Risk Factors Comparison 2023-06-29 to 2022-02-17 Form: 10-K

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Investing in our common stock involves a high degree of risk. You should carefully consider the risks and uncertainties described below, together with all of the other information in this Annual Report on Form 10- K, including the section titled " Management' s Discussion and Analysis of Financial Condition and Results of Operations " in Part II, Item 7, and our consolidated financial statements and related notes, before making a decision to invest in our common stock. The risks and uncertainties described below may not be the only ones we face. If any of the risks actually occur, our business, financial condition, operating results and prospects could be materially and adversely affected. In that event, the market price of our common stock could decline, and you could lose part or all of your investment. All information is presented in thousands, except per share amounts, client count, head count and where specifically noted. **Summary of** ~~Risks~~ - **Risk** ~~Related~~ **Factors Our business is subject** to **numerous risks and uncertainties, including those highlighted in this section titled " Risk Factors " and summarized below. We have various categories of risks, including risks relating to our** ~~Industry~~ **industry** ~~Dynamics~~ **dynamics** and ~~Competition~~ **competition ; operations; clients and demand for our services; management of our human capital; intellectual property, litigation and regulatory concerns; strategic transactions; and general risks associated with ownership of our common stock, which are discussed more fully below. As a result, this risk factor summary does not contain all of the information that may be important to you, and you should read this risk factor summary together with the more detailed discussion of risks and uncertainties set forth following this section under the heading " Risk Factors, " as well as elsewhere in this Annual Report on Form 10- K. Additional risks, beyond those summarized below or discussed elsewhere in this Annual Report on Form 10- K, may apply to our business, activities or operations as currently conducted or as we may conduct them in the future or in the markets in which we operate or may in the future operate. These risks include, but are not limited to, the following: • If we are unable to develop, improve, and expand our new services, to extend enhancements to the existing portfolio of services that we offer, or if we fail to predict and respond to emerging technological trends and clients' changing needs, our operating results and market share may suffer. •** We currently face competition from established competitors and may face competition from others in the future. **• Any unplanned interruption or degradation in the functioning or availability of our network or services, or attacks on or disruptions to our internal information technology systems, could lead to increased costs, a significant decline in our revenue, and harm to our reputation. • If we are unable to sell our services at acceptable prices relative to our costs, our revenue and gross margins will decrease, and our business and financial results will suffer. • Our operations are dependent in part upon communications capacity provided by third party telecommunications providers. A material disruption of the communications capacity could harm our results of operations, reputation, and client relations. • Our business depends on continued and unimpeded access to third party- controlled end- user access networks. • We depend on a limited number of clients for a substantial portion of our revenue in any fiscal period, and the loss of, or a significant shortfall in demand from, these clients could significantly harm our results of operations. • Many of our significant current and potential clients are pursuing emerging or unproven business models, which, if unsuccessful, or ineffective at monetizing delivery of their content, could lead to a substantial decline in demand for our content delivery and other services. • If we are unable to attract new clients or to retain our existing clients, our revenue could be lower than expected and our operating results may suffer. • If we are unable to retain our key employees and hire qualified personnel, our ability to compete could be harmed. • If we are not successful in integrating completed acquisitions in a timely manner, we may be required to reevaluate our business strategy, and we may incur substantial expenses and devote significant management time and resources without a productive result. • Our business may be adversely affected if we are unable to protect our intellectual property rights from unauthorized use or infringement by third parties. • We need to defend our intellectual property and processes against patent or copyright infringement claims, which may cause us to incur substantial costs and threaten our ability to do business. • Our indebtedness and liabilities could limit the cash flow available for our operations, expose us to risks that could adversely affect our business, financial condition, and results of operations and impair our ability to satisfy our obligations. • The trading price of our common stock has been, and is likely to continue to be, volatile. • The minimum bid price of our common stock has been below $ 1 per share and we have a received a notice of deficiency from Nasdaq that could affect the listing of our common stock on Nasdaq. • The restatement may affect investor confidence and raise reputational issues and may subject us to additional risks and uncertainties, including increased professional costs and the increased possibility of legal proceedings. • If we do not effectively remediate the material weaknesses identified in internal control over financial reporting as of December 31, 2022, or if we otherwise fail to maintain an effective system of internal control, our ability to report our financial results on a timely and on an accurate basis could be impaired, which could adversely affect our stock price. • If we are unable to attract and retain highly qualified accounting personnel to evaluate the accounting implications of our complex and / or non- routine transactions such as the Open Edge arrangements, our ability to accurately report our financial results may be harmed. • Our results of operations may fluctuate in the future. As a result, we may fail to meet or exceed the expectations of securities analysts or investors, which could cause our stock price to decline. • We have a history of losses, and we may not achieve or maintain profitability in the future. Risks Related to Industry Dynamics and Competition** We compete in markets that are intensely competitive, where differentiation is primarily measured by performance and cost where the difference between providers can be as small as a fraction of a percent or penny. In these markets, vendors offer a wide range of alternate solutions, and in a multi- CDN environment, our clients can route traffic to us, or away from us, within seconds, and at minimal costs. This naturally results in on- going price compression, and increased competition on features, functionality, integration and other factors. Several of our current competitors, as well as a number of our potential competitors, have longer operating histories, greater name recognition, broader client relationships and industry alliances, and substantially greater financial, technical and marketing resources than we do. As a consequence of the hyper competitive dynamics in our markets, we have experienced price compression, and an increased requirement for product advancement and innovation in order to remain competitive, which in turn have adversely affected and may continue to adversely affect our revenue, gross margin and operating results. Our primary competitors for our services include, among others, Akamai, **Amazon Web Services, Cloudflare, F5, Fastly, Imperva, and** Lumen Technologies ~~, Amazon, Fastly, StackPath, and Verizon Digital Media Services~~. In addition, a number of companies have recently entered or are currently attempting to enter our market, either directly or indirectly. These new entrants include companies that have built internal content delivery networks to solely deliver their own traffic, rather than relying solely, largely or in part on content delivery specialists, such as us. Some of these new entrants may become significant competitors in the future. Given the relative ease by which clients typically can switch among service providers in a multi- CDN environment, differentiated offerings or pricing by competitors could lead to a rapid loss of clients. Some of our current or potential competitors may bundle their offerings with other services, software or hardware in a manner that may discourage content providers from purchasing the services that we offer. In addition, we face different market characteristics and competition with local content delivery service providers as we expand internationally. Many of these international competitors are very well positioned within their local markets. Increased competition could result in price reductions and revenue shortfalls, loss of clients and loss of market share, which could harm our business, financial condition and results of operations. ~~If we are unable to develop, improve, and expand our new services, to extend enhancements to the existing portfolio of services that we offer, or if we fail to predict and respond to emerging technological trends and clients' changing needs, our operating results and market share may suffer.~~ The market for our services is characterized by rapidly changing technology, evolving industry standards, and new product and service introductions. Our operating results depend on our ability to help our clients deliver better digital experiences to their customers, understand user preferences, and predict industry changes. Our operating results also depend on our ability to improve and expand our solutions and services on a timely basis, and develop and extend new services into existing and emerging markets. This process is complex and uncertain. We must commit significant resources to improving and expanding our existing services before knowing whether our investments will result in services the market will accept. Furthermore, we may not successfully execute our initiatives because of errors in planning or timing, technical hurdles that we fail to overcome in a timely fashion, misunderstandings about market demand or a lack of appropriate resources. As prices for our core services fall, we will increasingly rely on new capabilities, product offerings, and other service offerings to maintain or increase our gross margins. Failures in execution, delays in improving and expanding our services, failures to extend our service offerings, or a market that does not accept the services and capabilities we introduce could result in competitors providing more differentiation than we do, which could lead to loss of market share, revenue, and earnings. Risks Relating to Our Operations ~~Any unplanned interruption or degradation in the functioning or availability of our network or services, or attacks on or disruptions to our internal information technology systems, could lead to increased costs, a significant decline in our revenue, and harm to our reputation.~~ Our business is dependent on providing our clients with an exceptional digital experience that is fast, efficient, safe, and reliable, every minute of every day. Our services could be disrupted by numerous events, including natural disasters, failure or refusal of our third- party network providers to provide the necessary capacity or access, failure of our software or global network infrastructure and power losses. In addition, we deploy our servers in third- party co- location facilities, and these third- party co- location providers could experience system outages or other disruptions that could constrain our ability to deliver our services. We may also experience business disruptions caused by security incidents, such as software viruses and malware, unauthorized hacking, DDoS attacks, security system control failures in our own systems or from vendors we or our clients use, email phishing, software vulnerabilities, social engineering, or other cyberattacks. These types of security incidents have been increasing in sophistication and frequency and sometimes result in the unauthorized access to or use of, and / or loss of intellectual property, client or employee data, trade secrets, or other confidential information. The economic costs to us to eliminate or alleviate cyber or other security problems, viruses, worms, malicious software programs, and other security vulnerabilities could be significant, and our efforts to address these problems may not be successful and could result in interruptions, delays, cessation of service, and loss of existing or potential clients. Any material interruption or degradation in the functioning of our services for any reason could reduce our revenue and harm our reputation with existing and potential clients, and thus adversely impact our business and results of operations. This is true even if such interruption or degradation was for a relatively short period of time, but occurred during the streaming of a significant live event, launch by a client of a new streaming service, or the launch of a new video- on- demand offering. If we are unable to sell our services at acceptable prices relative to our costs, our revenue and gross margins will decrease and our business and financial results will suffer. Our once innovative and highly valued content delivery service has become commoditized in its current form and we are often in a multi- CDN supplier environment, where our clients can route traffic to us, or away from us, within seconds. This naturally results in on- going price compression. Simultaneously, we invest significant amounts in purchasing capital equipment as part of our effort to increase the capacity of our global network. Our investments in our infrastructure are based upon our assumptions regarding future demand, anticipated network utilization, as well as prices that we will be able to charge for our services. These assumptions may prove to be wrong. If the price that we are able to charge clients to deliver their content falls to a greater extent than we anticipate, if we over- estimate future demand for our services, are unable to achieve an acceptable rate of network utilization, or if our costs to deliver our services do not fall commensurate with any future price declines, we may not be able to achieve acceptable rates of return on our infrastructure investments, and our gross profit and results of operations may suffer dramatically. As we further expand our global network and services, and as we refresh our network equipment, we are dependent on significant future growth in demand for our services to justify additional capital expenditures. If we fail to generate significant additional demand for our services, our results of operations will suffer, and we may fail to achieve planned or expected financial results. There are numerous factors that could, alone or in combination with other factors, impede our ability to increase revenue, moderate expenses, or maintain gross margins, including: • continued price declines arising from significant competition; • increasing settlement fees for certain peering relationships; • failure to increase sales of our services; • increases in electricity, bandwidth and rack space costs or other operating expenses, and failure to achieve decreases in these costs and expenses relative to decreases in the prices we can charge for our services and products; • failure of our current and planned services and software to operate as expected; • loss of any significant or existing clients at a rate greater than our increase in sales to new or existing clients; • failure to increase sales of our services to current clients as a result of their ability to reduce their monthly usage of our services to their minimum monthly contractual commitment; • failure of a significant number of clients to pay our fees on a timely basis or at all or to continue to purchase our services in accordance with their contractual commitments; and • inability to attract high quality clients to purchase and implement our current and planned services. A significant portion of our revenue is derived collectively from our video delivery, cloud security, edge compute, origin storage, and support services. These services tend to have higher gross margins than our content delivery services. We may not be able to achieve the growth rates in revenue from such services that we or our investors expect or have experienced in the past. If we are unable to achieve the growth rates in revenue that we expect for these service offerings, our revenue and operating results could be significantly and negatively affected. Our ability to use our net operating losses to offset future taxable income may be subject to certain limitations. Our ability to use our net operating losses to offset future taxable income may be subject to certain limitations. As of December 31, ~~2021~~ **2022** , we had federal and state net operating loss carryforwards ~~, or~~ **("** ~~NOLs~~ - **NOL** ~~,~~ **")** of $ ~~278~~ **308** , ~~300~~ **768** and $ ~~183~~ **214** , ~~600~~ **485** , respectively, due to prior period losses. In general, under Section 382 of the Internal Revenue Code of 1986, as amended **(** ~~, or~~ the **("** Code **")** , a corporation that undergoes an " ownership change " can be subject to limitations on its ability to utilize its NOLs to offset future taxable income. Our existing NOLs may be subject to limitations arising from past ownership changes. Future changes in our stock ownership, some of which are outside of our control, could result in an ownership change under Section 382 of the Code. In addition, under the Tax Cuts and Jobs Act (the **"** Tax Act **"**), the amount of post 2017 NOLs that we are permitted to deduct in any taxable year is limited to 80 % of our taxable income in such year, where taxable income is determined without regard to the NOL deduction itself. In addition, the Tax Act generally eliminates the ability to carry back any NOL to prior taxable years, while allowing post 2017 unused NOLs to be carried forward indefinitely. There is a risk that due to changes under the Tax Act, regulatory changes, or other unforeseen reasons, our existing NOLs could expire or otherwise be unavailable to offset future income tax liabilities. For these reasons, we may not be able to realize a tax benefit from the use of our NOLs, whether or not we attain profitability. We may have difficulty scaling and adapting our existing architecture to accommodate increased traffic and technology advances or changing business requirements. This could lead to the loss of clients and cause us to incur unexpected expenses to make network improvements. Our services and solutions are highly complex and are designed to be deployed in and across numerous large and complex networks. Our global network infrastructure has to perform well and be reliable for us to be successful. We will need to continue to invest in infrastructure and client success to account for the continued growth in traffic (and the increased complexity of that traffic) delivered via networks such as ours. We have spent and expect to continue to spend substantial amounts on the purchase and lease of equipment and data centers and the upgrade of our technology and network infrastructure to handle increased traffic over our network, implement changes to our network architecture and integrate existing solutions and to roll out new solutions and services. ~~For example, during 2021, we increased our network capacity by more than 20 % to over 108 terabits per second through software enhancements and hardware additions.~~ This expansion is expensive and complex and could result in inefficiencies, operational failures or defects in our network and related software. If we do not implement such changes or expand successfully, or if we experience inefficiencies and operational failures, the quality of our solutions and services and user experience could decline. Cost increases or the failure to accommodate increased traffic or these evolving business demands without disruption could harm our operating results and financial condition. For example, supply chain disruptions due to the ~~ongoing~~ COVID- 19 pandemic, natural disasters, increased demand, and political unrest (among other reasons) impact, and will likely continue to impact, our ability to procure equipment for upgrades, replacement parts, and network expansion within our expected price range or in extreme cases, at all. Global supply chain issues also affect our ability to timely deploy equipment, such as servers and other components required to keep our network up- to- date and growing to meet our clients' needs. Such delays in procuring and deploying the equipment required for our network could affect the quality and delivery time of services to our existing clients and prevent us from acquiring the network equipment needed to expand our business. Also, from time to time, we have needed to correct errors and defects in our software or in other aspects of our network. In the future, there may be additional errors and defects that may harm our ability to deliver our services, including errors and defects originating with third party networks or software on which we rely. These occurrences could damage our reputation and lead to the loss of current and potential clients, which would harm our operating results and financial condition. Rapid increase in the use of mobile and other devices to access the ~~internet~~ **Internet** present significant development and deployment challenges. The number of people who access the ~~internet~~ **Internet** through devices other than PCs, including mobile devices, game consoles, and television set- top devices continues to increase dramatically. The capabilities of these devices are advancing exponentially, and the increasing need to provide a high- quality video experience will present us with significant challenges. If we are unable to deliver our service offerings to a substantial number of alternative device users and at a high quality, or if we are slow to develop services and technologies that are more compatible with these devices, we may fail to capture a significant share of an important portion of the market. Such a failure could limit our ability to compete effectively in an industry that is rapidly growing and changing, which, in turn, could cause our business, financial condition and results of operations to suffer ~~. Our operations are dependent in~~

~~part upon communications capacity provided by third party telecommunications providers. A material disruption of the communications capacity could harm our results of operations, reputation and client relations~~. We enter into arrangements for private line capacity for our backbone from third party providers. Our contracts for private line capacity generally have terms of three to four years. The communications capacity may become unavailable for a variety of reasons, such as physical interruption, technical difficulties, contractual disputes, or the financial health of our third party providers. Also, industry consolidation among communications providers could result in fewer viable market alternatives, which could have an impact on our costs of providing services. Alternative providers are currently available; however, it could be time consuming and expensive to promptly identify and obtain alternative third party connectivity. Additionally, as we grow, we anticipate requiring greater private line capacity than we currently have in place. If we are unable to obtain such capacity from third party providers on terms commercially acceptable to us or at all, our business and financial results would suffer. Similarly, if we are unable to timely deploy enough network capacity to meet the needs of our client base or effectively manage the demand for our services, our reputation and relationships with our clients would be harmed, which, in turn, could harm our business, financial condition and results of operations. We face risks associated with international operations that could harm our business. We have operations in numerous foreign countries and may continue to expand our sales and support organizations internationally. As part of our business strategy, we intend to expand our international network infrastructure. Expansion could require us to make significant expenditures, including the hiring of local employees or resources, in advance of generating any revenue. As a consequence, we may fail to achieve profitable operations that will compensate our investment in international locations. We are subject to a number of risks associated with international business activities that may increase our costs, lengthen our sales cycle and require significant management attention. These risks include, but are not limited to: • increased expenses associated with sales and marketing, deploying services and maintaining our infrastructure in foreign countries; • competition from local service providers, many of which are very well positioned within their local markets; • challenges caused by distance, language, and cultural differences; • unexpected changes in regulatory requirements preventing or limiting us from operating our global network or resulting in unanticipated costs and delays; • interpretations of laws or regulations that would subject us to regulatory supervision or, in the alternative, require us to exit a country, which could have a negative impact on the quality of our services or our results of operations; • legal systems that may not adequately protect contract and intellectual property rights, policies, and taxation ~~,~~ • the physical infrastructure of the country; • potential political turmoil **and military conflict** ; • longer accounts receivable payment cycles and difficulties in collecting accounts receivable; • corporate and personal liability for violations of local laws and regulations; • currency exchange rate fluctuations and repatriation of funds; • potentially adverse tax consequences; • credit risk and higher levels of payment fraud; and • foreign exchange controls that might prevent us from repatriating cash earned outside the United States. There can be no assurance that these international risks will not materially adversely affect our business. Should there be significant productivity losses, or if we become unable to conduct operations in international locations in the future, and our contingency plans are unsuccessful in addressing the related risks, our business could be adversely affected. Our business depends on continued and unimpeded access to third party controlled end- user access networks. Our services depend on our ability to access certain end- user access networks in order to complete the delivery of rich media and other online content to end- users. Some operators of these networks may take measures that could degrade, disrupt or increase the cost of our or our clients' access to certain of these end- user access networks. Such measures may include restricting or prohibiting the use of their networks to support or facilitate our services, or charging increased fees to us, our clients or end- users in connection with our services. In 2015, the U. S. Federal Communications Commission (**the "** FCC **"**) released network neutrality and open Internet rules that reclassified broadband Internet access services as a telecommunications service subject to some elements of common carrier regulation. Among other things, the FCC order prohibited blocking or discriminating against lawful services and applications and prohibited " paid prioritization, " or providing faster speeds or other benefits in return for compensation. In 2017, the FCC overturned these rules. As a result, we or our clients could experience increased cost or slower data on these third- party networks. If we or our clients experience increased cost in delivering content to end users, or otherwise, or if end users perceive a degradation of quality, our business and that of our clients may be significantly harmed. This or other types of interference could result in a loss of existing clients, increased costs and impairment of our ability to attract new clients, thereby harming our revenue and growth. In addition, the performance of our infrastructure depends in part on the direct connection of our network to a large number of end- user access networks, known as peering, which we achieve through mutually beneficial cooperation with these networks. In some instances, network operators charge us for the peering connections. If, in the future, a significant percentage of these network operators elected to no longer peer with our network or peer with our network on less favorable economic terms, then the performance of our infrastructure could be diminished, our costs could increase and our business could suffer. We use certain " open- source " software, the use of which could result in our having to distribute our proprietary software, including our source code, to third parties on unfavorable terms, which could materially affect our business. Certain of our service offerings use software that is subject to open- source licenses. Open- source code is software that is freely accessible, usable and modifiable. Certain open-source code is governed by license agreements, the terms of which could require users of such open- source code to make any derivative works of such open- source code available to others on unfavorable terms or at no cost. Because we use open- source code, we may be required to take remedial action to protect our proprietary software. Such action could include replacing certain source code used in our software, discontinuing certain of our products or features or taking other actions that could divert resources away from our development efforts. In addition, the terms relating to disclosure of derivative works in many open-source licenses are unclear. We periodically review our compliance with the open- source licenses we use and do not believe we will be required to make our proprietary software freely available. Nevertheless, if a court interprets one or more such open-source licenses in a manner that is unfavorable to us, we could be required to make some components of our software available at no cost, which could materially and adversely affect our business and financial condition. Our business requires the continued development of effective business support systems to support our client growth and related services. The growth of our business depends on our ability to continue to develop effective business support systems. This is a complicated undertaking requiring significant resources and expertise. Business support systems are needed for implementing client orders for services, delivering these services, and timely and accurate billing for these services. The failure to continue to develop effective business support systems could harm our ability to implement our business plans and meet our financial goals and objectives. **Rising inflation rates could negatively impact our revenues and profitability if increases in the prices of our services or a decrease in consumer spending results in lower sales. In addition, if our costs increase and we are not able to pass along these price increases to our customers, our net income would be adversely affected, and the adverse impact may be material. Inflation rates, particularly in the United States and EMEA, have increased recently to levels not seen in years. Increased inflation may result in decreased demand for our products and services, increased operating costs (including our labor costs), reduced liquidity, and limitations on our ability to access credit or otherwise raise debt and equity capital. In addition, the United States Federal Reserve has raised, and may again raise, interest rates in response to concerns about inflation. Increases in interest rates, especially if coupled with reduced government spending and volatility in financial markets, may have the effect of further increasing economic uncertainty and heightening these risks. In an inflationary environment, we may be unable to raise the sales prices of our products and services at or above the rate at which our costs increase, which could / would reduce our profit margins and have a material adverse effect on our financial results and net income. We also may experience lower than expected sales and potential adverse impacts on our competitive position if there is a decrease in consumer spending or a negative reaction to our pricing. A reduction in our revenue would be detrimental to our profitability and financial condition and could also have an adverse impact on our future growth.** Risks Relating to our Clients and Demand for our Services ~~We depend on a limited number of clients for a substantial portion of our revenue in any fiscal period, and the loss of, or a significant shortfall in demand from, these clients could significantly harm our results of operations.~~ A relatively small number of clients typically account for a significant percentage of our revenue. For the year ended December 31, ~~2021~~ **2022** , sales to our top 20 clients accounted for approximately ~~74~~ **73** % of our total revenue and we had two clients, Amazon and ~~Sony~~ **Verizon** , which ~~each~~ represented more than 10 % of our total revenue **. As of December 31, 2022, Amazon, Verizon and Microsoft represented more than 10 % of our of our total accounts receivable** . In the past, the clients that comprised our top 20 clients have continually changed, and we also have experienced significant fluctuations in our individual clients' usage of, or decreased usage of, our services. As a consequence, we may not be able to adjust our expenses in the short term to address the unanticipated loss of a large client during any particular period. As such, we may experience significant, unanticipated fluctuations in our operating results that may cause us to not meet our expectations or those of stock market analysts, which could cause our stock price to decline. Rapidly evolving technologies or new business models could cause demand for our services to decline or could cause these services to become obsolete. Clients, potential clients, or third parties may develop technological or business model innovations that address digital delivery requirements in a manner that is, or is perceived to be, equivalent or superior to our service offerings. This is particularly true as our clients increase their operations and begin expending greater resources on delivering their content using third party solutions. If we fail to offer services that are competitive to in- sourced solutions, we may lose additional clients or fail to attract clients that may consider pursuing this in- sourced approach, and our business and financial results would suffer. If competitors introduce new products or services that compete with or surpass the quality or the price or performance of our services, we may be unable to renew our agreements with existing clients or attract new clients at the prices and levels that allow us to generate attractive rates of return on our investment. We may not anticipate such developments and may be unable to adequately compete with these potential solutions. In addition, our clients' business models may change in ways that we do not anticipate, and these changes could reduce or eliminate our clients' needs for our services. If this occurred, we could lose clients or potential clients, and our business and financial results would suffer. As a result of these or similar potential developments, it is possible that competitive dynamics in our market may require us to reduce our prices faster than we anticipate, which could harm our revenue, gross margin and operating results. Many of our ~~significant current and potential clients are pursuing emerging or unproven business models, which, if unsuccessful, or ineffective at monetizing delivery of their content, could lead to a substantial decline in demand for our content delivery and other services. Many of our~~ clients' business models that center on the delivery of rich media and other content to users remain unproven. Some of our clients will not be successful in selling advertising, subscriptions, or otherwise monetizing the content we deliver on their behalf, and consequently, may not be successful in creating a profitable business model. This will result in some of our clients discontinuing their business operations and discontinuing use of our services and solutions. Further, any deterioration and related uncertainty in the global financial markets and economy ~~, such as that caused by the COVID- 19 pandemic,~~ could result in reductions in available capital and liquidity from banks and other providers of credit, fluctuations in equity and currency values worldwide, and concerns that portions of the worldwide economy may be in a prolonged recessionary period. **Any of this could** ~~In addition, as the COVID- 19 pandemic adversely affects the global financial markets and economy, it may~~ also have the effect of heightening many of the other risks described in this ' ' Risk Factors'' section **and** ~~. Any of this could~~ materially adversely impact our clients' access to capital or willingness to spend capital on our services or, in some cases, ultimately cause the client to exit their business. This uncertainty may also impact our clients' levels of cash liquidity, which could affect their ability or willingness to timely pay for services that they will order or have already ordered from us. From time to time we discontinue service to clients for non- payment of services. We expect clients may discontinue operations or not be willing or able to pay for services that they have ordered from us. If ~~we are unable to attract new clients or to retain our existing clients, our revenue could be lower than expected and our operating results may suffer. If~~ our existing and prospective clients do not perceive our services to be of sufficiently high value and quality, we may not be able to retain or expand business with our current clients or attract new clients. We sell our services pursuant to service agreements that generally include some form of financial minimum commitment. Our clients have no obligation to renew their contracts for our services after the expiration of their initial commitment, and these service agreements may not be renewed at the same or higher level of service, if at all. Moreover, under some circumstances, some of our clients have the right to cancel their service agreements prior to the expiration of the terms of their agreements. Aside from minimum financial commitments, clients are not obligated to use our services for any particular type or amount of traffic. For those clients which utilize a multi- CDN strategy, they can route traffic to us, or away from us, within seconds. These facts, in addition to the hyper competitive landscape in our market, means that we cannot accurately predict future client renewal rates or usage rates. Our clients' usage or renewal rates may decline or fluctuate as a result of a number of factors, including: • their satisfaction or dissatisfaction with our services; • the quality and reliability of our network; • the prices of our services; • the prices of services offered by our competitors; • discontinuation by our clients of their ~~internet~~ **Internet** or web- based content distribution business; • mergers and acquisitions affecting our client base; and • reductions in our clients' spending levels. If our clients do not renew their service agreements with us, or if they renew on less favorable terms, our revenue may decline and our business may suffer. Similarly, our client agreements often provide for minimum commitments that are often significantly below our clients' historical usage levels. Consequently, even if we have agreements with our clients to use our services, these clients could significantly curtail their usage without incurring any penalties under our agreements. In this event, our revenue would be lower than expected and our operating results could suffer. It also is an important component of our growth strategy to market our services and solutions to particular industries or market segments. As an organization, we may not have significant experience in selling our services into certain of these markets. Our ability to successfully sell our services into these markets to a meaningful extent remains unproven. If we are unsuccessful in such efforts, our business, financial condition and results of operations could suffer. We generate our revenue primarily from the sale of content delivery services, and the failure of the market for these services to expand as we expect or the reduction in spending on those services by our current or potential clients would seriously harm our business. While we offer our clients a number of services and solutions, we generate the majority of our revenue from charging our clients for the content delivered on their behalf through our global network. We are subject to an elevated risk of reduced demand for these services. Furthermore, if the market for delivery of rich media content in particular does not continue to grow as we expect or grows more slowly, then we may fail to achieve a return on the significant investment we are making to prepare for this growth. Our success, therefore, depends on the continued and increasing reliance on the ~~internet~~ **Internet** for delivery of media content and our ability to cost-effectively deliver these services. Many different factors may have a general tendency to limit or reduce the number of users relying on the ~~internet~~ **Internet** for media content, the amount of content consumed by our clients' users, or the number of providers making this content available online, including, among others: • a general decline in ~~internet~~ **Internet** usage; • third party restrictions on online content, including copyright, digital rights management, and geographic restrictions; • system impairments or outages, including those caused by hacking or cyberattacks; and • a significant increase in the quality or fidelity of off- line media content beyond that available online to the point where users prefer the off- line experience. The influence of any of these or other factors may cause our current or potential clients to reduce their spending on content delivery services, which would seriously harm our operating results and financial condition. If our ability to deliver media files in popular proprietary content formats was restricted or became cost- prohibitive, demand for our content delivery services could decline, we could lose clients and our financial results could suffer. Our business depends on our ability to deliver media content in all major formats. If our legal right or technical ability to store and deliver content in one or more popular proprietary content formats was limited, our ability to serve our clients in these formats would be impaired and the demand for our services would decline by clients using these formats. Owners of ~~propriety~~ **proprietary** content formats may be able to block, restrict, or impose fees or other costs on our use of such formats, which could lead to additional expenses for us and for our clients, or which could prevent our delivery of this type of content altogether. Such interference could result in a loss of clients, increased costs, and impairment of our ability to attract new clients, any of which would harm our revenue, operating results, and growth. Risks Relating to Human Capital Management Failure to effectively enhance our sales capabilities could harm our ability to increase our client base and achieve broader market acceptance of our services. Increasing our client base and achieving broader market acceptance of our services will depend to a significant extent on our ability to enhance our sales and marketing operations. We have a widely deployed field sales force. Our sales personnel are closer to our current and potential clients. Nevertheless, adjustments that we make to improve productivity and efficiency to our sales force have been and will continue to be expensive and could cause some near- term productivity impairments. As a result, we may not be successful in improving the productivity and efficiency of our sales force, which could cause our results of operations to suffer. We believe that there is significant competition for sales personnel with the sales skills and technical knowledge that we require. Our ability to achieve significant growth in revenue in the future will depend, in large part, on our success in recruiting, training and retaining sufficient numbers of sales personnel. New hires require significant training and, in most cases, take a significant period of time before they achieve full productivity. Our recent hires and planned hires may not become as productive as we would like, and we may be unable to hire or retain sufficient numbers of qualified individuals in the future in the markets where we do business. Our business will be seriously harmed if our sales force productivity efforts do not generate a corresponding significant increase in revenue. ~~If we are unable to retain our key employees and hire qualified personnel, our ability to compete could be harmed.~~ Our future success depends upon the continued services of our executive officers and other key technology, sales, marketing, and support personnel who have critical industry experience and relationships that they rely on in implementing our business plan. There is considerable competition for talented individuals with the specialized knowledge to deliver our services, and this competition affects our ability to hire and retain key employees. Historically, we have experienced a significant amount of employee turnover, especially with respect to our sales personnel. Sales personnel that are relatively new may need time to become fully productive. ~~Inability~~ **Additionally, in connection with the Edgecast Acquisition, we may experience additional losses or departures of our senior management and other key personnel. If we lose the service of qualified management**

or other key personnel or are unable to **attract and** retain **the necessary members of senior management** or ~~hire~~ **other** key **personnel, we may not be able to successfully execute on our business strategy, which could have an adverse effect on our business. Our recent reduction in force undertaken to re- balance our cost structure may not achieve our intended outcome. In December 2022, we implemented a reduction in force affecting approximately 95** employees **,** ~~could disrupt our~~ - **or** ~~operations~~ **approximately 10 % of our global workforce in order to meet strategic and financial objectives and to optimize resources for long term growth** , ~~delay~~ **and to improve margins. In connection with** ~~the~~ **these** ~~development and~~ **actions, we will incur termination costs estimated to be $ 2. 6 million for the** ~~introduction~~ --- **reduction in force. This reduction in force is expected to result in approximately $ 14 million** of **annualized run rate cash savings associated with the 95 employees. We incur substantial costs to implement restructuring plans, and our restructuring activities may subject us to litigation risk and expenses. Our past restructuring actions do not provide any assurance that additional restructuring plans will not be required** ~~our~~ - **or** ~~services~~ **implemented in the future. Further** , ~~and~~ **restructuring plans may have other consequences, such as attrition beyond our planned reduction in force, a** ~~negatively~~ -- **negative** impact **on employee morale and productivity or** our ability to ~~sell~~ **attract highly skilled employees. Our competitors may also use** our ~~services~~ **restructuring plans to seek to gain a competitive advantage over us. As a result, our restructuring plans may affect our revenue and other operating results in the future** . Risks Relating to Intellectual Property, Litigation, and Regulations Our involvement in litigation may have a material adverse effect on our financial condition and operations. We have been involved in multiple intellectual property **and shareholder** lawsuits in the past. We are from time to time party to other lawsuits. The outcome of all litigation is inherently unpredictable. The expenses of defending these lawsuits, particularly fees paid to our lawyers and expert consultants, have been significant to date. If the cost of prosecuting or defending current or future lawsuits continues to be significant, it may continue to adversely affect our operating results during the pendency of such lawsuits. Lawsuits also require a diversion of management and technical personnel time and attention away from other activities to pursue the defense or prosecution of such matters. In addition, adverse rulings in such lawsuits either alone or cumulatively may have an adverse impact on our revenue, expenses, market share, reputation, liquidity, and financial condition. ~~We need to defend our intellectual property~~ **Further, we have recently acquired Moov** and ~~processes~~ **Edgecast and as a result of such acquisitions, multiple lawsuits have been brought** against ~~patent~~ **us. Further,** ~~or~~ **our** ~~copyright infringement~~ **restatement of prior period consolidated financial statements has resulted in a class action lawsuit being filed against us. Securities class action lawsuits and derivative lawsuits are often brought against companies that have entered into similar transactions involving a sale of a line of business or other business combinations. In addition, we may be subject to private actions, collective actions, investigations, and various other legal proceedings by stockholders, clients, employees, suppliers, competitors, government agencies, or others. Even if the lawsuits are without merit, defending against these** claims **can result in** ~~, which may cause us to incur~~ substantial costs **, damage to our reputation,** and ~~threaten~~ **divert significant amounts of management time and resources. If any of these legal proceedings were to be determined adversely to us, or we were to enter into a settlement arrangement, we could be exposed to monetary damages or limits on** our ability to ~~do~~ **operate our** business **, which could have an adverse effect on our business, liquidity financial condition, and operating results** . Companies, organizations or individuals, including our competitors and non- practicing entities, may hold or obtain patents or other proprietary rights that would prevent, limit or interfere with our ability to make, use or sell our services or develop new services, which could make it more difficult for us to operate our business. We have been and continue to be the target of intellectual property infringement claims by third parties. Companies holding ~~internet~~ **Internet** - related patents or other intellectual property rights are increasingly bringing suits alleging infringement of such rights or otherwise asserting their rights and seeking licenses. Any litigation or claims, whether or not valid, could result in substantial costs and diversion of resources from the defense of such claims. In addition, many of our agreements with clients require us to defend and indemnify those clients for third- party intellectual property infringement claims against them, which could result in significant additional costs and diversion of resources. If we are determined to have infringed upon a third party' s intellectual property rights, we may also be required to do one or more of the following: • cease selling, incorporating or using products or services that incorporate the challenged intellectual property; • pay substantial damages; • obtain a license from the holder of the infringed intellectual property right, which license may or may not be available on reasonable terms or at all; or • redesign products or services. If we are forced to litigate any claims or to take any of these other actions, our business may be seriously harmed. ~~Our business may be adversely affected if we are unable to protect our intellectual property rights from unauthorized use or infringement by third parties.~~ We rely on a combination of patent, copyright, trademark and trade secret laws and restrictions on disclosure to protect our intellectual property rights. We have applied for patent protection in the United States and a number of foreign countries. These legal protections afford only limited protection and laws in foreign jurisdictions may not protect our proprietary rights as fully as in the United States. Monitoring infringement of our intellectual property rights is difficult, and we cannot be certain that the steps we have taken will prevent unauthorized use of our intellectual property rights. Developments and changes in patent law, such as changes in interpretations of the joint infringement standard, could restrict how we enforce certain patents we hold. We also cannot be certain that any pending or future patent applications will be granted, that any future patent will not be challenged, invalidated or circumvented, or that rights granted under any patent that may be issued will provide competitive advantages to us. If we are unable to effectively protect our intellectual property rights, our business may be harmed. Internet- related and other laws relating to taxation issues, privacy, data security, and consumer protection and liability for content distributed over our network could harm our business. Laws and regulations that apply to communications and commerce conducted over the ~~internet~~ **Internet** are becoming more prevalent, both in the United States and internationally, and may impose additional burdens on companies conducting business online or providing ~~internet~~ **Internet** - related services such as ours. Increased regulation could negatively affect our business directly, as well as the businesses of our clients, which could reduce their demand for our services. For example, tax authorities abroad may impose taxes on the ~~internet~~ **Internet** - related revenue we generate based on where our internationally deployed servers are located. In addition, domestic and international taxation laws are subject to change. Our services, or the businesses of our clients, may become subject to increased taxation, which could harm our financial results either directly or by forcing our clients to scale back their operations and use of our services in order to maintain their operations. Also, the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the **“** Act **”**), and the regulations promulgated by the FCC under Title II of the Act, may impose obligations on the ~~internet~~ **Internet** and those participants involved in ~~internet~~ **Internet** - related businesses. In addition, the laws relating to the liability of private network operators for information carried on, processed by or disseminated through their networks are unsettled, both in the United States and abroad. Network operators have been sued in the past, sometimes successfully, based on the content of material disseminated through their networks. We may become subject to legal claims such as defamation, invasion of privacy and copyright infringement in connection with content stored on or distributed through our network. In addition, our reputation could suffer as a result of our perceived association with the type of content that some of our clients deliver. If we need to take costly measures to reduce our exposure to the risks posed by laws and regulations that apply to communications and commerce conducted over the ~~internet~~ **Internet** , or are required to defend ourselves against related claims, our financial results could be negatively affected. Several other laws also could expose us to liability and impose significant additional costs on us. For example, the Digital Millennium Copyright Act has provisions that limit, but do not eliminate, our liability for the delivery of client content that infringe copyrights or other rights, so long as we comply with certain statutory requirements. Also, the Children’ s On- line Privacy Protection Act restricts the ability of online services to collect information from minors and the Protection of Children from Sexual Predators Act of 1998 requires online service providers to report evidence of violations of federal child pornography laws under certain circumstances. There are also emerging regulation and standards regarding the collection and use of personal information and protecting the security of data on networks. Compliance with these laws, regulations, and standards is complex and any failure on our part to comply with these regulations may subject us to additional liabilities. We are subject to stringent privacy and data protection requirements and any actual or perceived failure by us to comply with such requirements could expose us to liability and have an adverse impact on our business. We are subject to stringent laws and legal requirements that regulate our collection, processing, storage, use and sharing of certain personal information, including the EU’ s General Data Protection Regulation (**“** GDPR **”**), Brazil’ s Lei Geral de Protecao de Dados Pessoais (**“** LGPD **”**), and in the United States, the California Consumer Privacy Act (**“** CCPA **”**), among others. GDPR specifically imposes strict rules regulating data transfers of personal data from the EU to the United States. These laws and regulations are costly to comply with, could expose us to civil penalties and substantial penalties for non- compliance, as well as private rights of action for data breaches, all of which could increase our potential liability. This could also delay or impede the development or adoption of our products and services, reduce the overall demand for our services, result in negative publicity, increase our operating costs, require significant management time and attention, slow the pace at which we close (or prevent us from closing) sales transactions. Furthermore, these laws have prompted a number of proposals for new US and global privacy legislation, which, if enacted, could add additional complexity and potential legal risk, require additional investment of resources, and impact strategies and require changes in business practices and policies. We expect that we will continue to face uncertainty as to whether our evolving efforts to comply with our obligations under privacy laws will be sufficient. If we are investigated by data protection regulators, we may face fines and other penalties. Any such investigation or charges by data protection regulators could have a negative effect on our existing business and on our ability to attract and retain new clients. Privacy concerns could lead to regulatory and other limitations on our business, including our ability to use “ cookies ” and video player “ cookies ” that are crucial to our ability to provide services to our clients. Our ability to compile data for clients depends on the use of “ cookies ” to identify certain online behavior that allows our clients to measure a website or video’ s effectiveness. A cookie is a small file of information stored on a user’ s computer that allows us to recognize that user’ s browser or video player when the user makes a request for a web page or to play a video. Certain privacy laws regulate cookies and / or require certain disclosures regarding cookies or place restrictions on the sending of unsolicited communications. In addition, ~~internet~~ **Internet** users may directly limit or eliminate the placement of cookies on their computers by, among other things, using software that blocks cookies, or by disabling or restricting the cookie functions of their ~~internet~~ **Internet** browser software and in their video player software. If our ability to use cookies were substantially restricted due to the foregoing, or for any other reason, we would have to generate and use other technology or methods that allow the gathering of user data in order to provide services to clients. This change in technology or methods could require significant re- engineering time and resources, and may not be complete in time to avoid negative consequences to our business. In addition, alternative technology or methods might not be available on commercially reasonable terms, if at all. If the use of cookies is prohibited and we are not able to efficiently and cost effectively create new technology, our business, financial condition and results of operations would be materially adversely affected. Risks Relating to ~~the COVID- 19 Pandemic The effects of the COVID- 19 pandemic have materially affected how we and our clients are operating our businesses, and the duration and extent to which this will impact our future results of operations and overall financial performance remains uncertain. In 2020, the World Health Organization (WHO) declared COVID- 19 a global pandemic. This pandemic adversely affected work forces, organizations, governments, clients, economies, and financial markets globally, and led to an economic downturn and increased market volatility. It also disrupted the normal operations of many businesses, including ours. For example, in response to the outbreak of COVID- 19, we activated our pandemic response plan and took several precautionary steps early to safeguard our business and our people, including implementing travel bans and restrictions, temporarily closing offices, and canceling participation in various industry events. The continued persistence of this outbreak, as well as intensified measures undertaken to contain the spread of COVID- 19, could decrease consumer spending, adversely affect demand for our technology and services, cause some of our clients and partners to exit their business, cause one or more of our clients to fail to renew, terminate, or renegotiate their contracts, affect the ability of our sales team to travel to potential clients, impact expected spending from new clients, and negatively impact~~

~~collections of accounts receivable, all of which could adversely affect our business, results of operations, and financial condition. Also, the sales cycle for a new client of our technology and services could lengthen, resulting in a potentially longer delay between increasing operating expenses and the generation of corresponding revenue, if any. We cannot predict whether and to what degree the disruption caused by the COVID- 19 pandemic and reactions thereto will continue, and expect to face difficulty accurately predicting our internal forecasts for the foreseeable future. The outbreak also presents challenges as our workforce is currently working remotely and shifting to assisting new and existing clients who are also generally working remotely. It is not possible for us to predict the duration or magnitude of the adverse results of the outbreak and its effects on our business, results of operations, or financial condition. Risks Relating to~~ Strategic Transactions As part of our business strategy, we may acquire businesses or technologies and may have difficulty integrating these operations. We may seek to acquire businesses or technologies that are complementary to our business in the future. Acquisitions are often complex and involve a number of risks to our business, including, among others: • the difficulty of integrating the operations, services, solutions and personnel of the acquired companies; • the potential disruption of our ongoing business; • the potential distraction of management; • the possibility that our business culture and the business culture of the acquired companies will not be compatible; • the difficulty of incorporating or integrating acquired technology and rights; • expenses related to the acquisition and to the integration of the acquired companies; • the impairment of relationships with employees and clients as a result of any integration of new personnel; • employee turnover from the acquired companies or from our current operations as we integrate businesses; • risks related to the businesses of acquired companies that may continue following the merger; and • potential unknown liabilities associated with acquired companies. If we are not successful in completing acquisitions, or integrating completed acquisitions in a timely manner, we may be required to reevaluate our business strategy, and we may incur substantial expenses and devote significant management time and resources without a productive result. Acquisitions will require the use of our available cash or dilutive issuances of securities. Future acquisitions or attempted acquisitions could also harm our ability to achieve profitability. For example, in September 2021, we acquired Moov ~~Corporation, a company that provides a sub- scale SaaS based application acceleration~~ and **in June 2022** ~~developer support platform. While we have started to integrate the people and technologies from Moov~~ , we **acquired Edgecast. We** have limited experience in making acquisitions ~~and there is no guarantee that such integration will be successful~~ . **The** ~~Moreover, the integration~~ process **of integrating the people and technologies from completed acquisitions** will likely require significant time and resources, require significant attention from management, and may disrupt the ordinary functioning of our business, and we may not be able to manage the process successfully, which could adversely affect our business, results of operations, and financial condition. Risks Related to Investments and Our Outstanding Convertible Notes If we are required to seek funding, such funding may not be available on acceptable terms or at all. We believe that our cash, cash equivalents and marketable securities ~~classified as current~~ plus cash from operations will be sufficient to fund our operations and proposed capital expenditures for at least the next twelve months. However, we may need or desire to obtain funding due to a number of factors, including a shortfall in revenue, increased expenses, increased investment in capital equipment, the acquisition of significant businesses or technologies, or adverse judgments or settlements in connection with future, unforeseen litigation. If we do need to obtain funding, it may not be available on commercially reasonable terms or at all. If we are unable to obtain sufficient funding, our business would be harmed. Even if we were able to find outside funding sources, we might be required to issue securities in a transaction that could be highly dilutive to our investors or we may be required to issue securities with greater rights than the securities we have outstanding today. We might also be required to take other actions that could lessen the value of our common stock, including borrowing money on terms that are not favorable to us. If we are unable to generate or raise capital that is sufficient to fund our operations, we may be required to curtail operations, reduce our capabilities or cease operations in certain jurisdictions or completely. Servicing our debt may require a significant...... in the acceleration of our debt. Our indebtedness and liabilities could limit the cash flow available for our operations, expose us to risks that could adversely affect our business, financial condition, and results of operations and impair our ability to satisfy our obligations under the Notes. ~~We~~ **In July 2020, we** incurred $ 125, 000 principal amount of additional indebtedness as a result of our issuance of the Notes. We may also incur additional indebtedness to meet future financing needs, including under our credit facility with ~~SVB~~ **First Citizens Bank (formerly Silicon Valley Bank) (“ FCB ”)** . Our indebtedness could have significant negative consequences for our security holders and our business, results of operations, and financial condition by, among other things: • increasing our vulnerability to adverse economic and industry conditions; • limiting our ability to obtain additional financing; • requiring the dedication of a substantial portion of our cash flow from operations to service our indebtedness, which will reduce the amount of cash available for other purposes; • limiting our flexibility to plan for, or react to, changes in our business; • diluting the interests of our stockholders as a result of issuing shares of our stock upon conversion of the Notes; and • placing us at a possible competitive disadvantage with competitors that are less leveraged than us or have better access to capital. Our business may not generate sufficient funds, and we may otherwise be unable to maintain sufficient cash reserves, to pay amounts due under our indebtedness, including the Notes, and our cash needs may increase in the future. ~~-~~If we are unable to generate such cash flow,we may be required to adopt one or more alternatives,such as selling assets,restructuring debt or obtaining additional debt or equity financing on terms that may be onerous or highly dilutive.Our ability to refinance any future indebtedness will depend on the capital markets and our financial condition at such time.We may not be able to engage in any of these activities or engage in these activities on desirable terms,which could result in a default on our debt obligations.In addition,any of our future debt agreements may contain restrictive covenants that may prohibit us from adopting any of these alternatives.Our failure to comply with these covenants could result in an event of default which,if not cured or waived,could ~~result~~ **results** in ~~the~~ acceleration of our debt **repayment.** In addition, the Loan and Security Agreement (as amended, the **“** Credit Agreement **”**) with **FCB** ~~Silicon Valley Bank (SVB)~~ originally entered into in November 2015 **, matures on April 2, 2025,** governing our credit facility contains, and any future indebtedness that we may incur may contain, financial and other restrictive covenants that limit our ability to operate our business, raise capital or make payments under our other indebtedness. **As of December 31, 2022, we were not in compliance with our Adjusted Quick Ratio requirement as it was below 1. 0. On June 27, 2023, we have received a waiver for, among others, such non- compliance. As of December 31, 2022 and 2021, we had no outstanding borrowings under the Credit Agreement.** If we fail to comply with these covenants or **obtain waivers for non- compliance or if we fail** to make payments under our indebtedness when due, then we ~~would~~ **may** be in default under that indebtedness, which could, in turn, result in that and our other indebtedness becoming immediately payable in full. We may be unable to raise the funds necessary to repurchase the Notes for cash following a fundamental change, or to pay any cash amounts due upon conversion, and our other indebtedness may limit our ability to repurchase the Notes or pay cash upon their conversion. Holders of the Notes may require us to repurchase their Notes following a fundamental change at a cash repurchase price generally equal to the principal amount of the Notes to be repurchased, plus accrued and unpaid interest, if any. In addition, upon conversion, we will satisfy part or all of our conversion obligation in cash unless we elect to settle conversions solely in shares of our common stock. We may not have enough available cash or be able to obtain financing at the time we are required to repurchase the Notes or pay the cash amounts due upon conversion. In addition, applicable law, regulatory authorities, and the agreements governing our other indebtedness may restrict our ability to repurchase the Notes or pay the cash amounts due upon conversion. Our failure to repurchase the Notes or to pay the cash amounts due upon conversion when required will constitute a default under the indenture governing the Notes **(the " Indenture ")** . A default under the ~~indenture~~ **Indenture** or the fundamental change itself could also lead to a default under agreements governing our other indebtedness, which may result in that other indebtedness becoming immediately payable in full. We may not have sufficient funds to satisfy all amounts due under the other indebtedness and the Notes. The accounting method for the Notes could adversely affect our reported financial condition and results. The accounting method for reflecting the Notes on our balance sheet, accruing interest expense for the Notes and reflecting the underlying shares of our common stock in our reported diluted earnings per share may adversely affect our reported earnings and financial condition. We expect that, under applicable accounting principles, the initial liability carrying amount of the Notes will be the fair value of a similar debt instrument that does not have a conversion feature, valued using our cost of capital for straight, non- convertible debt. We expect to reflect the difference between the net proceeds from the offering of the Notes and the initial carrying amount as a debt discount for accounting purposes, which will be amortized into interest expense over the term of the Notes. As a result of this amortization, the interest expense that we expect to recognize for the Notes for accounting purposes will be greater than the **future** cash interest payments we will pay on the Notes, which will result in lower reported income or higher reported **net** losses. The lower reported **net** income or higher reported **net** losses resulting from this accounting treatment could depress the trading price of our common stock and the Notes. **In** ~~However, in~~ August 2020, the Financial Accounting Standards Board (**"** FASB **"**) published Accounting Standards Update (**"** ASU **"**) 2020- 06, eliminating the separate accounting for the debt and equity components as described above ~~. ASU 2020- 06 will be effective for SEC- reporting entities for fiscal years beginning after December 15, 2021 (or, in the case of smaller reporting companies, December 15, 2023), including interim periods within those fiscal years~~ . On January 1, 2021, we early adopted ASU 2020- 06. The adoption of ASU 2020- 06 eliminated the separate accounting described above and will reduce the interest expense that we expect to recognize for the Notes for accounting purposes. In addition, ASU 2020- 06 eliminates the use of the treasury stock method for convertible instruments that can be settled in whole or in part with equity, and instead require application of the " if- converted " method. Under that method ~~, if it is adopted~~ , diluted earnings per share would generally be calculated assuming that all the Notes were converted solely into shares of common stock at the beginning of the reporting period, unless the result would be anti- dilutive. The application of the if- converted method may reduce our reported diluted earnings per share **, if applicable** . Also, if any of the conditions to the convertibility of the Notes is satisfied, then we may be required under applicable accounting standards to reclassify the liability carrying value of the Notes as a current, rather than a long- term, liability. This reclassification could be required even if no Note- holders convert their Notes and could materially reduce our reported working capital **or create a negative working capital** . Transactions relating to our Notes may affect the value of our common stock. In connection with the pricing of the Notes, we entered into capped call transactions (collectively, the **"** Capped Calls **"**) with one of the initial purchasers of the Notes and other financial institutions (collectively, the **"** Option Counterparties **"**). The Capped Calls cover, subject to customary adjustments, the number of shares of common stock initially underlying the Notes. The Capped Calls are expected generally to reduce the potential dilution of our common stock upon conversion of the Notes or at our election (subject to certain conditions) offset any cash payments we are required to make in excess of the aggregate principal amount of converted Notes, as the case may be, with such reduction or offset subject to a cap. In addition, the Option Counterparties or their respective affiliates may modify their hedge positions by entering into or unwinding various derivatives with respect to our common stock and / or purchasing or selling our common stock or other securities of ours in secondary market transactions following the pricing of the Notes and from time to time prior to the maturity of the Notes (and are likely to do so on each exercise date of the Capped Calls, which are expected to occur during the 40 trading day period beginning on the 41st scheduled trading day prior to the maturity date of the Notes, or following any termination of any portion of the Capped Calls in connection with any repurchase, redemption, or conversion of the Notes if we make the relevant election under the Capped Calls). This activity could also cause or avoid an increase or a decrease in the market price of our common stock. We are subject to counterparty risk with respect to the Capped Calls. The Option Counterparties are financial institutions, and we will be subject to the risk that any or all of them might default under the Capped Calls. Our exposure to the credit risk of the Option Counterparties will not be secured by any collateral. Past global economic conditions have resulted in the actual or perceived failure or financial difficulties of many financial institutions. If an ~~option~~ **Option** ~~counterparty~~ **Counterparty** becomes subject to insolvency proceedings, we will become an unsecured creditor in those proceedings with a claim equal to our exposure at that time under the Capped Calls with such ~~option~~ **Option** ~~counterparty~~ **Counterparty** . Our exposure will depend on many factors but, generally, an increase in our exposure will be correlated to an increase in the market price subject to the cap and in the volatility of our common stock. In addition, upon a default by an option counterparty, we may suffer more dilution than we currently anticipate with respect to our common stock. We can provide no assurances as to the financial stability or viability of the Option Counterparties. Risks Related to Ownership of Our Common Stock The trading ~~price of our common stock has been, and is likely to continue to be, volatile. The trading~~ prices of our common stock and the securities of technology companies generally have been highly volatile. Factors affecting the trading price of our common stock will include: • variations in our operating results; • announcements of technological innovations, new services or service enhancements, strategic alliances or significant agreements by us or by our competitors; • commencement or resolution of, our involvement in and uncertainties arising from litigation; • recruitment or departure of key personnel; • changes in the estimates of our operating results or changes in recommendations by securities analysts; • if we or our stockholders sell substantial amounts of our common stock (including shares issued upon the exercise of options ~~and warrants~~); • developments or disputes concerning our intellectual property or other proprietary rights; • the gain or loss of significant clients; • market conditions in our industry, the industries of our clients, and the economy as a whole, including the economic impact of **a global pandemic, such as** the COVID- 19 pandemic; and • adoption or modification of regulations, policies, procedures or programs applicable to our business. In addition, if the market for technology stocks or the stock market in general experiences loss of investor confidence, the trading price of our common stock could decline for reasons unrelated to our business, operating results or financial condition. The trading price of our common stock might also decline in reaction to events or speculation of events that affect other companies in our industry even if these events do not directly affect us. If securities or industry analysts do not publish research or reports about our business or if they issue an adverse or misleading opinion or report, our stock, our stock price, and trading volume could decline. The trading market for our common stock will be influenced by the research and reports that industry or securities analysts publish about us or our business. If an analyst issues an adverse or misleading opinion, our stock price could decline. If one or more of these analysts cease covering us or fails to publish reports on us regularly, we could lose visibility in the financial markets, which in turn could cause our stock price or trading volume to decline. Future equity issuances or a sale of a substantial number of shares of our common stock may cause the price of our common stock to decline. Because we may need to raise additional capital in the future to continue to expand our business and our research and development activities, among other things, we may conduct additional equity offerings. If we or our stockholders sell substantial amounts of our common stock (including shares issued upon the exercise of options ~~and warrants~~) in the public market, the market price of our common stock could fall. A decline in the market price of our common stock could make it more difficult for us to sell equity or equity- related securities in the future at a time and price that we deem appropriate. Anti-takeover provisions in our charter documents and Delaware law could discourage, delay or prevent a change in control of our company and may affect the trading price of our common stock. Provisions of our amended and restated certificate of incorporation and bylaws, as well as provisions of Delaware law, could make it more difficult for a third party to acquire us, even if doing so would benefit our stockholders. These provisions: • establish that members of the board of directors may be removed only for cause upon the affirmative vote of stockholders owning a majority of our capital stock; • authorize the issuance of " blank check " preferred stock that could be issued by our board of directors to increase the number of outstanding shares and thwart a takeover attempt; • limit who may call special meetings of stockholders; • prohibit action by written consent, thereby requiring stockholder actions to be taken at a meeting of the stockholders; • establish advance notice requirements for nominations for election to the board of directors or for proposing matters that can be acted upon at stockholder meetings; • provide for a board of directors with staggered terms; and • provide that the authorized number of directors may be changed only by a resolution of our board of directors. In addition, Section 203 of the Delaware General Corporation Law, which imposes certain restrictions relating to transactions with major stockholders, may discourage, delay or prevent a third party from acquiring us. General Risk Factors We are subject to the effects of fluctuations in foreign exchange rates, which could affect our operating results. The financial condition and results of operations of our operating foreign subsidiaries are reported in the relevant local currency and are then translated into U. S. dollars at the applicable currency exchange rate for inclusion in our consolidated U. S. dollar financial statements. Also, although a large portion of our client and vendor agreements are denominated in U. S. dollars, we may be exposed to fluctuations in foreign exchange rates with respect to client agreements with certain of our international clients. Exchange rates between these currencies and U. S. dollars in recent years have fluctuated significantly and may do so in the future. In addition to currency translation risk, we incur currency transaction risk whenever one of our operating subsidiaries enters into a transaction using a different currency than the relevant local currency. Given the volatility of exchange rates, we may be unable to manage our currency transaction risks effectively. Currency fluctuations could have a material adverse effect on our future international sales and, consequently, on our financial condition and results of operations. We could incur charges due to impairment of goodwill and long- lived assets. As of December 31, ~~2021~~ **2022** , we had a goodwill balance of approximately $ ~~114~~ **169** , **156** ~~511,~~ which is subject to periodic testing for impairment. Our long-lived assets also are subject to periodic testing for impairment. A significant amount of judgment is involved in the periodic testing. Failure to achieve sufficient levels of cash flow could result in impairment charges for goodwill or ~~fixed asset~~ impairment for long- lived assets, which could have a material adverse effect on our reported results of operations. Our goodwill impairment analysis also includes a comparison of the aggregate estimated fair value of our reporting unit to our total market capitalization. If our stock trades below our book value, a significant and sustained decline in our stock price and market capitalization could result in goodwill impairment charges. During times of financial market volatility, significant judgment will be used to determine the underlying cause of the decline and whether stock price declines are short- term in nature or indicative of an event or change in circumstances. Impairment charges, if any, resulting from the periodic testing are non- cash. ~~Our results of operations may fluctuate in the future.~~ As ~~a result, we may fail to meet or exceed the expectations~~ of ~~securities analysts or investors~~ **the annual impairment testing in the fourth quarter of 2022** , **we determined that goodwill was not impaired. During 2023, management identified indicators that the carrying amount of its goodwill may be impaired due to a**

decline in the company' s stock price which could ~~cause our stock price~~ **result in a future goodwill impairment charge** to ~~decline~~ **earnings, such charge may be material. Management will continue to monitor the relevant goodwill impairment indicators and significant estimates to determine whether an impairment is appropriate** . Our results of operations may fluctuate as a result of a variety of factors, many of which are outside of our control. If our results of operations fall below the expectations of securities analysts or investors, the price of our common stock could decline substantially. In addition to the effects of other risks discussed in this section, fluctuations in our results of operations may be due to a number of factors, including, among others: • our ability to increase sales to existing clients and attract new clients to our services; • the addition or loss of large clients, or significant variation in their use of our services; • costs associated with ~~current or~~ future intellectual property lawsuits and other **lawsuits; • costs associated with current or future shareholder class action or derivative** lawsuits; • service outages or third party security breaches to our platform or to one or more of our clients' platforms; • the amount and timing of operating costs and capital expenditures related to the maintenance and expansion of our business, operations and infrastructure and the adequacy of available funds to meet those requirements; • the timing and success of new product and service introductions by us or our competitors; • the occurrence of significant events in a particular period that result in an increase in the use of our services, such as a major media event or a client' s online release of a new or updated video game or operating system; • changes in our pricing policies or those of our competitors; • the timing of recognizing revenue; • limitations of the capacity of our global network and related systems; • the timing of costs related to the development or acquisition of technologies, services or businesses; • the potential write- down or write- off of intangible or other long- lived assets; • general economic, industry and market conditions (such as fluctuations experienced in the stock and credit markets during times of deteriorated global economic conditions or during an outbreak of an epidemic or pandemic ~~, such as the recent COVID- 19 outbreak)~~ and those conditions specific to ~~internet~~ **Internet** usage; • limitations on usage imposed by our clients in order to limit their online expenses; and • war, threat of war or terrorism, including cyber terrorism, and inadequate cybersecurity. We believe that our revenue and results of operations may vary significantly in the future and that period- to- period comparisons of our operating results may not be meaningful. You should not rely on the results of one period as an indication of future performance. We have a history of losses and we may not achieve or maintain profitability in the future. We incur significant expenses in developing our technology and maintaining and expanding our network. We also incur significant share- based compensation expense and have incurred (and may in the future incur) significant costs associated with litigation. Accordingly, we may not be able to achieve or maintain profitability for the foreseeable future. We also may not achieve sufficient revenue to achieve or maintain profitability and thus may continue to incur losses in the future for a number of reasons, including, among others: • slowing demand for our services; • increasing competition and competitive pricing pressures; • any inability to provide our services in a cost- effective manner; • incurring unforeseen expenses, difficulties, complications and delays; and • other risks described in this report. If we fail to achieve and maintain profitability, the price of our common stock could decline, and our business, financial condition and results of operations could suffer. We have incurred, and will continue to incur, significant costs as a result of operating as a public company, and our management is required to devote substantial time to corporate governance. We have incurred, and will continue to incur, significant public company expenses, including accounting, legal and other professional fees, insurance premiums, investor relations costs, and costs associated with compensating our independent directors. In addition, rules implemented by the SEC and Nasdaq impose additional requirements on public companies, including requiring changes in corporate governance practices. For example, the Nasdaq listing requirements require that we satisfy certain corporate governance requirements. Our management and other personnel need to devote a substantial amount of time to these governance matters. Moreover, these rules and regulations increase our legal and financial compliance costs and make some activities more time- consuming and costly. For example, these rules and regulations make it more difficult and more expensive for us to obtain director and officer liability insurance. If the accounting estimates we make, and the assumptions on which we rely, in preparing our **consolidated** financial statements prove inaccurate, our actual results may be adversely affected. Our **consolidated** financial statements have been prepared in accordance with U. S. **generally accepted accounting principles (" U. S.** GAAP **")** . The preparation of these **consolidated** financial statements requires us to make estimates and judgments about, among other things, taxes, revenue recognition, share- based compensation costs, contingent obligations, and doubtful accounts. These estimates and judgments affect the reported amounts of our assets, liabilities, revenue and expenses, the amounts of charges accrued by us, and related disclosure of contingent assets and liabilities. We base our estimates on historical experience and on various other assumptions that we believe to be reasonable under the circumstances and at the time they are made. If our estimates or the assumptions underlying them are not correct, we may need to accrue additional charges or reduce the value of assets that could adversely affect our results of operations, investors may lose confidence in our ability to manage our business and our stock price could decline. If we fail to maintain proper and effective internal controls or fail to implement our controls and procedures with respect to acquired or merged operations, our ability to produce accurate **consolidated** financial statements could be impaired, which could adversely affect our operating results, our ability to operate our business and investors' views of us. We must ensure that we have adequate internal financial and accounting controls and procedures in place so that we can produce accurate **consolidated** financial statements on a timely basis. We are required to spend considerable effort on establishing and maintaining our internal controls, which is costly and time- consuming and needs to be re- evaluated frequently. We have operated as a public company since June 2007, and we will continue to incur significant legal, accounting, and other expenses as we comply with Sarbanes- Oxley **Act of 2002 (" Sarbanes- Oxley Act ")** , as well as new rules implemented from time to time by the SEC and Nasdaq. These rules impose various requirements on public companies, including requiring changes in corporate governance practices, increased reporting of compensation arrangements, and other requirements. Our management and other personnel will continue to devote a substantial amount of time to these compliance initiatives. Moreover, new rules and regulations will likely increase our legal and financial compliance costs and make some activities more time- consuming and costly. Section 404 of SOX requires that we include in our annual report our assessment of the effectiveness of our internal control over financial reporting and our audited **consolidated** financial statements as of the end of each fiscal year. Furthermore, our independent registered public accounting firm, Ernst & Young LLP (**“** EY **”**), is required to report on whether it believes we maintained, in all material respects, effective internal control over financial reporting as of the end of the year. Our continued compliance with Section 404 will require that we incur substantial expense and expend significant management time on compliance related issues, including our efforts in implementing controls **, remediating material weaknesses** and **certain** procedures related to acquired or merged operations ~~. We currently do not have an internal audit group and use an international accounting firm to assist us with our assessment of the effectiveness of our internal controls over financial reporting~~ . In future years, if we fail to timely complete this assessment, or if EY cannot timely attest, there may be a loss of public confidence in our internal controls, the market price of our stock could decline, and we could be subject to regulatory sanctions or investigations by Nasdaq, the SEC, or other regulatory authorities, which would require additional financial and management resources. In addition, any failure to implement required new or improved controls, or difficulties encountered in their implementation, could harm our operating results or cause us to fail to timely meet our regulatory reporting obligations. **If we cannot continue to satisfy The Nasdaq Global Select Market continued listing standards and other Nasdaq rules, our common stock could be delisted, which would harm our business, the trading price of our common stock, our ability to raise additional capital and the liquidity of the market for our common stock. Our common stock is currently listed on The Nasdaq Global Select Market. To maintain the listing of our common stock on the Nasdaq Global Select Market, we are required to meet certain listing requirements. There is no assurance that we will be able to maintain compliance with such requirements. On March 23, 2023, the company received a letter (the “ 10- K Notice ”) from the Nasdaq Stock Market notifying the company that, as a result of the company’ s delay in filing its Annual Report on Form 10- K for the year ended December 31, 2022 (the “ Form 10- K ”), the company is not in compliance with the applicable rule that requires Nasdaq- listed companies to timely file all required periodic financial reports with the SEC. On April 27, 2023, the company received a letter (the “ Minimum Price Notice ”) from The Nasdaq Stock Market notifying the company that, because the closing bid price for its common stock has been below $ 1. 00 per share for 30 consecutive business days, it no longer complies with the minimum bid price requirement for continued listing on The Nasdaq Global Select Market. Neither the 10- K Notice nor the Minimum Price Notice has an immediate effect on the listing of the company’ s common stock on The Nasdaq Global Select Market. In each case, the company has been provided an initial compliance period of 180 calendar days to regain compliance with the applicable requirement. During the compliance period, the company’ s shares of common stock will continue to be listed and traded on The Nasdaq Global Select Market. To regain compliance, the Company must file its Form 10- K and the closing bid price of the company’ s common stock must meet or exceed $ 1. 00 per share for a minimum of ten consecutive business days during the applicable 180 calendar day grace period. The company intends to actively monitor the bid price for its common stock and will consider available options to regain compliance with the applicable listing requirements. If our common stock were to be delisted from Nasdaq and was not eligible for quotation or listing on another market or exchange, trading of our common stock could be conducted only in the over- the- counter market such as the OTC Markets Group DTCQB. In such event, it could become more difficult to dispose of, or obtain accurate price quotations for, our common stock, and there would likely also be a reduction in our coverage by securities analysts and the news media, which could cause the price of our common stock to decline further.** Changes in financial accounting standards or practices may cause adverse, unexpected financial reporting fluctuations and affect our reported results of operations. A change in accounting standards or practices can have a significant effect on our operating results and may affect our reporting of transactions completed before the change is effective. New accounting pronouncements and varying interpretations of existing accounting pronouncements have occurred and may occur in the future. Changes to existing rules or the questioning of current practices may adversely affect our reported financial results or the way we conduct our business. **We reached a determination to restate certain of our previously issued consolidated financial statements as a result of the identification of errors in previously issued consolidated financial statements, which resulted in unanticipated costs and may affect investor confidence and raise reputational issues. As discussed in the Explanatory Note, in Note 3, Restatement of Previously Issued Consolidated Financial Statements, and in Note 24, Restatement of Unaudited Quarterly Results, in this Annual Report on Form 10- K for the year ended December 31, 2022, we reached a determination to restate certain of our historical consolidated financial statements and related disclosures for the periods disclosed in those notes after identifying errors in our accounting treatment of certain of our complex and / or non- routine transactions. The restatement also included corrections for previously identified immaterial errors in the impacted periods. As a result, we have incurred unanticipated costs for accounting and legal fees in connection with or related to the restatement, and have become subject to a number of additional risks and uncertainties, which may affect investor confidence in the accuracy of our financial disclosures and may raise reputational risks for our business, both of which could harm our business and financial results. We recently identified material weaknesses in our internal control over financial reporting. If we do not effectively remediate the material weaknesses or if we otherwise fail to maintain effective internal control over financial reporting, our ability to report our financial results on a timely and on an accurate basis could be impaired, which may adversely affect the market price of our common stock. The Sarbanes- Oxley Act requires, among other things, that public companies evaluate the effectiveness of their internal control over financial reporting and disclosure controls and procedures. We identified the material weaknesses in internal control over financial reporting as of December 31, 2022: non- routine and complex transactions, revenue accounting system controls and financial close reporting. Please see Item 9A, Controls and Procedures, in this Annual Report on Form 10- K for additional information regarding the identified material weaknesses and our actions to date to remediate the material weaknesses. As a result, we may incur substantial costs, expend significant management time on compliance-**

related issues, and hire additional accounting, financial, and internal audit staff with appropriate public company experience and technical accounting knowledge. Moreover, if we or our independent registered public accounting firm identify additional deficiencies in our internal control over financial reporting that are deemed to be material weaknesses, we could be subject to sanctions or investigations by the SEC or other regulatory authorities, which would require additional financial and management resources. Any failure to maintain effective disclosure controls and procedures or internal control over financial reporting could have a material adverse effect on our business and operating results and cause a decline in the price of our common stock. The accounting treatment related to our Open Edge arrangements is complex, and if we are unable to attract and retain highly qualified accounting personnel to evaluate the accounting implications of our complex and / or non- routine transactions, our ability to accurately report our financial results may be harmed. Our Open Edge arrangements are classified as failed sale- leasebacks and accounted for as financing arrangements. The accounting rules related to these financing arrangements are complex and involve significant initial judgments in applying U. S. GAAP, and thus require experienced and highly skilled personnel to review and interpret the proper accounting treatment with respect thereto. Competition for senior finance and accounting personnel who have public company reporting experience is intense, and if we are unable to recruit and retain personnel with the required level of expertise to evaluate and accurately classify our revenue- generating transactions, our ability to accurately report our financial results may be harmed.