

## Risk Factors Comparison 2024-04-16 to 2023-04-17 Form: 10-K

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Below is a summary of the principal factors that make an investment in our securities speculative or risky. This summary does not address all of the risks that we face. Additional discussion of the risks summarized in this risk factor summary, and other risks that we face, can be found below under the heading “ Risk Factors ” and should be carefully considered, together with other information in this Form 10- K and our other filings with the SEC, before making an investment decision regarding our securities. • We will need additional funding, and we cannot guarantee that we will ~~satisfy the conditions precedent for the \$ 6.0 million that remains to be borrowed under the Keep Well Agreement or~~ find adequate sources of capital in the future. • We have incurred significant losses since our inception and may be unable to obtain additional funds before we achieve positive cash flows. • Our programs and solutions may not be as effective as we believe and may not achieve broad market acceptance and announcements of disappointing results may lead to declines in the market prices of our securities. • Our business currently depends upon a few large customers; during 2021, we lost two **large of such customers , and in October 2023, a large customer provided a notice of its intent to cease using our services in February 2024,** and any further loss would have a material adverse effect on us. • We have \$ ~~19.3~~ **0.5** million in principal amount of secured debt outstanding under the Keep Well Agreement, **\$ 1.5 million of which is payable upon demand of the lender**, and a default thereunder would have material adverse consequences to our financial condition, operating results, and ~~business.~~ • ~~The Keep Well Agreement contains significant restrictions on our business and operations and requires ongoing compliance with certain covenants, including financial covenants, and our common stock must be listed on Nasdaq for us to receive the remaining \$ 6.0 million to be borrowed under the Keep Well Agreement. Any failure to comply with the terms of the Keep Well Agreement or failure to satisfy conditions precedent to funding thereunder would have a material adverse effect on our business.~~ • We may not be able to generate sufficient cash flow or raise adequate financing to grow or scale our business or to fund our operations. • We depend upon our senior management and key consultants and their loss or unavailability could put us at a competitive disadvantage. • We need to attract and retain highly skilled personnel; we may be unable to effectively manage growth with our limited resources. • Customers may not achieve the savings we expect are created by our programs and solutions, which could adversely impact our business. • Market acceptance of our programs and solutions depends in large part on the willingness of third party payors to cover them, which is beyond our control. • We may fail to manage our growing business and may not be successful in identifying or completing any acquisitions necessary to continue such growth. Any such acquisition completed may not be successfully integrated with our operations or yield additional value for stockholders. • We may be unable to protect our intellectual property rights and we may be liable for infringing the intellectual property rights of others. • Ongoing healthcare legislative and regulatory reform measures may have a material adverse effect on our business and results of operations. • We must comply with significant government regulations, including with respect to licensure and privacy matters. • Our Series A Preferred Stock has no fixed maturity date, ranks junior to our currently outstanding indebtedness, is entitled to the payment of dividends only to the extent we may do so under Delaware corporate law, ~~is currently subject to restrictions on transfer contained in our charter~~ and has limited voting rights. • Our largest stockholder controls approximately ~~61~~ **40.6**% of our outstanding common stock and beneficially owns approximately ~~93~~ **85.5**% of our common stock, and may determine all matters presented for stockholder approval, including the election of directors, significant corporate transactions and our dissolution. • We are subject to ongoing litigation and may be subject to future litigation, any of which could result in substantial liabilities. • Our common stock may be delisted by Nasdaq. • The price of our common stock and preferred stock may be volatile. • The market prices for our common stock and preferred stock may be adversely impacted by future events. • Our certificate of incorporation, bylaws and Delaware law have anti- takeover provisions that could discourage, delay or prevent a change in control, which may cause our stock price to decline. Risks related to our business We expect to continue to incur substantial operating losses ~~and may be unable to obtain additional financing.~~ We have been unprofitable since our inception in 2003. Historically, we have seen and continue to see net losses, net loss from operations and negative cash flow from operating activities, **except for positive cash flow from operating activities in our second quarter of 2020 and first quarter of 2021,** as we experienced a period of rapid growth, and more recently our results have been negatively impacted by customer terminations. At December 31, ~~2022~~ **2023**, our ~~total cash and restricted cash was \$ 9.7 million and we had a working capital of approximately \$ 4.8 million.~~ We had an average monthly cash ~~flow burn rate~~ **burn rate** of approximately \$ ~~2~~ **1.0** million for the year ended December 31, ~~2022~~ **2023** and could continue to incur negative cash flows and operating losses for the next twelve months. We **have incurred negative cash flows from operations since inception and have expended, and expect to continue to expend, substantial funds to support and grow our business. We will require additional funds before** ~~continue to monitor liquidity, however, if we are unable~~ **to generate enough cash flows** ~~make sufficient new sales or expand existing customer contracts, we may not continue to fund~~ **have sufficient capital to continue to scale** our operations, ~~service our contracts and meet future enrollments or our obligations~~ **cover our operating expenses**. Additionally, if we add more health plans than ~~budgeted we anticipate~~, increase the size of the outreach pool by more than we anticipate, decide to invest in new products or seek out additional growth opportunities, or in order to provide liquidity for an extended period of losses, we would consider ~~financing these~~ **raising additional capital. We do not know whether additional funding will be available to us when needed on acceptable terms or at all. If adequate funds are not available or are not available on acceptable terms, we may need to downsize, curtail program development efforts or halt our** ~~options operations~~ **altogether.** ~~with either a debt or equity financing for which there~~ **There** can be no assurance that any such financing will be

available to us when needed on acceptable terms or at all. **If we raise additional funds by issuing equity securities, such financing will result in further dilution to our stockholders. Any equity securities issued also may provide for rights, preferences or privileges senior to those of holders of our common stock. If we raise funds by issuing debt securities, such securities would have rights, preferences and privileges senior to those of holders of our common stock, and the terms of the debt securities issued could impose significant restrictions on our operations.** We have incurred negative cash flows from operations since inception \$ 3.5 million in principal amount of secured debt outstanding under the Keep Well Agreement, and a default thereunder would have material adverse consequences expended, and expect to continue to expend, substantial funds to support and grow our financial condition, operating results, and business. We will require additional funds before we are able to generate enough cash flows to fund our operations and meet our obligations. We entered into a Master Note Purchase Agreement with Acuitas Capital LLC (“Acuitas Capital” and together with its affiliates, including Acuitas Group Holdings, LLC and Terren S. Peizer, “Acuitas”), dated as of April 15, 2022, as amended on each of August 12, 2022, November 19, 2022, and December 30, 2022 (as amended to date, the “Keep Well Agreement”). Acuitas Capital is our largest stockholder and an entity indirectly wholly owned and controlled by Mr. Peizer, our former Chief Executive Officer and Chairman. **To As of the filing date of this report, we borrowed have \$ 193.05 million in principal amount of secured debt outstanding the \$ 25.0 million that we may borrow under the Keep Well Agreement evidenced by senior secured convertible promissory notes.** Of the remaining \$ 6.0 million we may borrow, subject to the conditions in the Keep Well Agreement, \$ 4.0 million is to be funded in June 2023 and \$ 2.0 million in September 2023. One of the conditions precedent to funding is that our common stock is listed on The Nasdaq Stock Market (“Nasdaq”), and there ~~are~~ **the** are no assurances that we will satisfy that condition in the future. See “Acuitas Group Holdings, LLC owns approximately 40.6% of our outstanding common stock and beneficially owns approximately 85.5% of our outstanding common stock, and as a result of such ownership has the ability to substantially influence the election of directors and other matters submitted to stockholders” and “There can be no assurance that our common stock will continue to be listed on Nasdaq or, if listed, that we will be able to comply with the continued listing standards of Nasdaq, which could limit investors’ ability to make transactions in our securities and subject us to additional trading restrictions,” below. For additional information regarding the Keep Well Agreement, see the section titled, “Keep Well Agreement Notes” in Note 9 in the Notes to Consolidated Financial Statements in Part II, Item 8 of this report. In addition, even if we borrow the remaining \$ 6.0 million of which is payable upon demand of available under the Keep Well Agreement, we may need to raise additional funding. We do not know whether additional funding will be available on commercially acceptable terms, or at all. If adequate funds are not available or are not available on commercially acceptable terms, we may need to downsize, curtail program development efforts or halt our operations altogether. If we raise additional funds by issuing equity securities, such financing will result in further dilution to our stockholders. Any equity securities issued also may provide for rights, preferences or privileges senior to those ~~of holders of our common stock.~~ **the lender** of holders of our common stock. If we raise funds by issuing debt securities, these debt securities would have rights, preferences and privileges senior to those of holders of our common stock, and the terms of the debt securities issued could impose significant restrictions on our operations. The Keep Well Agreement includes customary events of default for a first priority senior secured debt facility. In the event of default under the Keep Well Agreement, Acuitas and the collateral agent under the Keep Well Agreement would have the rights that a secured creditor with a first priority lien on a company’s assets would have, including, the right to collect, enforce or satisfy any secured obligations then owing, including by foreclosing on the collateral securing our obligations under the Keep Well Agreement (which generally comprise all of our assets), **and** restrictions on the operation of our business would spring into effect, ~~and Acuitas would have no obligation to fund any future borrowings under the Keep Well Agreement.~~ A default under the Keep Well Agreement would have material adverse consequences to our financial condition, operating results, and business, and could cause us to become insolvent or enter bankruptcy proceedings, and our stockholders may lose all or a portion of their investment because of the priority of the claims of Acuitas, in its capacity as a secured creditor, on our assets. See also “Acuitas Group Holdings, LLC owns approximately 40.6% of our outstanding common stock and beneficially owns approximately 85.5% of our outstanding common stock, and as a result of such ownership has the ability to substantially influence the election of directors and other matters submitted to stockholders” and “There can be no assurance that our common stock will continue to be listed on Nasdaq or, if listed, that we will be able to comply with the continued listing standards of Nasdaq, which could limit investors’ ability to transact in our securities and subject us to additional trading restrictions,” below. **For additional information regarding the Keep Well Agreement, see the section titled, “Keep Well Agreement” in Note 9 of the Notes to Consolidated Financial Statements in Part II, Item 8 of this report.** The amounts we borrow under the Keep Well Agreement bear interest at a variable rate which could cause our outstanding indebtedness to increase significantly. The amounts we borrow under the Keep Well Agreement bear interest based on the 30 day tenor Term Secured Overnight Financing Rate (SOFR) Reference Rate, which is subject to a monthly adjustment, plus a margin specified in the Keep Well Agreement. As a result, in an increasing interest rate environment, the interest rate on the amounts we borrow under the Keep Well Agreement is subject to increase, thereby resulting in increased interest expense. The 30 day tenor Term SOFR Reference Rate has steadily increased in the past year. At December 31, 2022-2023, we had a total of \$ 0.61 million of accrued paid-in-kind interest related to on amounts borrowed under the Keep Well Notes and Agreement, which was related to the the three months ended December 31, 2023. **The effective weighted average interest rate for the amounts borrowed under the Keep Well Agreement was 20.79% at December 31, 2023. Accrued interest on the principal amount of the Keep Well Notes was 19.12%.** Accrued interest on the principal amount of borrowings under the Keep Well Agreement is added to principal, which either we will be required to repay, **with respect to \$ 1.5 million of principal, upon demand of the lender, and with respect to the balance** on the maturity date, **June 30-May 14, 2024-2026**, or, if converted into shares of our common stock in accordance with the terms of the Keep Well Agreement, will result in additional dilution to our stockholders. See Note 9 of the Notes to Consolidated Financial Statements in Part II, Item 8 of this report for more information. We may fail to

successfully manage and grow our business, which could adversely affect our results of operations, financial condition and business. Continued expansion could put significant strain on our management, operational and financial resources. The need to comply with the rules and regulations of the SEC will continue to place significant demands on our financial and accounting staff, financial, accounting and information systems, and our internal controls and procedures, any of which may not be adequate to support our anticipated growth. The need to comply with the state and federal healthcare, security and privacy regulation will continue to place significant demands on our staff and our policies and procedures, any of which may not be adequate to support our anticipated growth. We may not be able to effectively hire, train, retain, motivate and manage required personnel. Our failure to manage growth effectively could limit our ability to satisfy our reporting obligations, or achieve our marketing, commercialization and financial goals. We may be unable to successfully execute on our growth initiatives, business strategies or operating plans. We are continually executing a number of growth initiatives, strategies and operating plans designed to enhance our business. The anticipated benefits from these efforts are based on several assumptions that may prove to be inaccurate. Moreover, we may not be able to successfully complete these growth initiatives, strategies and operating plans and ~~or~~ realize all of the benefits, including growth targets and cost savings, that we expect to achieve or it may be more costly to do so than we anticipate. A variety of risks could cause us not to realize some or all of the expected benefits. These risks include, among others, delays in the anticipated timing of activities related to such growth initiatives, strategies and operating plans, increased difficulty and cost in implementing these efforts, including difficulties in complying with new regulatory requirements and the incurrence of other unexpected costs associated with operating ~~the our~~ business, failure of our products to receive sufficient market acceptance and a highly competitive, rapidly evolving marketplace. Moreover, our continued implementation of our **Ontrak** programs may disrupt our operations and performance. As a result, we cannot assure you that we will realize the ~~intended-expected~~ **benefits of our growth initiatives, strategies and operating plans**. If, for any reason, the benefits we realize are less than our estimates or the implementation of our growth initiatives, strategies and operating plans adversely affect our operations or cost more or take longer to effectuate than we expect, or if our assumptions prove inaccurate, our business, financial condition and results of operations may be materially adversely affected. Failure to effectively develop and expand our sales and marketing capabilities could harm our ability to execute our business plan, increase our customer base and achieve broader market acceptance of our program. Our ability to increase our customer base and achieve broader market acceptance of our Ontrak program will depend to a significant extent on our ability to deploy our sales and marketing resources efficiently and our ability to drive our current sales pipeline to secure new customers and to cultivate customer and partner relationships to drive revenue growth in the next twelve months. We are focused on identifying and developing new customer opportunities and these efforts require us to invest significant financial and other resources. Our business and operating results will be harmed if our sales and marketing efforts do not generate significant increases in revenue in the next twelve months. Our programs may not be as effective as we believe them to be, which could limit our potential revenue growth. Our belief in the efficacy of our Ontrak ~~solution~~ **programs** is based on a limited experience with a relatively small number of members in comparison to the total addressable members. Such results may not be indicative of the long- term future performance of treatment with our programs. If the ~~initially--~~ **initial indicated** results cannot be successfully replicated or maintained over time, utilization of our programs could decline substantially. There are no standardized methods for measuring efficacy of programs such as ours. Even if we believe our ~~solutions-~~ **programs** are effective, our customers could determine they are not effective by utilizing different outcome measures. In addition, even if our customers determine our ~~solutions-~~ **programs** are effective, they may discontinue them because they determine that the aggregate cost savings are not sufficient, our programs do not have a high enough return on investment, they prefer other competitive or strategic ~~solutions-~~ **programs** or do not believe our programs deliver other desired benefits such as clinical outcomes. Our success is dependent on our ability to enroll third- party payor members in our ~~programs~~ **Ontrak solutions-** ~~Our Large scale~~ outreach and enrollment efforts ~~have may~~ **not been conducted and only for limited time periods and we may not be able to** achieve the anticipated enrollment rates. Our Ontrak ~~solution~~ **programs** may not become widely accepted, which could limit our growth. Our ability to achieve further marketplace acceptance for our Ontrak ~~solution~~ **programs** is dependent on our ability to demonstrate financial and clinical outcomes from our agreements. If we are unable to secure sufficient contracts to achieve recognition or acceptance of our Ontrak ~~solution~~ **programs** or if our ~~program-~~ **programs** does not demonstrate the expected level of clinical improvement and cost savings, it is unlikely that we will be able to achieve widespread market acceptance. Disappointing results for our ~~solutions-~~ **programs** or failure to attain our publicly disclosed milestones could adversely affect market acceptance and have a material adverse effect on our stock price. Disappointing results, later- than- expected press release announcements or termination of evaluations, pilot programs or ~~our commercial Ontrak~~ **solutions by particular customers** could have a material adverse effect on the commercial acceptance of our solutions, our stock price and on our results of operations. In addition, announcements regarding results, or anticipation of results, may increase volatility in our stock price. In addition to numerous upcoming milestones, from time to time we provide financial guidance and other forecasts to the market. While we believe that the assumptions underlying projections and forecasts we make publicly available are reasonable, projections and forecasts are inherently subject to numerous risks and uncertainties. Any failure to achieve milestones, or to do so in a timely manner, or to achieve publicly announced guidance and forecasts, could have a material adverse effect on our results of operations and the price of our common stock. ~~We face business disruption and related risks resulting from the novel coronavirus 2019 (COVID-19) pandemic, which could have a material adverse effect on our business and results of operations. Our business could be disrupted and materially adversely affected by the COVID-19 pandemic, including as a result of mutations of such virus and the global spread of viral variants that may be more contagious or resistant to currently known treatments. As a result of measures imposed by the governments in affected regions, businesses and schools have been from time to time suspended due to quarantines intended to contain this outbreak and many people have been forced to work from home in those areas. As a result of the global pandemic, trade and business activities around the world have been adversely affected, international stock and commodity~~

markets have fluctuated widely and many regions are exhibiting signs of economic recession. Several programs were enacted in different countries in efforts to alleviate rising levels of unemployment and economic dislocation created by significantly reduced levels of social and business activity, although their longer term effectiveness is still uncertain particularly in view of the spread of the contagion and related variants. We are continuously assessing our business operations and system supports and the impact COVID-19 may have on our results and financial condition, but there can be no assurance that this analysis will enable us to avoid part or all of any impact from the spread of COVID-19 or its consequences, including downturns in business sentiment generally or in our sector in particular, or its effects on our members or outreach pool. Our industry is highly competitive, and we may not be able to compete successfully. The healthcare business in general, and the behavioral health treatment business in particular, are highly competitive and rapidly evolving. While we believe our **programs products and services are unique** in many aspects ~~unique~~ **and that our ability to offer customers a comprehensive and integrated behavioral health solution, including the utilization of our analytical models and innovative member engagement methodologies, will help us compete effectively**, we operate in highly competitive markets. We compete with other healthcare management service organizations, care management and disease management companies, including Managed Behavioral Healthcare Organizations (MBHOs), other specialty healthcare and managed care companies, and healthcare technology companies that are offering treatment and support of behavioral health on-line and on mobile devices. Most of our competitors are significantly larger and have greater financial, marketing and other resources than us. **We believe Our competitors may develop and introduce new processes and products that are equal our- or ability superior to our programs in treating** offer customers a comprehensive and integrated behavioral health **conditions** solution, including the utilization of our analytical models and innovative member engagement methodologies, will enable us to compete effectively. However, there **There** can be no assurance that we will **be able to compete successfully** not encounter more effective or more strategically desirable competition in the future, that we will have financial resources to continue to improve our offerings or that we will be successful improving them, **any of** which would limit our ability to maintain or increase our business. **Our competitors may develop and introduce new processes and products that are share** equal or superior to our programs in treating behavioral health conditions. Accordingly, we may be adversely affected by any new processes and products developed by our competitors. A substantial percentage of our revenues are attributable to a few large customers, any or all of which may terminate our services at any time. **Approximately 96 %** ~~Three customers accounted for an~~ **and** aggregate of approximately **98 92 %** and **four** customers accounted for an aggregate of approximately 91% of our total revenue for the year ended December 31, **2023 and 2022**, respectively, were attributable to **three** and **2021 four customers**, respectively. Also, three customers represented an aggregate of approximately 95% and two customers represented an aggregate of 100% of our total accounts receivable as of December 31, 2022 and 2021, respectively. **We had no accounts** On February 26, 2021, we received **receivable outstanding** a termination notice from our then largest customer and working with this customer on a transition plan, we completed the participation of this customer's members in the program as of December 31, 2021 **2023**. On August 18, 2021, we received a termination notice from another large customer of their intent not to continue the program past December 31, 2021. As of December 31, 2021, members from these two customers have completed their participation in the program. We expect that revenues from a limited number of customers will continue for the foreseeable future. Sales to these customers are made pursuant to agreements with flexible termination provisions, generally entitling the customer to terminate with or without cause on limited notice to us, as we have recently experienced during fiscal year 2021 as described above, and which have adversely affected our business and financial condition and results. **For example, in February 2021 and August 2021 we received notices from each of our then largest customers of their intent not to continue our program, and in October 2023, we received a notice from a large customer of its intent not to continue using our services after February 2024**. We may not be able to keep our key customers, or these customers may decrease their enrollment levels. Any substantial decrease or delay in revenues relating to one or more of our key customers would harm our business and financial condition and results. If revenues relating to current key customers cease or are reduced, we may not obtain sufficient enrollments from other customers necessary to offset any such losses or reductions. We depend on key personnel, the loss of which could impact the ability to manage our business. We are highly dependent on our senior management and key operating and technical personnel. **The loss of the services of any member of our senior management and key operating and technical personnel could have a material adverse effect on our business, operating results and financial condition.** We also rely on consultants and advisors to assist us in formulating our strategy. As our company grows, we will need to hire additional employees in order to achieve our objectives. There is currently intense competition for skilled executives and employees with relevant expertise, and this competition is likely to continue. The inability to attract and retain sufficient personnel could adversely affect our business, operating results and financial condition. Our success depends largely upon the continued services of our key executive officers. **These individuals** executive officers are at-will employees and therefore they may terminate employment with us at any time with no advance notice. We also rely **The loss of the services of any member of our senior management or of our key operating and technical personnel could have a material adverse effect** on our **business** leadership team in the areas of research and development, **operating results** marketing, services and **financial condition** general and administrative functions. **In addition, From from** time to time, there may be changes in our executive management team resulting from the hiring or departure of executives, which could disrupt our business. The replacement of one or more of our executive officers or other key employees would likely involve significant time and costs and may significantly delay or prevent the achievement of our business objectives. To continue to execute our growth strategy, we ~~also~~ must attract and retain highly skilled personnel. Competition is intense for qualified professionals. We may not be successful in continuing to attract and retain qualified personnel. We have from time to time in the past experienced, and we expect to continue to experience in the future, difficulty in hiring and retaining highly skilled personnel with appropriate qualifications. The pool of qualified personnel with experience working in the healthcare market is limited overall. In addition, many of the companies with which we compete for experienced

personnel have greater resources than we have. **The inability to attract and retain sufficient highly skilled personnel could adversely affect our business, operating results and financial condition.** In addition, in making employment decisions, particularly in high- technology industries, job candidates often consider the value of the stock options or other equity instruments they are to receive in connection with their employment. Volatility in the price of our stock may, therefore, adversely affect our ability to attract or retain highly skilled personnel. Further, the requirement to expense stock options and other equity instruments may discourage us from granting the size or type of stock option or equity awards that job candidates require to join our company. ~~Failure to attract new personnel or failure to retain and motivate our current personnel, could have a material adverse effect on our business, financial condition and results of operations.~~ We are dependent on our ability to recruit, retain and develop a very large and diverse workforce. We must transform our culture in order to successfully grow our business. Our products and services and our operations require a large number of employees. A significant number of employees have joined us in recent years as we continue to grow and expand our business. Our success is dependent on our ability to transform our culture, align our talent with our business needs, engage our employees and inspire our employees to be open to change, to innovate and to maintain member- and client- focus when delivering our services. Our business would be adversely affected if we fail to adequately plan for succession of our executives and senior management; or if we fail to effectively recruit, integrate, retain and develop key talent and / or align our talent with our business needs, in light of the current rapidly changing environment. While we have succession plans in place and we have employment arrangements with a limited number of key executives, these do not guarantee that the services of these or suitable successor executives will continue to be available to us. Our business and growth strategy depend on our ability to maintain and expand a network of qualified healthcare providers. If we are unable to do so, our future growth and our business, financial condition and results of operations would be negatively impacted. The success of our business is dependent upon our continued ability to maintain a network of qualified healthcare providers. In any particular market that we operate in, providers could demand higher payments or take other actions that could result in higher medical costs, less attractive service for our members or difficulty meeting regulatory or accreditation requirements. The failure to maintain or to secure new cost- effective provider contracts may result in a loss of or inability to grow our member base, higher costs, healthcare provider network disruptions, and less attractive service for our members, any of which could have a material adverse effect on our business, growth strategy, financial condition and results of operations. All significant medical treatments and procedures, including treatment utilizing our programs, involve the risk of serious injury or death. While we have not been the subject of any such claims, our business entails an inherent risk of claims for personal injuries and substantial damage awards. We cannot control whether individual physicians and therapists will apply the appropriate standard of care in determining how to treat their patients. While our agreements typically require physicians to indemnify us for their negligence, there can be no assurance they will be willing and financially able to do so if claims are made. In addition, our license agreements require us to indemnify physicians, hospitals or their affiliates for losses resulting from our negligence. We are also subject to ongoing securities class action and stockholder derivative litigation. See Note 13, “Commitments and Contingencies” in the Notes to Consolidated Financial Statements, in Part II, Item 8, included in this report. In addition, on March 1, 2023, the U. S. Department of Justice (the “DOJ”) announced charges and the SEC filed a civil complaint against Mr. Peizer, our former Chief Executive Officer and Chairman of our Board of Directors, alleging unlawful insider trading in our stock. Mr. Peizer owns and controls Acuitas Capital, our largest stockholder. See “Acuitas Group Holdings, LLC owns approximately 61.40.6% of our outstanding common stock and beneficially owns approximately 93.85.5% of our outstanding common stock, and as a result of such ownership has the ability to substantially influence the election of directors and other matters submitted to stockholders.” Neither we nor any of our other current or former directors or employees were charged by the DOJ or sued by the SEC. On November 15, 2022, we received a notification from the SEC’s Division of Enforcement that it is conducting an investigation captioned “In the Matter of Trading in the Securities of Ontrak, Inc. (HO-14340)” and issued a preservation letter as well as a subpoena for documents relating to the investigation. The notification indicates the investigation is a fact- finding inquiry for compliance with federal securities laws and should not be construed as an indication by the SEC that any violation of law has occurred, nor as a reflection upon any person, entity or security. We have been cooperating fully with the terms of the subpoena. We cannot predict the ultimate outcome of the DOJ or SEC proceedings, nor can we predict whether the DOJ or SEC or any other governmental authorities will initiate separate investigations or litigation, including against us. Investigations and any related legal and administrative proceedings could include a wide variety of outcomes, including the institution of administrative, civil injunctive or criminal proceedings involving the Company and / or its current or former executives and / or directors, the imposition of fines and other penalties, remedies and / or sanctions. In addition, from time to time, we may also be involved in legal proceedings and investigations arising in the ordinary course of business, including those relating to employment matters, relationships with partners, intellectual property disputes, and other business matters. We currently have insurance coverage for personal injury claims, directors’ and officers’ liability insurance coverage, and errors and omissions insurance. We may not be able to maintain adequate liability insurance at acceptable costs or on favorable terms. We expect that liability insurance will be more difficult to obtain and that premiums will increase over time and as the volume of patients treated with our programs increases. We have incurred and may continue to incur significant expenses as a result of litigation and other legal proceedings. In addition, the results of litigation and other legal proceedings are inherently uncertain and adverse judgments or settlements (regardless of a claim’s merit) in any legal disputes may result in materially adverse monetary damages or injunctive relief against us. Any claims, investigations or litigation, even if fully indemnified or insured, could damage our reputation and make it more difficult to compete effectively or obtain adequate insurance in the future. In addition, claims, investigations or litigation may be time- consuming, costly, divert management resources, and otherwise have a material adverse effect on our business and result of operations. If third- party payors fail to provide coverage and adequate payment rates for our solutions, our revenue and prospects for profitability will be harmed. Our future revenue growth will depend in part upon our ability to contract with health plans and other insurance payors for our

Ontrak solutions. In addition, insurance payors are increasingly attempting to contain healthcare costs, and may not cover or provide adequate payment for our programs. Adequate insurance reimbursement might not be available to enable us to realize an appropriate return on investment in research and product development, and the lack of such reimbursement could have a material adverse effect on our operations and could adversely affect our revenues and earnings. We may not be able to achieve promised savings for our Ontrak contracts, which could result in pricing levels insufficient to cover our costs or ensure profitability. Many of our Ontrak contracts are based upon anticipated or guaranteed levels of savings for our customers and achieving other operational metrics resulting in incentive fees based on savings. If we are unable to meet or exceed promised savings, achieve agreed upon operational metrics, or favorably resolve contract billing and interpretation issues with our customers, we may be required to refund from the amount of fees paid to us any difference between savings that were guaranteed and the savings, if any, which were actually achieved; or we may fail to earn incentive fees based on savings. Accordingly, during or at the end of the contract terms, we may be required to refund some or all of the fees paid for our services. This exposes us to significant risk that contracts negotiated and entered into may ultimately be unprofitable. In addition, managed care operations are at risk for costs incurred to provide agreed upon services under our solution. Therefore, failure to anticipate or control costs could have a materially adverse effect on our business. Our ability to use our net operating losses to offset future taxable income has been limited in certain cases and may be subject to certain limitations in the future. Our federal net operating loss carry forwards ("NOLs") have an indefinite life. These NOLs may be used to offset future taxable income, to the extent we generate any taxable income, and thereby reduce or eliminate our future federal income taxes otherwise payable. Section 382 of the Internal Revenue Code imposes limitations on a corporation's ability to utilize NOLs if it experiences an ownership change as defined in Section 382. In general terms, an ownership change may result from transactions increasing the ownership of certain stockholders in the stock of a corporation by more than 50 % over a three- year period. In the event that an ownership change has occurred, or were to occur, utilization of our NOLs would be subject to an annual limitation under Section 382 determined by multiplying the value of our stock at the time of the ownership change by the applicable long- term tax- exempt rate as defined in the Internal Revenue Code. Any unused annual limitation may be carried over to later years. We have experienced ownership changes in the past and can continue to experience ownership changes under Section 382 as a result of events in the past or the issuance of shares of common or preferred stock, or a combination thereof. As a result of such ownership changes, the use of our NOLs, or a portion thereof, against our future taxable income may be subject to an annual limitation under Section 382, which may result in expiration of a portion of our NOLs before utilization. We may periodically consummate opportunistic acquisitions of other companies, and we may not realize expected benefits or such acquisitions or we may have difficulties integrating acquired companies into our operations in a cost- effective manner, if at all. We may periodically consummate opportunistic acquisitions of businesses, assets, personnel or technologies that allow us to complement our existing operations, expand our market coverage, enter new geographic markets, or add new business capabilities. We continually evaluate and explore strategic opportunities as they arise, including business combination transactions, strategic partnerships, and the purchase or sale of assets. No assurance can be given that the benefits or synergies we may expect from an acquisition will be realized to the extent or in the time frame we anticipate. We may lose key employees, customers, vendors and other business partners of a company we acquire after announcement of acquisition plans. In addition, an acquisition may involve a number of risks and difficulties, including expansion into new geographic markets and business areas in which our management has limited prior experience, the diversion of management's attention to the operations and personnel of the acquired company, the integration of the acquired company's personnel, operations and technology systems and applications, changing relationships with customers, vendors or strategic partners, differing regulatory requirements including in new geographic markets and new business areas, and potential short- term adverse effects on our operating results. These challenges can be magnified as the size of the acquisition increases. Any delays or unexpected costs incurred in connection with the integration of an acquired company or otherwise related to an acquisition could have a material adverse effect on our business, financial condition and results of operations. An acquisition may require significant expenses and can result in increased debt or other contingent liabilities, adverse tax consequences, deferred compensation charges, the recording and later amortization of amounts related to deferred compensation and certain purchased intangible assets, and the refinement or revision of fair value acquisition estimates following the completion of an acquisition, any of which items could negatively impact our business, financial condition and results of operations. In addition, we may record goodwill in connection with an acquisition and incur goodwill impairment charges in the future. Any of these charges could cause the price of our common stock to decline. An acquisition also could absorb substantial cash resources, require us to incur or assume debt obligations, or involve our issuance of additional equity securities. If we issue equity securities in connection with an acquisition, we may dilute our common stock with securities that have an equal or a senior interest in our company. An acquired entity also may be leveraged or dilutive to our earnings per share, or may have unknown liabilities. In addition, the combined entity may have lower than expected revenues or higher expenses and therefore may not achieve the anticipated results. Any of these factors relating to an acquisition could have a material adverse impact on our business, financial condition and results of operations.

**Claims asserted against us for violation of securities laws, whether or not such claims have any merit, are costly to defend and could result in significant liabilities and diversion of our management's time and attention and could have a material adverse effect on our financial condition, business and results of operations. We offered and sold shares of our Series A Preferred Stock in offerings registered under the Securities Act. In February 2022, a purported securities class action was filed in the Superior Court of California for Los Angeles County, entitled Braun v. Ontrak, Inc., et al., Case No. 22STCV07174, on behalf of a putative class of all purchasers of our Series A Preferred Stock in such offerings. The action was brought against us, our officers and directors, and the investment banking firms that acted as underwriters for the offerings. The plaintiff asserted causes of actions alleging that we violated the federal securities laws in connection with the offerings based upon allegations that statements made regarding the growth of our customer base and**

expansion of our program with health plan customers were false or misleading. We believe that the allegations of falsity lack merit and that we have meritorious defenses, and we intend to defend against the action vigorously. In addition, one beneficial owner of our Series A Preferred Stock, through its legal counsel, has asserted that it believes it has claims against us based upon (a) statements in the prospectuses related to the offering of our Series A Preferred Stock regarding the segregated account that was funded with a portion of the proceeds received from such offerings to pre-fund dividend payments on our Series A Preferred Stock in light of the action of our board of directors in April 2023 to make such funds available for general corporate purposes after considering its fiduciary duties to our common stockholders and other relevant factors, (b) our alleged failures to accommodate the nominees of such beneficial owner for election by the holders of Series A Preferred Stock at the Company's 2023 annual meeting, and (c) our alleged failure to provide notice to the holders of Series A Preferred Stock in connection with the delisting of such stock by Nasdaq on October 20, 2023. To date, such beneficial owner has not specified damages or remedies it would seek if it were to assert any such claims formally. Others with interests in the Series A Preferred Stock may assert similar claims. We believe that such claims are and would be without merit and subject to meritorious defenses. However, any claim alleging any violation of securities laws or of the Certificate of Designations establishing the Series A Preferred Stock, with or without merit, could result in costly litigation, significant liabilities and diversion of our management's time and attention and could have a material adverse effect on our financial condition, business and results of operations. The results of litigation and other legal proceedings are inherently uncertain and adverse judgments or settlements (regardless of a claim's merit) in any legal dispute may result in materially adverse monetary damages or injunctive relief against us. An extended curtailment or halt of operations at the SEC and other government agencies, including due to a U. S. federal government shutdown, could delay or disrupt clinical and preclinical development and potential marketing approval of our product candidates and our ability to raise additional capital. Twice in the past decade, the previous appropriations legislation deadline was reached and Congress failed to pass a new appropriations bill or continuing resolution to temporarily extend funding, resulting in U. S. government shutdowns that caused federal agencies to halt non-essential operations. Political polarization among lawmakers may lead to a higher frequency and longer duration of government shutdowns in the future. The federal government came very close to another shutdown in late 2023. A federal government shutdown could prevent staff at federal agencies from performing key functions that may adversely affect our business. For example, a government shutdown could prevent SEC staff from performing key functions, including, for example, granting acceleration requests for registration statements, declaring registration statements or amendments thereto effective and providing interpretive guidance or no-action letters. If a federal government shutdown halts non-essential SEC operations for an extended period, it may negatively impact our ability to raise additional capital through registered offerings of our securities in the future. If a prolonged U. S. government shutdown or other event or condition occurs that prevents government and other regulatory agencies from hiring and retaining personnel and conducting their regular activities, it could significantly impact the ability of these agencies to timely review and process our regulatory submissions and may impede our access to additional capital needed to maintain or expand our operations or to complete important acquisitions or other transactions, which could have a material adverse effect on our business.

Risks related to our intellectual property Confidentiality agreements with employees, treating physicians and others may not adequately prevent disclosure of trade secrets and other proprietary information. In order to protect our proprietary technology and processes, we rely in part on confidentiality provisions in our agreements with employees, treating physicians, and others. These agreements may not effectively prevent disclosure of confidential information and may not provide an adequate remedy in the event of unauthorized disclosure of confidential information. In addition, others may independently discover trade secrets and proprietary information. Costly and time-consuming litigation could be necessary to enforce and determine the scope of our proprietary rights, and failure to obtain or maintain trade secret protection could adversely affect our competitive business position. We may be subject to claims that we infringe the intellectual property rights of others, and unfavorable outcomes could harm our business. Our future operations may be subject to claims, and potential litigation, arising from our alleged infringement of patents, trade secrets, trademarks or copyrights owned by other third parties. Within the healthcare, drug and bio-technology industry, many companies actively pursue infringement claims and litigation, which makes the entry of competitive products more difficult. We may experience claims or litigation initiated by existing, better-funded competitors and by other third parties. Court-ordered injunctions may prevent us from continuing to market existing products or from bringing new products to market and the outcome of litigation and any resulting loss of revenues and expenses of litigation may substantially affect our ability to meet our expenses and continue operations. Risks related to our healthcare industry Recent changes in insurance and health care laws have created uncertainty in the health care industry. The Patient Protection and Affordable Care Act as amended by the Health Care and Education Reconciliation Act, each enacted in March 2010, generally known as the Health Care Reform Law, significantly expanded health insurance coverage to uninsured Americans and changed the way health care is financed by both governmental and private payors. Following the 2016 federal elections, which resulted in the election of the Republican presidential nominee and Republican majorities in both houses of Congress, there were renewed legislative efforts to significantly modify or repeal the Health Care Reform Law and certain executive policy changes designed to modify its impact, including the enactment of the Tax Cuts and Jobs Act in December 2017 which repealed the penalties under the Health Care Reform Law for uninsured persons. In light of the Supreme Court ruling in *California et al. v. Texas et al.* in June 2021 generally supporting the Health Care Reform Law, we cannot predict what further reform proposals, if any, will be adopted, when they may be adopted, or what impact they may have on our business. There may also be other risks and uncertainties associated with the Health Care Reform Law. If we fail to comply or are unable to effectively manage such risks and uncertainties, our financial condition and results of operations could be adversely affected. We expect that additional state and federal healthcare reform measures may be adopted in the future, any of which could limit

the amounts that federal and state governments will pay for healthcare therapies, which could result in reduced demand for our services or additional pricing pressures. In August 2022, President Biden signed into law the Inflation Reduction Act of 2022 (“IRA”), which, among other provisions, included several measures intended to lower the cost of prescription drugs and related healthcare reforms. The IRA permits the Secretary of the Department of Health and Human Services to implement many of these provisions through guidance, as opposed to regulation, for the initial years. We cannot be sure whether additional legislation or rulemaking related to the IRA will be issued or enacted, or what impact, if any, such changes will have on our business. Our policies and procedures may not fully comply with complex and increasing regulation by state and federal authorities, which could negatively impact our business operations. The healthcare industry is highly regulated and continues to undergo significant changes as third-party payors, such as Medicare and Medicaid, traditional indemnity insurers, managed care organizations and other private payors, increase efforts to control cost, utilization and delivery of healthcare services. Healthcare companies are subject to extensive and complex federal, state and local laws, regulations and judicial decisions. Our failure or the failure of our treating physicians, to comply with applicable healthcare laws and regulations may result in the imposition of civil or criminal sanctions that we cannot afford, or require redesign or withdrawal of our programs from the market. We may become subject to medical liability claims, which could cause us to incur significant expenses and may require us to pay significant damages if not covered by insurance. Our business entails the risk of medical liability claims against both our providers and us. Although we carry insurance covering medical malpractice claims in amounts that we believe are appropriate in light of the risks attendant to our business, successful medical liability claims could result in substantial damage awards that exceed the limits of our insurance coverage. We carry professional liability insurance for ourselves, and we separately carry a general insurance policy, which covers medical malpractice claims. In addition, professional liability insurance is expensive and insurance premiums may increase significantly in the future, particularly as we expand our services. As a result, adequate professional liability insurance may not be available to us in the future at acceptable costs or at all. Any claims made against us that are not fully covered by insurance could be costly to defend against, result in substantial damage awards against us and divert the attention of our management and our providers from our operations, which could have a material adverse effect on our business, financial condition and results of operations. In addition, any claims may adversely affect our business or reputation. Our business practices may be found to constitute illegal fee-splitting or corporate practice of medicine, which may lead to penalties and adversely affect our business. Many states have laws that prohibit business corporations, such as us, from practicing medicine, exercising control over medical judgments or decisions of physicians or other health care professionals (such as nurses or nurse practitioners), or engaging in certain business arrangements with physicians or other health care professionals, such as employment of physicians and other health care professionals or fee-splitting. The state laws and regulations and administrative and judicial decisions that enumerate the specific corporate practice and fee-splitting rules vary considerably from state to state and are enforced by both the courts and government agencies, each with broad discretion. Courts, government agencies or other parties, including physicians, may assert that we are engaged in the unlawful corporate practice of medicine, fee-splitting, or payment for referrals by providing administrative and other services in connection with our treatment programs. As a result of such allegations, we could be subject to civil and criminal penalties, our contracts could be found invalid and unenforceable, in whole or in part, or we could be required to restructure our contractual arrangements. If so, we may be unable to restructure our contractual arrangements on favorable terms, which would adversely affect our business and operations. Our business practices may be found to violate anti-kickback, physician self-referral or false claims laws, which may lead to penalties and adversely affect our business. The healthcare industry is subject to extensive federal and state regulation with respect to kickbacks, physician self-referral arrangements, false claims and other fraud and abuse issues. The federal anti-kickback law (the “Anti-Kickback Law”) prohibits, among other things, knowingly and willfully offering, paying, soliciting, receiving, or providing remuneration, directly or indirectly, in exchange for or to induce either the referral of an individual, or the furnishing, arranging for, or recommending of an item or service that is reimbursable, in whole or in part, by a federal health care program. “Remuneration” is broadly defined to include anything of value, such as, for example, cash payments, gifts or gift certificates, discounts, or the furnishing of services, supplies, or equipment. The Anti-Kickback Law is broad, and it prohibits many arrangements and practices that are lawful in businesses outside of the health care industry. Recognizing the breadth of the Anti-Kickback Law and the fact that it may technically prohibit many innocuous or beneficial arrangements within the health care industry, the Office of Inspector General (“OIG”) has issued a series of regulations, known as the “safe harbors.” Compliance with all requirements of a safe harbor immunizes the parties to the business arrangement from prosecution under the Anti-Kickback Law. The failure of a business arrangement to fit within a safe harbor does not necessarily mean that the arrangement is illegal or that the OIG will pursue prosecution. Still, in the absence of an applicable safe harbor, a violation of the Anti-Kickback Law may occur even if only one purpose of an arrangement is to induce referrals. The penalties for violating the Anti-Kickback Law can be severe. These sanctions include criminal and civil penalties, imprisonment, and possible exclusion from the federal health care programs. Many states have adopted laws similar to the Anti-Kickback Law, and some apply to items and services reimbursable by any payor, including private insurers. In addition, the federal ban on physician self-referrals, commonly known as the Stark Law, prohibits, subject to certain exceptions, physician referrals of Medicare patients to an entity providing certain “designated health services” if the physician or an immediate family member of the physician has any financial relationship with the entity. A “financial relationship” is created by an investment interest or a compensation arrangement. Penalties for violating the Stark Law include the return of funds received for all prohibited referrals, fines, civil monetary penalties, and possible exclusion from the federal health care programs. In addition to the Stark Law, many states have their own self-referral bans, which may extend to all self-referrals, regardless of the payor. The federal False Claims Act imposes liability on any person or entity that, among other things, knowingly presents, or causes to be presented, a false or fraudulent claim for payment to the federal government. Under the False Claims Act, a person acts knowingly if he has actual knowledge of the information or acts in deliberate ignorance or in reckless disregard of the truth or



falsity of the information. Specific intent to defraud is not required. Violations of other laws, such as the Anti-Kickback Law or the FDA prohibitions against promotion of off-label uses of drugs, can lead to liability under the federal False Claims Act. The qui tam provisions of the False Claims Act allow a private individual to bring an action on behalf of the federal government and to share in any amounts paid by the defendant to the government in connection with the action. The number of filings of qui tam actions has increased significantly in recent years. When an entity is determined to have violated the False Claims Act, it may be required to pay up to three times the actual damages sustained by the government, plus civil penalties of between \$ 5, 500 and \$ 11, 000 for each false claim. Conduct that violates the False Claims Act may also lead to exclusion from the federal health care programs. Given the number of claims likely to be at issue, potential damages under the False Claims Act for even a single inappropriate billing arrangement could be significant. In addition, various states have enacted similar laws modeled after the False Claims Act that apply to items and services reimbursed under Medicaid and other state health care programs, and, in several states, such laws apply to claims submitted to all payors. On May 20, 2009, the Federal Enforcement and Recovery Act of 2009, or FERA, became law, and it significantly amended the federal False Claims Act. Among other things, FERA eliminated the requirement that a claim must be presented to the federal government. As a result, False Claims Act liability extends to any false or fraudulent claim for government money, regardless of whether the claim is submitted to the government directly, or whether the government has physical custody of the money. FERA also specifically imposed False Claims Act liability if an entity “ knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the Government. ” As a result, the knowing and improper failure to return an overpayment can serve as the basis for a False Claims Act action. In March 2010, Congress passed the Patient Protection and Affordable Care Act, as amended by the Health Care and Education Reconciliation Act of 2010, collectively the ACA, which also made sweeping changes to the federal False Claims Act. The ACA also established that Medicare and Medicaid overpayments must be reported and returned within 60 days of identification or when any corresponding cost report is due. Finally, the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations created the crimes of health care fraud and false statements relating to health care matters. The health care fraud statute prohibits knowingly and willfully executing a scheme to defraud any health care benefit program, including a private insurer. The false statements statute prohibits knowingly and willfully falsifying, concealing, or covering up a material fact or making any materially false, fictitious, or fraudulent statement in connection with the delivery of or payment for health care benefits, items, or services. A violation of this statute is a felony and may result in fines, imprisonment, or exclusion from the federal health care programs. Federal or state authorities may claim that our fee arrangements, our agreements and relationships with contractors, hospitals and physicians, or other activities violate fraud and abuse laws and regulations. If our business practices are found to violate any of these laws or regulations, we may be unable to continue with our relationships or implement our business plans, which would have an adverse effect on our business and results of operations. Further, defending our business practices could be time consuming and expensive, and an adverse finding could result in substantial penalties or require us to restructure our operations, which we may not be able to do successfully. Our business practices may be subject to state regulatory and licensure requirements. Our business practices may be regulated by state regulatory agencies that generally have discretion to issue regulations and interpret and enforce laws and rules. These regulations can vary significantly from jurisdiction to jurisdiction, and the interpretation of existing laws and rules also may change periodically. Some of our business and related activities may be subject to state health care-related regulations and requirements, including managed health care, utilization review (UR) or third-party administrator-related regulations and licensure requirements. These regulations differ from state to state, and may contain network, contracting, and financial and reporting requirements, as well as specific standards for delivery of services, payment of claims, and adequacy of health care professional networks. If a determination is made that we have failed to comply with any applicable state laws or regulations, our business, financial condition and results of operations could be adversely affected. If our providers or experts are characterized as employees, we would be subject to employment and withholding liabilities. We structure our relationships with our providers and experts in a manner that we believe results in an independent contractor relationship, not an employee relationship. An independent contractor is generally distinguished from an employee by his or her degree of autonomy and independence in providing services. A high degree of autonomy and independence is generally indicative of a contractor relationship, while a high degree of control is generally indicative of an employment relationship. On October 13, 2022, the Department of Labor published its “ Employee or Independent Contractor Classification under the Fair Labor Standards Act ” (the “ FLSA Standards ”) that would rescind existing guidance adopted under the Trump Administration and broaden the scope of the so-called “ economic realities test ” used to classify workers, likely making it more difficult for workers to be classified as independent contractors. Although we believe that our providers and experts are properly characterized as independent contractors, tax or other regulatory authorities may in the future challenge our characterization of these relationships particularly if the new FLSA Standards are adopted. If such regulatory authorities or state, federal or foreign courts were to determine that our providers or experts are employees, and not independent contractors, we would be required to withhold income taxes, to withhold and pay social security, Medicare and similar taxes and to pay unemployment and other related payroll taxes. We would also be liable for unpaid past taxes and subject to penalties. As a result, any determination that our providers or experts are our employees could have a material adverse effect on our business, financial condition and results of operations. We may be subject to healthcare anti-fraud initiatives, which may lead to penalties and adversely affect our business. State and federal government agencies are devoting increased attention and resources to anti-fraud initiatives against healthcare providers and the entities and individuals with whom they do business, and such agencies may define fraud expansively to include our business practices, including the receipt of fees in connection with a healthcare business that is found to violate any of the complex regulations described above. While to our knowledge we have not been the subject of any anti-fraud investigations, if such a claim were made, defending our business practices could be time consuming and expensive and an adverse finding could result in substantial penalties or require us to restructure our operations, which we may not be able to do successfully. Our use and

disclosure of patient information is subject to privacy and security regulations, which may result in increased costs. In providing administrative services to healthcare providers and operating our treatment programs, we may collect, use, disclose, maintain and transmit patient information in ways that will be subject to many of the numerous state, federal and international laws and regulations governing the collection, use, disclosure, storage, privacy and security of patient- identifiable health information, including the administrative simplification requirements of the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations (HIPAA) and the Health Information Technology for Economic and Clinical Health Act of 2009 (HITECH). The HIPAA Privacy Rule restricts the use and disclosure of certain patient information (“ Protected Health Information ” or “ PHI ”), and requires safeguarding that information. The HIPAA Security Rule and HITECH establish elaborate requirements for safeguarding PHI transmitted or stored electronically. HIPAA applies to covered entities, which may include healthcare facilities and also includes health plans that will contract for the use of our programs and our services. HIPAA and HITECH require covered entities to bind contractors that use or disclose protected health information (or “ Business Associates ”) to compliance with certain aspects of the HIPAA Privacy Rule and all of the HIPAA Security Rule. In addition to contractual liability, Business Associates are also directly subject to regulation by the federal government. Direct liability means that we are subject to audit, investigation and enforcement by federal authorities. HITECH imposes breach notification obligations requiring us to report breaches of “ Unsecured Protected Health Information ” or PHI that has not been encrypted or destroyed in accordance with federal standards. Business Associates must report such breaches so that their covered entity customers may in turn notify all affected patients, the federal government, and in some cases, local or national media outlets. We may be required to indemnify our covered entity customers for costs associated with breach notification and the mitigation of harm resulting from breaches that we cause. If we are providing management services that include electronic billing on behalf of a physician practice or facility that is a covered entity, we may be required to conduct those electronic transactions in accordance with the HIPAA regulations governing the form and format of those transactions. Services provided under our Ontrak solution not only require us to comply with HIPAA and HITECH but also Title 42 Part 2 of the Code of Federal Regulations (“ Part 2 ”). Part 2 is a federal, criminal law that severely restricts our ability to use and disclose drug and alcohol treatment information obtained from federally- supported treatment facilities. Our operations must be carefully structured to avoid liability under this law. Our Ontrak solution qualifies as a federally funded treatment facility which requires us to disclose information on members only in compliance with Title 42. In addition to the federal privacy regulations, there are a number of state laws governing the privacy and security of health and personal information. The penalties for violation of these laws vary widely and the area is rapidly evolving. In 2018, California passed the California Consumer Privacy Act (the “ CCPA ”), which gives consumers significant rights over the use of their personal information, including the right to object to the “ sale ” of their personal information. In 2020, Californians voted to enact the California Privacy Rights Act (CPRA), which amends the CCPA by expanding consumers' rights in their personal information and creating a new governmental agency to interpret and enforce the statute. Most provisions of the CPRA will become effective on January 1, 2023. While information covered by HIPAA is generally exempt from the applicability of the CCPA as amended by the CPRA, the rights of consumers under the CCPA may restrict our ability to use personal information in connection with our business operations. The CCPA also provides a private right of action for certain security breaches. In 2019, New York passed a law known as the SHIELD Act, which expands data breach reporting obligations and requires companies to have robust data security programs in place. More recently, New York and other states, including Washington, have introduced significant privacy bills, and Congress is debating federal privacy legislation, which if passed, may restrict our business operations and require us to incur additional costs for compliance. In addition, several foreign countries and governmental bodies, including the E. U., Brazil and Canada, have laws and regulations concerning the collection and use of personally identifiable information obtained from their residents, including identifiable health information, which are often more restrictive than those in the U. S. laws and regulations in these jurisdictions apply broadly to the collection, use, storage, disclosure and security of personally identifiable information, including health information, identifying, or which may be used to identify, an individual, such as names, email addresses and, in some jurisdictions, Internet Protocol (IP) addresses, device identifiers and other data. Although we currently conduct business only in the United States of America, these laws and regulations could become applicable to us in the event we expand our operations into other countries. These and other obligations may be modified and interpreted in different ways by courts, and new laws and regulations may be enacted in the future. Within the EEA, the General Data Protection Regulation (" GDPR") took full effect on May 25, 2018, superseding the 1995 European Union Data Protection Directive and becoming directly applicable across E. U. member states. The GDPR includes more stringent operational requirements for processors and controllers of personal data (including health information) established in and outside of the EEA, imposes significant penalties for non- compliance and has broader extra- territorial effect. As the GDPR is a regulation rather than a directive, it applies throughout the EEA, but permits member states to enact supplemental requirements if they so choose. Noncompliance with the GDPR can trigger fines of up to the greater of € 20 million or 4 % of global annual revenues. Further, a Data Protection Act substantially implementing the GDPR was enacted in the U. K., effective in May 2018. It remains unclear, however, how U. K. data protection laws or regulations will develop in the medium to longer term and how data transfers to and from the U. K. will be regulated in light of the U. K.' s withdrawal from the E. U. In addition, some countries are considering or have enacted legislation requiring local storage and processing of data that could increase the cost and complexity of delivering our services. We believe that we have taken the steps required of us to comply with laws governing the privacy and security of personal information, including health information privacy and security laws and regulations, in all applicable jurisdictions, both state and federal. However, we may not be able to maintain compliance in all jurisdictions where we do business. In addition, to the extent we disclose such information to our third- party service providers in the course of our business, we may be indirectly liable for their misuse or other unauthorized disclosure of such personal information (including health information). Failure to maintain compliance, or changes in state or federal privacy and security laws could result in civil and / or criminal penalties and could have a material

adverse effect on our business, including significant reputational damage associated with a breach. Under HITECH, we are subject to prosecution or administrative enforcement and increased civil and criminal penalties for non-compliance, including a four-tiered system of monetary penalties. We are also subject to enforcement by state attorneys general who were given authority to enforce HIPAA under HITECH, and who have authority to enforce state-specific data privacy and security laws. If regulations change, if we expand the territorial scope of our operations, or if it is determined that we are not in compliance with privacy regulations, we may be required to modify aspects of our program, which may adversely affect program results and our business or profitability. **Cybersecurity incidents, Security security breaches, loss of data and other disruptions could compromise sensitive information related to our business, prevent us from accessing critical information or expose us to liability, which could adversely affect our business and our reputation.** In the ordinary course of our business, we collect and store sensitive data, including legally protected patient health information, personally identifiable information about our employees, intellectual property, and proprietary business information. **Our success depends in part on our ability to provide effective cybersecurity protection in connection with our digital technologies and services as well as our internal digital infrastructure.** We manage and maintain our applications and data utilizing an off-site co-location facility. These applications and data encompass a wide variety of business critical information including research and development information, commercial information and business and financial information. The secure processing, storage, maintenance and transmission of this critical information is vital to our operations and business strategy, and we devote significant resources to protecting such information. Although we take measures to protect sensitive information from unauthorized access or disclosure, our information technology and infrastructure may be vulnerable to **cyberattacks attacks by hackers**, viruses, breaches or interruptions due to employee error or malfeasance, breaches or interruptions due to the malfeasance or negligence of any of our third-party service providers, terrorist attacks, earthquakes, fire, flood, other natural disasters, power loss, computer systems failure, data network failure, Internet failure or lapses in compliance with privacy and security mandates. We may be subject to distributed denial of service (DDOS) attacks by hackers aimed at disrupting service to patients and customers. Our response to such DDOS attacks may be insufficient to protect our network and systems. In addition, there has been a continuing increase in the number of malicious software attacks in a wide variety of different industries, including malware, ransomware, and email phishing scams ~~particularly since the start of the COVID-19 pandemic~~. Any ~~such virus~~, **successful cybersecurity incident or attack or breach or interruption** could compromise our networks and the information stored there could be accessed by unauthorized parties, publicly disclosed, lost or stolen. We have measures in place that are designed to detect and respond to such ~~security incidents and breaches of privacy and security mandates~~. Nonetheless, **there can be no assurance that the protocols and systems we cannot guarantee have designed to prevent or limit the effects of cybersecurity incidents or attacks, including** our backup systems, regular data backups, security protocols, network protection mechanisms and other procedures currently in place, or that may be in place in the future, will be adequate to prevent or remedy network and service interruption, system failure, damage to one or more of our systems, data loss, security breaches or other **cyberattack and data security incidents**. We might be required to expend significant capital and resources to protect against or address ~~such security breaches or other cyberattack and data security incidents~~ **incident**. Any access, disclosure or other loss of information could result in legal claims or proceedings, liability under laws that protect the privacy of personal information (such as HIPAA and state data security laws), government enforcement actions and regulatory penalties. We may also be required to indemnify our customers for costs associated with having their data on our system breached. Unauthorized access, loss or dissemination could also interrupt our operations, including our ability to provide treatment, bill our customers, provide customer support services, conduct research and development activities, process and prepare company financial information, manage various general and administrative aspects of our business and damage our reputation, or we may lose one or more of our customers, especially if they felt their data may be breached, any of which could adversely affect our business. **Also, even if we successfully defend our own digital technologies and services, we also rely on providers of third-party products, services, and networks, with whom we may share data and services, and who may be unable to effectively defend their digital technologies and services against cyberattack. We have experienced and will continue to experience varying degrees of cybersecurity incidents in the normal conduct of our business, including attacks resulting from social engineering such as phishing. These risks could harm our reputation and our relationships with our customers, our third party partners and our employees and may result in claims against us.** Certain of our professional healthcare employees, such as nurses, must comply with individual licensing requirements. All of our healthcare professionals who are subject to licensing requirements, such as our care coaches, are licensed in the state in which they provide professional services in person. While we believe our nurses provide coaching and not professional services, one or more states may require our healthcare professionals to obtain licensure if providing services telephonically across state lines to the state's residents. Healthcare professionals who fail to comply with these licensure requirements could face fines or other penalties for practicing without a license, and we could be required to pay those fines on behalf of our healthcare professionals. If we are required to obtain licenses for our nurses in states where they provide telephonic coaching, it would significantly increase the cost of providing our product. In addition, new and evolving agency interpretations, federal or state legislation or regulations, or judicial decisions could lead to the implementation of out-of-state licensure requirements in additional states, and such changes would increase the cost of services and could have a material effect on our business. Risks related to our preferred stock Our Series A Preferred Stock ranks junior to all of our indebtedness and other liabilities. In the event of our bankruptcy, liquidation, dissolution or winding-up of our affairs, our assets will be available to pay obligations on the Series A Preferred Stock only after all of our indebtedness and other liabilities have been paid. The rights of holders of the Series A Preferred Stock to participate in the distribution of our assets will rank junior to the prior claims of our current and future creditors and any future series or class of preferred stock we may issue that ranks senior to the Series A Preferred Stock. Also, the Series A Preferred Stock effectively ranks junior to all existing and future indebtedness and to the indebtedness and other liabilities of our existing subsidiaries and any future subsidiaries. Our existing

subsidiaries are, and future subsidiaries would be, separate legal entities and have no legal obligation to pay any amounts to us in respect of dividends due on the Series A Preferred Stock. At December 31, 2022-2023, our total liabilities equaled ~~was~~ \$ 20-5. ~~6 million-~~ million. If we are forced to liquidate our assets to pay our creditors, we may not have sufficient assets to pay amounts due on any or all of the Series A Preferred Stock then outstanding. Our future debt instruments may restrict the authorization, payment or setting apart of dividends on the Series A Preferred Stock. Also, future offerings of debt or senior equity securities may adversely affect the market price of the Series A Preferred Stock. If we decide to issue debt or senior equity securities in the future, it is possible that these securities will be governed by an indenture or other instruments containing covenants restricting our operating flexibility. Additionally, any convertible or exchangeable securities that we issue in the future may have rights, preferences and privileges more favorable than those of the Series A Preferred Stock and may result in dilution to owners of the Series A Preferred Stock. We and, indirectly, our stockholders, will bear the cost of issuing and servicing such securities. Because our decision to issue debt or equity securities in any future offering will depend on market conditions and other factors beyond our control, we cannot predict or estimate the amount, timing or nature of our future offerings. The holders of the Series A Preferred Stock will bear the risk of our future offerings, which may reduce the market price of the Series A Preferred Stock and will dilute the value of their holdings in us. ~~There can be no assurance that our Series A Preferred Stock will continue to be listed on Nasdaq, which could limit investors' ability to make transactions in our Series A Preferred Stock.~~ Our Series A Preferred Stock is ~~traded-~~ quoted on the OTC Nasdaq Capital Market ~~Markets~~ under the symbol "OTRKP." To maintain our listing we are required to satisfy continued listing requirements, including the requirement commonly referred ~~to~~ ~~as~~ ~~the~~ ~~minimum~~ ~~bid~~ ~~price~~ ~~rule~~ ~~which~~ ~~could~~ ~~limit~~ ~~investors'~~ ~~liquidity~~ ~~and~~ ~~ability~~ ~~to~~ ~~trade~~ ~~in~~ as the minimum bid price rule. The minimum bid price rule requires that the closing bid price of our Series A Preferred Stock be at least \$ 1. ~~Our~~ 00 per share. At the end of 2022 and the beginning of 2023, we were not in compliance with the minimum bid price rule with respect to our Series A Preferred Stock. We regained compliance with the rule in February 2023, but subsequently on April 13, 2023, we received a notice from the Staff of the Listing Qualifications Department of The Nasdaq Stock Market LLC indicating that we no longer met the minimum bid price rule with respect to our Series A Preferred Stock because the closing bid price of our Series A Preferred Stock was less than \$ 1. 00 for the previous 30 consecutive business days. The notice had no immediate effect on the listing of our Series A Preferred Stock on The Nasdaq Capital Market. We have 180 calendar days (or until October 10, 2023) to regain compliance. If at any time during such 180 calendar day period the closing bid price of our Series A Preferred Stock is at least \$ 1 ~~quoted on the OTC Markets~~ 00 for ~~The OTC Markets provides significantly less liquidity than a listing on the~~ minimum of 10 consecutive business days, ~~Nasdaq Stock Markets or~~ will provide us written confirmation of compliance and the ~~other~~ matter will ~~national securities exchange~~. Securities quoted on the OTC Markets are traded by a community of market makers that enter quotes and trade reports. This market is limited in comparison to the national stock exchanges and any prices quoted may not ~~be a reliable indication of~~ closed. There can be no assurance that we will be able to regain compliance with the minimum bid price rule or continue to satisfy other ~~the value~~ continued listing standards and maintain the listing of our Series A Preferred Stock. ~~Quotes for stocks included on the OTC Markets are not listed in the financial sections of newspapers as are those for the Nasdaq Stock Market or the NYSE.~~ The suspension ~~Therefore, prices or for delisting securities traded solely on the OTC Markets may be difficult to obtain. Trading on the OTC Markets as opposed to a national securities exchange has resulted and may continue to result in a reduction in some or all of the following: (a) the liquidity of our Series A Preferred Stock ; (b) ; or the commencement of delisting proceedings, for whatever reason could, among other~~ ~~the market price~~ things, materially impair our stockholders' ability to buy and sell shares of our Series A Preferred Stock ; ~~(c) and could have an adverse effect on the~~ number of market price of, and the efficiency of the trading market ~~markers in for, our Series A Preferred Stock . See also "There can be no assurance that ; (d) the availability of information concerning the trading prices and volume of shares of our common Series A Preferred stock Stock will continue ; and (e) the number of broker- dealers willing to be listed- execute trades in shares of our Series A Preferred Stock. Each of the foregoing could have a material adverse effect on Nasdaq the price of or our Series A Preferred Stock ; if listed, that we will be able to comply with the continued listing standards of Nasdaq, which could limit investors' ability to make transactions in our securities and subject us to additional trading restrictions," below.~~ The liquidity of the market for our Series A Preferred Stock also depends on a number of other factors, including prevailing interest rates, our financial condition and operating results, the number of holders of our Series A Preferred Stock, the market for similar securities and the interest of securities dealers in making a market in our Series A Preferred Stock. We cannot predict the extent to which investor interest in our Company will maintain the trading market in our Series A Preferred Stock, or how liquid that market will be. If an active market is not maintained, investors may have difficulty selling shares of our Series A Preferred Stock. We may not be able to pay dividends on the Series A Preferred Stock if we have insufficient cash or available 'surplus' as defined under Delaware law to make such dividend payments. Our ability to pay cash dividends on the Series A Preferred Stock requires us to have either net profits or positive net assets (total assets less total liabilities) over our capital, and that we have sufficient working capital in order to be able to pay our debts as they become due in the usual course of business. Our ability to pay dividends may also be impaired if any of the risks described in this ~~Annual Report~~ report on Form 10-K were to occur. Also, payment of our dividends depends upon our financial condition and other factors as our board of directors may deem relevant from time to time. We cannot assure you that ~~we~~ our businesses will generate ~~have~~ sufficient cash flow from operations or "surplus" that future borrowings will be available to ~~pay the cash dividends~~ us in an amount sufficient to enable us to make distributions on our common stock, if any, and preferred stock, including the Series A Preferred Stock. ~~Dividends on~~ to pay our indebtedness or ~~our~~ to fund our other liquidity needs. We have established a segregated account that was funded with a portion of the proceeds from sales of Series A Preferred Stock ~~are payable every February 28, May 30, August 31, and November 30. Our board of directors is not required to declare a dividend on the Series A Preferred Stock and did not declare a dividend on the Series A Preferred Stock since February 2022. On April 19, 2023, approximately \$ 4. 5 million that the Company~~

**maintained in a segregated account** to pre-fund quarterly dividend payments on the Series A Preferred Stock until August 2022 **was made**, although the payment of such amounts on deposit to holders of the Series A Preferred Stock is subject to compliance with applicable laws and with the foregoing limitations. Additionally, once the funds in the segregated account are exhausted, there can be no assurance that we will have sufficient cash flow from operations to continue such dividend payments. The amounts on deposit are also assets of our consolidated entity and while we have agreed not to use such amount for any corporate purposes other than payments of dividends on the Series A Preferred Stock, such account will be available to our creditors generally in the event holders of our indebtedness or other obligations arising in the ordinary course of business seek to pursue remedies under bankruptcy or insolvency laws or otherwise. In addition, our Board of Directors is not required to declare a dividend on the Series A Preferred Stock and did not declare a dividend on the Series A Preferred Stock for the quarters ended May 30, 2022, August 31, 2022, November 30, 2022 and February 28, 2023. In addition, our Board of Directors may determine that the use of such amount on deposit for other corporate purposes is required pursuant to the exercise of their fiduciary duties to our common stockholders. You should be aware that the pre-funded dividends may not be available to make such payments in the amounts and at the times required under the terms of the Series A Preferred Stock or at all. Our ability to finance our operations for at least the next 12 months from the date the financial statements included in this report are released assumes the availability of such amounts for general corporate purposes **and was classified as unrestricted cash** discussed in Note 3 of the Notes to the ~~Company's Consolidated~~ **consolidated balance sheet. Our board of directors deemed the foregoing to be in the best interests of the Company and its common stockholders in light of the Company's current and anticipated Financial financial condition and outlook** Statements in Part II, Item 8 of this Form 10-K **and after considering its fiduciary duties to the Company's common stockholders and other relevant factors**. Future issuances of preferred stock may reduce the value of the Series A Preferred Stock. We may sell additional shares of preferred stock on terms that may differ from the Series A Preferred Stock. Such shares could rank on parity with or, subject to the voting rights referred to above (with respect to issuances of new series of preferred stock), senior to the Series A Preferred Stock as to distribution rights or rights upon liquidation, winding up or dissolution. The subsequent issuance of additional shares of Series A Preferred Stock, or the creation and subsequent issuance of additional classes of preferred stock on parity with the Series A Preferred Stock, could dilute the interests of the holders of Series A Preferred Stock offered hereby. Any issuance of preferred stock that is senior to the Series A Preferred Stock would not only dilute the interests of the holders of Series A Preferred Stock, but also could affect our ability to pay distributions on, redeem or pay the liquidation preference on the Series A Preferred Stock. Market interest rates may materially and adversely affect the value of the Series A Preferred Stock. One of the factors that influences the price of the Series A Preferred Stock is the dividend yield on the Series A Preferred Stock (as a percentage of the market price of the Series A Preferred Stock) relative to market interest rates. Continued increase in market interest rates may lead prospective purchasers of the Series A Preferred Stock to expect a higher dividend yield (and higher interest rates would likely increase our borrowing costs and potentially decrease funds available for dividend payments). Thus, higher market interest rates could cause the market price of the Series A Preferred Stock to materially decrease. The special exchange right that the Series A Preferred Stock is entitled to may make it more difficult for a party to acquire us or discourage a party from acquiring us. The Series A Preferred Stock special exchange right may have the effect of discouraging a third party from making an acquisition proposal for us or of delaying, deferring or preventing certain of our change of control transactions under circumstances that otherwise could provide the holders of our Series A Preferred Stock with the opportunity to realize a premium over the then-current market price of such equity securities or that stockholders may otherwise believe is in their best interests. Holders of the Series A Preferred Stock may be unable to use the dividends-received deduction and may not be eligible for the preferential tax rates applicable to "qualified dividend income." Distributions paid to corporate U. S. holders of the Series A Preferred Stock may be eligible for the dividends-received deduction, and distributions paid to non-corporate U. S. holders of the Series A Preferred Stock may be subject to tax at the preferential tax rates applicable to "qualified dividend income," if we have current or accumulated earnings and profits, as determined for U. S. federal income tax purposes. We do not currently have any accumulated earnings and profits. Additionally, we may not have sufficient current earnings and profits during future fiscal years for the distributions on the Series A Preferred Stock to qualify as dividends for U. S. federal income tax purposes. If the distributions fail to qualify as dividends, U. S. holders would be unable to use the dividends-received deduction and may not be eligible for the preferential tax rates applicable to "qualified dividend income." Holders of the Series A Preferred Stock may be subject to tax if we make or fail to make certain adjustments to the **Exchange exchange Rate rate** of the Series A Preferred Stock even though you do not receive a corresponding cash dividend. The exchange rate for the Series A Preferred Stock special exchange right is subject to adjustment in certain circumstances. A failure to adjust (or to adjust adequately) such exchange rate after an event that increases your proportionate interest in us could be treated as a deemed taxable dividend to you. If you are a non-U. S. holder, any deemed dividend may be subject to U. S. federal withholding tax at a 30% rate, or such lower rate as may be specified by an applicable treaty, which may be set off against subsequent payments on the Series A Preferred Stock. In April 2016, the Internal Revenue Service issued new proposed income tax regulations in regard to the taxability of changes in exchange rights that will apply to the Series A Preferred Stock when published in final form and may be applied to us before final publication in certain instances. Our revenues, operating results and cash flows may fluctuate in future periods, and we may fail to meet investor expectations, which may cause the price of our Series A Preferred Stock to decline. Variations in our quarterly and year-end operating results are difficult to predict, and our income and cash flows may fluctuate significantly from period to period. If our operating results fall below the expectations of investors or securities analysts, the price of our Series A Preferred Stock could decline substantially. ~~Specific factors that may cause fluctuations in our operating results include:~~ The Series A Preferred Stock represents perpetual equity interests in us, and it has no maturity or mandatory redemption date and are not redeemable at the option of investors under any circumstances. As a result, the Series A Preferred Stock will not give rise to a claim for payment of a principal amount at a particular date. As a result, holders of the Series A Preferred Stock may be required to bear the

financial risks of an investment in the Series A Preferred Stock for an indefinite period of time. ~~In addition, the Series A Preferred Stock will rank junior to all our current and future indebtedness and other liabilities. The Series A Preferred Stock will also rank junior to any other senior securities we may issue in the future with respect to assets available to satisfy claims against us.~~ The Series A Preferred Stock has not been rated. We have not sought to obtain a rating for the Series A Preferred Stock. No assurance can be given, ~~however,~~ that one or more rating agencies might not independently determine to issue such a rating or that such a rating, if issued, would not adversely affect the market price of the Series A Preferred Stock. Also, we may elect in the future to obtain a rating for the Series A Preferred Stock, which could adversely affect the market price of the Series A Preferred Stock. Ratings only reflect the views of the rating agency or agencies issuing the ratings and such ratings could be revised downward, placed on a watch list or withdrawn entirely at the discretion of the issuing rating agency if in its judgment circumstances so warrant. Any such downward revision, ~~placing~~ **placement** on a watch list or withdrawal of a rating could have an adverse effect on the market price of the Series A Preferred Stock. The market price of the Series A Preferred Stock could be substantially affected by various factors. The market price of the Series A Preferred Stock depends on many factors, which may change from time to time, including: • prevailing interest rates, increases in which may have an adverse effect on the market price of the Series A Preferred Stock; • trading prices of similar securities; • our history of timely dividend payments; • the annual yield from dividends on the Series A Preferred Stock as compared to yields on other financial instruments; • general economic and financial market conditions; • government action or regulation; • the financial condition, performance and prospects of us and our competitors; • changes in financial estimates or recommendations by securities analysts with respect to us or our competitors in our industry; • our issuance of additional preferred equity or debt securities; **and** • actual or anticipated variations in quarterly operating results of us and our competitors; ~~and • the ongoing impact of the global COVID-19 pandemic~~. As a result of these and other factors, holders of the Series A Preferred Stock may experience a decrease, which could be substantial and rapid, in the market price of the Series A Preferred Stock, including decreases unrelated to our operating performance or prospects. A holder of Series A Preferred Stock has extremely limited voting rights. The voting rights for ~~of~~ a holder of Series A Preferred Stock are limited. Our shares of common stock are the only class of our securities that carry full voting rights. ~~Voting rights for holders of the Series A Preferred Stock exist primarily with respect to voting on amendments to our certificate of incorporation, including the certificate of designations relating to the Series A Preferred Stock, that materially and adversely affect the rights of the holders of Series A Preferred Stock or authorize, increase or create additional classes or series of our capital stock that are senior to the Series A Preferred Stock.~~ Other than the limited circumstances described in the Certificate of Designations establishing the Series A Preferred Stock and except to the extent required by law, holders of Series A Preferred Stock do not have any voting rights. **Voting rights for holders of the Series A Preferred Stock exist primarily with respect to voting on amendments to our certificate of incorporation, including the certificate of designations relating to the Series A Preferred Stock, that materially and adversely affect the rights of the holders of Series A Preferred Stock or authorize, increase or create additional classes or series of our capital stock that are senior to the Series A Preferred Stock. In addition, as of August 31, 2023, the holders of the Series A Preferred Stock, have the right, voting separately as a single class, to elect two individuals to our board of directors because, as of that date, dividends on the Series A Preferred Stock had not been paid in an aggregate amount equal to the equivalent of at least six or more quarterly dividends. See “Risks related to our common stock — Failure to maintain effective internal controls could adversely affect our Series A Preferred operating results and the market for our common stock Stock have** Section 404 of the Sarbanes-Oxley Act **right to elect two directors to our board of directors,” below** 2002 requires that we maintain internal control over financial reporting that meets applicable standards. As with many smaller companies with small staff, material weaknesses in our financial controls and procedures may be discovered. If we are unable, or are perceived as unable, to produce reliable financial reports due to internal control deficiencies, investors could lose confidence in our reported financial information and operating results, which could result in a negative market reaction and adversely affect our ability to raise capital. As of the **filing** date of this report, **11-29, 891-064, 933-175** shares of our outstanding **common** stock were owned by, and **102-236, 654-067, 155-779** shares of our common stock were beneficially owned by, Acuitas Group Holdings, LLC, an entity indirectly wholly owned and controlled by Mr. Peizer, which represents the ownership of approximately **61.40-6%** of our outstanding common stock and the beneficial ownership of approximately **93.85-5%** of our common stock. **The foregoing number of shares** In addition, under the Keep Well Agreement, the beneficial **beneficially** ownership of **owned by** Acuitas Group Holdings, LLC and **the corresponding percentage assumes the conversion** its affiliates may increase to 90% of our future **\$ 3.5 million of the** outstanding **Keep Well Notes at a conversion price of \$ 0.36 per share (with any accrued interest paid in cash) and includes 9,722,223** shares of common stock **issuable upon exercise of warrants that would be issued upon conversion of the \$ 3.5 million of the principal amount of the outstanding Keep Well Notes**. As a result, Acuitas has and is expected to continue to have the ability to significantly influence the election of our Board of Directors and the outcome of all other matters submitted to our stockholders. Acuitas’ interest may not always coincide with our interests or the interests of other stockholders, and Acuitas may act in a manner that advances its best interests and not necessarily those of other stockholders. One consequence to this substantial influence or control is that it may be difficult for investors to remove our management. It could also deter unsolicited takeovers, including transactions in which stockholders might otherwise receive a premium for their shares over then current market prices. There can be no assurance that our common stock will continue to be listed on Nasdaq or, if listed, that we will be able to comply with the continued listing standards of Nasdaq, which could limit investors’ ability to ~~make transactions~~ **transact** in our securities and subject us to additional trading restrictions. Our common stock is ~~traded-listed~~ **on NASDAQ-The Nasdaq Capital Market** under the symbol “OTRK.” **The Nasdaq Capital Market requires that listed companies satisfy continued listing standards to maintain their listing.** On **September 14 October 13, 2022-2023**, we received a **notice letter** from the Staff of the Listing Qualifications Department **Staff (the “Staff”)** of The Nasdaq Stock Market LLC (**“Nasdaq”**) indicating that we no longer ~~met~~ **meet** the minimum bid price requirement

set forth in Nasdaq Listing Rule 5450-5550(a)(12) (the “Minimum Bid Price Requirement Rule”) because the closing bid price for our common stock was less than \$ 1.00 for the previous 30 consecutive business days. The notice letter had no immediate effect on the listing of our common stock on The Nasdaq Global Capital Market. Under Nasdaq Listing listing rules Rule 5810(e)(3)(A), we had a 180- calendar day grace period, or until March 13 April 10, 2023 2024, to regain compliance with the Minimum Bid Price Requirement Rule. Because On April 11, 2024, we did received a letter from the Staff notifying us that we had not regain-regained compliance with the Minimum Bid Price Requirement Rule by April March 13, 2023, in order to receive a second 180- 10- calendar day grace period within which to regain compliance, 2024 in accordance with Nasdaq Listing Rules, and that we are not eligible for applied to the Listing Qualifications Department of Nasdaq to transfer the listing of our common stock from The Nasdaq Global Market to The Nasdaq Capital Market and- an notified Nasdaq of our intention to cure the deficiency during the additional 180- calendar day grace period within which to regain compliance because, such as by effecting a reverse stock split, if necessary. On March 14, 2023, we do not meet received approval to transfer the minimum stockholders’ equity requirement for initial listing on of our common stock from The Nasdaq Global Market to The Nasdaq Capital Market. The letter also states that, unless we request and- an appeal by April 18, 2024, our common stock will be scheduled for delisting from The Nasdaq Capital Market and will be suspended at the opening of business on April 22, 2024, and a Form 25- NSE will be filed with the SEC, which will remove our common stock from listing and registration on The Nasdaq Stock Market. The Staff made its determination based upon our most recent public filings as a result of April 11, 2024. However, as disclosed in this report, our stockholders’ equity as of December 31, 2023 and as of the date of the filing of this report is in excess of the minimum stockholders’ equity requirement for initial listing on The Nasdaq Capital Market. Accordingly, we were granted a second- believe we are eligible for an additional 180- calendar day grace period from April 10, or until September 11, 2023 2024, within which to regain compliance with the Minimum Bid Price Requirement Rule. The We would regain compliance with the Minimum Bid Price Requirement will be met if our common stock has a minimum closing bid price of at least \$ 1.00 per share for a minimum of 10 consecutive business days during the additional 180- calendar day grace period, unless Nasdaq exercises its discretion to extend such 10- day period. We will be monitoring- have notified Nasdaq that if necessary, we intend to cure the non- compliance with the Minimum Bid Price Rule during such additional 180- calendar day period by implementing a reverse stock split in sufficient time to evidence a closing bid price of our common stock of at least \$ 1.00 per share for a minimum of ten consecutive business days prior to the expiration of such 180- day period. If the Staff does not grant us such additional 180- calendar day period, we intend to appeal the Staff’ s determination to delist our common stock to the Nasdaq Hearings Panel (the “ Panel ”) on or before April 18, 2024. A hearing request stays the delisting and will effect suspension of our common stock pending the decision of the Panel. At the hearing, we would intend to present our views concerning our eligibility for the additional 180- calendar day period to regain compliance with the Minimum Bid Price Rule and our plans for regaining compliance, which would include implementing a reverse stock split, if necessary as described above, in an attempt to regain compliance. There can be no assurance that we will be able- granted an additional 180- calendar day period within which to regain compliance with the Minimum Bid Price Requirement. If we do not regain compliance by September 11, 2023, we will receive a notification from Nasdaq that our- or common stock, if such an extension period is granted subject to delisting. At that time, we may appeal the delisting determination to a Nasdaq hearings panel. Such notification will have no immediate effect on our listing on The Nasdaq Capital Market, nor will it have an immediate effect on the trading of our common stock pending such hearing, if we were to seek an appeal. In addition, even if we were to regain compliance with the Minimum Bid Price Requirement, there can be no assurance that we will be able to maintain- evidence compliance with other-- the Minimum Bid Price Rule before continued listing requirements for The Nasdaq Capital Market or that our common stock will not be delisted from The Nasdaq Capital Market in the future. For example, The Nasdaq Capital Market requires that companies have: (x) stockholders’ equity of at least \$ 2.5 million; (y) a market value of listed securities of at least \$ 35 million; or (z) net income from continuing operations of \$ 500,000 in the company’ s most recently completed fiscal year or in two of the three-- the extension period expires most recently completed fiscal years. Our stockholders’ equity may become less than \$ 2.5 million later in 2023 and we do not currently meet either of the two alternative compliance standards described in clause (y) and (z). In addition to the specified criteria for continued listing, Nasdaq also has broad discretionary public interest authority that it can exercise to apply additional or more stringent criteria for continued listing on the Nasdaq. Nasdaq has exercised this discretionary authority in the past. As reported above, as of the date of the filing of this report, Acuitas is Group Holdings, LLC owns approximately 40.6% of our largest stockholder outstanding common stock, beneficially owns approximately 85.5% of our common stock, and the aggregate we have borrowed \$ 19.0 million in principal amount we borrowed of secured debt from Acuitas under the Keep Well Agreement, plus all accrued and unpaid interest thereon, was approximately \$ 3.7 million. Mr. Peizer owns and controls Acuitas and, as reported above, on March 1, 2023, the DOJ announced charges and the SEC filed a civil complaint against Mr. Peizer alleging unlawful insider trading in our stock. On March 1, 2023, Nasdaq has requested certain information from us related to the charges against Mr. Peizer. We responded to those requests. No assurances can be given that Nasdaq will not exercise its discretionary public interest authority to delist our common stock or Series A preferred stock due to public interest concerns related to Acuitas’ ownership of our common stock or its relationship to us under the Keep Well Agreement. Maintaining In connection with (a) the listing of our common stock public offering and the concurrent private placement that closed on November 14, 2023 and Nasdaq is a condition precedent to receiving the remaining \$ 6.0 million that we will borrow under securities issuable in connection with the conversion of the Keep Well Notes effected in the Notes Conversion and (b) the Sixth Amendment to the Keep Well Agreement described in Item 7 of Part II of this report, we submitted listing of additional shares applications to Nasdaq in accordance with Nasdaq listing rules. See “ Current Staff practice is not to accept or reject listing of additional shares applications before the closing of a public or private offering. We believe will

need additional funding, and we cannot guarantee that we will satisfy the conditions precedent for issuances of securities in the \$ 6.0 million that remains public offering, in the concurrent private placement, in connection with the Notes Conversion and in connection with the Sixth Amendment to be borrowed under the Keep Well Agreement are all compliant with Nasdaq listing rules. However, Nasdaq could assert that as a result of one or more of these securities issuances, we are not in compliance with Nasdaq listing rules. For find adequate sources of capital example, Nasdaq could assert that the exercise price reset and share adjustment provisions in the warrants sold in the public offering, in the concurrent private placement and / or under the Sixth Amendment to the Keep Well Agreement mandate a delisting determination unless such provisions are modified. Should that occur, we would need to obtain (1) with respect to the warrants sold in the public offering, the consent of the holders of warrants representing at least a majority of the shares of common stock underlying the warrants the then future outstanding and each investor in the public offering who purchased at least \$ 1.75 million of securities at the closing of the offering .<sup>2</sup> above and (2) with respect to the warrant issued to Acuitas in the concurrent private placement and with respect to the securities issued under the Sixth Amendment to the Keep Well Agreement, the consent of Acuitas, for any modifications. The failure to obtain such consent (s) could result in the delisting of our common stock . If our common stock is ultimately delisted by Nasdaq, and we are not able to list our securities on another national securities exchange, we expect our securities could be quoted on an over- the- counter market. If this were to occur, then we could face significant material adverse consequences, including: ~~(a)~~ less liquid trading market for our securities; ~~(b)~~ more limited market quotations for our securities; ~~(c)~~ determination that our common stock is a “ penny stock ” that requires brokers to adhere to more stringent rules and possibly resulting in a reduced level of trading activity in the secondary trading market for our securities; ~~(d)~~ more limited research coverage by stock analysts; ~~(e)~~ loss of reputation; and ~~(f)~~ more difficult and more expensive equity financings in the future. The National Securities Markets Improvement Act of 1996, which is a federal statute, prevents or preempts the states from regulating the sale of certain securities, which are referred to as “ covered securities. ” If our common stock remains listed on Nasdaq, our common stock will be covered securities. Although the states are preempted from regulating the sale of our securities, the federal statute does allow the states to investigate companies if there is a suspicion of fraud, and, if there is a finding of fraudulent activity, then the states can regulate or bar the sale of covered securities in a particular case. If our securities were no longer listed on Nasdaq and therefore not “ covered securities, ” we would be subject to regulation in each state in which we offer our securities . **Certain of our warrants contain price protection in the form of anti- dilution provisions that could harm trading in our common stock and make it difficult for us to obtain additional financing.** The warrants we issued and sold in the public offering and the concurrent private placement that closed on November 14, 2023 have price- based anti- dilution provisions. Under these anti- dilution provisions, subject to certain limited exceptions, (a) the exercise price of these warrants will be reduced each time we issue or sell (or are deemed to issue or sell) any securities for a consideration per share less than a price equal to their exercise price in effect immediately prior to such issuance or sale (or deemed issuance or sale), (b) on May 14, 2026, the exercise price of these warrants will be reduced to the greater of (i) \$ 0.1584 per share and (ii) the lesser of (x) the then exercise price and (y) the lowest volume weighted average price of our common stock on any trading day during the five trading day period immediately before May 14, 2026, (c) if at any time prior to June 20, 2027, we grant, issue or sell (or enter into any agreement to grant, issue or sell) any shares of common stock, non- convertible indebtedness and / or common stock equivalents to Acuitas that results in a reduction of the exercise price in accordance with the terms of these warrants, or we consummate (or enter into any agreement with respect to) any other financing with Acuitas and the exercise price of these warrants is greater than the lowest volume weighted average price of our common stock on any trading day during the five trading day period immediately following the public announcement of such transaction with Acuitas, then the exercise price of these warrants will be reduced to the lowest volume weighted average price on any trading day during such five trading day period, and (d) if we issue, sell or enter into any agreement to issue or sell securities at a price which varies or may vary with the market price of the shares of our common stock, the holders of these warrants will have the right to substitute such variable price for the exercise price of their then in effect. In addition, these anti- dilution provisions provide that if the exercise price of the warrants decrease, then the number of shares of our common stock issuable upon exercise thereof will proportionally increase. See “ Overview — Recent Developments — Warrant Adjustment Provisions ” in Item 7 of Part II of this report for more information regarding these anti- dilution provisions. In addition, as described in “ Overview — Recent Developments — Sixth Amendment to Existing Keep Well Agreement ” in Item 7 of Part II of this report, subject to stockholder approval, we will issue additional warrants to Acuitas that contain these anti- dilution provisions. To the extent we trigger, or enter into any agreement or issue any security that would trigger, the anti- dilution provisions of these warrants, our stockholders may experience substantial dilution. For example, on March 28, 2024, in connection with entering into an amendment to the Keep Well Agreement to provide for the issuance of additional securities thereunder at a price less than the exercise price of these warrants, we obtained a waiver from each holder of these warrants, pursuant to which such holder agreed to specified adjustments to the exercise price of their respective warrant in lieu of the adjustments that would otherwise be made in accordance with the terms of their respective warrant. In accordance with such waivers, the per share exercise price of their respective warrant was reduced from \$ 0.85 to \$ 0.3442, subject to further adjustment in accordance with the terms of such waiver and their respective warrant, and the aggregate number of shares of common stock issuable upon exercise of these warrants (without giving effect to the exercise of any of these warrants that occurred between their initial issuance date and the time the per share exercise price was reduced to \$ 0.3442) increased from 57,666,666 to 142,407,513. See “ Overview — Recent Developments — Waivers by Holders of Outstanding Warrants ” in Item 7 of Part II of this report for additional information regarding the waivers. The overhang represented by these warrants, coupled with their anti- dilution provisions, may make it more difficult for



**us to raise additional capital, because of the possible substantial dilution to any new purchaser of our securities and the ability of holders of these warrants to enter into short sales of our stock. Any potential new purchaser of our securities may choose to value our common stock in such a manner that takes into account the number of shares of our common stock that would be outstanding immediately following the exercise of all these warrants.** We incur increased costs as a result of operating as a public company, and our management devotes substantial time to compliance initiatives. We incur significant legal, accounting and other expenses as a public company, including costs resulting from public company reporting obligations under the Exchange Act and regulations regarding corporate governance practices. Nasdaq's listing requirements and ~~the SEC rules of the Securities and Exchange Commission, or the SEC,~~ require that we satisfy certain corporate governance requirements relating to director independence, filing annual and interim reports, stockholder meetings, approvals and voting, soliciting proxies, conflicts of interest and a code of conduct. Our management and other personnel devote a substantial amount of time to ensure that we comply with all of these requirements. Moreover, the reporting requirements, rules and regulations associated with being a public company result in significant legal and financial compliance costs and make some activities more time-consuming and costly. These reporting requirements, rules and regulations, coupled with the increase in potential litigation exposure associated with being a public company, could also make it more difficult for us to attract and retain qualified persons to serve on our board of directors or board committees or to serve as executive officers, or to obtain certain types of insurance, including directors' and officers' insurance, on acceptable terms and we may be forced to accept reduced policy limits and coverage or incur substantially higher costs to obtain the same or similar coverage. Our stock price may be subject to substantial volatility, and the value of our stockholders' investment may decline. The price at which our common stock trades fluctuates as a result of a number of factors, including the number of shares available for sale in the market, quarterly variations in our operating results and actual or anticipated announcements of our Ontrak solution, announcements regarding new or discontinued Ontrak solution contracts, new products or services by us or competitors, regulatory investigations or determinations, acquisitions or strategic alliances by us or our competitors, recruitment or departures of key personnel, the gain or loss of significant customers, changes in the estimates of our operating performance, actual or threatened litigation, market conditions in our industry and the economy as a whole. Numerous factors, including many over which we have no control, may have a significant impact on the market price of our common stock, including: • announcements of new products or services by us or our competitors; • current events affecting the political, economic and social situation in the United States; • trends in our industry and the markets in which we operate; • changes in financial estimates and recommendations by securities analysts; • acquisitions and financings by us or our competitors; • the gain or loss of a significant customer; • quarterly variations in operating results; • the operating and stock price performance of other companies that investors may consider to be comparable; • purchases or sales of blocks of our securities; and • issuances of stock. We have used the market price of our common stock to establish future payment obligations to stockholders of acquisition targets in the past and may ~~continue to~~ do so in the future; any decline in the market price regardless of whether due to our performance or external market dynamics would give rise to a payment obligation to such holders. Furthermore, stockholders may initiate additional securities class action lawsuits if the market price of our stock drops significantly, which may cause us to incur further substantial costs and continue to divert the time and attention of our management. Future sales of common stock by existing stockholders, or the perception that such sales may occur, could depress our stock price. The market price of our common stock could decline as a result of sales by, or the perceived possibility of sales by, our existing stockholders. Most of our outstanding shares are eligible for public resale pursuant to Rule 144 under the Securities Act of 1933, as amended. As of December 31, ~~2022~~ **2023**, approximately ~~10.29.1~~ **10.29.1** million **outstanding** shares of our common stock were held by our affiliates and may be sold pursuant to an effective registration statement or in accordance with the volume and other limitations of Rule 144 or pursuant to other exempt transactions. Future sales of common stock by significant stockholders, including those who acquired their shares in private placements or who are affiliates, or the perception that such sales may occur, could depress the price of our common stock. Future issuances of common stock and hedging activities may depress the trading price of our common stock. Any future issuance of equity securities, including the issuance of shares upon direct registration, upon satisfaction of our obligations, compensation of vendors, exercise of outstanding warrants, or ~~effectuation~~ **the conversion** of a reverse stock split ~~the Keep Well Notes~~, could dilute the interests of our existing stockholders, and could substantially decrease the trading price of our common stock. As of ~~December 31, 2022~~ **the filing date of this report**, we had outstanding (a) options to purchase ~~41,895-816,522-937~~ **41,895-816,522-937** shares of our common stock at exercise prices ranging from \$ 0. ~~40-39~~ to \$ ~~86-519,57-42~~ per share and, (b) warrants to purchase ~~1-183,576-843,256-027~~ **1-183,576-843,256-027** shares of our common stock at exercise prices ranging from \$ 0. ~~01-0001~~ to \$ ~~13-9,68-105~~ per share. ~~Also, and (c) as of December 31, 2022, we had a total of 1,449,526 unvested RSUs covering 116,984 shares of our common stock. Also, assuming conversion of the \$ 2.0 million in principal of the Surviving Note at a conversion price of \$ 0.36 per share and \$ 1.5 million in principal of the Initial Demand Note at a conversion price of \$ 0.36 per share (with any accrued interest paid in cash in both cases), we would issue 5,555,556 and 4,166,667 shares of our common stock, respectively. In addition to the issuance of shares of our common stock upon the exercise or conversion of~~ **outstanding securities, we** may issue equity securities in the future for a number of reasons, including to finance our operations and business strategy, ~~and in connection with acquisitions, to adjust our ratio of debt to equity, to satisfy our obligations upon the exercise of outstanding warrants or options or for other reasons.~~ There may be future sales or other dilution of our equity, which may adversely affect the market price of our common stock. In the future, we may need to raise additional funds through public or private financing, which might include sales of equity **or equity-linked** securities. The issuance of any additional shares of common stock or securities convertible into, exchangeable for, or that represent the right to receive common stock, **and / or** the exercise of such securities, could be substantially dilutive to holders of shares of our common stock. Holders of shares of our common stock have no preemptive rights that entitle ~~holders~~ **them** to purchase their pro rata share of any offering of shares of any class or series. The market price of our common stock could decline as a result of sales of shares of our common stock ~~made~~

~~after this offering~~ or the perception that such sales could occur. Because our decision to issue securities in any future offering will depend on market conditions and other factors beyond our control, we cannot predict or estimate the amount, timing or nature of our future offerings. Thus, our stockholders bear the risk of our future offerings reducing the market price of our common stock and diluting their **ownership** interests in our Company. We have historically relied in part on sales of our common stock to fund our operations, and our future ability to obtain additional capital through stock sales or other securities offerings may be more costly than in the past, or may not be available to us at all. We have historically relied in part on sales of our common stock to fund our operations. For example, we raised an aggregate of approximately \$ 15. 1 million in gross proceeds in fiscal years 2021 and 2022 through the sale of shares of our common stock in offerings made under a Form S- 3 “ shelf ” registration statement. Using a shelf registration statement to conduct an equity offering to raise capital generally takes less time and is less expensive than other means, such as conducting an offering under a Form S- 1 registration statement. We are no longer eligible to use a shelf registration statement due to non- payment of dividends on our Series A preferred stock since December 31, 2022. **As a result, the public offering of common stock, pre- funded warrants and warrants we closed in November 2023, raising an aggregate gross proceeds of \$ 6. 3 million, was completed under a Form S- 1 registration statement.** We may choose to conduct ~~an additional offering~~ **offerings** of our securities under an exemption from registration under the Securities Act or under a Form S- 1 registration statement, but we would expect either of these alternatives to be a more expensive method of raising additional capital and more dilutive to our stockholders relative to using a shelf registration statement. The holders of our Series A Preferred Stock ~~may be entitled~~ **have the right** to elect two directors to our board of directors. Under the terms of the certificate of designation ~~for establishing~~ **our Series A Preferred Stock**, if dividends on our Series A Preferred have not been paid in an aggregate amount equal to the equivalent of at least six or more quarterly dividends (whether consecutive or not), the number of directors constituting our ~~Board~~ **board of Directors** ~~directors~~ will be increased by two, and the holders of our Series A Preferred Stock, will have the right, voting separately as a single class, to fill such newly created directorships (and to fill any vacancies in the terms of such directorships). Dividends on our Series A Preferred Stock are payable every February 28, May 30, August 31, and November 30. We ~~did have~~ **not pay paid** the dividends on our Series A Preferred Stock ~~since February~~ **payable in each of May 2022 , and the director election right described above commenced on August 2022 31 , November 2022 and February 2023.** Accordingly, ~~if~~ **Failure to maintain effective internal controls could adversely affect our operating results and the market for our common stock. Section 404 of the Sarbanes- Oxley Act of 2002 requires that we do not pay maintain internal control over financial reporting that meets applicable standards. As with many smaller companies with all small such dividends staff, material weaknesses in our financial controls and procedures may be discovered. If we are unable do not pay dividends with respect at least two additional quarterly dividend dates , the holders of our or are perceived as unable, Series A Preferred Stock will have the right to elect two to directors produce reliable financial reports due to internal control deficiencies, investors could lose confidence in our board of directors reported financial information and operating results, which could result in a negative market reaction and adversely affect our ability to raise capital** . Provisions in our certificate of incorporation and Delaware law could discourage a change in control, or an acquisition of us by a third party, even if the acquisition would be favorable to you. Our amended and restated certificate of incorporation and the Delaware General Corporation Law contain provisions ~~(including the Section 382 Ownership Limit)~~ that may have the effect of making more difficult or delaying attempts by others to obtain control of our Company, even when these attempts may be in the best interests of stockholders. In addition, our amended and restated certificate of incorporation authorizes our Board of Directors, without stockholder approval, to issue one or more series of preferred stock, which could have voting and conversion rights that adversely affect or dilute the voting power of the holders of common stock. Delaware law also imposes conditions on certain business combination transactions with “ interested stockholders. ” These provisions and others that could be adopted in the future could deter unsolicited takeovers or delay or prevent changes in our control or management, including transactions in which stockholders might otherwise receive a premium for their shares over then current market prices. These provisions may also limit the ability of stockholders to approve transactions that they may deem to be in their best interests. We do not expect to pay dividends on our common stock in the foreseeable future. We have paid no cash dividends on our common stock to date, and we intend to retain our future earnings, if any, to fund the continued development and growth of our business. As a result, we do not expect to pay any cash dividends in the foreseeable future on our common stock. Further, any payment of cash dividends will also depend on our financial condition, results of operations, capital requirements and other factors, including contractual restrictions to which we may be subject, and will be at the discretion of our ~~Board~~ **board of Directors** ~~directors~~ .