note 6. Restructuring, Severance and Related Costs

In March 2023, Over the last two years, the Company's management has approved multiple restructuring plans as part of the Company's management's continued cost saving measures and in order to reduce its operating costs, optimize its business model and to help align with its previously stated strategic initiatives, the Company implemented additional headcount reductions wherein initiatives.

In February 2024, approximately 19% 21% of the Company's employee positions were eliminated. In March 2023, eliminated and the Company incurred a total of approximately $0.5 $0.3 million of one-time termination related costs, including severance payments and benefits payable to the impacted employees, which have been recorded as part of "Restructuring, severance and related costs" on its the Company's condensed consolidated statement of operations for the nine three months ended September 30, 2023 March 31, 2024. As of September 30, 2023, the Company paid $0.5 million of such amount The headcount reductions were completed during March and no amount remained outstanding as of September 30, 2023. April 2024.

In August 2022, March 2023, approximately 19% of the Company's management approved a restructuring plan as part of management's cost saving measures, reducing approximately 34% of employee positions in order to reduce its operating costs were eliminated and help align with its previously stated strategic initiatives. During the three months ended September 30, 2022, the Company incurred a total of approximately $0.9 $0.5 million of one-time termination related costs, including severance payments and benefits payable to the impacted employees, including severance payments and benefits, which have been recorded as part of "Restructuring, severance and related costs" on its the Company's condensed consolidated statement of operations for the three and nine months ended September 30, 2022 March 31, 2023. The headcount reductions were completed by May 2023.

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Note 7. Common Stock and Preferred Stock

Net Loss Per Common Share

Basic net loss per common share is computed by dividing net loss attributable to common stockholders by the weighted-average number of shares of common stock outstanding during the period. Diluted net loss per common share is computed by giving effect to all shares of common stock potentially issuable upon exchange or exercise of outstanding shares of preferred stock and outstanding stock options and warrants, in each case, to the extent dilutive. Basic and diluted net loss per common share were the same for each period presented below as the inclusion of any such shares of common stock potentially issuable would have been anti-dilutive.

Basic and diluted net loss per common share were as follows (in thousands, except per share amounts):

		Three Months Ended September 30,		Nine Months Ended September 30,			
		2023	2022	2023	2022		
			Three Months Ended March 31,				
			Three Months Ended March 31,				
			Three Months Ended March 31,				
		2024				2024	2023
Net loss	Net loss	$(6,418)	$(12,764)	$(21,524)	$(42,467)		
Dividends on preferred stock - declared and undeclared	Dividends on preferred stock - declared and undeclared	(2,239)	(2,239)	(6,716)	(6,716)		
Net loss attributable to common stockholders	Net loss attributable to common stockholders	$(8,657)	$(15,003)	$(28,240)	$(49,183)		
Weighted-average shares of common stock outstanding	Weighted-average shares of common stock outstanding	4,905	4,056	4,827	3,666		
Weighted-average shares of common stock outstanding							
Weighted-average shares of common stock outstanding							
Net loss per common share - basic and diluted	Net loss per common share - basic and diluted	$ (1.76)	$ (3.70)	$ (5.85)	$ (13.42)		

Included in the weighted-average shares of common stock outstanding for the three months ended March 31, 2024 is a total of 18,333,333 common shares issuable upon the exercise of Private Placement Pre-funded Warrants (as defined and described in Note 10 below), which are exercisable at any time for nominal consideration, and as such, the shares are considered outstanding for the purpose of calculating basic and diluted net loss per share attributable to common stockholders.

The following common equivalent shares as of September 30, 2023 March 31, 2024 and 2022, 2023, issuable upon exercise of stock options and warrants, have been excluded from the diluted earnings per share calculation as their effect was anti-dilutive:

	September 30,	
	2023	2022
Warrants to purchase common stock	7,082,788	262,713
Options to purchase common stock	1,177,839	563,142
Total	8,260,627	825,855

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	March 31,	
	2024	2023
Warrants to purchase common stock	168,925,136	7,082,788
Options to purchase common stock	1,821,604	931,019
Total	170,746,740	8,013,807

Equity Offerings

Common Stock

In February 2023, pursuant to the terms of the Keep Well Agreement, as a result of stockholder approvals obtained at the 2023 Special Meeting, the Company issued to Acuitas (as defined in Note 10 below) 2,038,133 additional shares of the Company's common stock (which, after giving effect to the reverse stock split discussed in Note 1 above, was adjusted to 339,689 shares of the Company's common stock).

On September 2, 2022, pursuant to the terms of the Keep Well Agreement, as discussed in Note 10, the Company issued 739,645 shares of common stock (which, after giving effect to the reverse stock split discussed in Note 1 above, was adjusted to 123,275 shares of the Company's common stock) to Acuitas subsequent to obtaining stockholder approval for such issuance on August 29, 2022 at the Company's annual meeting of stockholders.

On August 2, 2022, the Company entered into a securities purchase agreement with certain institutional investors for the purchase and sale of 5,000,000 shares of the Company's common stock (which, after giving effect to the reverse stock split discussed in Note 1 above, was adjusted to 833,333 shares of the Company's common stock) at a purchase price of $0.80 per share in a registered direct offering. The offering closed on August 4, 2022 and the Company received total net proceeds of approximately $3.3 million (excluding approximately $0.7 million of fees and expenses). The Company used the net proceeds from the offering for working capital purposes.

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Preferred Stock

In 2020, the Company completed the issuance of a total of 3,770,265 shares of 9.50% Series A Cumulative Perpetual Preferred Stock. Stock (the "Series A Preferred Stock"). The Company, generally, may not redeem the Series A Preferred Stock until August 25, 2025, except upon the occurrence of a Delisting Event or Change of Control (as defined in the Certificate of Designations establishing the Series A Preferred Stock), and on and after August 25, 2025, the Company may, at its option, redeem the Series A Preferred Stock, in whole, at any time, or in part, from time to time, for cash at a redemption price of $25.00 per share, plus any accrued and unpaid dividends. The Series A Preferred Stock has no maturity date and will remain outstanding indefinitely unless redeemed by the Company or exchanged for shares of common stock in connection with a Delisting Event or Change of Control. Holders of Series A Preferred Stock generally have no voting rights, but have limited voting rights if the Company fails to pay dividends in respect of the Series A Preferred Stock for six or more quarters, whether or not declared or consecutive and in certain other events, including the right, voting separately as a single class, to elect two individuals to the Company's Board of Directors. Such director election right commenced on August 31, 2023 since the Company did not pay the dividend payable on that date or in respect of the five prior quarters (see discussion below).

Holders of Series A Preferred Stock of record at the close of business of each respective record date for quarterly dividends (February 15, May 15, August 15 and November 15 of each year) are entitled to receive, when, as and if declared by our Board of Directors, out of funds legally available for the payment of dividends, cumulative cash dividends at the rate of 9.50% per annum of the $25.00 per share liquidation preference (equivalent to $2.375 per annum per share or $0.593750 per quarter per share). Dividends, if and when declared by our Board of Directors, are payable quarterly in arrears, every February 28, May 30, August 31, and November 30, as applicable. In 2022, our Board of Directors declared the first quarterly dividend on the Series A Preferred Stock for holders of record on February 15, 2022 and paid cash dividends on February 28, 2022. Thereafter, no dividends have been declared by our Board of Directors. As such, at September 30, 2023 At March 31, 2024, we had total undeclared dividends of $14.2 $18.7 million.

On October 20, 2023 October 11, 2023, the Company received a letter from Nasdaq informing the Company that it is not eligible for a second 180-day compliance period within which to regain compliance with the minimum bid price rule for the Series A Preferred Stock was delisted from and that Nasdaq determined that the Nasdaq Capital Market. See Note 14 below for a discussion regarding the delisting of Series A Preferred Stock would be delisted from The Nasdaq Capital Market and would be suspended at the inception opening of its trading business on October 20, 2023. On November 20, 2023, The Nasdaq Stock Market filed a Form 25-NSE with the SEC to remove the Series A Preferred Stock from listing and registration on The Nasdaq Stock Market. The Series A Preferred Stock currently trades in the over-the-counter OTC Markets system.

Note 8. Stock-Based Compensation

The Company's 2017 Stock Incentive Plan (the “2017 Plan”) and 2010 Stock Incentive Plan (the “2010 Plan”) (the and together with the 2017 Plan, and the 2010 Plan together, the "Plan" "Plans") provide for the issuance of 1,695,741 2,849,746 shares of the Company's common stock. The Company has granted stock options to executive officers, employees, members of its Board the Company's board of Directors, directors, and certain outside consultants and has granted restricted stock units ("RSUs") to executive officers, employees and members of its Board the Company's board of Directors. directors. The terms and conditions upon which stock options vest vary among grants; however, stock options expire no later than ten years from the date of grant and awards granted to employees including to executive officers, and to members of the Company's Board board of Directors directors generally vest over one to four years on a straight-line basis. The terms and conditions upon which RSUs vest vary among grants; however, RSUs generally vest over three to five years on a straight-line basis. As of September 30, 2023 March 31, 2024, the Company had 1,298,788 1,938,623 stock options and RSUs outstanding and 44,143 557,901 shares reserved for future awards granted under the Plan. Plans.

Stock-based compensation expense was $0.8 $0.4 million and $1.2 $0.7 million for the three months ended September 30, 2023 March 31, 2024 and 2022, respectively, and $2.3 million and $6.3 million for the nine months ended September 30, 2023 and 2022, 2023, respectively.

The assumptions used in the Black-Scholes option-pricing model were as follows:

	Nine Three Months Ended September 30, 2023 March 31, 2024
Volatility	101.0% - 109.0% 96.0%
Risk-free interest rate	3.36% - 4.18% 3.81%
Expected life (in years)	3.76 - 4.66 4.09
Dividend yield	0 %

The expected volatility assumptions have been based on the historical and expected volatility of our stock and stock of comparable companies, measured over a period generally commensurate with the expected term or acceptable period to determine reasonable volatility. The weighted average expected option term for the nine three months ended September 30, 2023 March 31, 2024 reflects the application of the simplified method prescribed in SEC Staff Accounting Bulletin (“SAB”) No. 107 (as amended by SAB 110), which defines the life as the average of the contractual term of the options and the weighted average vesting period for all option tranches.

Stock Options - Employees and Directors

A summary of stock option activity is as follows:

	Number of Shares	Weighted Average Exercise Price
Outstanding as of December 31, 2022	815,970	$ 18.54
Granted	600,813	2.70
Forfeited	(238,944)	34.94
Outstanding as of September 30, 2023	1,177,839	7.13
Options vested and exercisable as of September 30, 2023	347,142	$ 17.81

	Number of Shares		Weighted Average Exercise Price
Outstanding as of December 31, 2023	1,162,109	$	6.63
Granted	770,039		0.39
Forfeited	(110,544)		15.19
Outstanding as of March 31, 2024	1,821,604		3.48
Options vested and exercisable as of March 31, 2024	615,633	$	7.14

As of September 30, 2023 March 31, 2024, there was $3.1 $2.3 million of unrecognized compensation cost related to non-vested share-based compensation arrangements granted to employees and directors under the Plan. Plans. These costs are expected to be recognized over a weighted-average period of approximately 2.86 2.82 years.

Performance-Based and Market-Based Awards

The Company's Compensation Committee designed a compensation structure to align the compensation level of the Company's former Executive Chairman to the performance of the Company through the issuance of market-based stock options. The market-based options vested upon the Company's stock price reaching a certain price at a specific performance period and the total amount of compensation expense recognized was based on a Monte Carlo simulation that factored in the probability of the award vesting. The market-based stock options to purchase a total of 1,040,000 shares (173,334 shares, adjusted for the reverse stock split, which is discussed in Note 1 above) of the Company's common stock expired unexercised on June 2, 2023.

Restricted Stock Units - Employees

The Company estimates the fair value of RSUs based on the closing price of its common stock on the date of grant. The following table summarizes our RSU award activity issued under the 2017 Plan:

		Restricted Stock Units		
		Restricted Stock Units		
		Restricted Stock Units		
Non-vested at December 31, 2023				
Non-vested at December 31, 2023				
Non-vested at December 31, 2023				
		Restricted Stock Units		Weighted Average Grant Date Fair Value
Non-vested at December 31, 2022		241,599	$	12.92
Vested and settled				
Vested and settled				
Vested and settled	Vested and settled	(118,842)		10.23
Forfeited	Forfeited	(1,805)		128.00
Forfeited				
Forfeited				
Non-vested at September 30, 2023		120,952		13.83
Non-vested at March 31, 2024				
Non-vested at March 31, 2024				
Non-vested at March 31, 2024				

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As of September 30, 2023 March 31, 2024, there was $1.6 $0.6 million of unrecognized compensation costs related to unvested outstanding RSUs. These costs are expected to be recognized over a weighted-average period of approximately 1.91 1.42 years.

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Warrants - Non-employees

The Company has issued warrants to purchase shares of the Company's common stock that have been approved by our Board of Directors. A summary of warrants activity was as follows:

	Number of Warrants	Weighted Average Exercise Price
Outstanding as of December 31, 2022	262,713	$ 3.06
Granted	6,820,075	0.92
Outstanding as of September 30, 2023	7,082,788	1.00
Warrants exercisable as of September 30, 2023	7,082,788	1.00

	Number of Warrants	Weighted Average Exercise Price
Outstanding as of December 31, 2023	114,243,865	$ 0.63
Granted	136,163,668	0.36
Exercised	(5,482,398)	0.10
Cancelled	(57,666,666)	0.85
Outstanding as of March 31, 2024	187,258,469	0.38
Warrants exercisable as of March 31, 2024	187,258,469	0.38

On each The number of January 5, 2023 and March 6, 2023, the Company borrowed $4.0 million under the Keep Well Agreement. In connection with the January 5, 2023 borrowing, the Company issued to Acuitas a warrant to purchase 473,373 shares of the Company's common stock (78,896 shares of subject to warrants granted and cancelled as presented in the Company's common stock as adjusted for table above give effect to the reverse stock split discussed in Note 1 above) with an original adjustment to the exercise price equal to $1.69 per share. In February 2023, as discussed of Public Offering Warrants and Private Placement Warrants (as such terms are defined in Note 10 below, below) pursuant to the waivers entered into by each holder of such warrants (discussed in Note 10 below). In accordance with the terms of such waivers, on March 28, 2024, the exercise price per share of all outstanding Public Offering Warrants and Private Placement Warrants was reduced to purchase an aggregate 1,775,148 $0.36 and simultaneously, the number of shares of the Company's common stock (295,860 shares issuable upon exercise was increased proportionally, such that the aggregate exercise price of the Company's common stock as adjusted for warrants, after taking into account the reverse stock split discussed adjustment in Note 1 above) previously issued by the Company to Acuitas through February 20, 2023 were exchanged for warrants to purchase 33,333,333 shares of the Company's common stock (5,555,557 shares of the Company's common stock as adjusted for the reverse stock split discussed in Note 1 above, of which 5,338,593 shares relate to warrants issued during the first quarter of 2023) with an exercise price, was equal to $0.45 per share ($0.92 per share as adjusted for the reverse stock split discussed in Note 1 above and further adjustments discussed in Note 10). In connection with the March 6, 2023 borrowing, the Company issued to Acuitas a warrant to purchase 8,888,889 shares of the Company's common stock (1,481,482 shares of the Company's common stock as adjusted for the reverse stock split discussed in Note 1 above) with an aggregate exercise price equal to $0.45 per share ($0.92 per share as adjusted for before the reverse stock split discussed adjustment in Note 1 above and further adjustments discussed in Note 10). All warrants issued to Acuitas have a five year term. the exercise price.

The assumptions used in the Black-Scholes warrant-pricing model were determined as follows:

	Nine Three Months Ended September 30, 2023 March 31, 2024
Volatility	100% - 109% 98%
Risk-free interest rate	3.90% - 4.61% 4.21%
Expected life (in years)	5.00 4.73
Dividend yield	0 %

Note 9. Leases

The Company determines whether an arrangement is a lease, or contains a lease, at inception and recognizes right-of-use assets and lease liabilities, initially measured at present value of the lease payments, on the Company's balance sheet and classifies the leases as either operating or financing finance leases. The Company leases office space in Henderson, Nevada, which previously served as the Company's headquarters and currently serves as the administrative office for certain of the Company's back-office functions, and in Rosemont, Illinois, which are accounted for as operating leases. The Rosemont, Illinois lease expired in June 2023. In September 2023, the Company entered into a month-to-month lease for a virtual office space in Miami, Florida, which serves as the Company's headquarters. The Company leases various computer equipment used in the operation of its business, which are accounted for as finance leases. The operating lease agreement for the Henderson, Nevada office is for a total of 2,721 square feet of office space for lease term of 58 months. The Company's finance leases are generally for 36 month terms. The Company had no finance leases during the three months ended and as of March 31, 2024 and December 31, 2023.

On April 12, 2022, In April 2022, the Company entered into a sublease agreement with a subtenant for 100% of the office space the Company leased in Santa Monica, California. The sublease agreement commenced on June 3, 2022 in June 2022 and provided for an expiration date of July 17, 2024, unless sooner terminated. On February 16, 2023, the Company, the landlord and the subtenant entered into a lease and sublease termination agreement for the office space, with a termination date of February 28, 2023. The Company agreed to pay to

pay to the landlord a $0.1 million early termination fee and monthly fixed rent for March and April 2023, and the subtenant agreed to pay to the Company monthly fixed sublease payments for March and April 2023. As a result of the lease termination, the Company wrote-off $0.3 million of operating lease right-of-use assets, and $0.6 million and $0.2 million of current and long-term operating lease liabilities, respectively, resulting in a non-cash gain of $0.5 million included in "Other income, net" on the condensed consolidated statement of operations for the nine three months ended September 30, 2023 March 31, 2023.

The Company's operating leases do not require any contingent rental payments, impose any financial restrictions, or contain any residual value guarantees. The leases include renewal options and escalation clauses. The renewal options have not been included in the calculation of the operating lease liabilities and right-of-use assets as the Company is not reasonably certain to exercise the options. Variable expenses generally represent the Company's share of the landlord's operating expenses.

Quantitative information for our leases is as follows (in thousands):

Condensed Consolidated Balance Sheets	Balance Sheet Classification	September 30, 2023	December 31, 2022
Assets			
Operating lease assets	"Operating lease right-of-use-assets"	$ 206	$ 632
Finance lease assets	"Property and equipment, net"	0	66
Total lease assets		$ 206	$ 698
Liabilities			
Current			
Operating lease liabilities	"Current portion of operating lease liabilities"	$ 53	$ 653
Finance lease liabilities	"Other accrued liabilities"	8	136
Non-current			
Operating lease liabilities	"Long-term operating lease liabilities"	181	546
Total lease liabilities		$ 242	$ 1,335

	Three Months Ended September 30,		Nine Months Ended September 30,	
Condensed Consolidated Statements of Operations	2023	2022	2023	2022
Operating lease expense	$ 20	$ 114	$ 139	$ 330
Short-term lease rent expense	1	1	2	6
Variable lease expense	—	16	23	13
Operating sublease income	—	(97)	(65)	(128)
Total rent expense	$ 21	$ 34	$ 99	$ 221
Finance lease expense				
Amortization of leased assets	$ 16	$ 30	$ 66	$ 93
Interest on lease liabilities	1	4	4	16
Total	$ 17	$ 34	$ 70	$ 109

Condensed Consolidated Balance Sheets	Balance Sheet Classification	March 31, 2024	December 31, 2023
Assets			
Operating lease assets	"Operating lease right-of-use-assets"	$ 183	$ 195
Total lease assets		$ 183	$ 195
Liabilities			
Current			
Operating lease liabilities	"Current portion of operating lease liabilities"	$ 59	$ 56
Non-current			

Operating lease liabilities	"Long-term operating lease liabilities"	151	166
Total lease liabilities		$ 210	$ 222

Condensed Consolidated Statements of Operations	Three Months Ended March 31, 2024	Three Months Ended March 31, 2023
Operating lease expense	$ 20	$ 87
Short-term lease rent expense	1	1
Variable lease expense	—	15
Operating sublease income	—	(65)
Total rent expense	$ 21	$ 38
Finance lease expense		
Amortization of leased assets	$ —	$ 25
Interest on lease liabilities	—	2
Total	$ —	$ 27

Condensed Consolidated Statements of Cash Flows	Three Months Ended March 31, 2024	Three Months Ended March 31, 2023
Cash paid for amounts included in the measurement of lease liabilities:		
Operating cash flows from operating leases	$ 21	$ 145
Financing cash flows from finance leases	—	50
Other		
Cash received for operating sublease	—	97

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Condensed Consolidated Statements of Cash Flows	Nine Months Ended September 30, 2023	Nine Months Ended September 30, 2022
Cash paid for amounts included in the measurement of lease liabilities:		
Operating cash flows from operating leases	$ 200	$ 552
Financing cash flows from finance leases	126	226
Other		
Cash received for operating sublease	97	99

Other Information	Other Information	September 30, 2023	December 31, 2022	Other Information	March 31, 2024	December 31, 2023
Weighted-average remaining lease term (years)	Weighted-average remaining lease term (years)					
Operating leases	Operating leases	3.4	2.5			
Financing leases		0.2	0.7			
Operating leases						
Operating leases					2.9	3.2

Weighted-average discount rate (%)				
Operating leases	16.25 %	12.56 %		
Operating leases	16.25 %		16.25 %	
Finance leases	15.15 %	12.92 %		
Finance leases	—	15.15	15.15 %	

Weighted-average discount rate (%)
Weighted-average discount rate (%)
Weighted-average discount rate (%)
Operating leases
Operating leases

The following table sets forth maturities of our lease liabilities (in thousands):

Operating Leases — At March 31, 2024

Remainder of 2024	
2025	
2026	
2027	

Operating Leases
Operating Leases
Remainder of 2024
Remainder of 2024
2025
2025
2026
2026
2027
2027

	At September 30, 2023		
	Operating Leases	Financing Leases	Total
Remainder of 2023	$ 21	$ 8	$ 29
2024	88	—	88
2025	90	—	90
2026	93	—	93
2027	16	—	16
Total lease payments	308	8	316
Less: imputed interest	(74)	—	(74)

Total lease payments
Total lease payments
Total lease payments
Less: imputed interest
Less: imputed interest
Less: imputed interest

Present value of lease liabilities				
Present value of lease liabilities				
Present value of lease liabilities	Present value of lease liabilities	234	8	242
Less: current portion	Less: current portion	(53)	(8)	(61)
Less: current portion				
Less: current portion				
Lease liabilities, non-current	Lease liabilities, non-current	$ 181	$ —	$181
Lease liabilities, non-current				
Lease liabilities, non-current				

Note 10. Debt

Keep Well Agreement

On April 15, 2022, the Company entered into a Master Note Purchase Agreement (the “Original Keep Well Agreement”) with Acuitas Capital LLC (“Acuitas Capital”), an entity indirectly wholly owned and controlled by Terren S. Peizer, the Company’s former Chief Executive Officer and Chairman. On August 12, 2022, the Company and Acuitas Capital entered into an amendment to the The Original Keep Well Agreement in connection with the appointment was amended on each of a collateral agent under the Original Keep Well Agreement August 12, 2022 (the “First Amendment”). On , November 19, 2022, the Company and Acuitas Capital entered into another amendment to the Original Keep Well Agreement, as amended by the First Amendment (the “Second Amendment”), on December 30, 2022, the Company and Acuitas Capital entered into another amendment to the Original Keep Well Agreement, as amended by the First Amendment and the Second Amendment (the “Third Amendment”), June 23, 2023 (the “Fourth Amendment”), October 31, 2023 (the “Fifth Amendment”) and on June 23, 2023, the Company and Acuitas Capital entered into another amendment to the Original Keep Well Agreement, as amended by the First Amendment, the Second Amendment and the Third Amendment March 28, 2024 (the “Fourth “Sixth Amendment”). The Company refers to the Original Keep Well Agreement

as amended by the First Amendment, the Second Amendment, the Third Amendment and the Fourth Amendment, to date as the “Keep Well Agreement” and to Acuitas Capital, together with its affiliates and any of its transferees or affiliates under the Keep Well Agreement, as “Acuitas.”

The Keep Well Agreement contains customary covenants that must be complied with by the Company, including, among other covenants, restrictions on the Company’s ability to incur debt, grant liens, make certain investments and acquisitions, pay dividends, repurchase equity interests, repay certain debt, amend certain contracts, enter into certain asset sale transactions, and covenants that require the Company to, among other things, provide annual, quarterly and monthly financial statements, together with related compliance certificates, maintain its property in good repair, maintain insurance and comply with applicable laws.

The Keep Well Agreement also includes the following financial covenants: a requirement that annualized consolidated recurring revenue for the preceding twelve months be at least $11.0 million tested monthly, and a requirement that consolidated liquidity must be greater than $5.0 million at all times. The Company was in compliance with such financial covenants as of March 31, 2024.

The Original Keep Well Agreement

Under the terms of the Original Keep Well Agreement, subject to the satisfaction of certain conditions precedent (some of which are described below), the Company could borrow from Acuitas up to $25.0 million, and in connection with each such borrowing, the Company agreed to issue to Acuitas a senior secured note (each, an “Original Keep Well Note”) with a principal amount equal to the amount borrowed. Subject to obtaining approval of the Company’s stockholders as required by applicable Nasdaq listing rules, which approval was obtained at the Company’s annual meeting of stockholders held on August 29, 2022 (the “2022

"2022 Annual Meeting of Stockholders"), in connection with each Original Keep Well Note issued by the Company, the Company agreed to issue to Acuitas a warrant to purchase shares of the Company's common stock (each, an "Original Keep Well Warrant"). The number of shares of the Company's common stock underlying each Original Keep Well Warrant was to be equal to (y) the product of the principal amount of the applicable Keep Well Note and 20% divided by (z) the exercise price of the applicable Original Keep Well Warrant, which was $1.69 per share, the Nasdaq Official Closing Price (as reflected on Nasdaq.com) of the Company's common stock immediately preceding the time the parties entered into the Original Keep Well Agreement. The maturity date of the Original Keep Well Notes was September 1, 2023.

The conditions precedent to the Company's ability to borrow, and Acuitas' obligation to lend, under the Original Keep Well Agreement included that (x) the Company have used best efforts to obtain sufficient financing from a third party for the Company to pay and discharge, when due and payable, its obligations, (y) the Company be unable despite its best efforts to obtain such financing from a third party on reasonably acceptable terms, and (z) (1) absent obtaining the funds requested by the Company to borrow under the Original Keep Well Agreement, the Company would not have sufficient unrestricted cash to pay and discharge all of its obligations then due or scheduled to become due within the 30 days following the date of the borrowing request, and (2) there be no conditions or events that, when considered in the aggregate, raise substantial doubt about the Company's ability to continue as a going concern through August 15, 2023 (the "Funding Condition").

In connection with entering into the Original Keep Well Agreement, subject to obtaining approval of the Company's stockholders as required by applicable Nasdaq listing rules, which approval was obtained at the 2022 Annual Meeting of Stockholders, the Company agreed to issue 739,645 shares of its common stock to Acuitas (or an entity affiliated with Acuitas, as designated by Acuitas) (the "Original Commitment Shares"). The Original Commitment Shares were issued to Acuitas in September 2022, and after giving effect to the reverse stock split discussed in Note 1 above, was adjusted to 123,275 shares of the Company's common stock.

The Second Amendment, the Third Amendment and Fourth Amendment to the Keep Well Agreement

Under the Second Amendment and the Third Amendment, many of the conditions precedent to the Company's ability to borrow, and Acuitas' obligation to lend, were eliminated, including the Funding Condition, the Company's obligation to pay accrued interest on a monthly basis was eliminated, and instead accrued interest will be added to the principal amount of the applicable Keep Well Note (as defined below) (and of any other secured note issued under the Keep Well Agreement), Agreement, the financial covenant that the Company's consolidated recurring revenue be at least $15.0 million was reduced to $11.0 million, however, the satisfaction of such covenant as a condition to funding was eliminated, and certain other affirmative and negative covenants of the Company, the satisfaction of which were conditions to funding, were also eliminated as conditions to funding, and (a) the minimum conversion price of the Keep Well Notes (as defined below) and (b) the minimum dollar amount to which the denominator will be reduced for purposes of calculating the warrant coverage on future borrowings under the Keep Well Agreement (as discussed below), was revised to be $0.15 (subject to adjustment for stock splits or other recapitalizations that affect all common stockholders proportionately). The $0.15 referenced in the preceding sentence was adjusted to $0.90 after giving effect to the reverse stock split discussed in Note 1 above.

Below is a summary of certain other amendments effected by the Second Amendment, the Third Amendment and the Fourth Amendment:

- the maturity date of the Original Keep Well Notes (and of any other secured notes issued under the Keep Well Agreement) was extended from September 1, 2023 to June 30, 2024 in the Second Amendment, and further extended from June 30, 2024 to September 30, 2024 in the Fourth Amendment, subject to acceleration for certain customary

events of default, including for failure to make payments when due, breaches by the Company of certain covenants and representations in the Keep Well Agreement, defaults by the Company under other agreements related to indebtedness, the Company's bankruptcy or dissolution, and a change of control of the Company;
- per the Second Amendment, the remaining amount available to be borrowed under the Keep Well Agreement was increased from $10.7 million to $14.0 million and the provision that previously reduced the amount available to be borrowed by the net proceeds the Company received from equity financings was eliminated;
- per the Second Amendment, the funding structure was changed from borrowings as needed from time to time at the election of the Company, to the Company agreeing to borrow, and Acuitas agreeing to lend, subject to the conditions in the Keep Well Agreement (which conditions were also amended as described above), the entire then-remaining amount of $14.0 million as follows: $4.0 million in each of January (which was borrowed on January 5, 2023), March (which was borrowed on March 6, 2023) and June 2023, and $2.0 million in September 2023; the funding structure was further amended in the Fourth Amendment with respect to the $6.0 million remaining available amount to be funded, as described below;
- per the Fourth Amendment, in lieu of the $6.0 million remaining available amount to be funded as described above (and in full satisfaction of Acuitas' obligation to purchase Keep Well Notes from the Company), Acuitas agreed to deliver to the Company for deposit and to be held by the Company in a segregated account established by the Company until such time of qualified withdrawal and issuance of a Keep Well Note, as described below (the proceeds so deposited, the "Escrowed Funds" and the account into which the proceeds are so deposited, the "Escrow Account"): (i) $4.0 million on June 23, 2023 (which was received by the Company on June 26, 2023); and (ii) $2.0 million on September 1, 2023 (which was received by the Company on September 7, 2023); the total of such $6.0 million was included in "Other accrued liabilities" on the Company's condensed consolidated balance sheet as of September 30, 2023);
- per the Fourth Amendment, any time, and from time to time, that the Company has less than $1.0 million of Qualified Cash (as defined in Fourth Amendment), the Company may withdraw $1.0 million of Escrowed Funds (or any lesser remaining amount of Escrowed Funds) from the Escrow Account; each such withdrawal will be treated as a

sale by the Company to Acuitas of a Keep Well Note with a principal amount equal to the amount withdrawn by the Company and in connection with each such withdrawal, the Company will also issue a Keep Well Warrant to Acuitas; and

- per the Fourth Amendment, if the Company does not complete a Qualified Financing (as defined below) on or prior to October 31, 2023, then, on October 31, 2023, the Company must withdraw all of the Escrowed Funds (other than any accrued interest thereon, all of which will belong to the Company) then on deposit in the Escrow Account, and such

withdrawal will be treated as a sale by the Company to Acuitas of a Keep Well Note, and in connection with such withdrawal, the Company will also issue a Keep Well Warrant to Acuitas.

In the event the Company completes a Qualified Financing, all of the Escrowed Funds (other than any accrued interest thereon, all of which will belong to the Company) then on deposit in the Escrow Account will be invested in the Qualified Financing on behalf of Acuitas on the same terms as all other investors in the Qualified Financing, and the Company's obligation to sell to Acuitas, and Acuitas' obligation to purchase from the Company, any further Keep Well Notes will thereupon be deemed discharged with respect to the amount so invested.

A "Qualified Financing" generally means any financing in which the Company issues or sells any of its equity securities for cash to one or more third party investors resulting in gross proceeds to the Company of at least $10.0 million exclusive of any amount invested by Acuitas in such financing.

For a discussion regarding an amendment to the definition of Qualified Financing as well as investment of Escrowed Funds and conversion of Keep Well Notes, as described below, see Note 14 under "*Fifth Amendment to Keep Well Agreement."Agreement" below.*

Conversion of Keep Well Notes

Following approval of the Company's stockholders obtained at the 2023 Special Meeting, Acuitas, at its option, has the right to convert the entire principal amount of the secured notes issued under the Keep Well Agreement, plus all accrued and unpaid interest thereon, in whole or in part, into shares of the Company's common stock at a conversion price equal to the lesser of (i) $0.40 per share and (ii) the greater of (a) the closing price of the Company's common stock on the trading day immediately prior to the applicable conversion date and (b) $0.15 (the "Conversion Right"). The $0.40 and $0.15 referenced in the preceding sentence are subject to adjustment for stock splits and similar corporate actions, and were adjusted to $2.39 and $0.90, respectively, after giving effect to the reverse stock split discussed in Note 1 above.

Each Original Keep Well Note outstanding as of the date of stockholder approval was deemed to be amended to contain the Conversion Right. The Company refers to such Original Keep Well Notes, as so amended, and to all other secured notes issued under the Keep Well Agreement, as the "Keep Well Notes."

In addition, in connection with the conversion of the principal amount of any Keep Well Note and/or accrued interest thereon into shares of the Company's common stock (as described above), the Company will issue to Acuitas a five-year warrant to purchase shares of the Company's common stock, and the number of shares of the Company's common stock subject to each such warrant will be equal to (x) 100% of the amount converted divided by (y) the conversion price of the Keep Well Note then in effect, and the exercise price of each such warrant will be equal to the conversion price of the Keep Well Note then in effect, subject to adjustment as described below. See Note 14 below for information regarding conversion of Keep Well Notes.

Increase in Warrant Coverage and Other Adjustments

Following approval of the Company's stockholders obtained at the 2023 Special Meeting, (a) the exercise price of the warrants issued under the Keep Well Agreement (both the Original Keep Well Warrants outstanding as of the date of the Second Amendment and those issued thereafter) was reduced to $0.45 per share ($2.70 per share as adjusted for the reverse stock split discussed in Note 1 above), which was the Nasdaq Official Closing Price (as reflected on Nasdaq.com) of the Company's common stock immediately preceding the time the parties entered into the Second Amendment, and which is subject to future adjustment as described below; (b) the number of shares of the Company's common stock subject to the warrants outstanding at the time of the 2023 Special Meeting (i.e., 1,775,148 shares, before the reverse stock split discussed in Note 1 above) was increased to the number of shares that would have been subject to such warrants if the warrant coverage was equal to 100% of the amount borrowed under the Keep Well Agreement in respect of which the applicable Keep Well Warrant was issued (instead of 20%) divided by $0.45 (i.e., 33,333,333 shares, or an additional 31,558,185 shares; 5,555,557 shares , or an additional 5,259,696 shares, as adjusted for the reverse stock split discussed in Note 1 above); and (c) the warrant coverage on borrowings under the Keep Well Agreement after the date of the Second Amendment was increased to a number of shares of the Company's common stock equal to (x) 100% of the amount borrowed (instead of 20% of such amount) divided by (y) the greater of (i) the per share warrant exercise price (as adjusted as of the date of issuance of the applicable warrant) and (ii) $0.15 ($0.90 as adjusted for the reverse stock split discussed in Note 1 above) (the "Warrant Coverage Denominator"), subject to future adjustment as described below, and each warrant issued after the date of the Second Amendment has an exercise price equal to $0.45 per share ($2.70 per share as adjusted for the reverse stock split discussed in Note 1 above), subject to future adjustment as described below.

As a result of stockholder approvals obtained at the 2023 Special Meeting, the Company issued to the holder of each warrant issued under the Keep Well Agreement outstanding as of the date of such approval, in exchange for such warrant, a new warrant to purchase shares of the Company's common stock that reflect the amendments to the warrants described above and below, including the increase in the warrant coverage and the decrease in the exercise price. The Company refers to the new warrants issued in exchange for outstanding warrants and to any warrants issued in connection with future borrowings under the Keep Well Agreement or in connection with the conversion of the principal amount of any Keep Well Note and/or accrued interest thereon into shares of the Company's common stock as the "Keep Well Warrants."

Under the terms of the Second Amendment, if the reverse stock split approved at the 2023 Special Meeting is effected, then:

(1) the exercise price of each warrant issued pursuant to the Keep Well Agreement that is outstanding as of the effective time of the reverse stock split would be reduced to the lesser of (i) the volume-weighted average price of the Company's common stock over the five trading days beginning on the trading day that commences immediately after the effective time of the reverse stock split (the "Reverse Stock Split Price") and (ii) the exercise price after giving effect to the adjustment thereto as a result of the reverse stock split (the lesser of (i) and (ii), the "Post-Stock Split Price"), subject to further reduction as described below; and

(2) the Warrant Coverage Denominator would be reduced to the greater of $0.15 ($0.90 as adjusted for the reverse stock split discussed in Note 1 above) and the Post-Stock Split Price, subject to further reduction as described below.

As discussed in Note 1 above, the reverse stock split approved at the 2023 Special Meeting was effected on July 27, 2023. After giving effect to such reverse stock split, and in accordance with the above, the Post-Stock Split Price was determined to be $2.44 on August 3, 2023. In addition, after giving effect to such reverse stock split, the number of shares of the Company's common stock underlying the Keep Well Warrants outstanding at the effective time of the reverse stock split were proportionally adjusted such that the aggregate exercise price payable upon exercise of the Keep Well Warrants remains unchanged.

Also under the terms of the Second Amendment: (i) the exercise price of each Keep Well Warrant outstanding as of September 1, 2023 will was to be reduced to the closing price of the Company's common stock on August 31, 2023, if such closing price is less than the Post-Stock Split Price; and (ii) the Warrant Coverage Denominator will was to be reduced to the greater of (a) $0.15 (or $0.90 as adjusted after giving effect to the reverse stock split discussed in Note 1 above) and (b) the lesser of (x) the Post-Stock Split Price and (y) the closing price of the Company's common stock on August 31, 2023. As such, on September 1, 2023, the exercise price of each Keep Well Warrant and the Warrant Coverage Denominator (applicable to warrant issuances, if any, thereafter) was determined to be $0.92. The Company assessed the adjustment to the warrant exercise price on August 3, 2023 and September 1, 2023, as described above, and determined that application of the relative fair value method was appropriate in assessing and allocating the change in the fair value of the warrants related to such change in warrant exercise prices. As such, the Company recorded a total of $0.2 million of debt discount costs to the Keep Well Notes as of September 30, 2023, and such debt discount costs will be accreted using the effective interest method over the remaining term of the Keep Well Notes.

Additional Commitment Shares

As a result of stockholder approvals obtained at the 2023 Special Meeting, the Company issued to Acuitas 2,038,133 additional shares of the Company's common stock (which, after giving effect to the reverse stock split discussed in Note 1 above, was adjusted to 339,689 shares of the Company's common stock).

Issuance Cap Fifth Amendment to Keep Well Agreement

The *Changes to Qualified Financing*. Under the Fifth Amendment, the minimum amount to be raised in an equity financing for such financing to constitute a "Qualified Financing" was reduced from $10.0 million to $8.0 million, and the deadline by when a Qualified Financing must be completed before the Company and is required to withdraw the Escrowed Funds was extended from October 31, 2023 to January 31, 2024. Under a letter agreement entered into on November 9, 2023, the minimum amount to be raised in an equity financing for such financing to constitute a "Qualified Financing" was further reduced to $6.0 million.

Conversion of Keep Well Notes. Under the Fifth Amendment, if the Company completed a Qualified Financing, Acuitas agreed that (i) under no circumstances will the Company issue any shares upon exercise of any warrant issued under the Keep Well Agreement or upon conversion of any Keep Well Note to the extent that, after giving effect to the issuance of any such shares, Acuitas (together with its affiliates) would beneficially own convert into shares of the Company's common stock representing more the aggregate principal amount of the Keep Well Notes plus all accrued and unpaid interest thereon, minus (a) $7.0 million, minus (b) the principal amount of any Keep Well Notes purchased with funds from the Escrow Account prior to the closing of the Qualified Financing, if any, in accordance with the terms (including the conversion price) of the Keep Well Agreement and the Keep Well Notes (the "Notes Conversion"); provided that if the offering price per share at which the shares of common stock and accompanying warrants are sold to the public in the Qualified Financing (the "Offering Price") is less than 90% the conversion price at which Keep Well Notes are converted, upon the effectiveness of the Fifth Amendment Stockholder Approval Matters (as defined below): (1) the Company would issue to Acuitas

such additional shares of common stock such that the total number of shares of common stock issued in respect of the Notes Conversion plus such additional shares of common stock would equal the number of shares that would have been issued in respect of the Notes Conversion if the Keep Well Notes converted in the Notes Conversion were converted at a conversion price equal to the Offering Price; and (2) the exercise price of the warrants issued to Acuitas in connection with the Notes Conversion (the "Conversion Warrants") would be reduced to the Offering Price and the number of shares of common stock subject to the Conversion Warrants would be increased to the number of shares of common stock that would have been subject to the Conversion Warrants if the Keep Well Notes were converted at a conversion price equal to the Offering Price.

Private Placement. In lieu of the provisions set forth in the Fourth Amendment concerning the investment of Escrowed Funds in the offering that constitutes a Qualified Financing, the Fifth Amendment provided that if an offering constituted a Qualified Financing, the Company and Acuitas will immediately prior to, or simultaneously with the closing of such offering, consummate a private placement (the "Private Placement") of $11.0 million of an unregistered pre-funded warrant to purchase shares of the Company's common stock (the "Private Placement Pre-Funded Warrant") and an unregistered warrant to purchase shares of the Company's common stock (the "Private Placement Warrant," and together with the Private Placement Pre-Funded Warrant, the "Private Placement Securities"). The consideration for the Private Placement Securities purchased by Acuitas would consist of (a) the Escrowed Funds then held in the Escrow Account, and (b) a reduction of the aggregate amounts outstanding under the Keep Well Notes (after giving effect to the Notes Conversion) to $2.0 million (the senior secured convertible promissory note evidencing such $2.0 million, the "Surviving Note"). Each Private Placement Pre-Funded Warrant would be sold together with two Private Placement Warrants with each Private Placement Warrant exercisable for one share of our common stock.

Surviving Note. Under the Fifth Amendment, the maturity date of the Surviving Note was extended from September 30, 2024 to May 14, 2026, which date is two years and six months after the closing date of the offering that constituted a Qualified Financing, unless the Surviving Note becomes due and payable in full earlier, whether by acceleration or otherwise. In addition, if the Offering Price is lower than $0.90, then, subject to the effectiveness of the Fifth Amendment Stockholder Approval Matters, the $0.90 floor on the conversion price of the Surviving Note would be replaced with the Offering Price. On December 20, 2023, upon the effectiveness of the Fifth Amendment Stockholder Approval Matters, the $0.90 conversion price of the Surviving Note was replaced with $0.60, the Public Offering Price, discussed below.

Stockholder Approval. Under the Fifth Amendment, among other things, the Company was required to seek stockholder approval in accordance with the Nasdaq listing rules of (A) the issuance of the shares of the Company's common stock issuable upon exercise of (x) the warrants and the pre-funded warrants sold in the offering that constitutes a Qualified Financing and (y) the Private Placement Securities that, in the aggregate for clauses (x) and (y) above, are in excess of the maximum number of shares of the Company's common stock permitted to be issued without such approval under Nasdaq's listing rules (which amount is equal to 19.99% of the total number of shares of the Company's common stock outstanding immediately following the Notes Conversion and immediately prior to the closing of the offering that constitutes a Qualified Financing and/or the Private Placement), (B) the amendment to the conversion price of the Surviving Note described above, and (C) any other terms of the offering that constitutes a Qualified Financing, the Private Placement and/or the Fifth Amendment that require approval of the Company's stockholders under Nasdaq's listing rules (collectively, the "Fifth Amendment Stockholder Approval Matters").

Support Agreement. In connection with entering into the Fifth Amendment, on October 31, 2023, the Company and Acuitas entered into a support agreement pursuant to which Acuitas has agreed to vote the shares of the Company's common stock it beneficially owns in favor of the Fifth Amendment Stockholder Approval Matters.

Public Offering, Private Placement and Notes Conversion

On November 14, 2023, the Company completed a public offering (the "Public Offering"). In the Public Offering, the Company issued (a) 4,592,068 shares of its common stock and 9,184,136 warrants to purchase up to 9,184,136 shares of its common stock at a combined public offering price of $0.60 per share of common stock and accompanying warrants (the "Public Offering Price"), and (b) 5,907,932 pre-funded warrants to purchase up to 5,907,932 shares of its common stock (the "Public Offering Pre-Funded Warrants") and 11,815,864 warrants to purchase up to 11,815,864 shares of its common stock at a combined public offering price of $0.5999 per Public Offering Pre-Funded Warrant and accompanying warrants, which represents the per share public offering price for the common stock and accompanying warrants less the $0.0001 per share exercise price for each Public Offering Pre-Funded Warrant. The Company refers to the warrants sold in the Public Offering accompanying the shares of common stock and the warrants accompanying the Public Offering Pre-Funded Warrants as the "Public Offering Warrants." The Company received gross proceeds of $6.3 million from the Public Offering, and therefore the Public Offering constituted a Qualified Financing. Total net proceeds was approximately $5.3 million (net of approximately $1.0 million of offering related

fees and expenses, not including the placement fee payable relating to the Private Placement discussed below). The Public Offering Warrants had an initial exercise price of $0.85 per share, subject to adjustment. The exercisability of the Public Offering Warrants was subject to the effectiveness of the Fifth Amendment Stockholder Approval Matters, and expire five years from the effectiveness thereof.

In accordance with the Fifth Amendment, concurrent with the closing of the Public Offering, the Company issued to Humanitario Capital LLC, an affiliate of Acuitas Capital, a Private Placement Pre-Funded Warrant to purchase up to 18,333,333 shares of the Company's common stock, at an exercise price of $0.0001 per share, and a Private Placement Warrant to purchase up to 36,666,666 shares of the Company's common stock, at an exercise price of $0.85 per share, subject to adjustment, for total consideration of $11.0 million. The consideration for the Private Placement Securities consisted of (a) the $6.0 million in the Escrow Account that Acuitas previously delivered to the Company in June 2023 and September 2023 in accordance with the Keep Well Agreement (which $6.0 million was reclassified from restricted cash to unrestricted cash) and (b) $5.0 million of debt owed under the Keep Well Notes, which was cancelled. The Company wrote-off $1.5 million of debt discount in connection with $5.0 million Keep Well Notes cancelled. The Company paid placement fees of approximately $0.4 million in connection with the Private Placement.

The Company assessed and determined that the warrants issued in the Public Offering and Private Placement as described above qualified for equity classification and applied the relative fair value method to allocate proceeds from each Public Offering and Private Placement transactions to the respective warrants.

In accordance with the Fifth Amendment, on November 14, 2023 and before the closing of the Public Offering and Private Placement, the Notes Conversion was effected. In connection with the Notes Conversion, $16.2 million of Keep Well Notes were converted into 18,054,791 shares of the Company's common stock and the Company issued to

Acuitas a Conversion Warrant to purchase up to 18,054,791 shares of the Company's common stock with an exercise price of $0.90 per share, which was the conversion price of the Keep Well Notes converted in the Notes Conversion. The Company wrote-off $3.7 million of debt discount in connection with the conversion of $16.2 million of Keep Well Notes.

On November 15, 2023, Acuitas, who owned a majority of the outstanding shares of the Company's common stock as of that date, executed and delivered to the Company a written consent approving the Fifth Amendment Stockholder Approval Matters. The Company filed an information statement regarding the Fifth Amendment Stockholder Approval Matters with the SEC on November 30, 2023 and mailed such information statement to the holders of its common stock. The actions approved by such consent became effective on December 20, 2023.

Because the Public Offering Price was less than the conversion price at which Keep Well Notes were converted in the Notes Conversion, (1) the Company issued to Acuitas 9,027,395 additional shares of common stock, which when added with the shares of common stock issued in respect of the Notes Conversion, equaled the total number of shares of common stock that the Company would have issued in respect of the Notes Conversion if the Keep Well Notes converted in the Notes Conversion were converted at a conversion price equal to the Public Offering Price; and (2) the exercise price of the Conversion Warrant was reduced to the Public Offering Price and the number of shares of common stock subject to the Conversion Warrant was increased by an additional 9,027,395 shares to equal the number of shares of common stock that would have been subject to the Conversion Warrant if the Keep Well Notes converted in the Notes Conversion were converted at a conversion price equal to the Public Offering Price.

Sixth Amendment to Keep Well Agreement

Issuance of Demand Notes and Warrants. Under the Sixth Amendment, and in connection with the execution of the Sixth Amendment, on April 1, 2024, the Company shall issue and sell to Acuitas, and Acuitas shall purchase from the Company, a senior secured convertible promissory note (a "Demand Note"), with a principal amount of $1.5 million (the "Initial Demand Note") (see discussion in Note 14 below). Also, under the Sixth Amendment, in Acuitas' sole discretion, Acuitas may purchase from the Company, and the Company will issue and sell to Acuitas, up to an additional $13.5 million in principal amount of Demand Notes, at such time and in such principal amounts as specified in the Sixth Amendment (see Note 14 below). The terms of the Demand Notes are substantially similar to the Surviving Note, except the amounts due under the Demand Notes are payable upon demand of the holder. Unless and until the effective date of the Sixth Amendment Stockholder Approval (as defined below) occurs (such effective date, the "Sixth Amendment Stockholder Approval Effective Date"), the Company will not issue any shares of its common stock in connection with the conversion of any Demand Note.

In connection with each Demand Note purchased by Acuitas from the Company (including the Initial Demand Note), and subject to the Sixth Amendment Stockholder Approval Effective Date occurring, the Company will issue to Acuitas (or an entity affiliated with Acuitas, as designated by Acuitas) a warrant ("Demand Warrant") to purchase such number of shares of the Company's common stock that results in 200% warrant coverage. Each Demand Warrant will have a term of five years. The initial exercise price of each Demand Warrant will be (a) in the case of the Demand Warrant issued in connection with the Initial Demand Note and in respect of the next $3.0 million of principal amount of Demand Notes purchased by Acuitas, the lesser of (i) $0.3442 (after giving effect to the reduction of the exercise price of the Public Offering Warrants and Private Placement Warrant (collectively, the "November 2023 Warrants") that occurred on April 5, 2024 described below) and (ii) the greater of (1) the consolidated closing bid price of the Company's common stock as reported on The Nasdaq Stock Market or such other exchange on which the Company's common stock is listed (the "Exchange") immediately preceding the time the applicable Demand Note is deemed issued by the Company and (2) $0.12, and (b) in the case of the Demand Warrants issued in connection with any subsequent Demand Notes, the consolidated closing bid price of the Company's common stock as reported on the Exchange immediately preceding the time the applicable Demand Note is deemed issued by the Company, which initial exercise price will, in each case of clauses (a) and (b) above, be subject to further adjustment in accordance with the terms of the Demand Warrant and the Sixth Amendment. The terms of the Demand Warrants will be substantially similar to the terms of the November 2023 Warrants. See "Warrant Adjustment Provisions," below.

The Company will not issue any Demand Warrant unless and until the Sixth Amendment Stockholder Approval Effective Date occurs, and promptly as practicable following such date, the Company will issue each Demand Warrant that would have been issued through and including such date.

Replacement of Keep Well Warrants. Following the Sixth Amendment Stockholder Approval Effective Date, the Company will issue to each holder of each warrant to purchase shares of the Company's common stock issued under the Existing Keep Well Agreement outstanding as of the time Sixth Amendment Stockholder Approval Effective Date (any such warrant, a "Replaced Keep Well Warrant"), in exchange therefor, a warrant to purchase shares of such issuance (the "Issuance Cap" the Company's common stock (a "New Keep Well Warrant"); and (ii) substantially in the event of a Fundamental Transaction (as defined in the Second Amendment), regardless form of the actual number of securities of Demand Warrant, and each Replaced Keep Well Warrant will be deemed automatically cancelled. Each New Keep Well Warrant will (a) have the Company beneficially owned by Acuitas and its affiliates at same issuance date as the effective time thereof, Acuitas shall not be entitled to receive any consideration pursuant to such Fundamental Transaction Replaced Keep Well Warrant in respect of any shares underlying any which it was issued, (b) a term of five years from the original issuance date of the warrants Replaced Keep Well Warrant in respect of which it was issued, and (c) an initial exercise price equal to $0.3442 (after giving effect to the reduction of the exercise price of the November 2023 Warrants that occurred on April 5, 2024 described below), which will be subject to further adjustment in accordance with its terms and the terms of the Sixth Amendment.

Surviving Note. Effective as of the Sixth Amendment Stockholder Approval Effective Date, the conversion price of the Surviving Note will become equal to the lesser of (i) $0.36, and (ii) the greater of (a) the consolidated closing bid price of the Company's common stock as reported on the Exchange on the trading day that is immediately prior to the applicable conversion date of such note and (b) $0.12, which will be subject to further adjustment in accordance with its terms.

Sixth Amendment Stockholder Approval. The Company was required to seek stockholder approval (the "Sixth Amendment Stockholder Approval") in accordance with the Nasdaq listing rules of (a) the issuance of the (x) Demand Warrants, (y) the New Keep Well Warrants and (z) the Demand Notes, (b) the issuance of the shares of the Company's common stock upon exercise or conversion, as applicable, of the Demand Warrants, the New Keep Well Warrants, and the Demand Notes, and (c) any other terms of the Sixth Amendment that require approval of the Company's stockholders under the Nasdaq listing rules. See Note 14 below.

Waivers by Holders of Outstanding Warrants

On March 28, 2024, the Company and each holder of a Public Offering Warrant entered into a waiver and consent agreement (collectively, the “Public Offering Investor Waivers”), pursuant to which such holder agreed to waive, with respect to the transactions contemplated by the Sixth Amendment, certain limitations and prohibitions in the securities purchase agreement pursuant to which the Public Offering Warrants were issued that otherwise would have prohibited the Company from entering into Sixth Amendment and consummating the transactions contemplated thereby.

In addition, pursuant to the Public Offering Investor Waivers, the holders of the Public Offering Warrants agreed to the following adjustments to the exercise price of the Public Offering Warrants then in effect (in lieu of the adjustments that would otherwise be made in accordance with the terms of the Public Offering Warrants) in connection with the Sixth Amendment and the transactions contemplated thereby: (i) the exercise price was reduced to $0.36 per share at the time the Company entered into the Sixth Amendment; (ii) if $0.36 was greater than the lowest volume weighted average price (“VWAP”) of the Company’s common stock on any trading day during the five trading day period immediately following the public announcement of the

Company entering into the Sixth Amendment (the “Restricted Transaction Measuring Period”), then the exercise price per share would be further reduced to the lowest VWAP on any trading day during the Restricted Transaction Measuring Period; and (iii) if any senior secured promissory note issued under the Keep Well Agreement is converted into shares of the Company’s common stock at a conversion price per share less than the exercise price per share of the Public Offering Warrants then in effect, after giving effect to the preceding clauses (i) and (ii) and any adjustments pursuant to the terms of the Public Offering Warrant (other than Section 3(b) thereof), then the exercise price will be further reduced to such conversion price at such time of such conversion. Also on March 28, 2024, the Company and Humanitario entered into a waiver and agreement (the “Private Placement Investor Waiver” and together with the Public Offering Investors Waivers, the “Investor Waivers”) pursuant to which, among other things, Humanitario agreed to the adjustments to the exercise price of the Private Placement Warrant then in effect as described above for the Public Offering Warrants (in lieu of the adjustments that would otherwise be made in accordance with the terms of such warrant) in connection with the Sixth Amendment and the transactions contemplated thereby.

In order to enter into the Sixth Amendment, as described above, the Company and the holders of the Public Offering Warrants and Private Placement Warrants agreed to adjust the exercise price and simultaneously increase the number of shares of the Company's common stock issuable upon exercise of the Public Offering Warrants and Private Placement Warrants, as described above. The Company deemed this modification of warrants to be debt issuance costs, which was recorded at their relative fair value of $10.5 million as an other long-term asset included in "Other assets" on the Company's condensed consolidated balance sheet as of March 31, 2024 as there has been no issuance of the demand notes as of March 31, 2024.

The lowest VWAP on any trading day during the Restricted Transaction Measuring Period was $0.3442 (the five trading day ended on April 5, 2024). Accordingly, the exercise price of the Public Offering Warrants and the Private Placement Warrant (collectively, the “November 2023 Warrants”) was reduced to, and currently is, $0.3442 per share, which is subject to further adjustment in accordance with the terms of the Investor Waivers and the November 2023 Warrants.

In addition, as a result of the reduction of the exercise price of the November 2023 Warrants to $0.3442 per share described above, the initial exercise price of each Demand Warrant and each New Keep Well Warrant the Company issues, in each case, if and when issued, will be $0.3442 per share, which is subject to further adjustment in accordance with the Sixth Amendment and, as applicable, the Demand Warrant and New Keep Well Warrant.

Warrant Adjustment Provisions

In addition to customary adjustment in the event of stock dividends, stock splits, reorganizations or similar events affecting our common stock, the exercise price of the November 2023 Warrants, the Demand Warrants and New Keep Well Warrants, and the number of shares of common stock issuable upon exercise thereof are subject to adjustment upon the occurrence of the events described below (collectively, the “Warrant Adjustment Provisions”).

- *Adjustment in May 2026*. On May 14, 2026, the exercise price of the warrants will be reduced to the greater of (i) $0.1584 per share and (ii) the lesser of (x) the then exercise price and (y) the lowest volume weighted average price of our common stock on any trading day during the five trading day period immediately before May 14, 2026.

- *Alternative Exercise Price Following Certain Issuances*. If we issue or sell, or enter into any agreement to issue or sell, any common stock, common stock equivalents, or rights, warrants or options to purchase shares of our capital stock or common stock equivalents that are issuable or convertible into or exchangeable or exercisable for shares of our common stock at a price which varies or may vary with the market price of our common stock (excluding customary adjustments in the event of stock dividends, stock splits, reorganizations or similar events), the holder will have the right, in its sole discretion, to substitute the variable price for the exercise price of its warrants.

- *Adjustment for Stock Combination Events*. In the event of stock dividends, stock splits, reorganizations or similar events affecting our common stock (a “Stock Combination Event”), if the Event Market Price (as defined below) is less than the exercise price of the warrants then in effect (after giving effect to customary adjustments thereto as a result of the event), then on the 16th trading day immediately following the Stock Combination Event, the exercise price of the warrants will be reduced to the Event Market Price. “Event Market Price” means, with respect to any Stock Combination Event, the quotient determined by dividing (x) the sum of the volume weighted average price of our common stock for each of the five lowest trading days during the 20 consecutive trading day period ending and including the trading day immediately preceding the 16th trading day after the date of such Stock Combination Event, by (y) five.

- *Adjustment Upon Restricted Investor Subsequent Placement*. If at any time prior to June 20, 2027, we (1) grant, issue or sell (or enter into any agreement to grant, issue or sell) any shares issuable upon conversion of any Keep Well Note common stock, non-convertible indebtedness and/or common stock equivalents to Acuitas that would represent shares results in excess a reduction of the Issuance Cap if beneficially owned by exercise price in accordance with the terms of the warrants, or (2) consummate (or enter into any agreement with respect to) any other financing with Acuitas and/ (any transaction described in clause (1) or its affiliates (2), other than certain exempt issuances, a "Restricted Transaction") and the exercise price of the warrants is greater than the lowest volume weighted average price of our common stock on any trading day during the five trading day period immediately following the public announcement of such Restricted Transaction, then the exercise price of the warrants will be reduced to the lowest volume weighted average price on any trading day during such five trading day period.

- *Adjustment for Dilutive Issuances*. If we issue (or enter into any agreement to issue) any shares of our common stock or common stock equivalents, excluding certain exempt issuances, for a consideration per share less than the exercise price of the warrants in effect immediately prior to such effective time, issuance or deemed issuance, then the exercise price of the warrants will be reduced to an amount equal to the consideration per share at which the common stock or common stock equivalents were issued or deemed issued.

- *Adjustment to Number of Shares Issuable Upon Exercise*. Simultaneously with any adjustment to the exercise price on or prior to June 20, 2027, the number of shares of common stock issuable upon exercise will be increased or decreased proportionally, such that the aggregate exercise price of the warrants, after taking into account the adjustment in the exercise price, will be equal to the aggregate exercise price before the adjustment in the exercise price.

In the event of a fundamental transaction, as described in the November 2023 Warrants, the Demand Warrants and all warrants and New Keep Well Notes owned Warrants and which generally includes any reorganization, recapitalization or beneficially owned reclassification of our common stock, the sale, transfer or other disposition of all or substantially all of our properties or assets, our consolidation or merger with or into another person, the acquisition of more than 50% of our outstanding common stock, or any person or group becoming the beneficial owner of 50% of the voting power represented by Acuitas and/ our outstanding common stock, a holder of any of the November 2023 Warrants, the Demand Warrants or its affiliates at New Keep Well Warrants will be entitled to receive upon exercise thereof the effective time kind and amount of securities, cash or other property that the holder would have received had it exercised the holder's applicable warrant immediately prior to such fundamental transaction. Additionally, as more fully described in the November 2023 Warrants, the Demand Warrants and New Keep Well Warrants, in the event of certain fundamental transactions, the holder will be entitled to receive consideration in an amount equal to the Black Scholes Value (as defined in the warrants) of the warrants on the date of consummation of such Fundamental Transaction, solely to the extent that, if exercised or converted, such warrants and Keep Well Notes would result in the issuance of such excess shares, will be cancelled and forfeited without consideration therefor, effective as of such effective time; provided, however, that the foregoing shall not affect the Company's obligation to pay all amounts owed under such Keep Well Notes in connection with such Fundamental Transaction.

Covenants

The Keep Well Agreement contains customary covenants that must be complied with by the Company, including, among other covenants, restrictions on the Company's ability to incur debt, grant liens, make certain investments and acquisitions, pay dividends, repurchase equity interests, repay certain debt, amend certain contracts, enter into certain asset sale transactions, and covenants that require the Company to, among other things, provide annual, quarterly and monthly financial statements, together with related compliance certificates, maintain its property in good repair, maintain insurance and comply with applicable laws. Subject to certain customary exceptions, the Company also agreed not to incur any indebtedness or issue any shares of its capital stock or capital stock equivalents without Acuitas' consent until 180 days following the Final Funding Date.

As mentioned above, the Keep Well Agreement also includes the following financial covenants: a requirement that annualized consolidated recurring revenue for the preceding twelve months be at least $11.0 million tested monthly, and a requirement that consolidated liquidity must be greater than $5.0 million at all times. The Company was in compliance with such financial covenants as of September 30, 2023. transaction.

Borrowings Under the Keep Well Agreement

In February 2023, as a result of approvals obtained at the 2023 Special Meeting relating to the terms provided for in the Second Amendment, as described above, the Company determined that terms of the Keep Well Agreement as amended by the Second Amendment is substantially different from the terms in the Original Keep Well Agreement and that extinguishment of the senior

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secured notes issued under the Original Keep Well Agreement and recognition of a new debt instrument for the senior secured notes under the Original Keep Well Agreement as amended by the Second Amendment was appropriate. As such, in February 2023, the Company recorded the extinguishment of the senior secured notes under the Original Keep Well Agreement, resulting in a loss on extinguishment of debt of $2.2 million, which was recorded as part of additional paid in capital since the debt transaction is with Acuitas, a significant shareholder. The new debt instrument includes an embedded conversion feature, as described above, which was accounted for in accordance with ASU 2020-06, "Accounting for Convertible Instruments and Contracts in an Entity's Own Equity," which the Company adopted on January 1, 2022, and accordingly the Company did not separately present such embedded conversion feature in equity but rather accounted for the convertible debt wholly as debt. The Company also assessed and determined that the Keep Well Warrants qualified for equity classification and applied the relative fair value method to allocate proceeds from the debt issuance to the Keep Well Warrants. The Company incurred

$0.3 million of debt issuance costs related to the Second Amendment. The fair value of the Keep Well Warrants and new debt issuance costs relating to the Second Amendment were recorded as part of debt discount and accreted using the effective interest method over the contractual term of the debt.

In connection with the Fourth Amendment entered into in June 2023 discussed above, the Company incurred approximately $0.04 million of legal costs, which have been expensed as incurred as the Company determined that the Fourth Amendment was a modification of original debt terms.

As of September 30, 2023 At March 31, 2024, the Company borrowed a total of $19.0 $2.2 million, under the Keep Well Agreement. Each borrowing which includes $0.2 million of accrued paid-in-kind interest, was evidenced with the issuance of outstanding on a Keep Well Note. The Keep Well Note which will accrue accrues interest based on the adjusted term SOFR for each interest period. At September 30, 2023, the Company had a cumulative total of $3.7 million of accrued paid-in-kind interest on the Keep Well Notes, of which $1.2 million and $3.1 million were related to the three and nine months ended September 30, 2023, respectively. At September 30, 2023 March 31, 2024, the effective weighted average interest rate for the Keep Well Notes was 20.73% 21.08%.

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The net carrying amounts of the liability components consists of the following (in thousands):

		September 30, 2023	December 31, 2022	March 31, 2024	December 31, 2023
Principal	Principal	$ 22,663	$ 11,553		
Less: debt discount	Less: debt discount	(8,603)	(1,488)		
Net carrying amount	Net carrying amount	$ 14,060	$ 10,065		

The following table presents the interest expense recognized related to the Company's borrowings under the Keep Well Agreement and the 2024 Notes (as defined below) (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2023	2022	2023	2022
Contractual interest expense	$ 1,174	$ 320	$ 3,110	$ 2,264
Accretion of debt discount	1,210	225	2,850	729
Total interest expense	$ 2,384	$ 545	$ 5,960	$ 2,993

Securities Issued Under the Keep Well Agreement During 2022

Following approval of the Company's stockholders obtained at the annual stockholder meeting held on August 29, 2022, (a) on September 2, 2022, the Company issued 739,645 shares of its common stock (the "Commitment Shares") to Acuitas and (b) in August and September 2022, the Company issued to Acuitas warrants to purchase a total of 1,301,775 shares of the Company's common stock. The Commitment Shares and such warrants, which qualified for equity classification, were accounted for as debt discount based on their respective fair values determined at each issuance dates. The warrants have a term of five years and had an exercise price equal to $1.69, which was the closing price of the Company's common stock as reported on Nasdaq immediately preceding the time the parties entered into the Keep Well Agreement. As discussed above, as result of approvals obtained at the 2023 Special Meeting, each warrant issued under the Keep Well Agreement outstanding as of the date of such approval was

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exchanged for a new warrant to purchase shares of the Company's common stock that reflect the amendments to the warrants described above, including the increase in the warrant coverage and the decrease in the exercise price. Neither the number of Commitment Shares nor the number of shares of the Company's common stock subject to warrants issued to Acuitas described above give effect to the reverse stock split discussed in Note 1 above.

	Three Months Ended March 31,	
	2024	2023

Contractual interest expense	$ 112	$ 848
Accretion of debt discount	39	521
Total interest expense	$ 151	$ 1,369

Stockholders Agreement

Under the terms of the Keep Well Agreement, if Acuitas' beneficial ownership of the Company's capital stock equals at least a majority of the voting power of the Company's outstanding capital stock, Acuitas Capital and the Company agreed to enter into a stockholders agreement (the "Stockholders Agreement") pursuant to which, during any period that Acuitas' beneficial ownership of the Company's capital stock equals at least 50% of the Company's outstanding capital stock, Acuitas agreed to vote the shares of the Company's common stock it beneficially owns (a) in favor of an amendment to the certificate of incorporation or bylaws of the Company that would require the Company's board of directors to include not fewer than three independent directors at all times, (b) in favor of the election or re-election of independent directors nominated for election by the Company's board of directors or by the nominating committee thereof unless the failure of a nominee to be elected or re-elected to the Company's board of directors would not result in the Company having fewer than three independent directors following such election, and (c) against any proposal or action that would result in the Company's board of directors having fewer than three independent directors at all times. In addition, under the Stockholders Agreement, the parties agreed that, during any period that such beneficial ownership of Acuitas affiliates equals at least 50% of the Company's outstanding capital stock, the Company will not enter into any transaction between the Company or any of its affiliates, on the one hand, and Acuitas or any of its affiliates (excluding the Company and its affiliates), on the other hand, unless it is approved by a majority of the independent directors then serving on the Company's board of directors. The Stockholders Agreement was entered into on February 21, 2023.

2024 Notes

The Company was party to a Note Purchase Agreement dated September 24, 2019 (the "Note Agreement") with Goldman Sachs Specialty Lending Group, L.P. and any other purchasers party thereto from time to time (collectively, the "Holders"), as amended, pursuant to which the Company initially issued $35.0 million aggregate principal amount of senior secured notes (the "Initial 2024 Notes"). In August 2020, the Company issued an additional $10.0 million principal amount of senior secured notes as provided under the additional note purchase commitment of the Note Agreement (together with the Initial 2024 Notes, the "2024 Notes"). On February 14, 2022, the Company repaid $9.0 million of the outstanding balance of the 2024 Notes. On March 8, 2022, the Company entered into an Eight Amendment to Note Purchase Agreement with the Holders (the "Eighth Amendment"), which among other things, amended certain financial covenants intended to increase the Company's financial flexibility, required a prepayment of $11.0 million of the outstanding loan balance without the incurrence of a yield maintenance premium or prepayment fee, which prepayment was made by the Company on March 8, 2022. On July 15, 2022, the Company entered into a payoff letter agreement with the holders of the 2024 Notes, pursuant to which the Company paid in full the outstanding loan balance under the 2024 Notes of approximately $7.6 million, which included $0.1 million of accrued interest as of July 15, 2022. All obligations owing by the Company and the other Note Parties (as defined in the Note Purchase Agreement) under the Note Purchase Agreement were released, discharged and satisfied in full, the Note Purchase Agreement and all other Note Documents (as defined in the Note Agreement) were terminated (other than those provisions therein that expressly survive termination), and all liens securing the Company's obligations under the Note Agreement were released. In July 2022, the Company wrote off the remaining $1.3 million of debt issuance costs related to the 2024 Notes.

In connection with entering into the Eighth Amendment, the Company issued to Special Situations Investing Group II, LLC ("Special Situations"), a warrant (the "Amendment Warrant") to purchase up to 111,680 shares of the Company's common stock (18,614 shares as adjusted for the reverse stock split discussed in Note 1 above). Also, the Company agreed to issue to Special Situations, beginning March 31, 2022 and until the earlier of (i) date the 2024 Notes have been paid in full and (ii) October 31, 2022, additional warrants (each a "Ticking Warrant") to purchase a number of shares of the Company's common stock equal to $47,500, to be calculated based on the volume weighted average trading price of the Company's common stock during the five (5) trading day period immediately preceding the date such Ticking Warrant is issued, not to exceed 7% of the outstanding shares of the Company's common stock on the date of the Eighth Amendment. The Amendment Warrant and each Ticking Warrant have an exercise price equal to $0.01 per share ($0.06 per share as adjusted for the reverse stock split discussed in Note 1 above) and expire on September 24, 2026. As of September 30, 2023, Ticking Warrants to purchase 118,931 shares of the Company's common stock (19,823 shares as adjusted for the reverse stock split discussed in Note 1 above) were outstanding. The Company assessed and separated the warrants into liability and equity components, wherein the Amendment Warrant qualified for equity classification and the Ticking Warrants qualified for liability classification. See Notes 8 and 11 for more information.

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Other

During August through and November 2022, the Company financed a total of $2.5 million of its insurance premiums at an annual weighted average effective rate of 5.9%, payable in 10 to 11 equal monthly installments and down payments totaling $0.2 million at inception of each financing agreement. During August and September 2023, the Company financed a total of $0.3 $2.1 million of its insurance premiums at annual weighted average effective rate of 4.7% 8.7%, payable in 10 9 to 11 equal monthly installments and down payments totaling $0.03 $0.4 million. At September 30, 2023 March 31, 2024 and December 31, 2022 December 31, 2023, there was $0.4 $0.9 million and $2.0 $1.4 million, respectively, relating to such financed insurance premium outstanding, which were included as part of "Other accrued liabilities" on our condensed consolidated balance sheet as of each respective period.

Note 11. Fair Value Measurements

Fair value is defined as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. Assets and liabilities recorded at fair value in the condensed consolidated balance sheets are categorized based upon the level of judgment associated with the inputs used to measure fair value. The fair value hierarchy distinguishes between (1) market participant assumptions developed based on market data obtained from independent sources (observable inputs) and (2) an entity's own assumptions about market participant assumptions developed based on the best information available in the circumstances (unobservable inputs). The fair value hierarchy consists of three

broad levels, which gives the highest priority to unadjusted quoted prices in active markets for identical assets or liabilities (Level I) and the lowest priority to unobservable inputs (Level III). The three levels of the fair value hierarchy are described below:

Level Input	Input Definition
Level I	Inputs are unadjusted, quoted prices for identical assets or liabilities in active markets at the measurement date.
Level II	Inputs, other than quoted prices included in Level I, that are observable for the asset or liability through corroboration with market data at the measurement date.
Level III	Unobservable inputs that reflect management's best estimate of what market participants would use in pricing the asset or liability at the measurement date.

The following tables summarize fair value measurements by level for assets and liabilities measured at fair value on a recurring basis as of the periods presented (in thousands):

	Balance as of September 30, 2023			
	Level I	Level II	Level III	Total
Contingent consideration (1)	$ —	$ —	$ 64	$ 64
Warrant liabilities (2)	—	—	17	17
Total liabilities	$ —	$ —	$ 81	$ 81

	Balance as of March 31, 2024			
	Level I	Level II	Level III	Total
Warrant liabilities (1)	$ —	$ —	$ 10	$ 10
Total liabilities	$ —	$ —	$ 10	$ 10

	Balance as of December 31, 2022			
	Level I	Level II	Level III	Total
Letter of credit (3)	$ 204	$ —	$ —	$ 204
Total assets	$ 204	$ —	$ —	$ 204
Contingent consideration (1)	$ —	$ —	$ 64	$ 64
Warrant liabilities (2)	—	—	43	43
Total liabilities	$ —	$ —	$ 107	$ 107

	Balance as of December 31, 2023			
	Level I	Level II	Level III	Total
Contingent consideration (2)	$ —	$ —	$ 64	$ 64
Warrant liabilities (1)	—	—	8	8
Total liabilities	$ —	$ —	$ 72	$ 72

(1) Included in "Other accrued liabilities" on our condensed consolidated balance sheets as of September 30, 2023 and December 31, 2022.
(2) Relates to Ticking Warrant warrants issued in connection with the Eight Amendment to the 2024 Notes Note Purchase Agreement with Goldman Sachs Specialty Lending Group, L.P., executed on March 8, 2022, as discussed in Note 10 above, and included in "Other accrued liabilities" on our condensed consolidated balance sheet as of September 30, 2023 March 31, 2024 and December 31, 2022 December 31, 2023.
(3) (2) Included in "Restricted cash - long term" "Other accrued liabilities" on our condensed consolidated balance sheets as of December 31, 2022 December 31, 2023.

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Financial instruments classified as Level III in the fair value hierarchy as of September 30, 2023 March 31, 2024 and December 31, 2022 2023 represent liabilities measured at market value on a recurring basis and include warrant liabilities relating to Ticking Warrants warrants issued in connection with an amendment to our debt agreement for the 2024 Notes, as discussed in Note 10, Purchase Agreement dated September 24, 2019, and contingent consideration relating to a stock price guarantee provided in an acquisition (see further discussion below regarding this contingent consideration). In accordance with current accounting rules, the warrant liabilities and contingent consideration liability are marked-to-market each quarter-end until they are completely settled or expire. The fair value of the warrant liabilities was valued using the Black-Scholes pricing model, using both observable and unobservable inputs and assumptions consistent with those used in the estimate of fair value of employee stock options. The fair value of the contingent consideration liability was valued using the Monte Carlo simulation model, using both observable and unobservable inputs and assumptions.

The carrying value of the Keep Well Notes is estimated to approximate their respective fair values as the variable interest rate of the notes approximates the market rate for debt with similar terms and risk characteristics.

The fair value measurements using significant Level III inputs, and changes therein, was as follows (in thousands):

		Level III Contingent Consideration
Balance as of September 30, 2023 and December 31, 2022 December 31, 2023	$	64
Settlement of contingent consideration		(64)
Balance as of March 31, 2024	$	—

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The $0.1 million of contingent consideration liability, relating to a stock price guarantee in our acquisition of LifeDojo Inc. completed in October 2020, was included in "Other accrued liabilities" on our condensed consolidated balance sheets as of September 30, 2023 and December 31, 2022 December 31, 2023.

In January 2024, the Company issued 1,238 shares of common stock, representing full settlement of the contingent consideration liability.

Warrant Liabilities

		Level III Warrant Liabilities
Balance as of December 31, 2022 December 31, 2023	$	43 8
Gain Loss on change in fair value of warrant liabilities		(26) 2
Balance as of September 30, 2023 March 31, 2024	$	17 10

The assumptions used in the Black-Scholes warrant-pricing model were determined as follows:

	September 30, 2023 March 31, 2024
Volatility	100.0 %
Risk-free interest rate	4.88 4.40 %
Weighted average expected life (in years)	3.03 2.52
Dividend yield	0 %

Note 12. Variable Interest Entities

Generally, an entity is defined as a Variable Interest Entity ("VIE") under current accounting rules if it either lacks sufficient equity to finance its activities without additional subordinated financial support, or it is structured such that the holders of the voting rights do not substantively participate in the gains and losses of the entity. When determining whether an entity that meets the definition of a business, qualifies for a scope exception from applying VIE guidance, the Company considers whether: (i) it has participated significantly in the design of the entity, (ii) it has provided more than half of the total financial support to the entity, and (iii) substantially all of the activities of the VIE are conducted on its behalf. A VIE is consolidated by its primary beneficiary, the party that has the power to direct the activities that most significantly affect the economics of the VIE and has the

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right to receive benefits or the obligation to absorb losses of the entity that could be potentially significant to the VIE. The primary beneficiary assessment must be re-evaluated on an ongoing basis.

As discussed under the heading *Management Services Agreements* ("MSA") below, the Company has an MSA with a Texas nonprofit health organization ("TIH") and a California Professional Corporation ("CIH"). Under the MSAs, the equity owners of TIH and CIH have only a nominal equity investment at risk, and the Company absorbs or receives a majority of the entity's expected losses or benefits. The Company participates significantly in the design of these MSAs. The Company also agrees to provide working capital loans to allow for TIH and CIH to fund their day to day obligations. Substantially all of the activities of TIH and CIH, including its decision making and approvals are conducted for its benefit, as evidenced by the fact that (i) the operations of TIH and CIH are conducted primarily using the Company's licensed network of providers and (ii) under the MSA, the Company agrees to provide and perform all non-medical management and administrative services for the entities. Payment of the Company's management fee by TIH and CIH is subordinate to payments of the other obligations of TIH and CIH, and repayment of the working capital loans is not guaranteed by the equity owner of the affiliated medical group or other third party. Creditors of TIH and CIH do not have recourse to the Company's general credit.

Based on the design of the entity and the lack of sufficient equity to finance its activities without additional working capital loans, the Company has determined that TIH and CIH are VIEs. The Company, as the primary beneficiary, is required to consolidate the VIE entities as it has power and potentially significant interests in the entities. Accordingly, the Company is required to consolidate the assets, liabilities, revenues and expenses of the managed treatment centers.

Management Services Agreements

In April 2018, the Company executed an MSA with TIH and in July 2018, the Company executed an MSA with CIH. Under the MSAs, the Company licenses to TIH and CIH the right to use its proprietary treatment programs and related trademarks, and provides all required day-to-day business management services, including, but not limited to:

- general administrative support services;
- information systems;
- recordkeeping;
- billing and collection; and
- obtaining and maintaining all federal, state and local licenses, certifications and regulatory permits.

All clinical matters relating to the operation of TIH and CIH and the performance of clinical services through the network of providers shall be the sole and exclusive responsibility of the TIH and CIH Board free of any control or direction from the Company.

TIH pays the Company a monthly fee equal to the aggregate amount of (a) its costs of providing management services (including reasonable overhead allocated to the delivery of its services and including salaries, rent, equipment, and tenant improvements incurred for the benefit of the medical group, provided that any capitalized costs will be amortized over a five-year period), (b) 10%-15% of the foregoing costs, and (c) any performance bonus amount, as determined by TIH at its sole discretion.

CIH pays the Company a monthly fee equal to the aggregate amount of (a) its costs of providing management services (including reasonable overhead allocated to the delivery of its services and including salaries, rent, equipment, and tenant improvements incurred for the benefit of the entity, provided that any capitalized costs will be amortized over a five-year period), and (b) any performance bonus amount, as determined by CIH at its sole discretion.

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The Company's condensed consolidated balance sheets include the following assets and liabilities from its TIH and CIH VIEs (in thousands):

	March 31, 2024
	March 31, 2024
	March 31, 2024
Cash	
Cash	
Cash	

			September 30, 2023		December 31, 2022
Cash and cash equivalents		$	1,629	$	686
Accounts receivable			—		381
Unbilled receivables					
Unbilled receivables					
Unbilled receivables	Unbilled receivables		119		90
Prepaid and other current assets	Prepaid and other current assets		40		116
Prepaid and other current assets					
Prepaid and other current assets					
Total assets					
Total assets					
Total assets	Total assets	$	1,788	$	1,273
Accrued liabilities	Accrued liabilities	$	41	$	119
Accrued liabilities					
Accrued liabilities					
Deferred revenue					
Deferred revenue					
Deferred revenue	Deferred revenue		89		52
Payables to Ontrak	Payables to Ontrak		2,098		1,602
Payables to Ontrak					
Payables to Ontrak					
Total liabilities	Total liabilities	$	2,228	$	1,773
Total liabilities					
Total liabilities					

Note 13. Commitments and Contingencies

From time to time, we are subject to various legal proceedings that arise in the normal course of our business activities. As of the date of this report, we are not party to any litigation the outcome of which, if determined adversely to us, would individually or in the aggregate be reasonably expected to have a material adverse effect on our results of operations or financial position, except the following:

Loss Contingencies

On March 3, 2021, a purported securities class action was filed in the United States District Court for the Central District of California, entitled *Farhar v. Ontrak, Inc*., Case No. 2:21-cv-01987. On March 19, 2021, another similar lawsuit was filed in the same court, entitled *Yildrim v. Ontrak, Inc*., Case No. 2:21-cv-02460. On July 14, 2021, the Court consolidated the two actions

under the Farhar case ("Consolidated Class Action"), appointed Ibinabo Dick as lead plaintiff, and the Rosen Law Firm as lead counsel. On August 13, 2021, lead plaintiff filed a consolidated amended complaint. In the Consolidated Amended Complaint, lead plaintiff, purportedly on behalf of a putative class of purchasers of Ontrak securities from August 5, 2020 through February 26, 2021, alleges that the Company and Terren S. Peizer, Brandon H. LaVerne and Curtis Medeiros, violated Sections 10(b) and 20(a) of the Securities Exchange Act of 1934, 15 U.S.C. §§ 78j(b), 78t(a), and Rule 10b-5, 17 C.F.R. § 240.10b-5, promulgated thereunder, by intentionally or recklessly making false and misleading statements and omissions in various press releases, SEC filings and conference calls with investors on August 5, 2020 and November 5, 2020. Specifically, the Consolidated Amended Complaint alleges that the Company was inappropriately billing its largest customer, Aetna, causing Aetna to, in May 2020, shut off its data feed to Ontrak, and, in July 2020, require Ontrak to complete a Corrective Action Plan ("CAP"). Lead plaintiff alleges that defendants: (1) misrepresented to investors that the data feed was shut off in July 2020, and that it was part of Aetna's standard compliance review of all of its vendors; (2) failed to disclose to investors that Aetna had issued the CAP; and (3) failed to disclose to investors that Ontrak was engaging in inappropriate billing practices. Lead plaintiff seeks certification of a class and monetary damages in an indeterminate amount. On September 13, 2021, defendants filed a motion to dismiss the Consolidated Amended Complaint for failure to state a claim under Federal Rules of Civil Procedure 12(b)(6) and 9(b) and the Private Securities Litigation Reform Act of 1995, 15 U.S.C. §§ 78u-4, et seq. The motion was taken under submission, with no oral argument. Prior to any ruling being issued on the motion to dismiss, on March 29, 2023, lead plaintiff filed a Second Amended Complaint. The Second Amended Complaint (1) adds Jonathan Mayhew as a defendant; (2) expands the purported class period to August 5, 2020 through August 19, 2021; and (3) now includes allegations that the defendants additionally intentionally or recklessly made false and misleading statements and omissions regarding the Company's relationship with its then-second largest customer, Cigna, in various press releases, SEC filings and conference calls with investors on May 6, 2021 and August 5, 2021. On May 15, 2023, the Company filed its motion to dismiss the Second Amended Complaint. On February 2, 2024, the Court issued an order granting the Company's motion to dismiss in its entirety and providing lead plaintiff leave to amend. On March 5, 2024, lead plaintiff filed its Third Amended Complaint, which asserts the same claims, against the same defendants for the same purported class period. On March 19, 2024, the Company filed its motion to dismiss the Third Amended Complaint. That motion is now fully-briefed, fully briefed and has been taken under submission by the Court. The Company believes that the allegations lack merit and intends to defend against the action vigorously.

On August 6, 2021, a purported stockholder derivative complaint was filed in the United States District Court for the Central District of California, entitled *Aptor v. Peizer*, Case No. 2:21-cv-06371, alleging breach of fiduciary duty on behalf of the Company against Terren S. Peizer, Brandon H. LaVerne, Richard A. Berman, Michael Sherman, Diane Seloff, Robert Rebak, Gustavo Giraldo and Katherine Quinn, and contribution against Terren S. Peizer and Brandon H. LaVerne. On October 6, 2021, a similar shareholder derivative action was filed in the same Court, entitled *Anderson v. Peizer*, Case No. 2:21-cv-07998, for breach of fiduciary duty, abuse of control, unjust enrichment, gross mismanagement and waste of corporate assets against Terren S. Peizer, Brandon H. LaVerne, Curtis Medeiros, Richard A. Berman, Michael Sherman, Edward Zecchini, Diane Seloff, Robert Rebak, Gustavo Giraldo, and Katherine Quinn, and contribution against Terren S. Peizer, Brandon H. LaVerne and Curtis Medeiros. On December 1, 2021, a similar shareholder derivative action was filed in the United States District Court for the District of Delaware, entitled *Vega v. Peizer*, Case No. 1:21-cv-01701, for violation of Section 20(a) of the Exchange Act, breach of fiduciary duty, unjust enrichment and waste of corporate assets against Terren S. Peizer, Brandon H. LaVerne, Curtis Medeiros, Richard A. Berman, Michael Sherman, Edward Zecchini, Diane Seloff, Robert Rebak, Gustavo Giraldo, and Katherine Quinn. In these actions, plaintiffs allege that the defendants breached their fiduciary duties by allowing or causing the Company to violate the federal securities laws as alleged in the Consolidated Class Action discussed above. The plaintiffs seek damages (and contribution from the officers) in an indeterminate amount. On December 7, 2021, the Court in the Central District of California consolidated the two Central District of California actions under the *Aptor* case caption and number (the "Consolidated Derivative Action"), stayed the action pending a ruling on the Motion to Dismiss in the Consolidated Class Action and ordered plaintiffs to file a consolidated amended complaint within fourteen (14) days of a ruling on the Motion to Dismiss in the Consolidated Class Action. On February 7, 2022, the Court in the District of Delaware extended the deadline for defendants to respond to the complaint in the *Vega* action to April 8, 2022. On March 21, 2022, the Court in the District of Delaware granted plaintiff's unopposed motion to transfer the case to the United States District Court for Central District of California in the interest of judicial efficiency due to the Consolidated Class Action and Consolidated Derivative Action already pending in that district, and that same day the case was transferred into the United States District Court for Central District of California and given the new Case No. 2:22-cv-01873-CAS-AS. On April 11, 2022, the Court stayed the action pending a ruling on the Motion to Dismiss in the Consolidated Class Action and ordered plaintiffs to inform defendants regarding their intention to amend their initial complaint within thirty (30) days of said ruling. On February 14, 2024, the parties in Consolidated Derivative Action stipulated to an extension of the stay pending a ruling on Ontrak's anticipated motion to dismiss the forthcoming amended complaint filed by lead plaintiff in the Consolidated Class Action. On April 8, 2024, the parties in the Vega action did the same. On January 25, 2024, another purported stockholder derivative complaint was filed in the Court of Chancery of the State of Delaware, entitled

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Dutkiewicz v. Acuitas Group Holdings LLC ("Acuitas"), Case No. 2024-0068, alleging breach of fiduciary duty under Brophy and unjust enrichment against Acuitas and Terren S. Peizer and breach of fiduciary duties generally against Acuitas, Terren S. Peizer, Brandon H. LaVerne, Jonathan Mayhew, Curtis Medeiros, Richard A. Berman, Michael Sherman, Edward Zecchini, Diane Seloff, Robert Rebak, Gustavo Giraldo, Katherine Quinn and Robert Newton. Ontrak's response date to this new derivative complaint is not yet set. Although all of the claims asserted in these actions purport to seek recovery on behalf of the Company, the Company will incur certain expenses due to indemnification and advancement obligations with respect to the defendants. The Company understands that defendants believe these actions are without merit and intend to defend themselves vigorously.

On February 28, 2022, a purported securities class action was filed in the Superior Court of California for Los Angeles County, entitled *Braun v. Ontrak, Inc., et al*., Case No. 22STCV07174. The plaintiff filed this action purportedly on behalf of a putative class of all purchasers of the Series A Preferred Stock pursuant to Registration Statements and Prospectuses issued in connection with Ontrak's August 21, 2020 initial public stock offering, its September 2020 through December 2020 "at market" offering, and its December 16, 2020 follow-on stock offering (collectively, the "Preferred Stock Offerings"). The plaintiff brings this action against the Company; its officers: Terren S. Peizer, Brandon H. LaVerne, and Christopher Shirley; its board members: Richard A. Berman, Sharon Gabrielson, Gustavo Giraldo, Katherine B. Quinn, Robert Rebak, Diane Seloff, Michael Sherman, and Edward Zecchini; and the investment banking firms that acted as underwriters for the Preferred Stock Offerings: B. Riley Securities, Inc., Ladenburg Thalmann & Co., Inc., William Blair & Company, LLC, Aegis Capital Corp., Insperex LLC (f/k/a Incapital LLC), The Benchmark Company, LLC, Boenning & Scatteredgood, Inc., Colliers Securities, LLC, Kingswood Capital Markets, and ThinkEquity (the "Underwriters"). The plaintiff asserts three causes of action alleging that Ontrak violated § 11, § 12(a)(2), and § 15 of the Securities Act of 1933, respectively, (1) by failing to disclose facts required to be disclosed under SEC Regulation S-K items 105 and 303 – that Aetna had turned off the data feed of customer records to Ontrak citing dissatisfaction with the Company's value proposition and billing practices and thereafter submitted a CAP to which Ontrak's senior executives were unable to effectively respond; and (2) by issuing allegedly false or misleading statements in its Registration Statements and Prospectuses: (a) regarding Ontrak's growing customer base; (b) regarding its ability to scale its operations; (c) that revenue from a limited number of its customers would continue; (d) that its services are provided to customers continuously; (e) that revenue increases were attributable to continued expansion of the Ontrak program; and (f) regarding the healthcare experience of its executives. The plaintiff seeks damages in an indeterminate amount. On July 7, 2022, the defendants filed demurrers to the complaint. On October 4, 2022, the Court issued its ruling, allowing the case to proceed but with a narrowed scope. Specifically, of the six alleged misleading statements, only two remain (that Ontrak had a growing "growing customer base" and that Ontrak's revenue growth was attributed to "[t]he continued expansion of [its] Ontrak program with [its] existing health plan customers"). The Court sustained the Company's demurrer to the second cause of action, for violation of Section 12 of the Securities Act of 1933, with 1933; while the Court granted leave to amend. amend the plaintiff determined not to amend to pursue that claim. The Company believes that the remaining allegations lack merit and intends to defend against the action vigorously.

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On November 18, 2022, plaintiff filed his Motion for Class Certification. On February 17, 2023, the Company filed its opposition and joined in the opposition of the Underwriters. On April 17, 2023, Plaintiff's filed their reply. On May 26, 2023, the defendants filed an omnibus sur-reply. The hearing on plaintiff's Motion was held on June 16, 2023. In advance of the hearing, the Court issued a tentative ruling certifying the Section 11 and 15 aspects of the class but denying certification of the Section 12 aspect of the class at this time, with leave for plaintiff to find a new class representative for the Section 12 subclass. Following oral argument, the Court took the Motion under submission and thereafter issued its "final ruling" on class certification on June 30, 2023. In its ruling, the Court largely adopted its tentative ruling and found the class is ascertainable as to all causes of action but that plaintiff's Section 12 claims were not typical of the class. The Court indicated it "would be inclined" to grant plaintiff leave to amend the complaint, divide the class into subclasses for each cause of action, certify the Section 11 and Section 15 classes, while granting plaintiff leave to find a new class representative for the Section 12 claims. The Court set an interim status conference for August 31, 2023 and continued the hearing on plaintiff's motion for class certification to October 10, 2023. At the interim status conference on August 31, 2023, plaintiff indicated he would not be pursuing a Section 12 sub-class and will not be amending the complaint or identifying a new class representative to pursue that claim. On October 12, 2023, the Court issued its ruling granting plaintiff's Motion and certifying the class as to the Section 11 and Section 15 claims only.

On May 1, 2023, the parties filed a joint stipulation requesting that the Court set the following additional dates: (1) January 31, 2024, for the parties to complete fact discovery; (2) May 30, 2024, for the parties to complete expert discovery; (3) June 14, 2024, for the parties to file dispositive motions; and (4) October 15, 2024, for trial. On September 8, 2023, plaintiff served notice, at the Court's direction, that trial was set for October 15, 2024 and that a final pre-trial conference would be held on October 1, 2024.

The parties have been were engaged in the early stages of discovery. However, on discovery until November 3, 2023, when the United States Attorneys' Office filed an application for leave to intervene and stay discovery pending resolution of a federal criminal case. On November 8, 2023, the Court set the Government's motion for hearing on December 14, 2023 and issued an order temporarily staying all discovery in the action pending resolution of the motion. On December 14, 2023, the Court granted the application for leave to intervene and stay discovery, staying discovery until June 25, 2024, or until criminal case reaches its conclusion at the trial level. The Court also vacated the previously set trial and related dates.

Securities Investigation

On November 15, 2022, the Company received a notification from the SEC, Division of Enforcement, that it is conducting an investigation captioned "In "In the Matter of Trading in the Securities of Ontrak, Inc. (HO-14340)" " and issued a preservation letter as well as a subpoena for documents relating to the investigation. The notification indicates the investigation is a fact-finding inquiry for compliance with federal securities laws and should not be construed as an indication by the SEC that any violation of law has occurred, nor as a reflection upon any person, entity or security. The Company has been cooperating fully cooperated with the terms of the subpoena.

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On March 1, 2023, the DOJ announced charges and the SEC filed a civil complaint against Terren S. Peizer, our Ontrak's former Chief Executive Officer and Chairman of our Board of Directors, alleging unlawful insider trading in our stock. Neither the Company nor any other current or former director or employee of the Company were charged by the DOJ or sued by the SEC. The Company cannot predict the ultimate outcome of the DOJ or SEC proceedings, nor can it predict whether any other governmental authorities will initiate separate investigations or litigation. Investigations and any related legal and administrative proceedings could include a wide variety of outcomes, including the institution of administrative, civil injunctive or criminal proceedings involving the Company and/or its current or former executives and/or directors, the imposition of fines and other penalties, remedies and/or sanctions.

Note 14. Subsequent Event Events

Customer Notification Issuance of Demand Notes

On October 10, 2023 Under the Sixth Amendment, on April 5, 2024, the Company was notified by issued and sold to Acuitas, and Acuitas purchased from the Company, the Initial Demand Note with a health plan customer principal amount of its intent not to continue using the Company's services after February 2024. The customer advised us to cease enrollment of any new members from that customer immediately. The customer also informed us that its decision was related to the customer's change in strategy and not reflective of the performance or value of the Company's services. For the three and nine months ended September 30, 2023, we billed this customer approximately $1.2 million and $3.1 million, respectively, representing 32.6% and 33.8%, respectively, of our total revenue.

ONTRAK, INC.
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(unaudited)

Preferred Stock

$1.5 million. On October 11, 2023 May 8, 2024, the Company received a letter issued and sold to Acuitas, and Acuitas purchased from Nasdaq informing the Company, that it is not eligible for another Demand Note with a second 180-day compliance period within which to regain compliance with the Minimum Bid Price Requirement for the Series A Preferred Stock and that Nasdaq determined that the Preferred Stock would be delisted from The Nasdaq Capital Market and would be suspended at the opening of business on October 20, 2023. On November 20, 2023, The Nasdaq Stock Market filed a Form 25-NSE with the SEC to remove the Series A Preferred Stock from listing and registration on The Nasdaq Stock Market. The Series A Preferred Stock currently trades in the over-the-counter OTC Markets system.

Fifth Amendment to Keep Well Agreement and Letter Agreement

On October 31, 2023, the Company and Acuitas Capital entered into a Fifth Amendment to the Master Note Purchase Agreement, as amended (the "Fifth Amendment"), which, among other things, provides the following:

Changes to Qualified Financing. Under the Fifth Amendment, the minimum amount to be raised in an equity financing for such financing to constitute a "Qualified Financing" was reduced from $10.0 million to $8.0 million, and the deadline by when a Qualified Financing must be completed before the Company is required to withdraw the Escrowed Funds was extended from October 31, 2023 to January 31, 2024. Under a letter agreement entered into on November 9, 2023, the minimum amount to be raised in an equity financing for such financing to constitute a "Qualified Financing" was further reduced to $6.0 million.

Conversion of Keep Well Notes. Under the Fifth Amendment, if the Company completes a Qualified Financing, Acuitas has agreed to convert into shares of the Company's common stock the aggregate principal amount of $1.5 million. As of the Keep Well Notes plus all accrued and unpaid interest thereon, minus (a) $7.0 million, minus (b) filing date of this report, under the principal amount of any Keep Well Notes purchased with funds Sixth Amendment, in Acuitas' sole discretion, Acuitas may purchase from the Escrow Account prior to the closing of the Qualified Financing, if any, in accordance with the terms (including the conversion price) of the Keep Well Agreement and the Keep Well Notes (the "Notes Conversion"); provided that if the offering price per share at which the shares of common stock and accompanying warrants are sold to the public in the Qualified Financing (the "Offering Price") is less than the conversion price at which Keep Well Notes are converted, upon the effectiveness of the Stockholder Approval Matters (as defined below): (1) we will issue to Acuitas such additional shares of common stock such that the total number of shares of common stock issued in respect of the Notes Conversion plus such additional shares of common stock would equal the number of shares that we would have issued in respect of the Notes Conversion if the Keep Well Notes converted in the Notes Conversion were converted at a conversion price equal to the Offering Price; and (2) the exercise price of the warrants issued to Acuitas in connection with the Notes Conversion (the "Conversion Warrants") would be reduced to the Offering Price and the number of shares of common stock subject to the Conversion Warrants would be increased to the number of shares of common stock that would have been subject to the Conversion Warrants if the Keep Well Notes were converted at a conversion price equal to the Offering Price.

Private Placement. In lieu of the provisions set forth in the Fourth Amendment concerning the investment of Escrowed Funds in the offering that constitutes a Qualified Financing, the Fifth Amendment provides that if an offering constitutes a Qualified Financing, the Company, and Acuitas will immediately prior to, or simultaneously with the closing of such offering, consummate a private placement (the "Private Placement") of $11.0 million of unregistered pre-funded warrants to purchase shares of the Company's common stock (the "Private Placement Pre-Funded Warrants") and unregistered warrants to purchase shares of the Company's common stock (the "Private Placement Warrants," and together with the Private Placement Pre-Funded Warrants, the "Private Placement Securities"). The material terms of the Private Placement Securities will be substantially similar to the material terms of the pre-funded warrants and the warrants offered in the offering that constitutes a Qualified Financing, except that the Private Placement Securities will have registration rights. The consideration for the Private Placement Securities purchased by Acuitas will consist of (a) the Escrowed Funds then held in the Escrow Account, and (b) a reduction of the aggregate amounts outstanding under the Keep Well Notes (after giving effect to the Notes Conversion) to $2.0 million (the "Surviving Notes"). Each Private Placement Pre-Funded Warrant will be sold together with two Private Placement Warrants with each Private Placement Warrant exercisable for one share of our common stock.

Surviving Notes. Under the Fifth Amendment, the maturity date of the Surviving Notes was extended from September 30, 2024 to the date that is two years and six months after the closing date of the offering that constitutes a Qualified Financing, unless the Surviving Notes become due and payable in full earlier, whether by acceleration or otherwise. In addition, if the Offering Price is lower than $0.90, then, subject to the effectiveness of the Stockholder Approval Matters, the $0.90 floor on the conversion price of the Surviving Notes will be replaced with the Offering Price.

Stockholder Approval. Under the Fifth Amendment, the Company is required to seek stockholder approval in accordance with the rules of the Nasdaq Stock Market (the "Listing Rules") of (A) the issuance of the shares of the Company's common stock issuable upon exercise of (x) the warrants and the pre-funded warrants sold in the offering that constitutes a Qualified Financing and (y) the Private Placement Securities that, in the aggregate for clauses (x) and (y) above, are in excess of the maximum number of shares of the Company's common stock permitted to be issued without such approval under Nasdaq's listing rules (which amount is equal to 19.99% of the total number of shares of the Company's common stock outstanding immediately following the Notes Conversion and immediately prior to the closing of the offering that constitutes a Qualified Financing and/or the Private Placement), (B) the amendment to the conversion price of the Surviving Notes described above, (C) the elimination of the Issuance Cap, and (D) any other terms of the offering that constitutes a Qualified Financing, the Private Placement and/or the Fifth Amendment that require approval of the Company's stockholders under Nasdaq's listing rules (collectively, the "Stockholder Approval Matters").

Support Agreement. In connection with entering into the Fifth Amendment, on October 31, 2023, the Company and Acuitas entered into a support agreement pursuant to which Acuitas has agreed to vote the shares of the Company's common stock it beneficially owns in favor of the Stockholder Approval Matters.

Public Offering, Private Placement and Notes Conversion

On November 14, 2023, the Company completed its previously announced public offering (the “Public Offering”). In the Public Offering, the Company issued (a) 4,592,068 shares of its common stock and 9,184,136 warrants to purchase up to 9,184,136 shares of its common stock at a combined public offering price of $0.60 per share of common stock and accompanying warrants (the “Public Offering Price”), and (b) 5,907,932 pre-funded warrants to purchase up to 5,907,932 shares of its common stock (the “Public Offering Pre-Funded Warrants”) and 11,815,864 warrants to purchase up to 11,815,864 shares of its common stock at a combined public offering price of $0.5999 per Public Offering Pre-Funded Warrant and accompanying warrants, which represents the per share public offering price for the common stock and accompanying warrants less the $0.0001 per share exercise price for each Public Offering Pre-Funded Warrant. The Company refers to the warrants sold in the Public Offering accompanying the shares of common stock and the Public Offering Pre-Funded Warrants as the “Public Offering Warrants.” The Company received gross proceeds of $6.3 million from the Public Offering, and therefore the Public Offering constituted a Qualified Financing. Total net proceeds was approximately $5.5 million (net of approximately $0.8 million of offering related fees and expenses, not including the fee payable relating to the Private Placement discussed below). The Public Offering Warrants have an exercise price of $0.85 per share. The exercisability of the Public Offering Pre-Funded Warrants and the Public Offering Warrants are subject to the effectiveness of the Stockholder Approval Matters, and will expire five years from the effectiveness thereof.

In accordance with the Fifth Amendment, concurrent with the closing of the Public Offering, the Company issued to Humanitario Capital LLC, an affiliate of Acuitas Capital LLC, a Private Placement Pre-Funded Warrant to purchase up to 18,333,333 shares of the Company's common stock and a Private Placement Warrant to purchase up to 36,666,666 shares of the Company's common stock for total consideration of $11.0 million. The consideration for the Private Placement Securities consisted of (a) the $6.0 million in the Escrow Account that Acuitas previously delivered to the Company in June 2023 and September 2023 in accordance with the Keep Well Agreement (which $6.0 million was reclassified from restricted cash to unrestricted cash) and (b) $5.0 million of debt owed under the Keep Well Notes was cancelled. In connection with the Private Placement, the Company paid placement fees of approximately $0.4 million.

In accordance with the Fifth Amendment, on November 14, 2023 and before the closing of the Public Offering and Private Placement, the Notes Conversion was effected. In connection with the Notes Conversion, and in accordance with the Keep Well Agreement, the Company issued to Acuitas 18,054,791 shares of the Company’s common stock and a Conversion Warrant to purchase up to 18,054,791 shares of the Company’s common stock with an exercise price of $0.90 per share, which was the conversion price of the Keep Well Notes converted in the Notes Conversion.

Because the Offering Price was less than the conversion price at which Keep Well Notes were converted in the Notes Conversion, upon the effectiveness of the Stockholder Approval Matters: (1) the Company will issue and sell to Acuitas, 9,027,395 up to an additional shares $12.0 million in principal amount of common stock, which when added with the shares of common stock issued Demand Notes, at such time and in respect of the Notes Conversion, will equal the total number of shares of common stock that the Company would have issued in respect of the Notes Conversion if the Keep Well Notes converted such principal amounts as specified in the Notes Conversion were converted at a conversion price equal to the Offering Price; and (2) the exercise price of the Conversion Warrant will be reduced to the Offering Price and the number of shares of common stock subject to the Conversion Warrant will be increased to the number of shares of common stock that would have been subject to the Conversion Sixth Amendment.

Warrant if the Keep Well Notes converted in the Notes Conversion were converted at a conversion price equal to the Offering Price. Sixth Amendment Stockholder Approval

On November 15, 2023 April 22, 2024, Acuitas, who owned a majority the Company obtained the Sixth Amendment Stockholder Approval (discussed in Note 10 above) by written consent or consents signed by the holders of the outstanding shares of the Company’s common stock as having not less than the minimum number of votes that date, executed would be necessary to authorize or take the applicable actions at a meeting at which all shares entitled to vote thereon were present and delivered to voted. Following receipt of the Sixth Amendment Stockholder Approval, on May 1, 2024, the Company a written consent approving the Stockholder Approval Matters. The Company will file an information statement regarding the Stockholder Approval Matters filed with the SEC a preliminary information statement related to the Sixth Amendment Stockholder Approval, and mail an on May 13, 2024, the Company mailed a definitive information statement to the holders of its common stock so the Stockholder Approval Matters can become effective as soon as practicable. Company’s stockholders in accordance with SEC rules. Under SEC rules, in the case of corporate actions taken by the consent of stockholders, the definitive information statement must be sent or given at least 20 calendar days prior to the earliest date on which the corporation corporate actions approved by the consent of stockholders may be taken. Accordingly, the effectiveness of the stockholder approval of the corporate actions approved by the Sixth Amendment Stockholder Approval will be 20 calendar days after the date on which definitive information statement was first sent or given to the Company’s stockholders, or June 2, 2024.

Exercise of Public Offering Warrants

From April 1, 2024 through the filing date of this report, the Company received a total of $1.4 million of cash proceeds from the exercise of Public Offering Warrants by certain holders thereof for a total of 4,016,664 shares of the Company's common stock.

Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations

The following discussion and analysis of our financial condition and results of operations should be read in conjunction together with our the condensed consolidated financial statements, including the related notes, and other financial information included elsewhere in this report. Quarterly Report on Form 10-Q. In addition to historical information, this discussion and analysis contains forward-looking statements that involve risks, uncertainties and assumptions. Our actual results may differ materially from these forward-looking statements as a result of certain factors. We discuss factors that we believe could cause or contribute to these differences below and elsewhere in this Quarterly Report on Form 10-Q, including those set forth in the sections of this Quarterly Report on Form 10-Q titled “Risk Factors” and in the risk factors disclosed in Item 1A to Part I of our Annual Report on Form 10-K for the fiscal year ended December 31, 2023 (“2023 10-K”).

FORWARD-LOOKINGSTATEMENTS Forward-Looking Statements

Investors are cautioned that all statements in this report that relate to This Quarterly Report on Form 10-Q contains “forward-looking statements” within the future involve risks and uncertainties. These statements, which are forward-looking statements under meaning of the Private Securities Litigation Reform Act of 1995 provide investors with respect to the Company’s expectations financial condition, results of operations, business strategies, operating efficiencies or forecasts synergies, competitive positions, growth opportunities for existing products, plans and objectives of future events. You can identify these statements by the fact that they do not relate only to historical or current facts. They may use words such as “anticipate,” “may,” “expect,” “should,” “believe,” “project,” “intend,” “will,” management, markets for our stock and other words matters. Statements in this report that are not historical facts are hereby identified as “forward-looking statements” for the purpose of similar meaning in connection with future events or future operating or financial performance. The Company’s expectations the safe harbor provided by Section 21E of the Exchange Act of 1934, as amended (the “Exchange Act”) and forecasts are subject to various risks and uncertainties and are based on assumptions that Section 27A of the Company believes in good faith are reasonable but which may be materially different from actual results. Securities Act of 1933, as amended. Forward-looking statements, including, without limitation, those relating to the Company’s our future business prospects, our revenue and results of operation, including future revenue expectations, income, wherever they occur, are necessarily estimates reflecting the best judgment of the Company’s our senior management as of the date on which they were made, or if no date is stated, as of the date of the filing of this report. Forward-looking statements are subject to a variety of risks, uncertainties and assumptions, including those described in the “Risk Factors” in Item 1A of Part II of this report, Quarterly Report on Form 10-Q and Item 1A of Part I of the Company’s Annual Report on Form our 2023 10-K for the fiscal year ended December 31, 2022 (the “2022 10-K”) and other reports the Company files that we file with the Securities and Exchange Commission (“SEC”), that may affect the operations, performance, development and results of our business. Because such risks and uncertainties could cause Our actual results or outcomes to may differ materially from those expressed in any forward-looking statements, investors should not place undue reliance on any forward-looking statements. discussed due to such risks, uncertainties and assumptions. New risks and uncertainties emerge from time to time, and it is not possible for us to predict which new risks and uncertainties will arise or materialize. arise. In addition, we cannot assess the impact of each risk and uncertainty on our business or the extent to which any risk, or uncertainty, or combination of risks, and uncertainties, may cause actual results to differ materially from those contained in any forward-looking statement. We caution you not to place undue reliance on the forward-looking statements contained in this report. Forward-looking statements are not guarantees of future performance and actual results will likely differ, perhaps materially, from those suggested by such forward-looking statements. We assume no obligation and do not intend to update any these forward-looking statements, except as required by law. Any or all forward-looking statements in this report may turn out to be wrong.

All references to “Ontrak,” “Ontrak, Inc.,” “we,” “us,” “our” or the “Company” mean Ontrak, Inc., its wholly-owned subsidiaries and variable interest entities, except where it is made clear that the term means only the parent company.

OVERVIEW

General

Ontrak Inc. is was founded with a passion for engaging with and helping improve the health and save the lives of anyone impacted by behavioral health conditions through our Wholehealth+ solution. We are an artificial intelligence (“AI”)-powered AI-powered and telehealth-enabled, virtualized technology-enabled behavioral healthcare company, whose mission is to help improve the health and save the lives of as many people as possible. Our technology-enabled platform provides utilizes claim-based analytics and predictive modeling to provide analytic insights throughout the delivery of our personalized treatment care program. Our program predicts people whose chronic disease will improve with behavior change, recommends effective care pathways that people are willing to follow, and engages and guides them to and through the care and treatment they need. By combining predictive analytics with human engagement, we deliver improved member health and validated outcomes and savings to healthcare payors.

Our integrated, technology-enabled Ontrak™ programs solutions are designed to provide healthcare solutions to members with behavioral conditions that cause or exacerbate chronic medical conditions such as diabetes, hypertension, coronary artery disease, chronic obstructive pulmonary disease, and congestive heart failure, which result in high medical costs. Ontrak has a unique ability to engage these members, who may not otherwise seek behavioral healthcare, leveraging proprietary enrollment capabilities built on deep insights into the drivers of care avoidance. Ontrak integrates evidence-based psychosocial and medical interventions delivered either in-person or via telehealth, along with care coaching and in-market community care coordinators coaches who address the social and environmental determinants of health, including loneliness. health. Our programs seek to improve member health and deliver validated cost savings to healthcare payors.

Management plans to continue to (i) manage operating costs by strategically pursuing cost optimization initiatives; and (ii) pursue our growth strategy by: (a) expanding sales and marketing resources to acquire new and diverse customers across major health plans, value based provider groups and self-insurance employers; (b) executing on our better market penetration strategy by providing full scale customized behavioral health solutions, addressing customer needs across all member acuity levels while mitigating vendor fatigue by becoming a principal customer partner; (c) leveraging our AI technology and new predictive

algorithms to improve identification and outreach, create more efficiencies, enhance coaching solutions and create more proof points; and (d) opportunistically pursuing partnerships that will accelerate growth.

Our business operates We operate as one segment in the United States and we have contracted contract with leading national and regional health plans and other at-risk payors to make the Ontrak program our solutions available to eligible members.

Recent Developments

Fifth Sixth Amendment to Keep Well Agreement and Letter Agreement

On October 31, 2023 March 28, 2024, the Company and Acuitas Capital LLC (“Acuitas Capital” and together with its affiliates, “Acuitas”) entered into a Fifth Amendment an amendment (the "Fifth Amendment" “Sixth Amendment”) to the Master Note Purchase Agreement dated April 15, 2022 (as amended to date, through and including the Sixth Amendment, the “Keep Well Agreement”), which, among other things, (1) reduced the minimum amount to be raised in an equity financing for such financing to constitute a “Qualified Financing” from $10.0 million to $8.0 million; (2) extended the deadline by when a Qualified Financing must be completed before the Company is required to withdraw the funds from the escrow account established under the Keep Well Agreement (the “Escrow Account”) from October 31, 2023 to January 31, 2024; (3) provides that, if the Company completes a Qualified Financing, Acuitas will convert into shares of the Company’s common stock the aggregate principal amount of the senior secured convertible notes issued by the Company to Acuitas under the Keep Well Agreement (the “Keep Well Notes”) plus all accrued and unpaid interest thereon, minus (a) $7.0 million, minus (b) the principal amount of any Keep Well Notes purchased with funds from the Escrow Account prior to the closing of the offering that constitutes the Qualified Financing, if any, in accordance with the terms (including the conversion price) of the Keep Well Agreement and the Keep Well Notes (the “Notes Conversion”); and (4) in connection with a Qualified Financing, the Company and Acuitas will consummate a private placement (the “Private Placement”) of $11.0 million of unregistered pre-funded warrants to purchase shares of the Company’s common stock (the “Private Placement Pre-Funded Warrants”) and unregistered warrants to purchase shares of the Company’s common stock (the “Private Placement Warrants”, and together with the Private Placement Pre-Funded Warrants, the “Private Placement Securities”). The consideration for the Private Placement Securities purchased by Acuitas will consist of (a) the funds then held in the Escrow Account, and (b) a reduction of the aggregate amounts outstanding under the Keep Well Notes (after giving effect to the Notes Conversion) to $2.0 million (the “Surviving Notes”). In addition, the maturity date of the remaining $2.0 million Keep Well Notes was extended from September 30, 2024 to the date that is two years and six months after the closing date of the offering that constitutes the Qualified Financing. Under a letter agreement entered into on November 9, 2023, the minimum amount to be raised in an equity financing for such financing to constitute a “Qualified Financing” was further reduced to $6.0 million. For detailed more information, regarding the Keep Well Agreement and the transactions related thereto, including the Fifth Amendment, see the discussions under “Keep Well Agreement” in Note Notes 10 and under "Fifth Amendment to Keep Well Agreement" in Note 14 of the Notes to the Condensed Consolidated Financial Statements included in Part I, Item 1 of this report.

Public Offering, Private Placement and Notes Conversion Waivers by Holders of Outstanding Warrants

On November 14, 2023 Also on March 28, 2024, the Company completed its previously announced public offering (the “Public Offering”). In the Public Offering, and each holder of warrants the Company issued (a) 4,592,068 shares of its common stock and 9,184,136 warrants to purchase up to 9,184,136 shares of its common stock at in a combined public offering price of $0.60 per share of common stock and accompanying warrants (the “Public Offering Price”), in a private placement completed in November 2023 entered into a waiver and (b) 5,907,932 pre-funded warrants consent agreement, pursuant to purchase up to 5,907,932 shares of its common stock (the “Public Offering Pre-Funded Warrants”) and 11,815,864 warrants to purchase up to 11,815,864 shares of its common stock at a combined public offering price of $0.5999 per Public Offering Pre-Funded Warrant and accompanying warrants, which represents the per share public offering price for the common stock and accompanying warrants less the $0.0001 per share exercise price for each Public Offering Pre-Funded Warrant. The Company refers such holder agreed to the warrants sold in the Public Offering accompanying the shares of common stock and the Public Offering Pre-Funded Warrants as the “Public Offering Warrants.” The Company received gross proceeds of $6.3 million from the Public Offering, and therefore the Public Offering constituted a Qualified Financing. Total net proceeds was approximately $5.5 million (net of approximately $0.8 million of offering related fees and expenses, not including the fees payable relating adjustments to the Private Placement discussed below). The Public Offering Warrants have an exercise price of $0.85 per share. The exercisability of the Public Offering Pre-Funded Warrants and the Public Offering Warrants are subject to the effectiveness of the Stockholder Approval Matters, and will expire five years from the effectiveness thereof.

In accordance with the Fifth Amendment, concurrent with the closing of the Public Offering, the Company issued to Humanitario Capital LLC, an affiliate of Acuitas Capital, a Private Placement Pre-Funded Warrant to purchase up to 18,333,333 shares of the Company’s common stock and a Private Placement Warrant to purchase up to 36,666,666 shares of the Company’s common stock for total consideration of $11.0 million. The consideration for the Private Placement Securities consisted of (a) the $6.0 million in the Escrow Account that Acuitas previously delivered to the Company in June 2023 and September 2023 in accordance with the Keep Well Agreement (which $6.0 million was reclassified from restricted cash to unrestricted cash) and (b) 5.0 million of debt owed under the Keep Well Notes was cancelled. In connection with the Private Placement, the Company paid placement fees of approximately $0.4 million.

In accordance with the Fifth Amendment, on November 14, 2023 and before the closing of the Public Offering and Private Placement, the Notes Conversion was effected. In connection with the Notes Conversion, and in accordance with the Keep Well Agreement, the Company issued to Acuitas 18,054,791 shares of the Company’s common stock and a Conversion Warrant to purchase up to 18,054,791 shares of the Company’s common stock with an exercise price of $0.90 per share, which was the conversion price of the Keep Well Notes converted in the Notes Conversion.

Because the Offering Price was less than the conversion price at which Keep Well Notes were converted in the Notes Conversion, upon the effectiveness of the Stockholder Approval Matters: (1) the Company will issue to Acuitas 9,027,395 additional shares of common stock, which when added with the shares of common stock issued in respect of the Notes Conversion, will equal the total number of shares of common stock that the Company would have issued in respect of the Notes Conversion if the Keep Well Notes converted in the Notes Conversion were converted at a conversion price equal to the Offering Price; and (2) the exercise price of their warrants then in effect. For more information, see Note 10 of the Conversion Warrant will be reduced Notes to the Offering Price and the number Condensed Consolidated Financial Statements included in Part I, Item 1 of shares of common stock subject to the Conversion Warrant will be increased to the number of shares of common stock that would have been subject to the Conversion Warrant if the Keep Well Notes converted in the Notes Conversion were converted at a conversion price equal to the Offering Price.

On November 15, 2023, Acuitas, who owned a majority of the outstanding shares of the Company’s common stock as of that date, executed and delivered to the Company a written consent approving the Stockholder Approval Matters. The Company will file an information statement regarding the Stockholder Approval Matters with the SEC and mail an information statement to the holders of its common stock so the Stockholder Approval Matters can become effective as soon as practicable. Under SEC rules, in the case of corporate actions taken by the consent of stockholders, the definitive information statement must be sent or given at least 20 calendar days prior to the earliest date on which the corporation actions approved by the consent of stockholders may be taken.

this report.

Customer Notification, Reduction in Workforce and Restructuring

On October 10, 2023, the Company was notified by a health plan customer of its intent not to continue using the Company’s services after February 2024. The customer advised us to cease enrollment of any new members from that customer immediately. The customer also informed us that the notification was related to the customer’s change in strategy and not reflective of the performance or value of the Company’s services. For the three and nine months ended September 30, 2023, we billed this customer approximately $1.2 million and $3.1 million, respectively, representing 32.6% and 33.8%, respectively, of our total revenue for those periods. We do not expect the loss of this customer to have a material negative impact on our previously stated revenue expectations for fiscal year 2023 because this customer is expected to continue to use our services into February 2024. As of the date we received this customer's notice, our outreach pool, which represents individuals insured by our health plan customers who have been identified through our advanced data analytics and predictive modeling with untreated behavioral health conditions that may be impacted through enrollment in the Ontrak program, decreased by 5,997 due to individuals insured by this customer. We continue to believe our other customers and our active pipeline of national and regional health plans, providers, healthcare systems and employers will generate revenue growth opportunities in the near future.

9.50% Series A Cumulative Perpetual Preferred Stock

On April 13, 2023, the Company received a letter from The Nasdaq Stock Market LLC (“Nasdaq”) indicating that the Company no longer meets the minimum bid price requirement set forth in Nasdaq Listing Rule 5555(a)(1) (the “Minimum Bid Price Requirement”) because the closing bid price for the Company’s 9.50% Series A Cumulative Perpetual Preferred

Stock (the "Series A Preferred Stock") was less than $1.00 for the previous 30 consecutive business days. In accordance with Nasdaq listing rules, the Company was provided a 180-calendar day period, or until October 10, 2023, to regain compliance with the Minimum Bid Price Requirement by maintaining a minimum closing bid price of at least $1.00 per share for a minimum of 10 consecutive business days during the 180-calendar day period. The Company did not regain compliance with the Minimum Bid Price Requirement before the 180-calendar day period expired.

On October 11, 2023, the Company received a letter from Nasdaq informing the Company that it is not eligible for a second 180-day compliance period within which to regain compliance with the Minimum Bid Price Requirement for the Series A Preferred Stock and that Nasdaq determined that the Series A Preferred Stock would be delisted from The Nasdaq Capital Market and would be suspended at the opening of business on October 20, 2023. On November 20, 2023, The Nasdaq Stock Market filed a

Form 25-NSE with the SEC to remove the Series A Preferred Stock from listing and registration on The Nasdaq Stock Market. Our Series A Preferred Stock currently trades in the over-the-counter OTC Markets system.

Under the certificate of designations establishing the Series A Preferred Stock, if dividends on the Series A Preferred Stock have not been paid in an aggregate amount equal to the equivalent of at least six or more quarterly dividends (whether consecutive or not), the number of directors constituting our board of directors will be increased by two, and the holders of the Series A Preferred Stock, will have the right, voting separately as a single class, to fill such newly created directorships (and to fill any vacancies in the terms of such directorships). Dividends on the Series A Preferred Stock are payable every February 28, May 30, August 31, and November 30. We did not pay the dividends on the Series A Preferred Stock payable in each of May 2022, August 2022, November 2022, February 2023, May 2023 and August 2023. Accordingly, the holders of the Series A Preferred Stock currently have the right to elect two directors to our board of directors.

Reverse Stock Split

On July 27, 2023, the Company filed a certificate of amendment to its amended and restated certificate of incorporation with the Secretary of State of the State of Delaware implementing a 1-for-6 reverse stock split. Any fractional share of the Company's common stock resulting from the reverse split was automatically rounded up to the nearest whole share. The Company's common stock began trading on the NASDAQ Capital Market on a post-split basis at the open of trading on July 28, 2023 and continues to trade under the symbol "OTRK," but it has been assigned a new CUSIP number (683373 302). See Note 1 of the Notes to Condensed Consolidated Financial Statements in Part I, Item 1 of this report for more information.

Insurance Recoveries

The Company is involved in various securities class actions and purported stockholder derivative complaints, and the Company has incurred legal costs related to the SEC/Department of Justice (the "DOJ") investigation of the Company's former Chief Executive Officer and Chairman of the Board of Directors, as described in Note 13 of the Notes to Condensed Consolidated Financial Statements in Part I, Item 1 of this report. The Company maintains a corporate liability insurance policy which provides coverage for legal defense costs (the "Insurance Policy"). The terms of the Insurance Policy provide that the insurer will pay the third party directly on behalf of the Company for such claims. Based on the Company's analysis, the Company's obligation as the primary obligor of the invoices has not been transferred to the insurer and as such, the Company records these legal claims as an other receivable with a corresponding liability on the condensed consolidated balance sheet. As of September 30, 2023, the Company submitted claims for 2024, approximately $2.4 million of such legal costs, of which $1.2 million has been paid by the insurer to the third parties. The Company has $1.2 million of claims as an other receivable included in "Prepaid expenses and other current assets" and $1.2 million as part of "Other accrued liabilities" on the condensed consolidated balance sheet as of September 30, 2023.

Management Changes

On March 2, 2023, Terren S. Peizer resigned as a member of the Company's Board of Directors, as Chairman of the Board, as Executive Chairman, and as Chief Executive Officer of the Company, effective immediately. Mr. Peizer explained that his resignation was for the good of the Company and to minimize any distraction from the important work that the Company does.

Effective March 3, 2023, the Company's Board of Directors appointed Brandon H. LaVerne as Interim Chief Executive Officer of the Company. Mr. LaVerne served as the Company's Co-President and Chief Operating Officer since June 27, 2022 and continues to serve as Chief Operating Officer, but no longer serves as Co-President. On November 16, 2023, Mr. LaVerne was appointed as Chief Executive Officer of the Company.

As a result of the changes in Mr. LaVerne's roles with the Company in March 2023, Mary Louise Osborne began to, and continue to, serve as the Company's President and Chief Commercial Officer. Ms. Osborne served as the Company's Co-President and Chief Commercial Officer since June 27, 2022 and August 2021, respectively.

Reduction in Workforce

In March 2023, as part of our continued cost saving measures and to reduce our operating costs and to help align with our previously stated strategic initiatives, we implemented additional headcount reductions wherein approximately 19% 21% of our employee positions were eliminated. These headcount reductions are eliminated, which is expected to result in a reduction of approximately $2.7 million of annual compensation costs. In March 2023, costs of approximately $2.0 million, and we incurred a total approximately $0.3 million of approximately $0.5 million of one-time termination related costs, including severance payments and benefits payable to the impacted employees, recorded as part of "Restructuring,

severance employees. The headcount reductions were completed during March and related costs" on our condensed consolidated statement of operations for the nine months ended September 30, 2023. April 2024. For more information regarding restructuring, severance and related costs, see Note 6 of the Notes to Condensed Consolidated Financial Statements included in Part I, Item 1 of this report.

Metrics

The following table sets forth our key metrics that we use to evaluate our business, measure our performance, identify trends affecting our business, formulate financial projections and make strategic decisions:

- *Revenue.* Our revenues are mostly generated from fees charged to health plan customers related to health plan members enrolled in our Ontrak program. Our contracts are generally designed to provide cash fees to us on a monthly basis, an upfront case rate, or fee for service based on enrolled members and achievement of certain member specified metrics that drive clinical engagement. Our performance obligation is generally satisfied over the length of the Ontrak program as our services our delivered and in certain contractual arrangement that provides for a minimum guarantee at the end of a contractual term upon non-achievement of stipulated revenue targets, revenue for the minimum guarantee is recognized when our performance obligation is satisfied at a point in time.

- *Cash flow from operations.* Our business activities generally have resulted in an outflow of cash flow from operations as we invest strategically into our business to help the growth of our operations.

- *Effective outreach pool.* Our effective outreach pool represents individuals insured by our health plan customers who have been identified through our advanced data analytics and predictive modeling with untreated behavioral health conditions that may be impacted through enrollment in the Ontrak program.

	Three Months Ended September 30,			
(In thousands, except outreach pool and percentages)	**2023**	**2022**	**Change $**	**Change %**
Revenue	$ 3,715	$ 2,843	$ 872	31 %
Cash flow from operations	(1,814)	(8,305)	6,491	(78)
	Nine Months Ended September 30,			
	2023	**2022**	**Change $**	**Change %**
Revenue	$ 9,204	$ 12,004	$ (2,800)	(23)%
Cash flow from operations	(11,882)	(22,520)	10,638	(47)

	At September 30,			
	2023	**2022**	**Change**	**Change %**
Effective outreach pool	9,377	4,163	5,214	125 %

	Three Months Ended March 31,			
(In thousands, except for outreach pool and percentages)	**2024**	**2023**	**Change $**	**Change %**
Revenue	$ 2,680	$ 2,529	$ 151	6 %
Cash flow from operations	(3,259)	(4,953)	1,694	(34)

	At March 31,			
	2024	**2023**	**Change**	**Change %**
Effective outreach pool	5,057	8,865	(3,808)	(43)%

Our revenue for the three months ended September 30, 2023 March 31, 2024 was $3.7 million $2.7 million compared to $2.8 million $2.5 million for the same period in 2022, and $9.2 million for the nine months ended September 30, 2023 compared to $12.0 million for the same period in 2022. 2023. The increase in our revenue in the three months ended September 30, 2023 March 31, 2024 compared to the same period in 2022 2023 was primarily due to an increase in our total average enrolled members during the three months ended September 30, 2023. The decrease in our revenue in the nine months ended September 30, 2023 compared to the same period in 2022 was primarily due to March 31, 2024, partially offset by a decrease in total average enrolled members during revenue related to the nine months ended September 30, 2023. customer who gave notice in October 2023 of its intent not to continue using our services after February 2024.

Our cash flow from operations for the three months ended September 30, 2023 March 31, 2024 was $(1.8) $(3.3) million compared to $(8.3) $(5.0) million for the same period in 2022, and $(11.9) million for the nine months ended September 30, 2023 compared to $(22.5) million for the same period in 2022. 2023. The improvement in our cash flow from operations during the three and nine months ended September 30, 2023 March 31, 2024 as compared to the same periods period in 2022 2023 was primarily due to a decrease in net loss which resulted primarily from an improvement in operating expenses resulting from strategic headcount reductions throughout 2022 and 2023.

reduction in 2023 as well as cost optimization initiatives we implemented.

Our effective outreach pool at September 30, 2023 March 31, 2024 was 9,377 5,057 compared to 4,163 8,865 at September 30, 2022 March 31, 2023. The decrease in our effective outreach pool was primarily related to a health plan customer informing us in October 2023 of its intent not to continue using our services after February 2024, partially offset by an increase in our effective outreach pool was due related to several factors including the refinement of our proprietary and predictive algorithms to identify additional eligible members, the addition of high-acuity, commercial members resulting from an amendment executed with an existing customer and the expansion of the Ontrak program for a Medicaid plan customer to a new 18 to 20 year old cohort of members members. In addition, in February 2024, we announced the expansion of our program to a larger commercial population with impactable cost threshold. In October 2023, our outreach pool decreased by 5,997 as a result of a health plan customer, informing us one of the largest health systems in the U.S. Mid-Atlantic and Southeast. In March 2024, we announced a continuing expansion of our strategic partnership with the same health plan customer to offer our program to eligible self-insured groups. The expanded partnership initially represented a more than 6.5 times increase in the number of this customer's members who are eligible for the Ontrak WholeHealth+ program. In May 2024, we announced the launch of a new customer agreement with a prominent regional Medicaid health plan for our Wholehealth+ and Ontrak Engage and Ontrak Access solutions upon obtainment of state approval. We expect that the Company's overall outreach pool of eligible members for our Wholehealth+ program will grow by approximately 10% with the addition of these new eligible members. As we work with our remaining customers in maximizing return on their intent not investment, optimizing our enrollment process and enhancing our offering, the effective outreach pool could continue to continue using our services after February 2024. See discussion above under “Recent Developments - Customer Notification.” fluctuate in the near term.

Key Components of Our Results of Operations

Revenue

Revenue from contracts with customers is recognized when, or as, we satisfy our performance obligations by transferring the promised goods or services to the customers. Revenue from a performance obligation satisfied over time is recognized by measuring our progress in satisfying the performance obligation in a manner that depicts the transfer of the goods or services to the customer. Revenue related to health plan customers whose health plan members are enrolled in our program is recognized over the enrollment period of the program.

One of our customer’s contracts includes a minimum guarantee aggregate invoices at agreed upon rates of $5.8 million over a two year contractual period ending on December 31, 2024, of which we have invoiced $0.2 million $0.5 million as of September 30, 2023 March 31, 2024, leaving $5.6 million $5.3 million of minimum guarantee over the remaining contractual period. In the event the minimum guarantee is not achieved, the shortfall will be invoiced to the customer on December 31, 2024, at which time revenue can will be recognized. evaluated for recognition.

Cost of Revenue

Cost of revenue consists primarily of salaries related to our care coaches, member engagement specialists and other staff directly involved in member care, healthcare provider claims payments and related processing fees, and other direct costs incurred to serve our health plan customers. All costs are recognized in the period in which an eligible member receives services.

Operating Expenses

Our operating expenses consist of our sales and marketing, research and development, and general and administrative expenses, as well as restructuring, severance and related costs as applicable. Sales and marketing expenses consist primarily of personnel and related expenses for our sales and marketing staff, including salaries, benefits, bonuses, stock-based compensation and commissions, and costs of marketing and promotional events, corporate communications, online marketing, product marketing and other brand-building activities. All advertising related costs are expensed as incurred. Research and development expenses consist primarily of personnel and related expenses for our engineers and software development staff, including salaries, benefits, bonuses and stock-based compensation, and the cost of certain third-party service providers. Research and development costs are expensed as incurred. General and administrative expenses consist primarily of personnel and related expenses for administrative, legal, finance, compliance and human resource staff, including salaries, benefits, bonuses and stock-based compensation, professional fees, insurance premiums, and other corporate expenses. Restructuring, severance and related costs include workforce reduction costs and asset impairment charges, if any.

Interest Expense, net

Interest expense consists primarily of interest expense from our outstanding debt, accretion of debt discount, amortization of debt issuance costs and finance leases.

Other Income (Expense), net

Other income (expense), net consists of gains and losses associated with changes in fair value of warrant liabilities and contingent consideration, write-off of debt issuance related costs and other assets, net gain related gain related to the write-off of an operating lease asset and liability upon early termination of the lease, and other miscellaneous income and expense items.

RESULTS OF OPERATIONS

The table below and the discussion that follows summarize our results of operations for each of the periods presented (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2023	2022	2023	2022

		Three Months Ended March 31, Three Months Ended March 31, Three Months Ended March 31,					
		2024				2024	2023
Revenue	Revenue	$ 3,715	$ 2,843	$ 9,204	$ 12,004		
Cost of revenue	Cost of revenue	1,040	1,436	2,691	6,488		
Gross profit	Gross profit	2,675	1,407	6,513	5,516		
Operating expenses:	Operating expenses:						
Operating expenses:							
Operating expenses:							
Research and development							
Research and development							
Research and development	Research and development	1,552	2,833	4,733	9,113		
Sales and marketing	Sales and marketing	822	1,151	2,649	3,893		
General and administrative	General and administrative	4,365	7,552	14,593	27,694		
Restructuring, severance and related costs	Restructuring, severance and related costs	—	934	457	934		
Total operating expenses	Total operating expenses	6,739	12,470	22,432	41,634		
Operating loss	Operating loss	(4,064)	(11,063)	(15,919)	(36,118)		
Other income (expense), net		38	(1,241)	324	(3,213)		
Other (expense) income, net							
Other (expense) income, net							
Other (expense) income, net							
Interest expense, net	Interest expense, net	(2,392)	(440)	(6,009)	(2,996)		
Loss before income taxes	Loss before income taxes	(6,418)	(12,744)	(21,604)	(42,327)		
Income tax (expense) benefit		—	(20)	80	(140)		
Income tax expense							
Net loss	Net loss	$(6,418)	$(12,764)	$(21,524)	$(42,467)		

Revenue

The mix of our revenue between commercial and government insured members can fluctuate quarter over quarter. The following table sets forth our sources of revenue for each of the periods indicated:

	Three Months Ended September 30,	Nine Months Ended September 30,
	Three Months Ended March 31,	

		Three Months Ended March 31, Three Months Ended March 31,												
(In thousands, except percentages)	*(In thousands, except percentages)*	**2023**	**2022**	**Change**	**Change %**	**2023**	**2022**	**Change**	**Change %**	*(In thousands, except percentages)*	**2024**	**2023**	**Change**	**Change %**
Commercial revenue	Commercial revenue	$1,216	$1,267	$ (51)	(4) %	$3,133	$ 5,624	$(2,491)	(44) %	Commercial revenue	$ 851 $	$ 883 $	$ (32) (4)	(4)%
Percentage of commercial revenue to total revenue	Percentage of commercial revenue to total revenue	33 %	45 %	(12)%		34 %	47 %	(13)%						
Government revenue	Government revenue	$2,499	$1,576	$923	59 %	$6,071	$ 6,380	$ (309)	(5) %					
Government revenue														
Government revenue											$1,829	$1,646	$ 183	11 %
Percentage of government revenue to total revenue	Percentage of government revenue to total revenue	67 %	55 %	12 %		66 %	53 %	13 %						
Total revenue	Total revenue	$3,715	$2,843	$872	31 %	$9,204	$12,004	$(2,800)	(23) %					
Total revenue														
Total revenue											$2,680	$2,529	$ 151	6 %

Total revenue increased $0.9 million $0.2 million, or 31% 6%, in the three months ended September 30, 2023 March 31, 2024 compared to the same period of 2022 primarily due to an increase in average total enrolled members during the three months ended September 30, 2023. Total revenue decreased $2.8 million, or 23%, in the nine months ended September 30, 2023 compared to the same period of 2022 primarily due to a decrease in total average enrolled members during the nine months ended September 30, 2023.

2023.

The percentage of our revenue from commercial customers decreased to 33% 32% for the three months ended September 30, 2023 March 31, 2024 compared to 45% 35% for the three months ended September 30, 2022. The percentage of our revenue from government customers increased to 67% for the three months ended September 30, 2023 compared to 55% for the three months ended September 30, 2022. The percentage of our revenue from commercial customers decreased to 34% for the nine months ended September 30, 2023 compared to 47% for the nine months ended September 30, 2022 March 31, 2023. The percentage of our revenue from government customers increased to 66% 68% for the nine three months ended September 30, 2023 March 31, 2024 compared to 53% 65% for the nine three months ended September 30, 2022 March 31, 2023. These shifts in mix of revenues from commercial and government customers were mainly due to a larger The decrease in commercial revenue compared was primarily related to the change a health plan customer who gave notice in October 2023 of its intent not to continue using our services after February 2024, partially offset by an increase in commercial revenue for our other health plan customers. The increase in government revenue during was primarily related to an increase in government revenue for a customer, partially offset by the three and nine months ended September 30, 2023 compared decrease in government revenue related to the same periods in 2022.

As previously reported, in October 2023, we were notified by a health plan customer who gave notice in October 2023 of its intent not to continue using our services after February 2024. This customer informed us that its decision was related to its change in strategy and not reflective of the performance or value of our services. For the three and nine months ended September 30, 2023, we billed this customer approximately $1.2 million and $3.1 million, respectively, representing 32.6% and 33.8%, respectively, of our total revenue for such periods. We do not expect the loss of this customer to have a material negative impact on our previously stated revenue expectations for fiscal year 2023 because this customer is expected to continue to use our services into February 2024. We also believe that reductions in revenue associated with the loss of this customer will be offset by revenue from new customers expected to begin to use our services in early 2024 based on our pipeline of active prospects. However, no assurances can be given that this will occur, and our revenue for future quarters could be lower due to the loss of this customer. See the risk factor titled “A substantial percentage of our revenues are attributable to a few large customers, any or all of which may terminate our services at any time,” in Item 1A of Part II of this report.

Cost of Revenue, Gross Profit and Gross Profit Margin

	Three Months Ended September 30,	Nine Months Ended September 30,
	Three Months Ended March 31,	

		Three Months Ended March 31, Three Months Ended March 31,												
(In thousands, except percentages)	*(In thousands, except percentages)*	2023	2022	Change	Change %	2023	2022	Change	Change %	*(In thousands, except percentages)*	2024	2023	Change	Change %
Cost of revenue	Cost of revenue	$ 1,040	$ 1,436	$ (396)	(28) %	$ 2,691	$ 6,488	$ (3,797)	(59) %	Cost of revenue	$ 975	$ $ 847	$ $ 128	15 15 %
Gross profit	Gross profit	2,675	1,407	1,268	90 %	6,513	5,516	997	18					
Gross profit margin	Gross profit margin	72 %	49 %	23 %		71 %	46 %	25 %						

Cost of revenue decreased $0.4 million increased $0.1 million, or 28% 15%, in the three months ended September 30, 2023 March 31, 2024 compared to the same period of 2022. Cost 2023. The increase in cost of revenue decreased $3.8 million, or 59%, in during the nine three months ended September 30, 2023 compared to the same period of 2022. Such decreases were March 31, 2024 was primarily due to the effect of lower headcount higher employee compensation and cost optimization initiatives we implemented throughout 2022 and in March 2023 as we strategically implemented continued cost saving measures to reduce our operating benefit costs, as well as improve the operations of our member facing organization, and partially offset by a decrease in provider costs.

Gross profit increased by $1.3 million $0.02 million and gross profit margin increased decreased by 23% 3% in the three months ended September 30, 2023 March 31, 2024 compared to the same period of 2022. Gross profit increased by $1.0 million and gross profit margin increased by 25% 2023. The decrease in the nine months ended September 30, 2023 compared to the same period of 2022. The increase in gross profit and gross profit margin in the three and nine months ended September 30, 2023 March 31, 2024 was primarily due to the effect of lower headcount and a higher increase in our cost optimization initiatives we implemented throughout 2022 and of revenue relative to the increase in March 2023 our revenue, as we strategically implemented continued cost saving measures to reduce our operating costs as well as improve the operations of our member facing organization, and a decrease in provider costs.

discussed above.

Operating Expenses

		Three Months Ended September 30, / Three Months Ended March 31, / Three Months Ended March 31, / Three Months Ended March 31,				Nine Months Ended September 30,												
(In thousands, except percentages)	*(In thousands, except percentages)*	2023	2022	Change	Change %	2023	2022	Change	Change %	*(In thousands, except percentages)*	2024		2023		Change		Change %	
Operating expenses:	Operating expenses:																	
Research and development																		
Research and development																		
Research and development	Research and development	$ 1,552	$ 2,833	$ (1,281)	(45) %	$ 4,733	$ 9,113	$ (4,380)	(48) %		$ 1,078	$	$ 1,644	$	$ (566)		(34) (34)	%
Sales and marketing	Sales and marketing	822	1,151	(329)	(29)	2,649	3,893	(1,244)	(32)									
General and administrative	General and administrative	4,365	7,552	(3,187)	(42)	14,593	27,694	(13,101)	(47)									
Restructuring, severance and related costs	Restructuring, severance and related costs	—	934	(934)	(100)	457	934	(477)	(51)									
Total operating expenses	Total operating expenses	$ 6,739	$ 12,470	$ (5,731)	(46)	$ 22,432	$ 41,634	$ (19,202)	(46)									

Operating loss	Operating loss	$(4,064)	$(11,063)	$ 6,999	(63) %	$(15,919)	$(36,118)	$ 20,199	(56) %
Operating loss									
Operating loss	$(4,273)	$(7,227)	$2,954	(41)%					

Total operating expenses decreased by $5.7 million $2.9 million, or 46% 33%, in the three months ended September 30, 2023 March 31, 2024 compared to the same period in 2022. 2023. The decrease in operating expenses was primarily due to:

- a $1.3 million $0.6 million decrease in our research and development costs, which was primarily related to a $0.5 million $0.3 million decrease in depreciation amortization expense, a $0.4 million $0.2 million decrease in employee-related costs a $0.3 million decrease in software related fees and a $0.1 million decrease in professional service costs; depreciation expense;
- a $0.3 million $0.5 million decrease in our sales and marketing costs, which was primarily related to a $0.5 million decrease in employee related cost in our sales and marketing department;
- a $3.2 million $1.7 million decrease in our general and administrative costs, which was primarily related to a $2.3 million $1.3 million decrease in legal costs, a $0.1 million decrease in employee-related costs, a $0.3 million $0.1 million decrease in software costs, a $0.1 million decrease in insurance related costs, a $0.2 million decrease in legal costs, a $0.2 million decrease in professional service costs and a $0.1 million decrease in software professional service costs; and
- a $0.9 million decrease in restructuring, severance and related costs due to the workforce reduction implemented in August 2022. For more information, see Note 6 of the Notes to the Condensed Consolidated Financial Statements included in Part I, Item 1 of this report.

Total operating expenses decreased by $19.2 million, or 46%, in the nine months ended September 30, 2023 compared to the same period in 2022. The decrease in operating expenses was primarily due to:

- a $4.4 million decrease in our research and development costs, which was primarily related to a $1.7 million decrease in employee-related costs, a $1.3 million decrease in depreciation expense, a $0.8 million decrease in software related fees and a $0.6 million decrease in professional service costs;
- a $1.2 million decrease in our sales and marketing costs, which was primarily related to a $1.0 million decrease in employee related cost in our sales and marketing department and a $0.2 million decrease in promotion related expenses;
- a $13.1 million decrease in our general and administrative costs, which was primarily related to a $9.3 million decrease in employee-related costs, a $1.0 million decrease in software costs, a $1.0 million decrease in insurance related costs, a $0.7 million decrease in professional service costs, a $0.5 million decrease in restructuring and severance related expenses, a $0.2 million decrease in travel and entertainment costs and a $0.2 million decrease in occupancy related costs; and
- a $0.5 million decrease in our restructuring, severance and related costs due related to the workforce reduction implemented in August 2022 February 2024 compared to the workforce reduction implemented in March 2023. For more information, see Note 6 of the Notes to the Condensed Consolidated Financial Statements included in Part I, Item 1 of this report.

Other (Expense) Income, (Expense), net

		Three Months Ended September 30,				Nine Months Ended September 30,			
		Three Months Ended March 31, Three Months Ended March 31, Three Months Ended March 31,							
(In thousands, except percentages)	(In thousands, except percentages)	2023	2022	Change $	Change %	2023	2022	Change $	Change %
Other income (expense), net		$ 38	$ (1,241)	$ 1,279	103	$ 324	$ (3,213)	$ 3,537	110 %

(In thousands, except percentages)	2024	2023	Change $	Change %
Other (expense) income, net	$ (2)	$ 291	$ (293)	101 %

Other expense, net for the three months ended March 31, 2024 was related to the loss on change in fair value of warrant liabilities. Other income, net for the three months ended September 30, 2023 was $0.04 million compared to other expense, net March 31, 2023 consisted of $1.2 million for the same period in 2022. Other income, net for the nine months ended September 30, 2023 was $0.3 million compared to other expense, net of $3.2 million for the same period in 2022. The $0.04 million of other income, net, for the three months ended September 30, 2023 was related to a gain resulting from a change in the fair value of warrant liabilities and the $1.2 million of other expense, net for the three months ended September 30, 2022 was primarily related to debt termination costs. The $0.3 million of other income, net for the nine months ended September 30, 2023 was primarily related to a

$0.5 million gain resulting from related to the write-off of an operating lease asset and liability upon early termination of the lease for office space in Santa Monica, California, partially offset by approximately $0.2 million of net lease termination related fees. The $3.2 million of other expense, net for the nine months ended September 30, 2022 was primarily related to $3.3 million of debt termination costs, partially offset by a $0.1 million gain related to a change in the fair value of warrant liabilities.

Interest Expense, net

	Three Months Ended September 30,				Nine Months Ended September 30,			
(In thousands, except percentages)	2023	2022	Change $	Change %	2023	2022	Change $	Change %
Interest expense, net	$(2,392)	$(440)	$(1,952)	(444) %	$(6,009)	$(2,996)	$(3,013)	(101) %

	Three Months Ended March 31,				
(In thousands, except percentages)	2024	2023	Change $		Change %
Interest expense, net	$ (183)	$ (1,394)	$ 1,211	87	87 %

The $2.0 million and $3.0 million increase $1.2 million decrease in interest expense, net for the three and nine months ended September 30, 2023, respectively, March 31, 2024 compared to the same periods period in 2022 2023 was primarily due to a higher lower average total outstanding loan balance during the three and nine months ended September 30, 2023, as well as higher March 31, 2024 and lower amount of accretion of debt discount to interest expense and higher weighted average interest rate for the three and nine months ended September 30, 2023 compared to the same periods in 2022. expense.

Income Tax (Expense) Benefit Expense

	Three Months Ended September 30,				Nine Months Ended September 30,			
(In thousands, except percentages)	2023	2022	Change $	Change %	2023	2022	Change $	Change %
Income tax (expense) benefit	$ —	$ (20)	$ 20	100 %	$ 80	$ (140)	$ 220	157 %

	Three Months Ended March 31,			
(In thousands, except percentages)	2024	2023	Change $	Change %
Income tax expense	$ —	$ (20)	$ 20	100 %

Income tax benefit of $0.08 million for the nine months ended September 30, 2023 was primarily related to a reversal of accrued estimated income taxes. Income tax expense of $0.02 million and $0.1 million for the three and nine months ended September 30, 2022, respectively, March 31, 2023 was primarily related to state income taxes.

LIQUIDITY AND CAPITAL RESOURCES

We generate revenues from the services we provide to commercial (employer funded), managed Medicare Advantage, managed Medicaid and dual eligible (Medicare and Medicaid) populations. We also generate revenues from the mental health and wellbeing support services we provide to members of employer customers under our LifeDojo wellbeing solution. We aim to increase the number of members that are eligible for our solutions by signing new contracts and identifying more eligible members within customers with whom we have existing contracts.

We have incurred significant net losses and negative operating cash flows since our inception, and we expect to continue to incur net losses and negative operating cash flow, in part due to the negative impact on our operations by customer terminations. As of September 30, 2023 March 31, 2024, our total cash and restricted cash was $9.2 million $6.4 million and we had working capital of approximately $1.5 million $5.7 million. For the nine three months ended September 30, 2023 March 31, 2024, our average monthly cash burn rate from operations was $1.3 million $1.1 million.

On November 14, 2023 March 28, 2024, the Notes Conversion, Company and Acuitas entered into the Public Offering Sixth Amendment to the Keep Well Agreement. Under the Sixth Amendment, the Company may issue up to a total of $15.0 million of senior secured convertible promissory notes (each a “Demand Note”), with the initial note in the principal amount of $1.5 million issued on April 5, 2024 and another note in the principal amount of $1.5 million issued on May 8, 2024. Acuitas, in its sole discretion, may purchase from the Company, and the Private Placement were completed. All amounts we owed under outstanding Keep Well Notes, other than $2.0 million Company will issue and sell to Acuitas, up to an additional $12.0 million in principal amount of Demand Notes.

As of March 31, 2024, was converted into shares of our common stock, we raised net proceeds of $5.5 million, and $6.0 million of restricted cash was reclassified as unrestricted cash. An aggregate of $2.0 million $2.2 million of secured debt, is outstanding including accrued paid-in-kind interest, issued under a the Keep Well Note, Agreement was outstanding. As of the filing date of this report, approximately $5.3 million of secured debt, including accrued paid-in-kind interest, issued under the Keep Well Agreement was outstanding, $3.0 million of which is payable upon demand of the holder, and the balance of which matures on May 14, 2026, unless it becomes due and payable in full earlier, whether by acceleration or otherwise. See “Overview—Recent Developments—Public Offering, Private Placement and Notes Conversion,” above.

Throughout 2022 In March 2023 and in March 2023, February 2024, as part of our the Company's continued cost saving measures to reduce our its operating costs and to better align with our its previously stated strategic initiatives, we the Company implemented a number of reduction reductions in workforce and vendor cost optimization plans. We The Company began to realize realizing the full effect of these cost saving measures and we expect cost savings to be realized in the remainder of 2023 and beyond, in 2024, including a decrease in our the Company's operating costs and an improvement in our the Company's average monthly cash flow from operations. The These cost optimization plans were necessary to right size our the Company's business commensurate with our its then current customer base.

In addition to revenue from business operations, since April 2022, our primary source of working capital has been borrowings under From April 1, 2024 through the Keep Well Agreement. As of the filing date of this report, no more funds can be borrowed under the Keep Well Agreement, and we have no other sources Company received a total of capital in place.

Regardless $1.4 million of our success in raising additional capital, we expect our cash on hand as proceeds from the exercise of September 30, 2023, together with the cash raised in the Public Offering warrants by certain holders thereof and the reclassification Company issued a total of $6.0 million from restricted cash to unrestricted cash in connection with the completion 4,016,664 shares of the Private Placement, will be sufficient to meet our obligations for at least the next 12 months from the date the financial statements in this report are released.

its common stock.

Management plans to continue to execute on executing its strategy to increase liquidity by continuing to (i) explore other sources of capital with either debt or equity financing for future liquidity needs; (ii) manage operating costs by strategically pursuing cost optimization initiatives; and (iii) pursue executing our growth strategy by by: (a) expanding sales and marketing resources to acquire new and diverse customers across major health plans, value based provider groups and self-insurance employers; (b) executing on our better market penetration strategy by providing full scale customized behavioral health solutions, addressing customer needs across all member acuity levels while mitigating vendor fatigue by becoming a principal customer partner; (c) leveraging our AI technology and new predictive algorithms to improve identification and outreach, create more efficiencies, enhance coaching solutions and create more proof points; and (d) opportunistically pursuing partnerships that we believe will accelerate growth.

We will need additional capital to successfully execute our growth strategy. In addition to revenue from business operations, since April 2022, the Company's primary source of working capital has been borrowings under the Keep Well Agreement and raising capital in equity offerings. We may seek to raise additional capital through equity or debt financings, however, when we can affect such financings and how much capital we can raise depends on a variety of factors, including, among others, market conditions, the trading price of our common stock and our determination as to the appropriate sources of funding for our operations. In addition, under the securities purchase agreement we entered into in connection with the Public Offering, we are generally prohibited from issuing shares of our common stock or common stock equivalents for capital raising purposes through May 12, 2024; however, from and after February 12, 2024, we may issue shares of our common stock or common stock equivalents for capital raising purposes if the per share price is $0.60 or greater. There can be no assurance that other capital will be available when needed or that, if available, it will be obtained on terms favorable to us and our stockholders, that we will be successful in implementing cost optimization initiatives, or that we will be successful in executing our growth strategy. In addition, the Keep Well Agreement contains various financial and other covenants, and any non-compliance with those covenants could result in an acceleration of the repayment of the amount amounts outstanding thereunder. Furthermore, equity or debt financings may have a dilutive effect on the holdings of our existing stockholders, and debt financings may subject us to restrictive covenants, operational restrictions and security interests in our assets. See

Regardless of our success in raising additional capital, we expect our cash on hand as of March 31, 2024, together with the risk factors entitled “We expect to continue to incur substantial operating losses” $3.0 million we received in exchange for Demand Notes issued on April 5, 2024 and “We will need additional funding, and May 8, 2024, the $1.4 million of cash proceeds we cannot guarantee that we will find adequate sources received from the exercise of capital in warrants since April 1, 2024 through the future” in Item 1A. Risk Factors, Part II filing date of this report. report and the amount potentially available for borrowing under the Keep Well Agreement, will be sufficient to meet our obligations for at least the next 12 months from the date the financial statements in this report are released.

Cash Flows

The following table sets forth a summary of our cash flows for the periods indicated (in thousands):

Nine Months Ended September 30,			
2023	**2022**		
Three Months Ended March 31,		**Three Months Ended March 31,**	
2024		**2024**	**2023**

Net cash used in operating activities	Net cash used in operating activities	$(11,882)	$(22,520)
Net cash used in investing activities	Net cash used in investing activities	(196)	(1,004)
Net cash provided by (used in) financing activities		11,592	(30,488)
Net decrease in cash and restricted cash		$ (486)	$(54,012)
Net cash (used in) provided by financing activities			
Net change in cash and restricted cash			

Net cash used in operating activities during the nine three months ended September 30, 2023 March 31, 2024 was $11.9 million $3.3 million compared with $22.5 million $5.0 million during the same period in 2022. 2023. The year over year improvement in our cash flow from operations during the nine three months ended September 30, 2023 March 31, 2024 as compared to the nine three months ended September 30, 2022 March 31, 2023 was primarily due to a decrease in net loss which resulted primarily from an improvement in operating expenses resulting from a strategic headcount reductions throughout 2022 reduction in March 2023 and 2023. vendor cost optimization plans.

Net cash used in investing activities was $0.2 million $0.04 million for the nine three months ended September 30, 2023 March 31, 2024 compared with $1.0 million $0.03 million in the same period of 2022. 2023. The $0.2 million $0.04 million and $1.0 million $0.03 million of net cash used in investing activities for the nine three months ended September 30, 2023 March 31, 2024 and 2022, 2023, respectively, was primarily related to capitalized software development costs.

Net cash provided by financing activities was $11.6 million for the nine months ended September 30, 2023 compared with net cash used in financing activities of $30.5 million was $0.005 million for the nine three months ended September 30, 2022. The $11.6 million March 31, 2024 compared with $7.3 million of net cash provided by financing activities for the nine three months ended September 30, 2023 March 31, 2023. The $0.005 million of net cash used in financing activities for the three months ended March 31, 2024 was primarily related to $0.5 million of financed insurance premium payments, partially offset by $0.5 million of proceeds from exercises of warrants. The $7.3 million of net cash provided by financing activities for the three months ended March 31, 2023 was primarily related to $8.0 million of proceeds from borrowings under the Keep Well Agreement, and $6.0 million of cash proceeds received in escrow under the Keep Well Agreement and held in a separate account (as discussed in Notes 2 and 10 of the Notes to Condensed Consolidated Financial Statements in Part I, Item 1 of this report), partially offset by $1.8 million $0.6 million of financed insurance premium payments. Net cash used in financing activities of $30.5 million for the nine months ended September 30, 2022 was primarily related to $39.2 million of repayments made on outstanding promissory notes issued in 2019 and 2020, $2.3 million of payments made on our financed insurance premiums and $2.2 million of dividend payments made on our Series A Preferred Stock, partially offset by $11.0 million of proceeds from the issuance of Keep Well Notes and $3.3 million of net proceeds received from common stock issued in an offering.

As a result of the above, our total cash and cash equivalents, including restricted cash of $6.0 million, was $9.2 million $6.4 million as of September 30, 2023 March 31, 2024.

Debt

See Note 10 and Note 14 of the Notes to Condensed Consolidated Financial Statements in Part I, Item 1 of this report for a detailed discussion about our debt.

OFF BALANCE SHEET ARRANGEMENTS

During the periods presented, we did not have, nor do we currently have, any relationships with unconsolidated entities or financial partnerships, such as entities often referred to as structured finance or special purpose entities, which would have been established for the purpose of facilitating off-balance sheet arrangements or other contractually narrow or limited purposes. We are therefore not exposed to the financing, liquidity, market or credit risk that could arise if we had engaged in those types of relationships.

CRITICAL ACCOUNTING POLICIES AND ESTIMATES

See Note 2 of the Notes to the Consolidated Financial Statements in Part II, Item 8 of the 2022 2023 Form 10-K and “Critical Accounting Policy Policies and Estimates” in Part II, Item 7 of the 2022 2023 Form 10-K for a discussion of the significant accounting policies and methods used in the preparation of the Company’s condensed consolidated financial statements. There have been no material changes to the Company’s critical accounting policies and estimates since the 2022 2023 Form 10-K.

Item 3. Quantitative and Qualitative Disclosures About Market Risk

Not applicable.

Item 4. Controls and Procedures

Evaluation of Disclosure Controls and Procedures

We have evaluated, with the participation of our principal executive officer and our principal financial officer, the effectiveness of our disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) as of September 30, 2023 March 31, 2024. Based on this evaluation, our principal executive officer and our principal financial officer have concluded that, as of September 30, 2023 March 31, 2024, our disclosure controls and procedures were effective to ensure that information required to be disclosed by us in the reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported, within the time periods specified in the SEC’s rules and forms, and is accumulated and communicated to our management, including our principal executive and principal financial officers, or persons performing similar functions, as appropriate to allow timely decisions regarding required disclosure.

Changes in Internal Control over Financial Reporting

There were no changes in our internal controls over financial reporting during the three months ended September 30, 2023 March 31, 2024 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

PART II - OTHER INFORMATION

Item 1. Legal Proceedings

From time to time, we are subject to various legal proceedings that arise in the normal course of our business activities. As of the date of the filing of this report, we were are not a party to any litigation the outcome of which, if determined adversely to us, would individually or in the aggregate be reasonably expected to have a material adverse effect on our results of operations or financial position, except for the legal proceedings discussed in Note 13, “Commitments and Contingencies” in the Notes to Condensed Consolidated Financial Statements, in Part I, Item 1 of this report, which is incorporated by reference herein.

Item 1A. Risk Factors

In evaluating us and our securities, we urge you to carefully consider the risks, uncertainties and other information in this report, as well as the risk factors disclosed in Item 1A to Part I of the 2022 2023 10-K. Any of the risks discussed in this report or any of the risks risk factors disclosed in Item 1A to Part I of the 2022 2023 10-K, as well as additional risks and uncertainties not currently known to us or that we currently deem immaterial, could materially and adversely affect our results of operations or financial condition. If any of these risks occur, our business, results of operations and financial condition could be harmed, the price of our common stock securities could decline, and future events and circumstances could differ significantly from those anticipated in the forward-looking statements contained in this report.

Summary of Risk Factors

Below is a summary Except as discussed below, there have been no material changes from the risk factors disclosed in Item 1A to Part I of the principal factors that make an investment in our securities speculative or risky. This summary does not address all of the risks that we face.

- We will need additional funding, and we cannot guarantee that we will find adequate sources of capital in the future.
- We have incurred significant losses since our inception and may be unable to obtain additional funds before we achieve positive cash flows.
- Our programs and solutions may not be as effective as we believe and may not achieve broad market acceptance and announcements of disappointing results may lead to declines in the market prices of our securities.
- Our business currently depends upon a few large customers; during 2021, we lost two of such customers, and in October 2023, a large customer provided a notice of its intent to cease using our services in February 2024, and any further loss would have a material adverse effect on us.
- We have $2.0 million in principal amount of secured debt outstanding under the Keep Well Agreement, and a default thereunder would have material adverse consequences to our financial condition, operating results, and business.
- We may not be able to generate sufficient cash flow or raise adequate financing to grow or scale our business or to fund our operations.
- We depend upon our senior management and key consultants and their loss or unavailability could put us at a competitive disadvantage.
- We need to attract and retain highly skilled personnel; we may be unable to effectively manage growth with our limited resources.
- Customers may not achieve the savings we expect are created by our programs and solutions, which could adversely impact our business.
- Market acceptance of our programs and solutions depends in large part on the willingness of third party payors to cover them, which is beyond our control.
- We may fail to manage our growing business and may not be successful in identifying or completing any acquisitions necessary to continue such growth. Any such acquisition completed may not be successfully integrated with our operations or yield additional value for stockholders.
- We may be unable to protect our intellectual property rights and we may be liable for infringing the intellectual property rights of others.
- Ongoing healthcare legislative and regulatory reform measures may have a material adverse effect on our business and results of operations.
- We must comply with significant government regulations, including with respect to licensure and privacy matters.
- Our Series A Preferred Stock has no fixed maturity date, ranks junior to our currently outstanding indebtedness, is entitled to the payment of dividends only to the extent we may do so under Delaware corporate law, is currently subject to restrictions on transfer contained in our charter and has limited voting rights.
- Our largest stockholder controls approximately 73% of our outstanding common stock and beneficially owns approximately 94% of our common stock, and may determine all matters presented for stockholder approval, including the election of directors, significant corporate transactions and our dissolution.
- We are subject to ongoing litigation and may be subject to future litigation, any of which could result in substantial liabilities.
- Our common stock may be delisted by Nasdaq.
- The price of our common stock and preferred stock may be volatile.
- The market prices for our common stock and preferred stock may be adversely impacted by future events.
- Our certificate of incorporation, bylaws and Delaware law have anti-takeover provisions that could discourage, delay or prevent a change in control, which may cause our stock price to decline.

Risk Factors

Risks related to our business

We expect to continue to incur substantial operating losses.

We have been unprofitable since our inception in 2003. Historically, we have seen and continue to see net losses, net loss from operations and negative cash flow from operating activities as we experienced a period of rapid growth, and more recently our results have been negatively impacted by customer terminations. At September 30, 2023, our cash and restricted cash was $9.2 million and we had working capital of approximately $1.5 million. We had an average monthly cash burn rate of approximately $1.3 million for the nine months ended September 30, 2023 and could continue to incur negative cash flows and operating losses for the next twelve months.

We will need additional funding, and we cannot guarantee that we will find adequate sources of capital in the future.

We have incurred negative cash flows from operations since inception and have expended, and expect to continue to expend, substantial funds to support and grow our business. We will require additional funds before we are able to generate enough cash flows to fund our operations and meet our obligations. Additionally, if we add more health plans than budgeted, increase the size of the outreach pool by more than we anticipate, decide to invest in new products or seek out additional growth opportunities, or in order to provide liquidity for an extended period of losses, we would consider raising additional capital.

We do not know whether additional funding will be available to us when needed on acceptable terms or at all. If adequate funds are not available or are not available on acceptable terms, we may need to downsize, curtail program development efforts or halt our operations altogether. There can be no assurance that any such financing will be available to us when needed on acceptable terms or at all.

If we raise additional funds by issuing equity securities, such financing will result in further dilution to our stockholders. Any equity securities issued also may provide for rights, preferences or privileges senior to those of holders of our common stock. If we raise funds by issuing debt securities, these debt securities would have rights, preferences and privileges senior to those of holders of our common stock, and the terms of the debt securities issued could impose significant restrictions on our operations.

We have $2.0 million in principal amount of secured debt outstanding under the Keep Well Agreement, and a default thereunder would have material adverse consequences to our financial condition, operating results, and business.

We entered into a Master Note Purchase Agreement with Acuitas Capital LLC ("Acuitas Capital" and together with its affiliates, including Acuitas Group Holdings, LLC and Terren S. Peizer, "Acuitas"), dated as of April 15, 2022 (as amended to date, the "Keep Well Agreement"). Acuitas Capital is our largest stockholder and an entity indirectly wholly owned and controlled by Mr. Peizer, our former Chief Executive Officer and Chairman. As of the date of this report, we have $2.0 million in principal amount of secured debt outstanding under the Keep Well Agreement. The Keep Well Agreement includes customary events of default for a first priority senior secured debt facility. In the event of default under the Keep Well Agreement, Acuitas and the collateral agent under the Keep Well Agreement would have the rights that a secured creditor with a first priority lien on a company's assets would have, including, the right to collect, enforce or satisfy any secured obligations then owing, including by foreclosing on the collateral securing our obligations under the Keep Well Agreement (which generally comprise all of our assets), restrictions on the operation of our business would spring into effect, and Acuitas would have no obligation to fund any future borrowings under the Keep Well Agreement. A default under the Keep Well Agreement would have material adverse consequences to our financial condition, operating results, and business, and could cause us to become insolvent or enter bankruptcy proceedings, and our stockholders may lose all or a portion of their investment because of the priority of the claims of Acuitas, in its capacity as a secured creditor, on our assets.

See also "*Acuitas Group Holdings, LLC owns approximately 73% of our outstanding common stock and beneficially owns approximately 94% of our outstanding common stock, and as a result of such ownership has the ability to substantially influence the election of directors and other matters submitted to stockholders*" and "*There can be no assurance that our common stock will continue to be listed on Nasdaq or, if listed, that we will be able to comply with the continued listing standards of Nasdaq, which could limit investors' ability to transact in our securities and subject us to additional trading restrictions*," below. For additional information regarding the Keep Well Agreement, see the section titled, "Keep Well Agreement" in Note 10 in the Notes to Condensed Consolidated Financial Statements in Part I, Item 1 of this report.

The amounts we borrow under the Keep Well Agreement bear interest at a variable rate which could cause our outstanding indebtedness to increase significantly.

The amounts we borrow under the Keep Well Agreement bear interest based on the 30 day tenor Term Secured Overnight Financing Rate (SOFR) Reference Rate, which is subject to a monthly adjustment, plus a margin specified in the Keep Well Agreement. As a result, in an increasing interest rate environment, the interest rate on the amounts we borrow under the Keep Well Agreement is subject to increase, thereby resulting in increased interest expense. The 30 day tenor Term SOFR Reference Rate has steadily increased in the past year. At September 30, 2023, we had a cumulative total of $3.7 million of accrued paid-in-kind interest on the Keep Well Notes, of which $1.2 million and $3.1 million were related to the three and nine months ended September 30, 2023, respectively. The effective weighted average interest rate for the Keep Well Notes was 20.73%. As noted above, as of the date of this report, there is $2.0 million in the aggregate outstanding under Keep Well Notes. Accrued interest on the principal amount of Keep Well Notes is added to principal, which either we will be required to repay on the maturity date, May 14, 2026, or, if converted into shares of our common stock, will result in additional dilution to our stockholders. See Note 10 and Note 14 of the Notes to Condensed Consolidated Financial Statements in Part I, Item 1 of this report for more information.

We may fail to successfully manage and grow our business, which could adversely affect our results of operations, financial condition and business.

Continued expansion could put significant strain on our management, operational and financial resources. The need to comply with the rules and regulations of the SEC will continue to place significant demands on our financial and accounting staff, financial, accounting and information systems, and our internal controls and procedures, any of which may not be adequate to support our anticipated growth. The need to comply with the state and federal healthcare, security and privacy regulation will continue to place significant demands on our staff and our policies and procedures, any of which may not be adequate to support our anticipated growth. We may not be able to effectively hire, train, retain, motivate and manage required personnel. Our failure to manage growth effectively could limit our ability to satisfy our reporting obligations, or achieve our marketing, commercialization and financial goals.

We may be unable to successfully execute on our growth initiatives, business strategies or operating plans.

We are continually executing a number of growth initiatives, strategies and operating plans designed to enhance our business. The anticipated benefits from these efforts are based on several assumptions that may prove to be inaccurate. Moreover, we may not be able to successfully complete these growth initiatives, strategies and operating plans and realize all of the benefits, including growth targets and cost savings, that we expect to achieve or it may be more costly to do so than we anticipate. A variety of risks could cause us not to realize some or all of the expected benefits. These risks include, among others, delays in the anticipated timing of activities related to such growth initiatives, strategies and operating plans, increased difficulty and cost in implementing these efforts, including difficulties in complying with new regulatory requirements and the incurrence of other unexpected costs associated with operating the business, failure of our products to receive sufficient market acceptance and a highly competitive, rapidly evolving marketplace. Moreover, our continued implementation of our programs may disrupt our operations and performance. As a result, we cannot assure you that we will realize the intended benefits. If, for any reason, the benefits we realize are less than our estimates or the implementation of our growth initiatives, strategies and operating plans adversely affect our operations or cost more or take longer to effectuate than we expect, or if our assumptions prove inaccurate, our business, financial condition and results of operations may be materially adversely affected.

Failure to effectively develop and expand our sales and marketing capabilities could harm our ability to execute our business plan, increase our customer base and achieve broader market acceptance of our program.

Our ability to increase our customer base and achieve broader market acceptance of our Ontrak program will depend to a significant extent on our ability to deploy our sales and marketing resources efficiently and our ability to drive our current sales pipeline to secure new customers and to cultivate customer and partner relationships to drive revenue growth in the next twelve months. We are focused on identifying and developing new customer opportunities and these efforts require us to invest significant financial and other resources. Our business and operating results will be harmed if our sales and marketing efforts do not generate significant increases in revenue in the next twelve months.

Our programs may not be as effective as we believe them to be, which could limit ourpotentialrevenue growth.

Our belief in the efficacy of our Ontrak solution is based on a limited experience with a relatively small number of members in comparison to the total addressable members. Such results may not be indicative of the long-term future performance of treatment with our programs. If the initially indicated results cannot be successfully replicated or maintained over time, utilization of our programs could decline substantially. There are no standardized methods for measuring efficacy of programs such as ours. Even if we believe our solutions are effective, our customers could determine they are not effective by utilizing different outcome measures. In addition, even if our customers determine our solutions are effective, they may discontinue them because they determine that the aggregate cost savings are not sufficient, our programs do not have a high enough return on investment, they prefer other competitive or strategic solutions or do not believe our programs deliver other desired benefits such as clinical outcomes. Our success is dependent on our ability to enroll third-party payor members in our Ontrak solutions. Large scale outreach and enrollment efforts have not been conducted and only for limited time periods and we may not be able to achieve the anticipated enrollment rates.

Our Ontraksolutionmay not become widely accepted, which could limit our growth.

Our ability to achieve further marketplace acceptance for our Ontrak solution is dependent on our ability to demonstrate financial and clinical outcomes from our agreements. If we are unable to secure sufficient contracts to achieve recognition or acceptance of our Ontrak solution or if our program does not demonstrate the expected level of clinical improvement and cost savings, it is unlikely that we will be able to achieve widespread market acceptance.

Disappointing results for oursolutionsor failure to attain our publicly disclosedmilestonescould adversely affect market acceptance and have a material adverse effect on our stock price.

Disappointing results, later-than-expected press release announcements or termination of evaluations, pilot programs or commercial Ontrak solutions could have a material adverse effect on the commercial acceptance of our solutions, our stock price and on our results of operations. In addition, announcements regarding results, or anticipation of results, may increase volatility in our stock price. In addition to numerous upcoming milestones, from time to time we provide financial guidance and other forecasts to the market. While we believe that the assumptions underlying projections and forecasts we make publicly available are reasonable, projections and forecasts are inherently subject to numerous risks and uncertainties. Any failure to achieve milestones, or to do so in a timely manner, or to achieve publicly announced guidance and forecasts, could have a material adverse effect on our results of operations and the price of our common stock.

Our industry is highly competitive, and we may not be able to compete successfully.

The healthcare business in general, and the behavioral health treatment business in particular, are highly competitive and rapidly evolving. While we believe our products and services are in many aspects unique, we operate in highly competitive markets. We compete with other healthcare management service organizations, care management and disease management companies, including Managed Behavioral Healthcare Organizations (MBHOs), other specialty healthcare and managed care companies, and healthcare technology companies that are offering treatment and support of behavioral health on-line and on mobile devices. Most of our competitors are significantly larger and have greater financial, marketing and other resources than us. We believe that our ability to offer customers a comprehensive and integrated behavioral health solution, including the utilization of our analytical models and innovative member engagement methodologies, will enable us to compete effectively. However, there can be no assurance that we will not encounter more effective or more strategically desirable competition in the future, that we will have financial resources to continue to improve our offerings or that we will be successful improving them, which would limit our ability to maintain or increase our business.

Our competitors may develop and introduce new processes and products that are equal or superior to our programs in treating behavioral health conditions. Accordingly, we may be adversely affected by any new processes and products developed by our competitors.

A substantial percentage of ourrevenuesare attributable toa fewlarge customers, any or all of which mayterminate our servicesat any time.

Three customers accounted for an aggregate of approximately 93% and 95% of our total revenue for the three months ended September 30, 2023 and 2022, respectively. Three customers accounted for an aggregate of approximately 92% and 93% of our total revenue for the nine months ended September 30, 2023 and 2022, respectively.

Also, two customers represented 100% of our total accounts receivable as of September 30, 2023 and three customers represented 95% of our total accounts receivable as of December 31, 2022.

In February 2021, we received a termination notice from our then largest customer. In August 2021, we received a termination notice from another large customer of their intent not to continue the program past December 31, 2021. As of December 31, 2021, members from these two customers have completed their participation in the program.

In October 2023 we received a notice from a large customer of its intent not to continue using our services after February 2024. The customer advised us to cease enrollment of any new members from that customer immediately. The customer also informed us that the notification was related to the customer's change in strategy and not reflective of the performance or value of our services.

We expect that revenues from a limited number of customers will continue for the foreseeable future. Sales to these customers are made pursuant to agreements with flexible termination provisions, generally entitling the customer to terminate with or without cause on limited notice to us, as we experienced during fiscal year 2021, as described above, and which have adversely affected our business and financial condition and results, and the notice we received in October 2023, as described above. We may not be able to keep our key customers, or these customers may decrease their enrollment levels. Any substantial decrease or delay in revenues relating to one or more of our key customers would harm our business and financial condition and results. If revenues relating to current key customers cease or are reduced, we may not obtain sufficient enrollments from other customers necessary to offset any such losses or reductions.

We depend on key personnel, the loss of which could impact the ability to manage our business.

We are highly dependent on our senior management and key operating and technical personnel. The loss of the services of any member of our senior management and key operating and technical personnel could have a material adverse effect on our business, operating results and financial condition. We also rely on consultants and advisors to assist us in formulating our strategy.

As our company grows, we will need to hire additional employees in order to achieve our objectives. There is currently intense competition for skilled executives and employees with relevant expertise, and this competition is likely to continue. The inability to attract and retain sufficient personnel could adversely affect our business, operating results and financial condition.

Our success depends largely upon the continued services of our key executive officers. These executive officers are at-will employees and therefore they may terminate employment with us at any time with no advance notice. We also rely on our leadership team in the areas of research and development, marketing, services and general and administrative functions. From time to time, there may be changes in our executive management team resulting from the hiring or departure of executives, which could disrupt our business. The replacement of one or more of our executive officers or other key employees would likely involve significant time and costs and may significantly delay or prevent the achievement of our business objectives.

To continue to execute our growth strategy, we also must attract and retain highly skilled personnel. Competition is intense for qualified professionals. We may not be successful in continuing to attract and retain qualified personnel. We have from time to time in the past experienced, and we expect to continue to experience in the future, difficulty in hiring and retaining highly skilled personnel with appropriate qualifications. The pool of qualified personnel with experience working in the healthcare market is limited overall. In addition, many of the companies with which we compete for experienced personnel have greater resources than we have.

In addition, in making employment decisions, particularly in high-technology industries, job candidates often consider the value of the stock options or other equity instruments they are to receive in connection with their employment. Volatility in the price of our stock may, therefore, adversely affect our ability to attract or retain highly skilled personnel. Further, the requirement to expense stock options and other equity instruments may discourage us from granting the size or type of stock option or equity awards that job candidates require to join our company. Failure to attract new personnel or failure to retain and motivate our current personnel could have a material adverse effect on our business, financial condition and results of operations.

We are dependent on our ability to recruit, retain and develop a very large and diverse workforce. We must transform our culture in order to successfully grow our business.

Our products and services and our operations require a large number of employees. A significant number of employees have joined us in recent years as we continue to grow and expand our business. Our success is dependent on our ability to transform our culture, align our talent with our business needs, engage our employees and inspire our employees to be open to change, to innovate and to maintain member- and client-focus when delivering our services. Our business would be adversely affected if we fail to adequately plan for succession of our executives and senior management; or if we fail to effectively recruit, integrate, retain and develop key talent and/or align our talent with our business needs, in light of the current rapidly changing environment. While we have succession plans in place and we have employment arrangements with a limited number of key executives, these do not guarantee that the services of these or suitable successor executives will continue to be available to us.

Our business and growth strategy depend on our ability to maintain and expand a network of qualified healthcare providers. If we are unable to do so, our future growth and our business, financial condition and results of operations would be negatively impacted.

The success of our business is dependent upon our continued ability to maintain a network of qualified healthcare providers. In any particular market that we operate in, providers could demand higher payments or take other actions that could result in higher medical costs, less attractive service for our members or difficulty meeting regulatory or accreditation requirements. The failure to maintain or to secure new cost-effective provider contracts may result in a loss of or inability to grow our member base, higher costs, healthcare provider network disruptions, and less attractive service for our members, any of which could have a material adverse effect on our business, growth strategy, financial condition and results of operations.

We are subject to ongoing litigation and may be subject to future litigation, any of which could result in substantial liabilities.

All significant medical treatments and procedures, including treatment utilizing our programs, involve the risk of serious injury or death. While we have not been the subject of any such claims, our business entails an inherent risk of claims for personal injuries and substantial damage awards. We cannot control whether individual physicians and therapists will apply the appropriate standard of care in determining how to treat their patients. While our agreements typically require physicians to indemnify us for their negligence, there can be no assurance they will be willing and financially able to do so if claims are made. In addition, our license agreements require us to indemnify physicians, hospitals or their affiliates for losses resulting from our negligence.

We are also subject to ongoing securities class action and stockholder derivative litigation. See Note 13, “Commitments and Contingencies” in the Notes to Condensed Consolidated Financial Statements, in Part I, Item 1, included in this report. In addition, on March 1, 2023, the U.S. Department of Justice (the “DOJ”) announced charges and the SEC filed a civil complaint against Mr. Peizer, our former Chief Executive Officer and Chairman of our Board of Directors, alleging unlawful insider trading in our stock. Mr. Peizer owns and controls Acuitas Capital, our largest stockholder. See “*Acuitas Group Holdings, LLC owns approximately 73% of our outstanding common stock and beneficially owns approximately 94% of our outstanding common stock, and as a result of such ownership has the ability to substantially influence the election of directors and other matters submitted to stockholders.*” Neither we nor any of our other current or former directors or employees were charged by the DOJ or sued by the SEC. On November 15, 2022, we received a notification from the SEC’s Division of Enforcement that it is conducting an investigation captioned "In the Matter of Trading in the Securities of Ontrak, Inc. (HO-14340)" and issued a preservation letter as well as a subpoena for documents relating to the investigation. The notification indicates the investigation is a fact-finding inquiry for compliance with federal securities laws and should not be construed as an indication by the SEC that any violation of law has occurred, nor as a reflection upon any person, entity or security. We have been cooperating fully with the terms of the subpoena. We cannot predict the ultimate outcome of the DOJ or SEC proceedings, nor can we predict whether the DOJ or SEC or any other governmental authorities will initiate separate investigations or litigation, including against us. Investigations and any related legal and administrative proceedings could include a wide variety of outcomes, including the institution of administrative, civil injunctive or criminal proceedings involving the Company and/or its current or former executives and/or directors, the imposition of fines and other penalties, remedies and/or sanctions.

In addition, from time to time, we may also be involved in legal proceedings and investigations arising in the ordinary course of business, including those relating to employment matters, relationships with partners, intellectual property disputes, and other business matters.

We currently have insurance coverage for personal injury claims, directors’ and officers’ liability insurance coverage, and errors and omissions insurance. We may not be able to maintain adequate liability insurance at acceptable costs or on favorable terms. We expect that liability insurance will be more difficult to obtain and that premiums will increase over time and as the volume of patients treated with our programs increases.

We have incurred and may continue to incur significant expenses as a result of litigation and other legal proceedings. In addition, the results of litigation and other legal proceedings are inherently uncertain and adverse judgments or settlements (regardless of a claim's merit) in any legal disputes may result in materially adverse monetary damages or injunctive relief against us. Any claims, investigations or litigation, even if fully indemnified or insured, could damage our reputation and make it more difficult to compete effectively or obtain adequate insurance in the future. In addition, claims, investigations or litigation may be time-consuming, costly, divert management resources, and otherwise have a material adverse effect on our business and result of operations.

If third-party payors fail to provide coverage and adequate payment rates for oursolutions, our revenue and prospects for profitability will be harmed.

Our future revenue growth will depend in part upon our ability to contract with health plans and other insurance payors for our Ontrak solutions. In addition, insurance payors are increasingly attempting to contain healthcare costs, and may not cover or provide adequate payment for our programs. Adequate insurance reimbursement might not be available to enable us to realize an appropriate return on investment in research and product development, and the lack of such reimbursement could have a material adverse effect on our operations and could adversely affect our revenues and earnings.

We may not be able to achieve promised savings for our Ontrakcontracts, which could result in pricing levels insufficient to cover our costs or ensure profitability.

Many of our Ontrak contracts are based upon anticipated or guaranteed levels of savings for our customers and achieving other operational metrics resulting in incentive fees based on savings. If we are unable to meet or exceed promised savings, achieve agreed upon operational metrics, or favorably resolve contract billing and interpretation issues with our customers, we may be required to refund from the amount of fees paid to us any difference between savings that were guaranteed and the savings, if any, which were actually achieved; or we may fail to earn incentive fees based on savings. Accordingly, during or at the end of the contract terms, we may be required to refund some or all of the fees paid for our services. This exposes us to significant risk that contracts negotiated and entered into may ultimately be unprofitable. In addition, managed care operations are at risk for costs incurred to provide agreed upon services under our solution. Therefore, failure to anticipate or control costs could have a materially adverse effect on our business.

Our ability to use our net operating losses to offset future taxable income has been limited in certain cases and may be subject to certain limitations in the future.

Our federal net operating loss carry forwards ("NOLs") have an indefinite life. These NOLs may be used to offset future taxable income, to the extent we generate any taxable income, and thereby reduce or eliminate our future federal income taxes otherwise payable. Section 382 of the Internal Revenue Code imposes limitations on a corporation's ability to utilize NOLs if it experiences an ownership change as defined in Section 382. In general terms, an ownership change may result from transactions increasing the ownership of certain stockholders in the stock of a corporation by more than 50% over a three-year period. In the event that an ownership change has occurred, or were to occur, utilization of our NOLs would be subject to an annual limitation under Section 382 determined by multiplying the value of our stock at the time of the ownership change by the applicable long-term tax-exempt rate as defined in the Internal Revenue Code. Any unused annual limitation may be carried over to later years. We have experienced ownership changes in the past and can continue to experience ownership changes under Section 382 as a result of events in the past or the issuance of shares of common or preferred stock, or a combination thereof. As a result of such ownership changes, the use of our NOLs, or a portion thereof, against our future taxable income may be subject to an annual limitation under Section 382, which may result in expiration of a portion of our NOLs before utilization.

We may periodically consummate opportunistic acquisitions of other companies, and we may not realize expected benefits or such acquisitions or we may have difficulties integrating acquired companies into our operations in a cost-effective manner, if at all.

We may periodically consummate opportunistic acquisitions of businesses, assets, personnel or technologies that allow us to complement our existing operations, expand our market coverage, enter new geographic markets, or add new business capabilities. We continually evaluate and explore strategic opportunities as they arise, including business combination transactions, strategic partnerships, and the purchase or sale of assets. No assurance can be given that the benefits or synergies we may expect from an acquisition will be realized to the extent or in the time frame we anticipate. We may lose key employees, customers, vendors and other business partners of a company we acquire after announcement of acquisition plans. In addition, an acquisition may involve a number of risks and difficulties, including expansion into new geographic markets and business areas in which our management has limited prior experience, the diversion of management's attention to the operations and personnel of the acquired company, the integration of the acquired company's personnel, operations and technology systems and applications, changing relationships with customers, vendors or strategic partners, differing regulatory requirements including in new geographic markets and new business areas, and potential short-term adverse effects on our operating results. These challenges can be magnified as the size of the acquisition increases. Any delays or unexpected costs incurred in connection with the integration of an acquired company or otherwise related to an acquisition could have a material adverse effect on our business, financial condition and results of operations.

An acquisition may require significant expenses and can result in increased debt or other contingent liabilities, adverse tax consequences, deferred compensation charges, the recording and later amortization of amounts related to deferred compensation and certain purchased intangible assets, and the refinement or revision of fair value acquisition estimates following the completion of an acquisition, any of which items could negatively impact our business, financial condition and results of operations. In addition, we may record goodwill in connection with an acquisition and incur goodwill impairment charges in the future. Any of these charges could cause the price of our common stock to decline. An acquisition also could absorb substantial cash resources, require us to incur or assume debt obligations, or involve our issuance of additional equity securities. If we issue equity securities in connection with an acquisition, we may dilute our common stock with securities that have an equal or a senior interest in our company. An acquired entity also may be leveraged or dilutive to our earnings per share, or may have unknown liabilities. In addition, the combined entity may have lower than expected revenues or higher expenses and therefore may not achieve the anticipated results. Any of these factors relating to an acquisition could have a material adverse impact on our business, financial condition and results of operations.

Claims asserted against us for violation of securities laws, whether or not such claims have any merit, are costly to defend and could result in significant liabilities and diversion of our management's time and attention and could have a material adverse effect on our financial condition, business and results of operations.

We offered and sold shares of our Series A Preferred Stock in offerings registered under the Securities Act. In February 2022, a purported securities class action was filed in the Superior Court of California for Los Angeles County, entitled *Braun v. Ontrak, Inc., et al*., Case No. 22STCV07174, on behalf of a putative class of all purchasers of our Series A Preferred Stock in such offerings. The action was brought against us, our officers and directors, and the investment banking firms that acted as underwriters for the offerings. The plaintiff asserted causes of actions alleging that we violated the federal securities laws in connection with the offerings based upon allegations that statements made regarding the growth of our customer base and expansion of our program with health plan customers were false or misleading. We believe that the allegations of falsity lack merit and that we have meritorious defenses, and we intend to defend against the action vigorously.

In addition, one beneficial owner of our Series A Preferred Stock has informally indicated that it may consider one or more claims against us based upon statements in the prospectuses related to the offering of our Series A Preferred Stock regarding the segregated account that was funded with a portion of the proceeds received from such offerings to pre-fund dividend payments on our Series A Preferred Stock in light of the action of our board of directors in April 2023 to make such funds available for general corporate purposes after considering its fiduciary duties to our common stockholders and other relevant factors. Such beneficial owner of our Series A Preferred Stock has also informally alleged that statements in the prospectuses related to the offering of our Series A Preferred Stock with respect to the right of holders of our Series A Preferred Stock to elect individuals to our board of directors if dividends on our Series A Preferred Stock have not been paid in an aggregate amount equal to the equivalent of at least six or more quarterly dividends were false or misleading. To date, such beneficial owner has not specified damages or remedies it would seek if it were to assert any such claims. Others with interests in the Series A Preferred Stock may assert similar claims. We believe that any such claims would be without merit and subject to meritorious defenses. However, any claim alleging any violation of securities laws, with or without merit, could result in costly litigation, significant liabilities and diversion of our management's time and attention and could have a material adverse effect on our financial condition, business and results of operations. The results of litigation and other legal proceedings are inherently uncertain and adverse judgments or settlements (regardless of a claim's merit) in any legal dispute may result in materially adverse monetary damages or injunctive relief against us.

An extended curtailment or halt of operations at the SEC and other government agencies, including due to a U.S. federal government shutdown, could delay or disrupt clinical and preclinical development and potential marketing approval of our product candidates and our ability to raise additional capital.

Twice in the past decade, the previous appropriations legislation deadline was reached and Congress failed to pass a new appropriations bill or continuing resolution to temporarily extend funding, resulting in U.S. government shutdowns that caused federal agencies to halt non-essential operations. Political polarization among lawmakers may lead to a higher frequency and longer duration of government shutdowns in the future. If lawmakers cannot pass a continuing resolution or a new federal budget by November 17, 2023, another federal government shutdown would begin. A federal government shutdown could prevent staff at federal agencies from performing key functions that may adversely affect our business. For example, a government shutdown could prevent SEC staff from performing key functions, including, for example, granting acceleration requests for registration statements, declaring registration statements or amendments thereto effective and providing interpretive guidance or no-action letters. If a federal government shutdown halts non-essential SEC operations for an extended period, it may negatively impact our ability to raise additional capital through registered offerings of our securities in the future. If a prolonged U.S. government shutdown or other event or condition occurs that prevents government and other regulatory agencies from hiring and retaining personnel and conducting their regular activities, it could significantly impact the ability of these agencies to timely review and

process our regulatory submissions and may impede our access to additional capital needed to maintain or expand our operations or to complete important acquisitions or other transactions, which could have a material adverse effect on our business.

Risks related to our intellectual property

Confidentiality agreements with employees,treating physiciansand others may not adequately prevent disclosure of trade secrets and other proprietary information.

In order to protect our proprietary technology and processes, we rely in part on confidentiality provisions in our agreements with employees, treating physicians, and others. These agreements may not effectively prevent disclosure of confidential information and may not provide an adequate remedy in the event of unauthorized disclosure of confidential information. In addition, others may independently discover trade secrets and proprietary information. Costly and time-consuming litigation could be necessary to enforce and determine the scope of our proprietary rights, and failure to obtain or maintain trade secret protection could adversely affect our competitive business position.

We may be subject to claims that we infringe the intellectual property rights of others, and unfavorable outcomes could harm our business.

Our future operations may be subject to claims, and potential litigation, arising from our alleged infringement of patents, trade secrets, trademarks or copyrights owned by other third parties. Within the healthcare, drug and bio-technology industry, many companies actively pursue infringement claims and litigation, which makes the entry of competitive products more difficult. We may experience claims or litigation initiated by existing, better-funded competitors and by other third parties. Court-ordered injunctions may prevent us from continuing to market existing products or from bringing new products to market and the outcome of litigation and any resulting loss of revenues and expenses of litigation may substantially affect our ability to meet our expenses and continue operations.

Risks related to ourhealthcareindustry

Recent changes in insurance and health care laws have created uncertainty in the health care industry.

The Patient Protection and Affordable Care Act as amended by the Health Care and Education Reconciliation Act, each enacted in March 2010, generally known as the Health Care Reform Law, significantly expanded health insurance coverage to uninsured Americans and changed the way health care is financed by both governmental and private payors. Following the 2016 federal elections, which resulted in the election of the Republican presidential nominee and Republican majorities in both houses of Congress, there were renewed legislative efforts to significantly modify or repeal the Health Care Reform Law and certain executive policy changes designed to modify its impact, including the enactment of the Tax Cuts and Jobs Act in December 2017 which repealed the penalties under the Health Care Reform Law for uninsured persons. In light of the Supreme Court ruling in *California et al. v. Texas et al.* in June 2021 generally supporting the Health Care Reform Law, we cannot predict what further reform proposals, if any, will be adopted, when they may be adopted, or what impact they may have on our business. There may also be other risks and uncertainties associated with the Health Care Reform Law. If we fail to comply or are unable to effectively manage such risks and uncertainties, our financial condition and results of operations could be adversely affected.

We expect that additional state and federal healthcare reform measures may be adopted in the future, any of which could limit the amounts that federal and state governments will pay for healthcare therapies, which could result in reduced demand for our services or additional pricing pressures. In August 2022, President Biden signed into law the Inflation Reduction Act of 2022 ("IRA"), which, among other provisions, included several measures intended to lower the cost of prescription drugs and related healthcare reforms. The IRA permits the Secretary of the Department of Health and Human Services to implement many of these provisions through guidance, as opposed to regulation, for the initial years. We cannot be sure whether additional legislation or rulemaking related to the IRA will be issued or enacted, or what impact, if any, such changes will have on our business.

Our policies and procedures may not fully comply with complex and increasing regulation by state and federal authorities, which could negatively impact our business operations.

The healthcare industry is highly regulated and continues to undergo significant changes as third-party payors, such as Medicare and Medicaid, traditional indemnity insurers, managed care organizations and other private payors, increase efforts to control cost, utilization and delivery of healthcare services. Healthcare companies are subject to extensive and complex federal, state and local laws, regulations and judicial decisions. Our failure or the failure of our treating physicians, to comply with applicable healthcare laws and regulations may result in the imposition of civil or criminal sanctions that we cannot afford, or require redesign or withdrawal of our programs from the market.

We may become subject to medical liability claims, which could cause us to incur significant expenses and may require us to pay significant damages if not covered by insurance.

Our business entails the risk of medical liability claims against both our providers and us. Although we carry insurance covering medical malpractice claims in amounts that we believe are appropriate in light of the risks attendant to our business, successful medical liability claims could result in substantial damage awards that exceed the limits of our insurance coverage. We carry professional liability insurance for ourselves, and we separately carry a general insurance policy, which covers medical malpractice claims. In addition, professional liability insurance is expensive and insurance premiums may increase significantly in the future, particularly as we expand our services. As a result, adequate professional liability insurance may not be available to us in the future at acceptable costs or at all.

Any claims made against us that are not fully covered by insurance could be costly to defend against, result in substantial damage awards against us and divert the attention of our management and our providers from our operations, which could have a material adverse effect on our business, financial condition and results of operations. In addition, any claims may adversely affect our business or reputation.

Our business practices may be found to constitute illegal fee-splitting or corporate practice of medicine, which may lead to penalties and adversely affect our business.

Many states have laws that prohibit business corporations, such as us, from practicing medicine, exercising control over medical judgments or decisions of physicians or other health care professionals (such as nurses or nurse practitioners), or engaging in certain business arrangements with physicians or other health care professionals, such as employment of physicians and other health care professionals or fee-splitting. The state laws and regulations and administrative and judicial decisions that enumerate the specific corporate practice and fee-splitting rules vary considerably from state to state and are enforced by both the courts and government agencies, each with broad discretion. Courts, government agencies or other parties, including physicians, may assert that we are engaged in the unlawful corporate practice of medicine, fee-splitting, or payment for referrals by providing administrative and other services in connection with our treatment programs. As a result of such allegations, we could be subject to civil and criminal penalties, our contracts could be found invalid and unenforceable, in whole or in part, or we could be required to restructure our contractual arrangements. If so, we may be unable to restructure our contractual arrangements on favorable terms, which would adversely affect our business and operations.

Our business practices may be found to violate anti-kickback, physician self-referral or false claims laws, which may lead to penalties and adversely affect our business.

The healthcare industry is subject to extensive federal and state regulation with respect to kickbacks, physician self-referral arrangements, false claims and other fraud and abuse issues.

The federal anti-kickback law (the “Anti-Kickback Law”) prohibits, among other things, knowingly and willfully offering, paying, soliciting, receiving, or providing remuneration, directly or indirectly, in exchange for or to induce either the referral of an individual, or the furnishing, arranging for, or recommending of an item or service that is reimbursable, in whole or in part, by a federal health care program. “Remuneration” is broadly defined to include anything of value, such as, for example, cash payments, gifts or gift certificates, discounts, or the furnishing of services, supplies, or equipment. The Anti-Kickback Law is broad, and it prohibits many arrangements and practices that are lawful in businesses outside of the health care industry.

Recognizing the breadth of the Anti-Kickback Law and the fact that it may technically prohibit many innocuous or beneficial arrangements within the health care industry, the Office of Inspector General (“OIG”) has issued a series of regulations, known as the “safe harbors.” Compliance with all requirements of a safe harbor immunizes the parties to the business arrangement from prosecution under the Anti-Kickback Law. The failure of a business arrangement to fit within a safe harbor does not necessarily mean that the arrangement is illegal or that the OIG will pursue prosecution. Still, in the absence of an applicable safe harbor, a violation of the Anti-Kickback Law may occur even if only one purpose of an arrangement is to induce referrals. The penalties for violating the Anti-Kickback Law can be severe. These sanctions include criminal and civil penalties, imprisonment, and possible exclusion from the federal health care programs. Many states have adopted laws similar to the Anti-Kickback Law, and some apply to items and services reimbursable by any payor, including private insurers.

In addition, the federal ban on physician self-referrals, commonly known as the Stark Law, prohibits, subject to certain exceptions, physician referrals of Medicare patients to an entity providing certain “designated health services” if the physician or an immediate family member of the physician has any financial relationship with the entity. A “financial relationship” is created by an investment interest or a compensation arrangement. Penalties for violating the Stark Law include the return of funds received for all prohibited referrals, fines, civil monetary penalties, and possible exclusion from the federal health care programs. In addition to the Stark Law, many states have their own self-referral bans, which may extend to all self-referrals, regardless of the payor.

The federal False Claims Act imposes liability on any person or entity that, among other things, knowingly presents, or causes to be presented, a false or fraudulent claim for payment to the federal government. Under the False Claims Act, a person acts knowingly if he has actual knowledge of the information or acts in deliberate ignorance or in reckless disregard of the truth or falsity of the information. Specific intent to defraud is not required. Violations of other laws, such as the Anti-Kickback Law or the FDA prohibitions against promotion of off-label uses of drugs, can lead to liability under the federal False Claims Act. The qui tam provisions of the False Claims Act allow a private individual to bring an action on behalf of the federal government and to share in any amounts paid by the defendant to the government in connection with the action. The number of filings of qui tam actions has increased significantly in recent years. When an entity is determined to have violated the False Claims Act, it may be required to pay up to three times the actual damages sustained by the government, plus civil penalties of between $5,500 and $11,000 for each false claim. Conduct that violates the False Claims Act may also lead to exclusion from the federal health care programs. Given the number of claims likely to be at issue, potential damages under the False Claims Act for even a single inappropriate billing arrangement could be significant. In addition, various states have enacted similar laws modeled after the False Claims Act that apply to items and services reimbursed under Medicaid and other state health care programs, and, in several states, such laws apply to claims submitted to all payors.

On May 20, 2009, the Federal Enforcement and Recovery Act of 2009, or FERA, became law, and it significantly amended the federal False Claims Act. Among other things, FERA eliminated the requirement that a claim must be presented to the federal government. As a result, False Claims Act liability extends to any false or fraudulent claim for government money, regardless of whether the claim is submitted to the government directly, or whether the government has physical custody of the money. FERA also specifically imposed False Claims Act liability if an entity "knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the Government." As a result, the knowing and improper failure to return an overpayment can serve as the basis for a False Claims Act action. In March 2010, Congress passed the Patient Protection and Affordable Care Act, as amended by the Health Care and Education Reconciliation Act of 2010, collectively the ACA, which also made sweeping changes to the federal False Claims Act. The ACA also established that Medicare and Medicaid overpayments must be reported and returned within 60 days of identification or when any corresponding cost report is due.

Finally, the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations created the crimes of health care fraud and false statements relating to health care matters. The health care fraud statute prohibits knowingly and willfully executing a scheme to defraud any health care benefit program, including a private insurer. The false statements statute prohibits knowingly and willfully falsifying, concealing, or covering up a material fact or making any materially false, fictitious, or fraudulent statement in connection with the delivery of or payment for health care benefits, items, or services. A violation of this statute is a felony and may result in fines, imprisonment, or exclusion from the federal health care programs.

Federal or state authorities may claim that our fee arrangements, our agreements and relationships with contractors, hospitals and physicians, or other activities violate fraud and abuse laws and regulations. If our business practices are found to violate any of these laws or regulations, we may be unable to continue with our relationships or implement our business plans, which would have an adverse effect on our business and results of operations. Further, defending our business practices could be time consuming and expensive, and an adverse finding could result in substantial penalties or require us to restructure our operations, which we may not be able to do successfully.

Our business practices may be subject to state regulatory and licensure requirements.

Our business practices may be regulated by state regulatory agencies that generally have discretion to issue regulations and interpret and enforce laws and rules. These regulations can vary significantly from jurisdiction to jurisdiction, and the interpretation of existing laws and rules also may change periodically. Some of our business and related activities may be subject to state health care-related regulations and requirements, including managed health care, utilization review (UR) or third-party administrator-related regulations and licensure requirements. These regulations differ from state to state, and may contain network, contracting, and financial and reporting requirements, as well as specific standards for delivery of services, payment of claims, and adequacy of health care professional networks. If a determination is made that we have failed to comply with any applicable state laws or regulations, our business, financial condition and results of operations could be adversely affected.

If our providers or experts are characterized as employees, we would be subject to employment and withholding liabilities.

We structure our relationships with our providers and experts in a manner that we believe results in an independent contractor relationship, not an employee relationship. An independent contractor is generally distinguished from an employee by his or her degree of autonomy and independence in providing services. A high degree of autonomy and independence is generally indicative of a contractor relationship, while a high degree of control is generally indicative of an employment relationship. On October 13, 2022, the Department of Labor published its "Employee or Independent Contractor Classification under the Fair Labor Standards Act" (the "FLSA Standards") that would rescind existing guidance adopted under the Trump Administration and broaden the scope of the so-called "economic realities test" used to classify workers, likely making it more difficult for workers to be classified as independent contractors. Although we believe that our providers and experts are properly characterized as independent contractors, tax or other regulatory authorities may in the future challenge our characterization of these relationships particularly if the new FLSA Standards are adopted. If such regulatory authorities or state, federal or foreign courts were to determine that our providers or experts are employees, and not independent contractors, we would be required to withhold income taxes, to withhold and pay social security, Medicare and similar taxes and to pay unemployment and other related payroll taxes. We would also be liable for unpaid past taxes and subject to penalties. As a result, any determination that our providers or experts are our employees could have a material adverse effect on our business, financial condition and results of operations.

We may be subject to healthcare anti-fraud initiatives, which may lead to penalties and adversely affect our business.

State and federal government agencies are devoting increased attention and resources to anti-fraud initiatives against healthcare providers and the entities and individuals with whom they do business, and such agencies may define fraud expansively to include our business practices, including the receipt of fees in connection with a healthcare business that is found to violate any of the complex regulations described above. While to our knowledge we have not been the subject of any anti-fraud investigations, if such a claim were made, defending our business practices could be time consuming and expensive and an adverse finding could result in substantial penalties or require us to restructure our operations, which we may not be able to do successfully.

Our use and disclosure of patient information is subject to privacy and security regulations, which may result in increased costs.

In providing administrative services to healthcare providers and operating our treatment programs, we may collect, use, disclose, maintain and transmit patient information in ways that will be subject to many of the numerous state, federal and international laws and regulations governing the collection, use, disclosure, storage, privacy and security of patient-identifiable health information, including the administrative simplification requirements of the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations (HIPAA) and the Health Information Technology for Economic and Clinical Health Act of 2009 (HITECH). The HIPAA Privacy Rule restricts the use and disclosure of certain patient information ("Protected Health Information" or "PHI"), and requires safeguarding that information. The HIPAA Security Rule and HITECH establish elaborate requirements for safeguarding PHI transmitted or stored electronically. HIPAA applies to covered entities, which may include healthcare facilities and also includes health plans that will contract for the use of our programs and our services. HIPAA and HITECH require covered entities to bind contractors that use or disclose protected health information (or "Business Associates") to compliance with certain aspects of the HIPAA Privacy Rule and all of the HIPAA Security Rule. In addition to contractual liability, Business Associates are also directly subject to regulation by the federal government. Direct liability means that we are subject to audit, investigation and enforcement by federal authorities. HITECH imposes breach notification obligations requiring us to report breaches of "Unsecured Protected Health Information" or PHI that has not been encrypted or destroyed in accordance with federal standards. Business Associates must report such breaches so that their covered entity customers may in turn notify all affected patients, the federal government, and in some cases, local or national media outlets. We may be required to indemnify our covered entity customers for costs associated with breach notification and the mitigation of harm resulting from breaches that we cause. If we are providing management services that include electronic billing on behalf of a physician practice or facility that is a covered entity, we may be required to conduct those electronic transactions in accordance with the HIPAA regulations governing the form and format of those transactions. Services provided under our Ontrak solution not only require us to comply with HIPAA and HITECH but also Title 42 Part 2 of the Code of Federal Regulations ("Part 2"). Part 2 is a federal, criminal law that severely restricts our ability to use and disclose drug and alcohol treatment information obtained from federally-supported treatment facilities. Our operations must be carefully structured to avoid liability under this law. Our Ontrak solution qualifies as a federally funded treatment facility which requires us to disclose information on members only in compliance with Title 42.

In addition to the federal privacy regulations, there are a number of state laws governing the privacy and security of health and personal information. The penalties for violation of these laws vary widely and the area is rapidly evolving.

In 2018, California passed the California Consumer Privacy Act (the "CCPA"), which gives consumers significant rights over the use of their personal information, including the right to object to the "sale" of their personal information. In 2020, Californians voted to enact the California Privacy Rights Act (CPRA), which amends the CCPA by expanding consumers' rights in their personal information and creating a new governmental agency to interpret and enforce the statute. Most provisions of the CPRA will become effective on January 1, 2023. While information covered by HIPAA is generally exempt from the applicability of the CCPA as amended by the CPRA, the rights of consumers under the CCPA may restrict our ability to use personal information in connection with our business operations. The CCPA also provides a private right of action for certain security breaches.

In 2019, New York passed a law known as the SHIELD Act, which expands data breach reporting obligations and requires companies to have robust data security programs in place. More recently, New York and other states, including Washington, have introduced significant privacy bills, and Congress is debating federal privacy legislation, which if passed, may restrict our business operations and require us to incur additional costs for compliance.

In addition, several foreign countries and governmental bodies, including the E.U., Brazil and Canada, have laws and regulations concerning the collection and use of personally identifiable information obtained from their residents, including identifiable health information, which are often more restrictive than those in the U.S. laws and regulations in these jurisdictions apply broadly to the collection, use, storage, disclosure and security of personally identifiable information, including health information, identifying, or which may be used to identify, an individual, such as names, email addresses and, in some jurisdictions, Internet Protocol (IP) addresses, device identifiers and other data. Although we currently conduct business only in the United States of America, these laws and regulations could become applicable to us in the event we expand our operations into other countries. These and other obligations may be modified and interpreted in different ways by courts, and new laws and regulations may be enacted in the future.

Within the EEA, the General Data Protection Regulation ("GDPR") took full effect on May 25, 2018, superseding the 1995 European Union Data Protection Directive and becoming directly applicable across E.U. member states. The GDPR includes more stringent operational requirements for processors and controllers of personal data (including health information) established in and outside of the EEA, imposes significant penalties for non-compliance and has broader extra-territorial effect. As the GDPR is a regulation rather than a directive, it applies throughout the EEA, but permits member states to enact supplemental requirements if they so choose. Noncompliance with the GDPR can trigger fines of up to the greater of €20 million or 4% of global annual revenues. Further, a Data Protection Act substantially implementing the GDPR was enacted in the U.K., effective in May 2018. It remains unclear, however, how U.K. data protection laws or regulations will develop in the medium to longer term and how data transfers to and from the U.K. will be regulated in light of the U.K.'s withdrawal from the E.U. In addition, some countries are considering or have enacted legislation requiring local storage and processing of data that could increase the cost and complexity of delivering our services.

We believe that we have taken the steps required of us to comply with laws governing the privacy and security of personal information, including health information privacy and security laws and regulations, in all applicable jurisdictions, both state and federal. However, we may not be able to maintain compliance in all jurisdictions where we do business. In addition, to the extent we disclose such information to our third-party service providers in the course of our business, we may be indirectly liable for their misuse or other unauthorized disclosure of such personal information (including health information). Failure to maintain compliance, or changes in state or federal privacy and security laws could result in civil and/or criminal penalties and could have a material adverse effect on our business, including significant reputational damage associated with a breach. Under HITECH, we are subject to prosecution or administrative enforcement and increased civil and criminal penalties for non-compliance, including a four-tiered system of monetary penalties. We are also subject to enforcement by state attorneys general who were given authority to enforce HIPAA under HITECH, and who have authority to enforce state-specific data privacy and security laws. If regulations change, if we expand the territorial scope of our operations, or if it is determined that we are not in compliance with privacy regulations, we may be required to modify aspects of our program, which may adversely affect program results and our business or profitability.

Security breaches, loss of data and other disruptions could compromise sensitive information related to our business, prevent us from accessing critical information or expose us to liability, which could adversely affect our business and our reputation.

In the ordinary course of our business, we collect and store sensitive data, including legally protected patient health information, personally identifiable information about our employees, intellectual property, and proprietary business information. We manage and maintain our applications and data utilizing an off-site co-location facility. These applications and data encompass a wide variety of business critical information including research and development information, commercial information and business and financial information.

The secure processing, storage, maintenance and transmission of this critical information is vital to our operations and business strategy, and we devote significant resources to protecting such information. Although we take measures to protect sensitive information from unauthorized access or disclosure, our information technology and infrastructure may be vulnerable to attacks by hackers, viruses, breaches or interruptions due to employee error or malfeasance, breaches or interruptions due to the malfeasance or negligence of any of our third-party service providers, terrorist attacks, earthquakes, fire, flood, other natural disasters, power loss, computer systems failure, data network failure, Internet failure or lapses in compliance with privacy and security mandates. We may be subject to distributed denial of service (DDOS) attacks by hackers aimed at disrupting service to patients and customers. Our response to such DDOS attacks may be insufficient to protect our network and systems. In addition, there has been a continuing increase in the number of malicious software attacks in a wide variety of different industries, including malware, ransomware, and email phishing scams, particularly since the start of the COVID-19 pandemic. Any such virus, breach or interruption could compromise our networks and the information stored there could be accessed by unauthorized parties, publicly disclosed, lost or stolen. We have measures in place that are designed to detect and respond to such security incidents and breaches of privacy and security mandates. Nonetheless, we cannot guarantee our backup systems, regular data backups, security protocols, network protection mechanisms and other procedures currently in place, or that may be in place in the future, will be adequate to prevent or remedy network and service interruption, system failure, damage to one or more of our systems, data loss, security breaches or other data security incidents. We might be required to expend significant capital and resources to protect against or address such incidents. Any access, disclosure or other loss of information could result in legal claims or proceedings, liability under laws that protect the privacy of personal information (such as HIPAA and state data security laws), government enforcement actions and regulatory penalties. We may also be required to indemnify our customers for costs associated with having their data on our system breached. Unauthorized access, loss or dissemination could also interrupt our operations, including our ability to provide treatment, bill our customers, provide customer support services, conduct research and development activities, process and prepare company financial information, manage various general and administrative aspects of our business and damage our reputation, or we may lose one or more of our customers, especially if they felt their data may be breached, any of which could adversely affect our business.

Certain of our professional healthcare employees, such as nurses, must comply with individual licensing requirements.

All of our healthcare professionals who are subject to licensing requirements, such as our care coaches, are licensed in the state in which they provide professional services in person. While we believe our nurses provide coaching and not professional services, one or more states may require our healthcare professionals to obtain licensure if providing services telephonically across state lines to the state's residents. Healthcare professionals who fail to comply with these licensure requirements could face fines or other penalties for practicing without a license, and we could be required to pay those fines on behalf of our healthcare professionals. If we are required to obtain licenses for our nurses in states where they provide telephonic coaching, it would significantly increase the cost of providing our product. In addition, new and evolving agency interpretations, federal or state legislation or regulations, or judicial decisions could lead to the implementation of out-of-state licensure requirements in additional states, and such changes would increase the cost of services and could have a material effect on our business.

Risks related to our preferred stock

Our Series A Preferred Stock ranks junior to all of our indebtedness and other liabilities.

In the event of our bankruptcy, liquidation, dissolution or winding-up of our affairs, our assets will be available to pay obligations on the Series A Preferred Stock only after all of our indebtedness and other liabilities have been paid. The rights of holders of the Series A Preferred Stock to participate in the distribution of our assets will rank junior to the prior claims of our current and future creditors and any future series or class of preferred stock we may issue that ranks senior to the Series A Preferred Stock. Also, the Series A Preferred Stock effectively ranks junior to all existing and future indebtedness and to the indebtedness and other liabilities of our existing subsidiaries and any future subsidiaries. Our existing subsidiaries are, and future subsidiaries would be, separate legal entities and have no legal obligation to pay any amounts to us in respect of dividends due on the Series A Preferred Stock.

At September 30, 2023, our total liabilities was $25.4 million. If we are forced to liquidate our assets to pay our creditors, we may not have sufficient assets to pay amounts due on any or all of the Series A Preferred Stock then outstanding.

Our future debt instruments may restrict the authorization, payment or setting apart of dividends on the Series A Preferred Stock. Also, future offerings of debt or senior equity securities may adversely affect the market price of the Series A Preferred Stock. If we decide to issue debt or senior equity securities in the future, it is possible that these securities will be governed by an indenture or other instruments containing covenants restricting our operating flexibility. Additionally, any convertible or exchangeable securities that we issue in the future may have rights, preferences and privileges more favorable than those of the

Series A Preferred Stock and may result in dilution to owners of the Series A Preferred Stock. We and, indirectly, our stockholders, will bear the cost of issuing and servicing such securities. Because our decision to issue debt or equity securities in any future offering will depend on market conditions and other factors beyond our control, we cannot predict or estimate the amount, timing or nature of our future offerings. The holders of the Series A Preferred Stock will bear the risk of our future offerings, which may reduce the market price of the Series A Preferred Stock and will dilute the value of their holdings in us.

Our Series A Preferred Stock is quoted on the OTC Markets, which could limit investors' liquidity and ability to trade in our Series A Preferred Stock.

Our Series A Preferred Stock is quoted on the OTC Markets. The OTC Markets provides significantly less liquidity than a listing on the Nasdaq Stock Markets or other national securities exchange. Securities quoted on the OTC Markets are traded by a community of market makers that enter quotes and trade reports. This market is limited in comparison to the national stock exchanges and any prices quoted may not be a reliable indication of the value of our Series A Preferred Stock. Quotes for stocks included on the OTC Markets are not listed in the financial sections of newspapers as are those for the Nasdaq Stock Market or the NYSE. Therefore, prices for securities traded solely on the OTC Markets may be difficult to obtain.

Trading on the OTC Markets as opposed to a national securities exchange has resulted and may continue to result in a reduction in some or all of the following: (a) the liquidity of our Series A Preferred Stock; (b) the market price of our Series A Preferred Stock; (c) the number of market markers in our Series A Preferred Stock; (d) the availability of information concerning the trading prices and volume of shares of our Series A Preferred Stock; and (e) the number of broker-dealers willing to execute trades in shares of our Series A Preferred Stock. Each of the foregoing could have a material adverse effect on the price of our Series A Preferred Stock.

The liquidity of the market for our Series A Preferred Stock also depends on a number of other factors, including prevailing interest rates, our financial condition and operating results, the number of holders of our Series A Preferred Stock, the market for similar securities and the interest of securities dealers in making a market in our Series A Preferred Stock. We cannot predict the extent to which investor interest in our Company will maintain the trading market in our Series A Preferred Stock, or how liquid that market will be. If an active market is not maintained, investors may have difficulty selling shares of our Series A Preferred Stock.

We may not be able to pay dividends on the Series A Preferred Stock if we have insufficient cash or available 'surplus' as defined under Delaware law to make such dividend payments.

Our ability to pay cash dividends on the Series A Preferred Stock requires us to have either net profits or positive net assets (total assets less total liabilities) over our capital, and that we have sufficient working capital in order to be able to pay our debts as they become due in the usual course of business. Our ability to pay dividends may also be impaired if any of the risks described in this report or in the 2022 10-K were to occur. Also, payment of our dividends depends upon our financial condition and other factors as our Board of Directors may deem relevant from time to time. We cannot assure you that we will have sufficient cash or "surplus" to pay the cash dividends on the Series A Preferred Stock. In addition, our Board of Directors is not required to declare a dividend on the Series A Preferred Stock and did not declare a dividend on the Series A Preferred Stock for the quarters ended May 31, 2022, August 31, 2022, November 30, 2022, February 28, 2023, May 31, 2023 and August 31, 2023. On April 19, 2023, approximately $4.5 million that the Company maintained in a segregated account to pre-fund quarterly dividend payments on the Series A Preferred Stock until August 2022 was made available for general corporate purposes and was classified as unrestricted cash on the Company's consolidated balance sheet. Our Board of Directors deemed the foregoing to be in the best interests of the Company and its common stockholders in light of the Company's current and anticipated financial condition and outlook, and after considering its fiduciary duties to the Company's common stockholders and other relevant factors.

Future issuances of preferred stock may reduce the value of the Series A Preferred Stock.

We may sell additional shares of preferred stock on terms that may differ from the Series A Preferred Stock. Such shares could rank on parity with or, subject to the voting rights referred to above (with respect to issuances of new series of preferred stock), senior to the Series A Preferred Stock as to distribution rights or rights upon liquidation, winding up or dissolution. The subsequent issuance of additional shares of Series A Preferred Stock, or the creation and subsequent issuance of additional classes of preferred stock on parity with the Series A Preferred Stock, could dilute the interests of the holders of Series A Preferred Stock offered hereby. Any issuance of preferred stock that is senior to the Series A Preferred Stock would not only dilute the interests of the holders of Series A Preferred Stock, but also could affect our ability to pay distributions on, redeem or pay the liquidation preference on the Series A Preferred Stock.

Market interest rates may materially and adversely affect the value of the Series A Preferred Stock.

One of the factors that influences the price of the Series A Preferred Stock is the dividend yield on the Series A Preferred Stock (as a percentage of the market price of the Series A Preferred Stock) relative to market interest rates. Continued increase in market interest rates may lead prospective purchasers of the Series A Preferred Stock to expect a higher dividend yield (and higher interest rates would likely increase our borrowing costs and potentially decrease funds available for dividend payments). Thus, higher market interest rates could cause the market price of the Series A Preferred Stock to materially decrease.

The special exchange right that the Series A Preferred Stock is entitled to may make it more difficult for a party to acquire us or discourage a party from acquiring us.

The Series A Preferred Stock special exchange right may have the effect of discouraging a third party from making an acquisition proposal for us or of delaying, deferring or preventing certain of our change of control transactions under circumstances that otherwise could provide the holders of our Series A Preferred Stock with the opportunity to realize a premium over the then-current market price of such equity securities or that stockholders may otherwise believe is in their best interests.

Holders of the Series A Preferred Stock may be unable to use the dividends-received deduction and may not be eligible for the preferential tax rates applicable to "qualified dividend income."

Distributions paid to corporate U.S. holders of the Series A Preferred Stock may be eligible for the dividends-received deduction, and distributions paid to non-corporate U.S. holders of the Series A Preferred Stock may be subject to tax at the preferential tax rates applicable to "qualified dividend income," if we have current or accumulated earnings and profits, as determined for U.S. federal income tax purposes. We do not currently have any accumulated earnings and profits. Additionally, we may not have sufficient current earnings and profits during future fiscal years for the distributions on the Series A Preferred Stock to qualify as dividends for U.S. federal income tax purposes. If the distributions fail to qualify as dividends, U.S. holders would be unable to use the dividends-received deduction and may not be eligible for the preferential tax rates applicable to "qualified dividend income."

Holders of the Series A Preferred Stock may be subject to tax if we make or fail to make certain adjustments to the exchange rate of the Series A Preferred Stock even though you do not receive a corresponding cash dividend.

The exchange rate for the Series A Preferred Stock special exchange right is subject to adjustment in certain circumstances. A failure to adjust (or to adjust adequately) such exchange rate after an event that increases your proportionate interest in us could be treated as a deemed taxable dividend to you. If you are a non-U.S. holder, any deemed dividend may be subject to U.S. federal withholding tax at a 30% rate, or such lower rate as may be specified by an applicable treaty, which may be set off against subsequent payments on the Series A Preferred Stock. In April 2016, the Internal Revenue Service issued new proposed income tax regulations in regard to the taxability of changes in exchange rights that will apply to the Series A Preferred Stock when published in final form and may be applied to us before final publication in certain instances.

Our revenues, operating results and cash flows may fluctuate in future periods, and we may fail to meet investor expectations, which may cause the price of our Series A Preferred Stock to decline.

Variations in our quarterly and year-end operating results are difficult to predict, and our income and cash flows may fluctuate significantly from period to period. If our operating results fall below the expectations of investors or securities analysts, the price of our Series A Preferred Stock could decline substantially.

The Series A Preferred Stock represents perpetual equity interests in us, and it has no maturity or mandatory redemption date and are not redeemable at the option of investors under any circumstances. As a result, the Series A Preferred Stock will not give rise to a claim for payment of a principal amount at a particular date. As a result, holders of the Series A Preferred Stock may be required to bear the financial risks of an investment in the Series A Preferred Stock for an indefinite period of time. In addition, the Series A Preferred Stock will rank junior to all our current and future indebtedness and other liabilities. The Series A Preferred Stock will also rank junior to any other senior securities we may issue in the future with respect to assets available to satisfy claims against us.

The Series A Preferred Stock has not been rated.

We have not sought to obtain a rating for the Series A Preferred Stock. No assurance can be given, however, that one or more rating agencies might not independently determine to issue such a rating or that such a rating, if issued, would not adversely affect the market price of the Series A Preferred Stock. Also, we may elect in the future to obtain a rating for the Series A Preferred Stock, which could adversely affect the market price of the Series A Preferred Stock. Ratings only reflect the views of the rating agency or agencies issuing the ratings and such ratings could be revised downward, placed on a watch list or withdrawn entirely at the discretion of the issuing rating agency if in its judgment circumstances so warrant. Any such downward revision, placing on a watch list or withdrawal of a rating could have an adverse effect on the market price of the Series A Preferred Stock.

The market price of the Series A Preferred Stock could be substantially affected by various factors.

The market price of the Series A Preferred Stock depends on many factors, which may change from time to time, including:

- prevailing interest rates, increases in which may have an adverse effect on the market price of the Series A Preferred Stock;
- trading prices of similar securities;
- our history of timely dividend payments;
- the annual yield from dividends on the Series A Preferred Stock as compared to yields on other financial instruments;
- general economic and financial market conditions;
- government action or regulation;
- the financial condition, performance and prospects of us and our competitors;
- changes in financial estimates or recommendations by securities analysts with respect to us or our competitors in our industry;
- our issuance of additional preferred equity or debt securities;
- actual or anticipated variations in quarterly operating results of us and our competitors; and
- the ongoing impact of the global COVID-19 pandemic.

As a result of these and other factors, holders of the Series A Preferred Stock may experience a decrease, which could be substantial and rapid, in the market price of the Series A Preferred Stock, including decreases unrelated to our operating performance or prospects.

A holder of Series A Preferred Stock has extremely limited voting rights.

The voting rights of a holder of Series A Preferred Stock are limited. Our shares of common stock are the only class of our securities that carry full voting rights. Other than the limited circumstances described in the Certificate of Designations establishing the Series A Preferred Stock and except to the extent required by law, holders of Series A Preferred Stock do not have any voting rights. Voting rights for holders of the Series A Preferred Stock exist primarily with respect to voting on amendments to our certificate of incorporation, including the certificate of designations relating to the Series A Preferred Stock, that materially and adversely affect the rights of the holders of Series A Preferred Stock or authorize, increase or create additional classes or series of our capital stock that are senior to the Series A Preferred Stock. In addition, if dividends on the Series A Preferred Stock have not been paid in an aggregate amount equal to the equivalent of at least six or more quarterly dividends (whether consecutive or not), the holders of the Series A Preferred Stock, will have the right, voting separately as a single class, to elect two individuals to our Board of Directors. Such director election right commenced on August 31, 2023 since we did not pay the dividend payable on that date or any currently unpaid dividend. See “Risks related to our common stock—The holders of our Series A Preferred Stock have the right to elect two directors to our board of directors,” below.

Risks related to our common stock

Failure to maintain effective internal controls could adversely affect our operating results and the market for our common stock.

Section 404 of the Sarbanes-Oxley Act of 2002 requires that we maintain internal control over financial reporting that meets applicable standards. As with many smaller companies with small staff, material weaknesses in our financial controls and procedures may be discovered. If we are unable, or are perceived as unable, to produce reliable financial reports due to internal control deficiencies, investors could lose confidence in our reported financial information and operating results, which could result in a negative market reaction and adversely affect our ability to raise capital.

Acuitas Group Holdings, LLC owns approximately 73% of our outstanding common stock and beneficially owns approximately 94% of our outstanding common stock, and as a result of such ownership has the ability to substantially influence the election of directors and other matters submitted to stockholders.

As of the date of this report, 20,036,780 shares of our outstanding common stock were owned by, and 124,850,067 shares of our common stock were beneficially owned by, Acuitas Group Holdings, LLC, an entity indirectly wholly owned and controlled by Mr. Peizer, which represents the ownership of approximately 73% of our outstanding common stock and the beneficial ownership of approximately 94% of our common stock. The foregoing number of shares beneficially owned by Acuitas Group Holdings, LLC and the corresponding percentage assumes the conversion of $2.0 million of the outstanding Keep Well Note at a conversion price of $0.60 per share (with any additional accrued interest paid in cash) and includes the following securities: (a) 9,027,395 shares of our common stock that will be issued to Acuitas in respect of the conversion of the Keep Well Notes effected on November 14, 2024 upon the effectiveness of stockholder approval, which is expected to occur within 60 days of this report, (b) an additional 9,027,395 shares of our common stock that will be subject to the warrant issued to Acuitas in connection with such conversion upon the effectiveness of stockholder approval, which is expected to occur within 60 days of this report, (c) 3,333,334 shares of common stock issuable upon exercise of a warrant that would be issued upon conversion of the $2.0 million of the outstanding Keep Well Note, and (d) 54,999,999 shares of common stock issuable upon exercise of the pre-funded warrant and warrant issued to an affiliate of Acuitas Group Holdings, LLC, on November 14, 2024. The $0.60 conversion price described in the preceding sentence and the exercisability of the warrants described in clause (d) in the preceding sentence are subject to the effectiveness of stockholder approval, which is expected to occur within 60 days of this report. As a result, Acuitas has and is expected to continue to have the ability to significantly influence the election of our Board of Directors and the outcome of all other matters submitted to our stockholders. Acuitas’ interest may not always coincide with our interests or the interests of other stockholders, and Acuitas may act in a manner that advances its best interests and not necessarily those of other stockholders. One consequence to this substantial influence or control is that it may be difficult for investors to remove our management. It could also deter unsolicited takeovers, including transactions in which stockholders might otherwise receive a premium for their shares over then current market prices. 10-K.

There can be no assurance that our common stock will continue to be listed on Nasdaq or, if listed, that we will be able to comply with the continued listing standards of Nasdaq, which could limit investors’ ability to transact in our securities and subject us to additional trading restrictions.

Our common stock is traded listed on The Nasdaq Capital Market under the symbol “OTRK.” The Nasdaq Capital Market requires that listed companies have: (x) stockholders' equity of at least $2.5 million; (y) a market value of listed securities of at least $35 million; or (z) net income from continuing operations of $500,000 in the company's most recently completed fiscal year or in two of the three most recently completed fiscal years. Our stockholders' equity at June 30, 2023 was approximately $0.75 million and we did not meet either of the two alternative compliance standards described in clause (y) and (z). On August 15, 2023, we received a letter from Nasdaq informing us that we did not meet the $2.5 million in stockholders' equity requirement for satisfy continued listing as of June 30, 2023. That letter had no immediate impact on the listing of our common stock on The Nasdaq Capital Market. standards to maintain their listing.

In accordance with Nasdaq listing rules, we had 45 calendar days, or until September 29, 2023, to submit a plan to regain compliance with the stockholders' equity requirement, which we submitted for the Nasdaq staff's consideration on October 2, 2023. The Nasdaq staff has been processing our plan of compliance consistent with its discretion to extend the deadline for up to an additional five calendar days. Our plan of compliance indicates that upon closing of the public offering that closed on November 14, 2023, our stockholders' equity will increase to substantially above $2.5 million, taking into account the conversion of the Keep Well Notes in the Notes Conversion. Nasdaq may grant us an extension period of up to 180 calendar days from the date of the notice we received on August 15, 2023 (or through February 11, 2024) to regain compliance with the stockholders' equity requirement, and we believe that we will be able to demonstrate compliance upon closing of the public offering that closed on November 14, 2023. If for any reason Nasdaq does not accept our plan of compliance and determine that we demonstrated compliance upon closing of the public offering, or if we are unable to regain compliance within any extension period granted by Nasdaq, Nasdaq would be required to issue a delisting determination. We would at that time be entitled to request a hearing before a Nasdaq Hearings Panel to demonstrate our compliance (or present our plan to regain compliance) to request a further extension period to regain compliance if necessary. The request for a hearing would stay any delisting action with respect to our common stock by Nasdaq.

In addition, on On October 13, 2023, we received a letter from the Nasdaq Staff indicating that we no longer meet the minimum bid price requirement set forth in Nasdaq listing rules Listing Rule 5550(a)(2) (the "Minimum Bid Price Rule") because the closing bid price for our common stock was less than $1.00 for the previous 30 consecutive business days. That The letter has had no immediate effect on the listing of our common stock on The Nasdaq Capital Market. Under Nasdaq listing rules, we have had a 180-calendar day period, or until April 10, 2024, to regain compliance with the Minimum Bid Price Rule.

On April 11, 2024, we received a letter from the Nasdaq Staff notifying us that we had not regained compliance with the Minimum Bid Price Rule by April 10, 2024, and that we are not eligible for an additional 180-calendar day period within which to regain compliance because we do not meet the minimum bid price requirement. stockholders' equity requirement for initial listing on The Nasdaq Capital Market. The letter also stated that, unless we requested an appeal by April 18, 2024, our common stock would be scheduled for delisting from The Nasdaq Capital Market and would be suspended at the opening of business on April 22, 2024, and a Form 25-NSE would be filed with the SEC, which would remove our common stock from listing and registration on The Nasdaq Stock Market.

The Nasdaq Staff made its determination based upon our most recent public filings as of April 11, 2024. However, as disclosed in our 2023 10-K, our stockholders' equity as of December 31, 2023 was in excess of the minimum bid price stockholders' equity requirement will be met for initial listing on The Nasdaq Capital Market. Accordingly, we believe we are eligible for an additional 180-calendar day period from April 10, 2024 within which to regain compliance with the Minimum Bid Price Rule. We would regain compliance with the Minimum Bid Price Rule if our common stock has a minimum closing bid price of at least $1.00 per share for a minimum of 10 consecutive business days during the additional 180-calendar day period, unless Nasdaq exercises its discretion to extend such 10-day period. If We have notified Nasdaq that if necessary, we do not regain compliance by April 10, 2024, we may be eligible for an intend to cure the non-compliance with the Minimum Bid Price Rule during such additional 180-calendar day period subject to satisfying the conditions in the applicable Nasdaq listing rules based on our most recent public filings and market information at that time and we notify Nasdaq of our intent to cure the deficiency related to the minimum bid price requirement by effecting implementing a reverse stock split if necessary. We are monitoring the in sufficient time to evidence a closing bid price of our common stock of at least $1.00 per share for a minimum of ten consecutive business days prior to the expiration of such 180-day period.

We timely requested a hearing to the Nasdaq Hearings Panel (the "Panel") to appeal the Nasdaq Staff's determination to delist our common stock. That request stayed the delisting and will consider options suspension of our common stock pending the decision of the Panel. At

the hearing, we intend to present our views concerning our eligibility for the additional 180-calendar day period to regain compliance with the minimum bid price requirement. However, there Minimum Bid Price Rule and our plans for regaining compliance, which would include implementing a reverse stock split if necessary as described above. There can be no assurance that we will be able granted an additional 180-calendar day period within which to regain compliance, or, if such an extension period is granted, that we will be able to evidence compliance with the minimum bid price requirement. Minimum Bid Price Rule before the extension period expires.

In addition to the specified criteria for continued listing, Nasdaq also has broad discretionary public interest authority that it can exercise to apply additional or more stringent criteria for continued listing on the Nasdaq. Nasdaq has exercised this discretionary authority in the past. As of the date of the filing of this report, Acuitas is our largest stockholder and the aggregate principal amount we borrowed under the Keep Well Agreement, plus all accrued and unpaid interest thereon, was approximately $2.0 million $5.3 million. Mr. Peizer owns and controls Acuitas and, on March 1, 2023, the DOJ announced charges and the SEC filed a civil complaint against Mr. Peizer alleging unlawful insider trading in our stock. On March 1, 2023, Nasdaq has requested certain information from us related to the charges against Mr. Peizer. We responded to those requests. On each of May 12, 2023 and June 30, 2023, the Nasdaq staff requested certain supplemental information from us. We responded to each of those requests. No assurances can be given that Nasdaq will not exercise its discretionary public interest authority to delist our common stock due to public interest concerns related to Acuitas' ownership of our common stock or its relationship to us under the Keep Well Agreement.

In connection with (a) the public offering Public Offering and the concurrent private placement that closed on November 14, 2023 Private Placement and the securities issuable in connection with the conversion of the Keep Well Notes senior secured convertible notes effected in the Notes Conversion and (b) the Sixth Amendment, we submitted listing of additional shares applications to Nasdaq in accordance with Nasdaq listing rules. Current Nasdaq staff Staff practice is not to accept or reject listing of additional shares applications before the closing of a public or private offering. We believe that the issuances of securities in the public offering, Public Offering, in the concurrent private placement Private Placement, in connection with the Notes Conversion and in connection with the Notes Conversion Sixth Amendment are all compliant with Nasdaq listing rules. However, Nasdaq could assert that as a result of one or more of these securities issuances, we are not in compliance with Nasdaq's Nasdaq listing rules. For example, Nasdaq could assert that the exercise price reset and share adjustment provisions in the warrants sold Public Offering Warrants, in the public offering Private Placement Warrant, in the Demand Warrants and/or in the concurrent private placement New Keep Well Warrants mandate a delisting determination unless such provisions are modified. Should that occur, we would need to obtain (a) (1) with respect to the warrants sold in the public offering, Public Offering Warrants, the consent of the holders of warrants Public Offering Warrants representing at least a majority of the shares of common stock underlying the warrants Public Offering Warrants then outstanding and each investor in the public offering Public Offering who purchased at least $1.75 million of securities at the closing of the offering, and (b) (2) with respect to the warrant issued to Acuitas in Private Placement Warrant, the concurrent private placement, Demand Warrants and the New Keep Well Warrants, the consent of Acuitas, for any modifications. The failure to obtain such consent(s) could result in the delisting of our common stock.

If our common stock is delisted by Nasdaq, and we are not able to list our securities on another national securities exchange, we expect our securities could be quoted on an over-the-counter market. If this were to occur, then we could face significant material adverse consequences, including: (a) less liquid trading market for our securities; (b) more limited market quotations for our securities; (c) determination that our common stock is a "penny stock" that requires brokers to adhere to more stringent rules and possibly resulting in a reduced level of trading activity in the secondary trading market for our securities; (d) more limited research coverage by stock analysts; (e) loss of reputation; and (f) more difficult and more expensive equity financings in the future.

The National Securities Markets Improvement Act of 1996, which is a federal statute, prevents or preempts the states from regulating the sale of certain securities, which are referred to as "covered securities." If our common stock remains listed on Nasdaq, our common stock will be covered securities. Although the states are preempted from regulating the sale of our securities, the federal statute does allow the states to investigate companies if there is a suspicion of fraud, and, if there is a finding of fraudulent activity, then the states can regulate or bar the sale of covered securities in a particular case. If our securities were no longer listed on Nasdaq and therefore not "covered securities," we would be subject to regulation in each state in which we offer our securities.

We incur increased costs as a result of operating as a public company, and our management devotes substantial time to compliance initiatives.

We incur significant legal, accounting and other expenses as a public company, including costs resulting from public company reporting obligations under the Exchange Act and regulations regarding corporate governance practices. Nasdaq's listing requirements and SEC rules require that we satisfy certain corporate governance requirements relating to director independence, filing annual and interim reports, stockholder meetings, approvals and voting, soliciting proxies, conflicts of interest and a code of conduct. Our management and other personnel devote a substantial amount of time to ensure that we comply with all of these requirements. Moreover, the reporting requirements, rules and regulations associated with being a public company result in significant legal and financial compliance costs and make some activities more time-consuming and costly. These reporting requirements, rules and regulations, coupled with the increase in potential litigation exposure associated with being a public company, could also make it more difficult for us to attract and retain qualified persons to serve on our board of directors or board committees or to serve as executive officers, or to obtain certain types of insurance, including directors' and officers' insurance, on acceptable terms and we may be forced to accept reduced policy limits and coverage or incur substantially higher costs to obtain the same or similar coverage.

Our stock price may be subject to substantial volatility, and the value of our stockholders' investment may decline.

The price at which our common stock trades fluctuates as a result of a number of factors, including the number of shares available for sale in the market, quarterly variations in our operating results and actual or anticipated announcements of our Ontrak solution, announcements regarding new or discontinued Ontrak solution contracts, new products or services by us or competitors, regulatory investigations or determinations, acquisitions or strategic alliances by us or our competitors, recruitment or departures of key personnel, the gain or loss of significant customers, changes in the estimates of our operating performance, actual or threatened litigation, market conditions in our industry and the economy as a whole.

Numerous factors, including many over which we have no control, may have a significant impact on the market price of our common stock, including:

- announcements of new products or services by us or our competitors;
- current events affecting the political, economic and social situation in the United States;
- trends in our industry and the markets in which we operate;
- changes in financial estimates and recommendations by securities analysts;
- acquisitions and financings by us or our competitors;
- the gain or loss of a significant customer;
- quarterly variations in operating results;
- the operating and stock price performance of other companies that investors may consider to be comparable;
- purchases or sales of blocks of our securities; and
- issuances of stock.

We have used the market price of our common stock to establish future payment obligations to stockholders of acquisition targets in the past and may continue to do so in the future; any decline in the market price regardless of whether due to our performance or external market dynamics would give rise to a payment obligation to such holders. Furthermore, stockholders may initiate additional securities class action lawsuits if the market price of our stock drops significantly, which may cause us to incur further substantial costs and continue to divert the time and attention of our management.

Future sales of common stock by existing stockholders, or the perception that such sales may occur, could depress our stock price.

The market price of our common stock could decline as a result of sales by, or the perceived possibility of sales by, our existing stockholders. Most of our outstanding shares are eligible for public resale pursuant to Rule 144 under the Securities Act of 1933, as amended. As of September 30, 2023, approximately 2.0 million outstanding shares of our common stock were held by our affiliates and may be sold pursuant to an effective registration statement or in accordance with the volume and other limitations of Rule 144 or pursuant to other exempt transactions. Future sales of common stock by significant stockholders, including those who acquired their shares in private placements or who are affiliates, or the perception that such sales may occur, could depress the price of our common stock.

Future issuances of common stock and hedging activities may depress the trading price of our common stock.

Any future issuance of equity securities, including the issuance of shares upon direct registration, upon satisfaction of our obligations, compensation of vendors, exercise of outstanding warrants, or effectuation of a reverse stock split, could dilute the interests of our existing stockholders, and could substantially decrease the trading price of our common stock. As of

September 30, 2023, we had outstanding options to purchase 1,177,839 shares of our common stock at exercise prices ranging from $2.16 to $519.42 per share and warrants to purchase 7,082,788 shares of our common stock at exercise prices ranging from $0.06 to $82.08 per share. Also, as of September 30, 2023, we had a total of 120,949 unvested RSUs outstanding. We may issue equity securities in the future for a number of reasons, including to finance our operations and business strategy, in connection with acquisitions, to adjust our ratio of debt to equity, to satisfy our obligations upon the exercise of outstanding warrants or options or for other reasons.

There may be future sales or other dilution of our equity, which may adversely affect the market price of our common stock.

In the future, we may need to raise additional funds through public or private financing, which might include sales of equity securities. The issuance of any additional shares of common stock or securities convertible into, exchangeable for, or that represent the right to receive common stock or the exercise of such securities could be substantially dilutive to holders of shares of our common stock. Holders of shares of our common stock have no preemptive rights that entitle holders to purchase their pro rata share of any offering of shares of any class or series. The market price of our common stock could decline as a result of sales of shares of our common stock made after this offering or the perception that such sales could occur. Because our decision to issue securities in any future offering will depend on market conditions and other factors beyond our control, we cannot predict or estimate the amount, timing or nature of our future offerings. Thus, our stockholders bear the risk of our future offerings reducing the market price of our common stock and diluting their interests in our Company.

We have historically relied in part on sales of our common stock to fund our operations, and our future ability to obtain additional capital through stock sales or other securities offerings may be more costly than in the past, or may not be available to us at all.

We have historically relied in part on sales of our common stock to fund our operations. For example, we raised an aggregate of approximately $15.1 million in gross proceeds in fiscal years 2021 and 2022 through the sale of shares of our common stock in offerings made under a Form S-3 “shelf” registration statement. Using a shelf registration statement to conduct an equity offering to raise capital generally takes less time and is less expensive than other means, such as conducting an offering under a Form S-1 registration statement. We are no longer eligible to use a shelf registration statement due to non-payment of dividends on our Series A preferred stock since December 31, 2022. We may choose to conduct an offering of our securities under an exemption from registration under the Securities Act or under a Form S-1 registration statement, but we would expect either of these alternatives to be a more expensive method of raising additional capital and more dilutive to our stockholders relative to using a shelf registration statement.

The holders of our Series A Preferred Stock have the right to elect two directors to our board of directors.

Under the terms of the certificate of designation establishing our Series A Preferred Stock, if dividends on our Series A Preferred have not been paid in an aggregate amount equal to the equivalent of at least six or more quarterly dividends (whether consecutive or not), the number of directors constituting our board of directors will be increased by two, and the holders of our Series A Preferred Stock, will have the right, voting separately as a single class, to fill such newly created directorships (and to fill any vacancies in the terms of such directorships). Dividends on our Series A Preferred Stock are payable every February 28, May 30, August 31, and November 30. We did not pay the dividends on our Series A Preferred Stock payable in each of May 2022, August 2022, November 2022, February 2023, May 2023 and August 2023. Accordingly, such director election right described above commenced on August 31, 2023.

Provisions in our certificate of incorporation and Delaware law could discourage a change in control, or an acquisition of us by a third party, even if the acquisition would be favorable to you.

Our amended and restated certificate of incorporation and the Delaware General Corporation Law contain provisions (including the Section 382 Ownership Limit) that may have the effect of making more difficult or delaying attempts by others to obtain control of our Company, even when these attempts may be in the best interests of stockholders. In addition, our amended and restated certificate of incorporation authorizes our Board of Directors, without stockholder approval, to issue one or more series of preferred stock, which could have voting and conversion rights that adversely affect or dilute the voting power of the holders of common stock. Delaware law also imposes conditions on certain business combination transactions with “interested stockholders.” These provisions and others that could be adopted in the future could deter unsolicited takeovers or delay or prevent changes in our control or management, including transactions in which stockholders might otherwise receive a premium for their shares over then current market prices. These provisions may also limit the ability of stockholders to approve transactions that they may deem to be in their best interests.

We do not expect to pay dividends on our common stock in the foreseeable future.

We have paid no cash dividends on our common stock to date, and we intend to retain our future earnings, if any, to fund the continued development and growth of our business. As a result, we do not expect to pay any cash dividends in the foreseeable future on our common stock. Further, any payment of cash dividends will also depend on our financial condition, results of operations, capital requirements and other factors, including contractual restrictions to which we may be subject, and will be at the discretion of our Board of Directors.

Item 2. Unregistered Sales of Equity Securities, Use of Proceeds, and Issuer Purchases of Equity Securities

None. All sales of unregistered securities during the three months ended March 31, 2024 were previously disclosed in the Company's Annual Report on Form 10-K or Current Report on Form 8-K.

Item 3. Defaults Upon Senior Securities

Preferred Dividend Arrearage

Holders of the Series A Preferred Stock are entitled to receive, when, as and if declared by our Board of Directors out of funds legally available therefor, cumulative cash dividends at the rate of 9.50% per annum of the $25.00 per share liquidation preference (equivalent to $2.375 per annum per share or $0.593750 per quarter per share). Our Board of Directors has not declared dividends on the Series A Preferred Stock since May 2022. As such, as of the date of the filing of this report, we had approximately $15.3 million $19.8

million of undeclared dividends in arrears. For more information about the Series A Preferred Stock, see Note 7 6 of the Notes to Condensed Consolidated Financial Statements in Part I, Item 1 of this report.

Item 4. Mine Safety Disclosures

Not applicable.

Item 5. Other Information

(a) As previously reported, in March 2023, the Company's Board of Directors appointed Brandon H. LaVerne, age 51, as Interim Chief Executive Officer of the Company effective immediately. Mr. LaVerne had served as the Company's Co-President and Chief Operating Officer since June 27, 2022 and continued to serve as Chief Operating Officer after being appointed as Interim Chief Executive Officer but ceased serving as Co-President. From March 2020 until June 27, 2022, Mr. LaVerne served as the Company's Chief Financial Officer. On November 16, 2023, the Company's Board of Directors appointed Mr. LaVerne as Chief Executive Officer of the Company. Mr. LaVerne also continues to serve as Chief Operating Officer. Mr. LaVerne's biographical information is in the Company's definitive proxy statement on Schedule 14A filed with the SEC on July 25, 2022. Mr. LaVerne was not appointed as the Company's Chief Executive Officer pursuant to any arrangement or understanding with any other person, and Mr. LaVerne has no family relationships with any current director, director nominee, or executive officer of the Company.None.

(b) None.

(c) Under SEC rules and regulations, as a smaller reporting company, we are not required During the period from January 1, 2024 to provide March 31, 2024, none of our directors or officers (as defined in Rule 16a-1(f) under the information required by this item Exchange Act) adopted or terminated any Rule 10b5-1 trading arrangement (as defined in this report. Item 408(a)(1)(i) of Regulation S-K) or any non-Rule 10b5-1 trading arrangement (as defined in Item 408(c) of Regulation S-K).

Item 6. Exhibits

Exhibit No.	Description
4.1	Form of Pre-Funded Common Stock Demand Note (attached as Exhibit A to the Sixth Amendment to Master Note Purchase Warrant issued in the Offering on November 14, 2023 (incorporated herein Agreement), incorporated by reference to Exhibit 4.1 of the Company's Form 8-K filed with the SEC on November 15, 2023). March 28, 2024.
4.2	Form of Common Stock Demand Warrant and New Keep Well Warrant (attached as Exhibit B to the Sixth Amendment to Master Note Purchase Warrant issued in the Offering on November 14, 2023 (incorporated herein Agreement), incorporated by reference to Exhibit 4.2 of the Company's Form 8-K filed with the SEC on November 15, 2023).
4.3	Pre-Funded Common Stock Purchase Warrant issued to Humanitario Capital LLC on November 14, 2023 (incorporated herein by reference to Exhibit 4.3 of the Company's Form 8-K filed with the SEC on November 15, 2023).
4.4	Common Stock Purchase Warrant issued to Humanitario Capital LLC on November 14, 2023 (incorporated herein by reference to Exhibit 4.4 of the Company's Form 8-K filed with the SEC on November 15, 2023). March 28, 2024.
10.1	Letter Agreement dated August 7, 2023, between Ontrak, Inc., Acuitas Capital LLC and U.S. Bank Trust Company, National Association (incorporated herein by reference to Exhibit 10.2 of the Company's Form 10-Q filed with the SEC on August 10, 2023).
10.2	Fifth Sixth Amendment to Master Note Purchase Agreement, dated as of October 31, 2023 March 28, 2024, by and between Ontrak, Inc., certain of its subsidiaries as party thereto as guarantors, and Acuitas Capital LLC, as purchaser and U.S. Bank Trust Company, National Association, as collateral agent (incorporated herein by reference to Exhibit 10.1 of to the Company's Form 8-K filed with the SEC on November 2, 2023 March 28, 2024).
10.3 10.2	Support Form of Waiver and Consent Agreement, dated as of October 31, 2023 March 28, 2024, by and among the party thereto in favor of Ontrak, Inc. and Acuitas Group Holdings, LLC and Acuitas Capital LLC (incorporated herein by reference to Exhibit 10.2 of to the Company's Form 8-K filed with the SEC on November 2, 2023 March 28, 2024).
10.4 10.3	Letter Waiver Agreement, dated November 9, 2023 effective as of March 28, 2024, between Ontrak, Inc. and Acuitas by Humanitario Capital LLC (incorporated in favor of Ontrak, Inc.(incorporated herein by reference to Exhibit 10.1 of 10.3 to the Company's Form 8-K filed with the SEC on November 15, 2023 March 28, 2024).
31.1*	Certification by the Chief Executive Officer, pursuant to Rule 13-a-14(a) and 15d-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
31.2*	Certification by the Chief Financial Officer, pursuant to Rule 13-a-14(a) and 15d-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
32.1**	Certification by the Chief Executive Officer, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
32.2**	Certification by the Chief Financial Officer, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

101.INS*	XBRL Instance Document
101.SCH*	Inline XBRL Taxonomy Extension Schema Document
101.CAL*	Inline XBRL Taxonomy Extension Calculation Linkbase Document
101.DEF*	Inline XBRL Taxonomy Extension Definition Linkbase Document
101.LAB*	Inline XBRL Taxonomy Extension Label Linkbase Document
101.PRE*	Inline XBRL Taxonomy Extension Presentation Linkbase Document
104*	Cover Page Interactive Data File (formatted as Inline XBRL with applicable taxonomy extension information contained in Exhibits 101)

* Filed herewith.
** Furnished herewith.

SIGNATURES

Pursuant to the requirements 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.

ONTRAK, INC.

Date: November 20, 2023 May 15, 2024	By: /s/ BRANDON H. LAVERNE Brandon H. LaVerne Chief Executive Officer (Principal Executive Officer)
Date: November 20, 2023 May 15, 2024	By: /s/ JAMES J. PARK James J. Park Chief Financial Officer (Principal Financial Officer)

Exhibit 31.1

CERTIFICATION

I, Brandon H. LaVerne, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Ontrak, Inc.;

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: November 20, 2023 May 15, 2024

/s/ BRANDON H. LAVERNE
Brandon H. LaVerne
Chief Executive Officer
(Principal Executive Officer)

Exhibit 31.2

CERTIFICATION

I, James J. Park, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Ontrak, Inc.;

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: November 20, 2023 May 15, 2024

/s/ JAMES J. PARK
James J. Park
Chief Financial Officer
(Principal Financial Officer)

Exhibit 32.1

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

In connection with the Quarterly Report on Form 10-Q of Ontrak, Inc. (“Ontrak") for the quarter ended September 30, 2023 March 31, 2024, as filed with the Securities and Exchange Commission on the date hereof (the “Report), I, Brandon H. LaVerne, Chief Executive Officer of Ontrak certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

(1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a) or 78o(d)); and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of Ontrak.

/s/ BRANDON H. LAVERNE	November 20, 2023 May 15, 2024
Brandon H. LaVerne	Date
Chief Executive Officer	
(Principal Executive Officer)	

Exhibit 32.2

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

In connection with the Quarterly Report on Form 10-Q of Ontrak, Inc. (“Ontrak") for the quarter ended September 30, 2023 March 31, 2024, as filed with the Securities and Exchange Commission on the date hereof (the “Report), I, James J. Park, Chief Financial Officer of Ontrak, certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

(1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a) or 78o(d)); and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of Ontrak.

/s/ JAMES J. PARK	November 20, 2023 May 15, 2024
James J. Park	Date
Chief Financial Officer	
(Principal Financial Officer)	

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